

U.S. Department of Justice

President's Commission on Law Enforcement and the Administration of Justice



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November, 2020

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Although the Commission which prepared this Report was subject to the Federal Advisory Committee Act ("FACA"), 5 U.S.C. app. 2, a United States District Court judge has found that the Department of Justice ("DOJ") and the Commission's officers violated FACA in forming and operating the Commission. In particular, DOJ and the Commission did not comply with FACA's requirements to ensure the Commission's membership is fairly balanced in terms of the points of view represented, file a charter, select a designated federal officer, or provide timely notice of meetings in the Federal Register. For additional detail, the remedial order of the United States District Court that issued this decision is attached to the Commission's Report.

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FROM THE COMMISSION CHAIR

November 2020

Dear Colleagues:

On October 28, 2019, President Donald J. Trump signed Executive Order 13,896 creating this historic Commission to study, review, and recommend improvements to the law enforcement profession and the criminal justice system. Nearly 55 years ago President Lyndon B. Johnson created the Commission on Law Enforcement and the Administration of Justice. After two years of work, the Johnson Commission provided a blueprint for the criminal justice system that endured for more than a half century. This Commission was tasked with building upon the Johnson Commission report to provide a practical blueprint within a year that guides the improvement of the public safety of the United States and reinforces the fundamental purpose of government: to provide unalienable rights to life, liberty, and the pursuit of happiness.

The 17 commissioners appointed by Attorney General William P. Barr were charged with the significant responsibility to carry out the Executive Order and implementation guidance, and to submit a report to the attorney general. In the face of adversity of the COVID-19 epidemic, these Commission members demonstrated an unparalleled level of dedication, commitment, and sacrifice as they remained steadfast in meeting their obligation and duty to serve our great nation. These Commissioners were joined by more than 150 working group members; hundreds of subject matter experts; and a dedicated, energetic group of federal program managers, all working tirelessly to achieve the goals of this Commission. Nearly 200 expert witnesses provided oral testimony through more than 50 hearing panels, and more than 190 diverse groups of interest provided public statements, including information relating to civil and human rights and comments from survivors of murdered law enforcement officers. Collectively, the work of this Commission resulted in a set of practical recommendations for federal, state, local, tribal, and territorial governments to improve the law enforcement profession and related criminal justice system components. The key virtues of all commissioners included being extraordinary listeners, remaining practical, exercising sound judgement, and serving a duty to our great country.

I was humbled and honored to have served as the chair of this Commission and gained incredible insights driven by fact, research, and experience. As spoken to us on our first day of business by Attorney General Barr, "serving on this Commission is a privilege, [an] honor, and carries tremendous responsibility" for the welfare of our United States of America. I am forever grateful for this opportunity to lead the work of this Commission.

I encourage my colleagues throughout the criminal justice system, as well as elected and appointed officials and the community at large, to carefully consider and work toward adopting these recommendations.

Sincerely,

Phil Keith

Chair, President's Commission on Law Enforcement and the Administration of Justice

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INTRODUCTION

“Crime, especially violent crime, denies people their unalienable rights to life, liberty, and the pursuit of happiness. Together as a society, we must work to prevent crime from occurring, ensure that those who perpetrate crime face justice, and assist victims in overcoming the effects of crime on their lives.”¹ - President Donald J. Trump

“In forming the Commission, the Department of Justice has marshaled together the expertise and experiences of all sectors of the law enforcement community—urban police departments, county sheriffs, state attorneys general and prosecutors, elected officials, United States Attorneys, and federal law enforcement agencies. They come from distinct states, cities, counties, and towns across the country but share a common mission of safeguarding their respective communities from a variety of threats.”² - Attorney General William Barr

CALL TO ACTION

On October 28, 2019, President Donald J. Trump signed the Executive Order on the Commission on Law Enforcement and the Administration of Justice. The Executive Order tasked the Commission to study key issues related to law enforcement and the administration of justice and to make recommendations to the attorney general, who would submit a final report with recommendations to the president. The report contains actions that can be taken to prevent, reduce, and control crime, increase respect for the law, and assist victims. The Executive Order also authorized the attorney general to select commissioners. The attorney general, at his discretion, selected officials from the federal government and elected officials from state and local governments.

Through working groups, commissioners conducted meetings with researchers, subject matter experts, and key stakeholders to gather information about the issues identified by the president and attorney general. The commissioners also convened issue-focused hearings to gather testimony from experts and stakeholders. This research and testimony inform the Commission’s recommendations to improve the administration of justice.

The last commission to review the criminal justice system took place during the Johnson administration, and many of the issues examined by that Commission remain relevant today. The Johnson Commission’s 1967 report, *The Challenge of Crime in a Free Society*, looked at “questions about how the police, the courts, and corrections should be organized; how their personnel should be selected, trained, and paid; what modern technology can do to help their work; what kinds of knowledge they need; what procedures they use; what resources they should be given;

1 Commission on Law Enforcement and the Administration of Justice, Exec. Order No. 13,896 (2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-01/pdf/2019-24040.pdf>.

2 William P. Barr, U.S. Attorney General, “Statement From Attorney General Barr on the Establishment of the Presidential Commission,” presented at swearing in of Commissioners for the 2019 President’s Commission on Law Enforcement and the Administration of Justice, Washington, DC, January 22, 2020, <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice>.

what the relations between the community and the various parts of the criminal justice system should be.”³ These questions remain at the forefront of the current Commission.

More than half a century later, the President’s Commission on Law Enforcement and the Administration of Justice has produced a timely report that updates the mission of its predecessor. The Commission’s work gives voice to the lived experiences and stories told by those in law enforcement and other parts of the criminal justice system, and through that voice delivers recommendations for advancing and adapting law enforcement to manage modern issues and challenges. It is informed by incisive analysis on a range of topics that highlight and identify the issues that affect today’s law enforcement professionals. It also recognizes the social problems, including mental health, substance use issues, and homelessness, that face the nation and notes their serious impact on the criminal justice system.

With the support of the president and the leadership of Attorney General Barr, this report advocates for and facilitates a comprehensive and coordinated examination of systemic topics. The report also provides substantive recommendations to improve the operation of the criminal justice system, building with rich insight upon what the previous Commission set out to achieve. For example, the many advances in technology since the Johnson Commission report made that an important issue for review. From telecommunications, to forensics, to facial recognition and more, the technology landscape of today would have been regarded as science fiction 50 years ago. This report addresses the current state of technology, both as it supports criminal justice and as it is used to commit crime. Similarly, this report provides recommendations on numerous other issues identified by the attorney general through the authority of the Executive Order: Alleviating the Impact of Social Problems on Public Safety, Law Enforcement Recruitment and Training, Rural and Tribal Law Enforcement, Law Enforcement Health and Wellness, Grant Programs, Respect for Law Enforcement and the Rule of Law, Business and Community Development, Reduction of Crime, Criminal Justice System Partners, Juvenile Justice and Youth Crime, Victim Services, Data and Reporting, Reentry Programs and Initiatives, and Homeland Security.

This report highlights social justice issues and provides recommendations that support our law enforcement’s mission to safeguard the public while maintaining positive relationships with their communities. As Attorney General Barr stated, “A free and safe society requires a trusted and capable police force to safeguard our rights to life and liberty.”⁴ This report provides practical, actionable, and thoughtful recommendations to enhance public safety and support the administration of justice.

THE COMMISSION

As directed in the Executive Order, Attorney General Barr established the Commission on January 22, 2020. Phil Keith, former chief of police for the Knoxville Police Department in Tennessee and current director of the Office of Community Oriented Policing Services, was appointed to chair the Commission. Katharine (Katie) Sullivan, former Colorado state trial court judge and current principal deputy assistant attorney general of the Office of Justice Programs, was selected as vice chair and also served as a commissioner. Sixteen other officials were sworn in as commissioners to represent federal, state, and local governments and law enforcement for a total of 17 commissioners.

³ U.S. President’s Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, DC: U.S. Government Printing Office, 1967), 2, <https://www.ncjrs.gov/pdffiles1/nij/42.pdf>.

⁴ Office of Public Affairs, “Attorney General William P. Barr Announces the Establishment of the Presidential Commission on Law Enforcement and the Administration of Justice,” U.S. Department of Justice, January 22, 2020, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-establishment-presidential-commission-law>.

The commissioners studied issues related to law enforcement and the administration of justice, with the goal of submitting a final report with recommendations to the attorney general. This report compiles and documents reviews of relevant research, testimony from subject matter experts, and input from stakeholder agencies and associations.

THE ISSUES

The Executive Order highlighted key areas of interest to the White House and gave authority to the attorney general to review additional issues at his discretion. The following issues for review were established and working groups were formed:

- **Respect for the Rule of Law and Law Enforcement** focused on the trend of diminished respect for law enforcement and the laws they enforce. The group specifically evaluated how under-enforcement of the criminal law in certain jurisdictions affects public safety, public perception of law enforcement and the laws it enforces, police resources and morale, and the rule of law. The group also evaluated how to increase respect for law enforcement and how a lack of respect for law enforcement impacts public safety and the rule of law.
- **Victim Services** examined cross-system programs on the federal, state, and local levels that leverage criminal justice system professionals to better address the needs of victims of crime, including victims of human trafficking and hate crimes; victims working with trauma; and victims who are elderly, homeless, youths, or who have limited English proficiency.
- **Alleviating the Impact of Social Problems on Public Safety** studied how socio-criminal factors—mental illness, homelessness, and substance abuse—affect law enforcement. The group focused not on the social problems themselves, but on how their prevalence affects law enforcement resources, capacity, and morale. The group assessed how other government resources (e.g., education, business, and social services) can cooperatively tackle the social ills that contribute to crime.
- **Juvenile Justice and Youth Crime** focused on the principles of an effective, efficient, and balanced juvenile justice system which prevents juvenile crime and delinquency. The group examined the causes of youth crime and violence and law enforcement's role in both the apprehension of serious juvenile offenders and the appropriate use of diversion and community-based resources. The group also focused on the continued development of qualified juvenile justice professionals to enhance awareness, knowledge, and collaboration among stakeholders vital to crime prevention and community safety.
- **Reentry Programs and Initiatives** focused on how prisoner programming and post-custodial rehabilitation initiatives can reduce recidivism and improve the quality of life for criminal offenders and their communities.
- **Criminal Justice System Partners** examined how police, judges, prosecutors, defense attorneys, and correctional authorities intersect, and how the system of criminal justice can leverage those intersections to enhance its ability to prevent and control crime and serve the victims of crime.
- **Business and Community Development** assessed the role and influence of commercial businesses and community development organizations and their efforts to cultivate prosperous and safe communities.
- **Reduction of Crime** examined and evaluated trends in crime; the current use of targeted deterrence approaches to reduce violent crime; and new and developing methodologies, technologies, and approaches to combat criminal activity, delinquency, and public disorder.

This group also focused on the integration of education, employment, social services, and public health services into efforts to reduce crime and ease the burden on law enforcement, courts, and corrections systems.

- **Homeland Security** focused on the issues pertaining to the national security of the United States and how to best combat the threat posed by both international and domestic terrorism.
- **Grant Programs** reviewed the efficacy of federal grant programs in aiding state, local, tribal, and territorial law enforcement entities and constructively evaluated optimal use of federal funding for local law enforcement.
- **Technology** focused on how new, innovative, and developing technologies affect law enforcement in terms of both challenges and opportunities.
- **Data and Reporting** reviewed current data being collected by the federal government as it relates to crime, the criminal justice system, and law enforcement. The group evaluated methods by which these data are collected and how they are used. It also identified gaps in these collections, including law enforcement and crime data that are not currently collected by the federal government but should be. The group also reviewed evidence-based policing (EBP), including promising practices, and how EBP can be used to advance policing.
- **Rural and Tribal Law Enforcement** focused on the major issues confronting rural and tribal law enforcement.
- **Law Enforcement Health and Wellness** focused on the physical safety and mental health of law enforcement officers.
- **Law Enforcement Recruitment and Training** focused on the issues affecting officer recruitment, retention, and training. The group was tasked to specifically evaluate how to improve and increase the enlistment, retention, and training of police officers across the country.

The working groups performed in a consultative capacity and provided advice, counsel, and support to the Commission. Chairs led each working group with the assistance of a federal program manager. Three team leads each managed five working groups to oversee progress, provide guidance and support, and assist with administrative issues. A federal lead writer/editor provided editorial guidance and served as the managing editor in the development of this report. A support contractor provided logistical and writing services. The working groups worked autonomously to conduct interviews of subject matter experts and collect research to review. Working groups submitted regular reports on their progress and activities to the Commission. They also prepared and assisted with the coordination of Commission hearings.

The result of their efforts is this report, and each working group issue represents a chapter. Each chapter contains issue statements, reviews of relevant research, examples of innovative approaches, analysis of information collected by the Commission, and challenges affecting the criminal justice system. Each chapter also contains comprehensive recommendations to address these issues and support law enforcement, victims of crime, businesses, and the overall administration of justice in the United States.

THE HEARINGS

The Commission conducted a series of hearings to collect written and oral testimony from criminal justice professionals and other expert witnesses. The hearings were managed by the Commission chair and followed formal rules of order, similar to Congressional hearings. Witnesses were afforded the opportunity to submit written statements prior to appearing before the Commission

in the hearing. Witnesses provided oral statements and participated in a moderated question-and-answer session with the commissioners.

The hearings were organized around the Commission's issue areas and were scheduled to take place in five cities around the United States across five months. Several hearing dates coincided with large criminal justice conferences to take advantage of having witnesses and subject matter experts already in one location.

The Commission held the first hearing in Miami, Florida, on February 27, 2020. The hearing focused on Law Enforcement Health and Wellness and coincided with the International Association of Chiefs of Police's Symposium on Officer Safety, Health, and Wellness. Commissioners heard from 15 witnesses and experts on topics that included law enforcement health and wellness programs, the impact of stress and trauma on officers, suicide prevention, and mental health concerns.



Commissioners during testimony in Miami

The second hearing, which focused on Social Problems Impacting Public Safety, was scheduled to occur on March 19–20, 2020, in Orange County, California; however, it was cancelled due to the COVID-19 pandemic. The remaining in-person hearings were also cancelled due to pandemic-related federal travel restrictions and local bans on large gatherings. As a result, the federal program management team pivoted away from live hearings to a teleconferencing format. With assistance from the Federal Bureau of Investigation's teleconferencing service, the federal program team coordinated the efforts to operate hearings virtually.

The virtual hearings accomplished the same goals as the live hearings while keeping everyone safe from exposure. The format was identical to that of the planned live hearings, as witnesses submitted written testimony and then presented an oral statement, followed by questions from the commissioners. The transcripts, written testimony, and witness biographies from each hearing were publically posted on the Department of Justice website. The teleconferencing format allowed for additional hearings, addressing more topics than were originally scheduled using the live hearing approach. By the end of the hearings, the Commission had heard from 182 witnesses across 51 panels. The teleconferencing format also allowed for a wider audience to listen in to the hearings. An average of 92 people listened to each teleconference.

The Commission used a dedicated email account to collect comments and recommendations from the public. Nearly 180 separate statements were submitted by individuals within law enforcement, professional criminal justice membership associations, academics, advocacy organizations, and concerned citizens, which provided the Commission additional context and

information. It also ensured that many voices and perspectives contributed to the development of the final report.

THE REPORT

This report documents the work of the Commission and the working groups. Each of the 15 issues has its own chapter that provides a background and current state of the topics within the issue and specific recommendations to improve law enforcement and the administration of justice in the United States. If not explicitly stated, recommendations referencing states also include the District of Columbia and all United States territories, as applicable. A complete enumerated list of all recommendations, the report methodology, and a listing of hearings are provided in the appendices.

A SPECIAL NOTE ABOUT THE COVID-19 PANDEMIC AND CIVIL UNREST OF 2020

COVID-19 Pandemic

Early in the work of the commission, the United States began responding to the person-to-person spread of the novel SARS-COV-2 virus, the infectious agent responsible for the respiratory illness called Coronavirus Disease 2019 (COVID-19). That virus quickly reached pandemic status, presenting tremendous challenges to the nation's criminal justice system and its professionals. Leaders in the criminal justice system were forced to reconsider fundamental operational activities in order to protect the health of their personnel, while also still carrying out their duties. For example, according to jointly-administered survey results from the International Association of Chiefs of Police and George Mason University, most responding agencies adopted formal policies to reduce proactive pedestrian or traffic stops (61 percent), while many agencies (39 percent) had actually increased community presence for certain locations that were uniquely affected by the virus, such as grocery stores and hospitals.⁵

The public health concerns had other unique implications for the public safety sphere. Many agencies suspended or modified their academy and in-service training, or they looked for ways to safely conduct training without unnecessarily exposing their personnel. This required close coordination with state training standards bodies to examine how to meet requirements while operating within a modified training environment. Access to personal protection equipment became an essential consideration for all first responders. Facilities such as jails and prisons, courtrooms and prosecutors' offices, and crime laboratories were forced to shut down or curtail activities for a period of time, which included early releases of inmates from prisons and jails across the country as officials sought to minimize risks to detainees and staff. Law enforcement was confronted with the need to coordinate closely with public health officials as they developed shelter-in-place orders, which raised questions about the viability of enforcing those orders. Criminal justice officials and staff were not immune to the effects of the virus. Performing in a public service role in the midst of a public health crisis presents both mental and physical health impacts. At the time of publication, some first responders are still being robbed of their health and worse—their lives.

One long-term impact that will linger for some time is the unknown effects that the COVID-19 virus will have on criminal justice system budgets, as federal, state, and local revenues may continue to be negatively impacted by economic fallout. The potential for reductions in budgets

⁵ Cynthia Lum, Carl Maupin, and Megan Stoltz, *The Impact of COVID-19 on Law Enforcement Agencies (Wave 1)* (Alexandria, VA: International Association of Chiefs of Police, 2020), <https://www.theiacp.org/sites/default/files/IACP-GMU%20Survey.pdf>.

will likely limit training, equipment and technology procurement, overtime, and even reductions in force through attrition and furloughs in some jurisdictions.

Civil Unrest Against Law Enforcement

This new public safety dynamic—while hopefully temporary—is exacerbated by the confluent civil unrest events and protests against law enforcement that continue to unfold in the aftermath of several high-profile use-of-force incidents. In particular, on May 25, 2020, the death of George Floyd at the hands of police officers in Minneapolis, Minnesota, sparked protests in cities and towns across the nation, which were sometimes overtaken by those intent on exploiting the situation for their own means. Law enforcement is sworn to uphold the constitutionally protected activities of those whose only intent is to exercise their legitimate right to protest, yet radical elements that bring violence and property destruction further strain law enforcement resources.

The civil demonstrations protesting the death of George Floyd raise many issues regarding the function of law enforcement in their mission to keep American communities secure and safe. While some of these issues are relevant to and addressed by this report, including the importance of community trust in law enforcement, the Executive Order authorizing this commission calls for a comprehensive study of law enforcement as it exists today and under its current charge to prevent crime and safeguard communities. A fundamental reformation of the institution of law enforcement as commonly and currently understood is therefore beyond the scope of this report. In the aftermath of the civil unrest, moreover, President Donald J. Trump issued a distinct Executive Order Number 13929 entitled “Safe Policing for Safe Communities” that specifically responds to the killing of George Floyd by calling for police reforms that would prevent abuses of police authority and restore public trust in law enforcement.

Both COVID-19 and civil unrest presented both unanticipated and unparalleled challenges to the law enforcement profession and criminal justice system. Both responded as one might expect: with quick adaptation to meet the difficulties of protecting public safety and upholding the law during a public health crisis, as well as leading important discussions within the law enforcement profession about policing practices like use of force, accountability, and transparency.

The work of this historic Commission took place against that backdrop. Hundreds of professionals balanced their commitment to this Commission with their considerable and complex duties in their own communities and positions. Their dedication to service made this report possible.

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EXECUTIVE SUMMARY

Pursuant to Executive Order No. 13,896 signed by President Donald J. Trump on October 28, 2019, the President's Commission on Law Enforcement and the Administration of Justice reviewed and examined a range of subjects that affect law enforcement officers and their ability to safeguard America. This is the first Commission convened since 1967, and the demands and responsibilities of law enforcement have evolved significantly and substantively. The findings and recommendations of the Commission vary considerably in terms of the issues identified and the solutions prescribed. After months of hard work receiving testimony and digesting volumes of reports and materials, several prominent themes that encapsulate the major issues facing law enforcement and its capacity to prevent and control crime emerged.

The thesis of the Commission's study is that the fundamental duty of law enforcement remains to protect people from harm. It accomplishes this duty directly through safeguarding victims from crime and indirectly through maintaining the rule of law. No segment of the criminal justice system—courts, prosecutors, correctional facilities—has been as effective or successful at crime reduction as law enforcement. A robust police force remains essential for public safety and the legal order, and under these circumstances there must be more, not less, investment in law enforcement to protect and serve American communities.

In part due to its success addressing criminal problems, impractical expectations have arisen that law enforcement officers can cure all of the criminal problems they police, which has resulted in an overworked, overburdened law enforcement with diminished resources, morale, and public confidence. The fact remains that crime is a complex social problem that requires a conglomerate of welfare programs and government systems to address, and thus requires the help of a greater social and governmental framework to reduce. With this understanding, law enforcement can return to its core mission and first duty—public safety. This is a demanding responsibility in itself. While there are many ways for law enforcement to improve its capacity to address the salient criminal threats of our time, enhanced technology and crime data analysis hold extraordinary promise for the ability of law enforcement to fashion smart, efficient, and evidence-based strategies to police a 21st century world and preserve collective peace and security.

PART I: THE RULE OF LAW

The Basic Mission of Police is to Preserve the Rule of Law

The fundamental purpose of law enforcement is to preserve the rule of law. Because law enforcement officers cannot and should not be omnipresent, it follows that it is not the badge and gun that protects communities from crime. Rather, this protection comes from a system of rules and a social compact in which Americans have faith and an expectation that anyone who breaks those rules—no matter who they are—will be held accountable by an impartial justice system enforced by competent officers of the law. While it is the rule of law that allows a social order of liberty and equality, the American peace officer carries the vital duty of giving life to the law through its enforcement. In doing so, law enforcement instills the trust that it is these laws, not the men and women who make or execute them, that ultimately govern and safeguard the public. The role of law enforcement to uphold the rule of law is critical to maintaining public safety in a general sense, but also essential to vindicating the individual victims of crime. Ultimately,

the victims of crime suffer most when the rule of law erodes and law enforcement lacks public confidence to keep them safe.

This was true during the last President's Commission on Law Enforcement in 1967 ("The 1967 Law Enforcement Commission"), and it remains true today. There are grave consequences when communities lose their trust in law enforcement and its capacity to administer justice and safeguard the American people. Disrespect for law enforcement, unfortunately, readily becomes a disrespect for the law itself, which threatens the social order. Following the killing of George Floyd on May 26, 2020, which transpired during the work of this Commission, the civil protests against alleged police abuses were accompanied by significant lawlessness and increases in crime across many jurisdictions, and are a timely reminder of the importance that citizens have collective trust in their law enforcement to protect and serve their communities. The Commission's review of law enforcement, therefore, rests on the foundational principle that law enforcement officers are the primary guarantors of communal safety. As such, government policies and programs should foremost promote public trust in law enforcement, but also deter abuses by police that undermine that trust. To that end, the Commission has recommended jurisdictions enhance officer training on using force and develop special procedures for investigating and prosecuting officer-involved shootings which promote accountability, transparency, impartiality, and due process.

Ultimately, however, the first and greatest reason for the use of force by police remains that individuals do not respect or comply with the lawful commands of law enforcement officers. The criminal justice system affords many avenues for citizens to challenge the actions of police officers—it does not allow them to do so through physically resisting officers, nor does it allow law enforcement officers to surrender their duties to public safety whenever a subject resists. Because law enforcement has a duty to secure compliance by force, and because individuals have a legal right to challenge law enforcement force in subsequent proceedings, the Commission asserts that the primary prevention of unwarranted force by law enforcement is for citizens to "Comply, Then Complain."

Much work remains for law enforcement to optimize community trust and to improve practices that undermine trust. The recommendations within this report support not only the work of good and competent law enforcement agencies but also the tenets of President Trump's Executive Order on Safe Policing and Safe Communities, which more directly addresses the concern of police abuse of power.

PART II: THE COMPLEMENTS TO EFFECTIVE LAW ENFORCEMENT

Law Enforcement Cannot Solve the Problem of Crime Alone

As important as law enforcement is to the social order, a proper understanding of law enforcement must also recognize its limitations. While society sometimes underappreciates the job law enforcement does within its traditional role of crime reduction, at the same time it often overrates the capacity of law enforcement to take on all sorts of responsibilities beyond its traditional mission. A significant misconception that persists from the 1967 Law Enforcement Commission to present day is that a police force can solve the problem of crime alone. To quote our predecessors:

The fact is, of course, that even under the most favorable circumstances the ability of the police to act against crime is limited. The police did not create and cannot resolve the social conditions that stimulate crime. They did not start and cannot resolve the social conditions that stimulate crime. They do not enact the laws that they are required to

enforce, nor do they dispose of the criminals they arrest. The police are only part of the criminal justice system; the criminal justice system is only one part of the government; and the government is only part of society.¹

One of the principal determinations of the Commission is that the modern law enforcement officer is still being asked to do too much with too little. The problem of crime is a complex and difficult issue, and law enforcement cannot take it on alone. Law enforcement must join with families, churches, schools, workplaces, commercial industries, nonprofit organizations, social service agencies, correctional facilities, and other criminal justice services to work together to deter and prevent criminal behavior. The failures of any of these institutions can result in the ultimate and unrealistic assignment of responsibility to law enforcement as a catchall backstop to “fix” the social consequences that come in the form of criminal activity.

Law enforcement is part of a government architecture of social welfare and public safety systems that collaboratively function to keep communities safe. Nevertheless, in many communities, law enforcement still bears the primary responsibility of managing the social ills that motivate crime—be it mental illness, drug addiction, or homelessness. As law enforcement has assumed the duties of both public safety and social caretaking, finite resources within their agencies have been diverted from traditional police work to the domain of social provider—where law enforcement often lacks the relevant resources, expertise, or authority. The Commission therefore recommends enhanced public programs and services specifically equipped to address mental illness, homelessness, and drug addiction, so that communities can delimit and restore the mission of law enforcement to its core duty of preventing crime.

In addition to public programs that can better treat the social conditions that produce criminal behavior, there are additional elements of the criminal justice system that can complement law enforcement’s efforts. Specifically, juvenile justice and reentry services are essential and remedial instruments of crime prevention and reduction. These systems may assist in stopping troubled youths from committing crimes in the future, and also bring adults who have committed crimes in their past back to normal lives of peace and prosperity. While law enforcement often puts the wheels of criminal justice in motion, there are many ways that judges, prosecutors, defense attorneys, and correctional officials—at various stages of the legal proceedings—can work towards a fairer and more just system that best serves victims, defendants, and the community at large in the collective goal of reducing crime. To that end, the Commission recommends improved coordination among law enforcement and prosecutors; greater transparency among prosecutors, defense, and victims as to guilty plea agreements; increased use of treatment courts for certain categories of crimes and defendants; and a refined bail system based on public safety and accountability.

PART III: CRIME REDUCTION

Prominent Strategies and Methods to Reduce Crime

A primary takeaway of the Commission’s study is the need to refocus and return law enforcement to its traditional mission of apprehending those who pose a threat to public safety. That mission is daunting enough by itself. The scale and scope of criminal problems confronting American law enforcement has expanded considerably in the half century since the 1967 Law Enforcement Commission into new frontiers such as cyberspace and homeland security. Moreover, criminals have exploited new technologies and innovations to commit and conceal criminal activity.

¹ U.S. President’s Commission on Law Enforcement and the Administration of Justice, *Task Force on the Police* (Washington, DC: U.S. Government Printing Office, 1967).

Violent crime is not new and is no less important today in assessing crime reduction. In the period between the 1967 Law Enforcement Commission and the present, violent crime rates increased dramatically in the 1970s and 1980s, peaking in 1991 at a rate triple that of the violent crime rate confronting law enforcement in 1967. Since that time, however, violent crime has steadily decreased to a fifty-year low observed in the most recent FBI Uniform Crime Reporting (2018). But the continuous reduction of violent crime rates is neither inevitable nor accidental. Recent spikes in violent crime have occurred, most notably in 2015, demonstrating that law enforcement policy and social conditions substantially influence the violent crime rate.

Even where most of the country enjoys historically low violent crime rates, many communities—particularly in urban and tribal jurisdictions—suffer from levels of violent crime several times the national average and parallel crime rates in developing countries. Gangs and other criminal organizations terrorize American communities for power and profit, armed by an illicit firearm trade and financed by the proceeds of drug trafficking. Targeting the most violent criminal actors and their organizations should remain a primary focus of law enforcement, given that violence is the most harmful class of crime to its victims and their communities.

It is violent crime that most deprives Americans of their freedom and security. Thus, it is violent crime that should demand principal attention and concern from law enforcement. Because violent crime is concentrated in certain cities as well as certain tribal jurisdictions, law enforcement should devote its resources to the urban and tribal communities that need them most. More resources also need to be devoted to rural communities that face the same types of crimes as urban areas but with much less personnel and far fewer tools to address them. The Commission also proposes several ways for law enforcement to better identify, assess, and incapacitate the worst violent criminals and their organizations through crime data analysis, crime gun intelligence, hotspot mapping, and other measures to optimally target violent criminals. An aggressive anti-violent crime policy, moreover, necessarily includes initiatives to deter and punish the illegal firearm trafficking that places guns in the hands of criminals who will then use them to victimize others.

Relatedly, the Commission studied the criminal harms of drug trafficking, which continues to ravage communities, destroy families, and enrich violent criminals. The proliferation of potent synthetic opioids and the resurgence of methamphetamine have resulted in thousands of American deaths per year through drug overdose. While law enforcement, as explained above, cannot be expected to remedy the scourge of drug addiction, the Commission does recommend several measures for law enforcement to disrupt and dismantle the drug trafficking organizations most responsible for the importation and distribution of dangerous controlled substances.

Finally, no study of crime is complete without a specific focus on crimes against vulnerable populations. The crimes of human trafficking, child sex abuse, elder abuse, and domestic violence are particularly reprehensible and offensive. These victims have a greater need for the protection of law enforcement and society.

PART IV: INNOVATIONS

Policing in the Digital Age

The 1967 Law Enforcement Commission undertook a systematic review of American law enforcement when it primarily operated through street policing and face-to-face encounters. Today, however, a significant portion of crime, and the work law enforcement does to stop it, takes place in a metaphysical realm of cyberspace where law enforcement have minimal personal interaction with the criminals they pursue or the people they protect. The digital domain is an

environment that poses anonymous and pronounced criminal threats—including to children and minors who are especially vulnerable to sexual exploitation.

The digital world has also afforded criminals the ability to conceal their crimes, including through methods of data encryption that are impervious to search and seizure by law enforcement. The lack of lawful access to encrypted information controlled by technology companies is presently one of the greatest obstacles to law enforcement in its efforts to combat crime. The rule of law cannot exist in a space—digital or otherwise—that deliberately insulates criminals from law enforcement investigation. The substantial danger to individual victims and general safety posed by warrant-proof encryption demands a prompt and decisive policy action. Because the prominent technology companies have increasingly elected to implement data systems that prevent law enforcement access, the Commission has concluded that a legislative solution may be necessary to optimally balance the interests of personal privacy and public safety.

While technological advancements present challenges for law enforcement, a critical lesson from the Commission's study is that modernity is not just a new world of opportunity for criminals. Technology in particular poses unique and important opportunities for law enforcement as well. New methods of electronic surveillance and digital investigation hold considerable promise, and the Commission recommends that law enforcement take a proactive approach to developing and innovating technologies to combat crime instead of reactively catching up to the technological innovations of the day. Accordingly, the Commission encourages law enforcement to specifically consider—with appropriate contemplation of competing policy interests—developing and adapting crime reduction technologies, such as unmanned aerial systems (quadcopters), acoustic gunshot detection technologies, and facial recognition software, to add to their crime-fighting arsenal.

Technological advancements may also furnish better and more information for law enforcement to identify, prevent, and reduce crime. The computerization of law enforcement incidents, reports, and statistics has created a universe of crime data that can lead to improved policing and transparency. Law enforcement needs to develop and consult this information to decide how best to deploy limited resources. Data analysis is crucial to informed policymaking at the highest levels of law enforcement; it can assist law enforcement in evaluating the extent of criminal problems as well as the efficacy of law enforcement strategies to combat them. It is also integral to investigations of violent crime, as data analysis of crime gun intelligence and hotspot mapping can allow law enforcement to target the most violent criminal actors and their organizations.

PART V: LAW ENFORCEMENT RESOURCES

Caring for Those Who Care for Us

The job of a law enforcement officer is as challenging as ever. In the course of their everyday duties, officers confront extremely dangerous or traumatic scenarios in which they must act with composure and professionalism. In addition, society has tasked officers with an increasing range of duties beyond their traditional authority or expertise, which has taxed their capacity to police communities. Finally, distrust and disrespect for law enforcement has undermined morale and, in some cases, resulted in violence that threatens the physical safety of officers.

The extraordinary duties of a law enforcement officer produce great risks to their physical and mental well-being. It is important, therefore, to tend to the health and wellness of the law enforcement officers who look after the health and wellness of their communities. Safe and effective policing requires law enforcement to have the programs, resources, and care that ensure

officers are in good physical and mental condition to take on the significant responsibilities of the job. To that end, the Commission recommends law enforcement agencies establish programs for officer physical fitness and health, devote more resources and protections to the mental health conditions of police officers, and safeguard officers from both intentional (e.g., officer killings) and accidental (e.g., traffic and firearms) harms.

Similarly, both the rule of law and public safety depend on law enforcement officers who have the skill and training to take on the important and challenging job of protecting communities from crime. The Commission therefore recommends the deployment of greater resources for law enforcement to hire, train, and retain officers who are qualified to and capable of assuming the challenging role of policing American communities.

DRAFT

PRESIDENTIAL AND ATTORNEY GENERAL RECOMMENDATIONS

PART I: THE RULE OF LAW

1. Prosecutorial authorities who adopt non-enforcement policies should publish such policies and report data on declined cases (Respect for the Rule of Law and Law Enforcement, Chapter 1).
2. States should enact legislation that requires law enforcement agencies to have an independent, external agency that has met minimum training and accreditation standards conduct the criminal investigation of use-of-force incidents that result in death or serious bodily injury (Respect for the Rule of Law and Law Enforcement, Chapter 1).

PART II: THE COMPLEMENTS TO LAW ENFORCEMENT

3. State and local governments should implement or enhance co-located, comprehensive, one-stop-shop systems of care to screen, assess, and treat people with mental illness and substance use disorders that meets the demand of the community, including criminal defendants (Alleviating the Impact of Social Problems on Public Safety, Chapter 3).
4. Any jurisdiction that eliminates cash bail should first establish a comprehensive pre-trial release program that addresses public and victim safety and flight risk (Criminal Justice System Partners, Chapter 6).

PART III: CRIME REDUCTION

5. Congress should provide additional funding to the Department of Justice to increase the number of National Integrated Ballistic Information Network (NIBIN) sites, and the Department of Justice should provide additional grant funding to the Local Law Enforcement Crime Gun Intelligence Centers Integration Initiative (Reduction of Crime, Chapter 8).
6. Congress should permanently schedule the entire class of fentanyl and related analogues (Reduction of Crime, Chapter 8).

PART IV: INNOVATIONS

7. Congress should pass legislation mandating communications and electronic data services manage encrypted data in a manner that allows court-ordered access by law enforcement (Technology, Chapter 11).
8. The Department of Justice should fund an expansion of real time crime centers (RTCCs) along with the development of technology tools that provide RTCCs the ability to identify and disseminate crime intelligence, analyze crime patterns, and develop strategies for reducing crime (Technology, Chapter 11).

PART V: LAW ENFORCEMENT RESOURCES

9. Congress should establish and fund a national law enforcement crisis hotline (Law Enforcement Health and Wellness, Chapter 14).

10. The Department of Education should fund an undergraduate law enforcement scholarship program (similar to an ROTC scholarship), as well as loan forgiveness, for individuals who commit to a law enforcement career (Law Enforcement Recruitment and Training, Chapter 15).

DRAFT

Part I

THE RULE OF LAW

The Central Mission of Law Enforcement is to Preserve the Rule of Law

The fundamental purpose of law enforcement is to preserve the rule of law. Because law enforcement cannot and should not be omnipresent, Americans need to have faith that the criminal justice system will hold accountable those individuals who commit crimes. Ultimately, victims of crime and their families suffer most when the rule of law erodes and the public lacks confidence that law enforcement will keep them safe.

This was true during the last President's Commission on Law Enforcement in 1967 and remains true today. There are grave consequences when communities lose trust in law enforcement and its capacity to administer justice and safeguard the American people. Civil protests against alleged police abuses—in particular when accompanied by significant lawlessness and increases in crime—highlight the ever-growing importance of mutual trust between communities and members of law enforcement.

This section recommends that jurisdictions enhance officer training on use of force and develop special procedures for investigating and prosecuting officer-involved shootings. These special procedures should promote accountability, transparency, impartiality, and due process. This section also supports the tenets of President Donald J. Trump's Executive Order on Safe Policing and Safe Communities, which more directly addresses issues involving use of force.

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CHAPTER 1: RESPECT FOR THE RULE OF LAW AND LAW ENFORCEMENT

Preserving the rule of law is the central function of law enforcement. The safety of American communities does not rely merely on the physical presence of law enforcement, but rather a social trust that law enforcement will hold those accountable who violate the law. Law enforcement provides that trust and thereby stabilizes and preserves the rule of law. When communities lose respect for law enforcement, they lose faith in the legal order that law enforcement officers administer. As disrespect for law enforcement devolves into disrespect for the law itself, the consequences to public safety and the rule of law are grave.

As former Attorney General Michael B. Mukasey relates, it is not just respect for law enforcement but also respect for the rule of law that is critical to a civil society: “We draw our identity not only from adherence to a system embodied in a law that we call the Constitution, but also from consensus in general terms about what that means. Once that is up for grabs, the whole point of having a country at all, as opposed to just being citizens of the world at large, is up for grabs as well.”⁷

These remarks highlight the challenges facing law enforcement agencies across the country. While the majority of Americans appreciate the important role of law enforcement in our society, there still remains significant work to address persistent negative attitudes towards peace officers. The stability of a free and civilized society hinges on a justice system that is not only fair, but also perceived as such. There are many ways law enforcement agencies and the community at large can foster support, respect, and appreciation for the individuals who put their lives on the line to ensure the safety and well-being of the American people.

Anti-police sentiment has various historical and social origins, but at present it predominantly centers around abuses of power by law enforcement in the discharge of their duties. Unlawful and unjustified use of force by law enforcement officers—although rare—may reasonably undermine community trust and exact considerable costs to the rule of law. While the Commission also addresses this issue elsewhere in its report, a notable cause of negative perceptions of law enforcement stems from officer-involved shootings and use of force incidents.

While these incidents deserve attention from law enforcement given their acute impact on community trust, criticism towards the criminal justice system and the police who administer it must also account for the dramatic decreases in crime that law enforcement has achieved. After reaching its apex in 1992, violent crime in America today nears a 50-year low. As one author has reported to exemplify this trend: “In the past 30 years, violent crime in New York City has plummeted an astonishing 70 percent. In 1990, there were 2,245 people murdered in New York City; in 2018, the number was 289, a decline of 80 percent, even though the city’s population had increased by more than a million (to about 8.5 million) in that span.”⁸

⁷ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 21, 2020) (written statement of Michael B. Mukasey, former U.S. Attorney General), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁸ Andrew McCarthy, “The Progressive Prosecutor Project,” *Commentary*, March 2020, <https://www.commentarymagazine.com/articles/andrew-mccarthy/the-progressive-prosecutor-project/>.

While many critics assert “mass incarceration” of “non-violent drug offenders” has been a collateral consequence of this movement, this statement was contradicted by testimony received by the Commission and remains, at best, disputed. According to the Bureau of Justice Statistics,

The combined state and federal imprisonment rate for 2019 (419 per 100,000 U.S. residents), based on sentenced prisoners (those sentenced to more than one year), decreased 3 percent from 2018 (432 per 100,000 U.S. residents). This was the lowest imprisonment rate in 24 years, dating back to 1995. Since 2009, the imprisonment rate—the portion of U.S. residents who are in prison—has dropped 17 percent overall, including 29 percent among black residents, 24 percent among Hispanic residents, and 12 percent among white residents. . . . The total prison population in the U.S. declined from 1,464,400 at year-end 2018 to 1,430,800 at year-end 2019, a decrease of 33,600 prisoners. This was the largest absolute population decline since year-end 2015.⁹

Moreover, as Rafael Mangual, Senior Fellow and Deputy Director of Legal Policy at the Manhattan Institute for Policy Research, testified, claims about “mass incarceration” are based on manipulation of statistics and invalid comparisons, such as to other countries that have far lower rates of crime.¹⁰

Contrary to some narratives, the current prison population also does not consist mostly of non-violent drug offenders. Mangual states: “The majority (60 percent) of prisoners in the U.S. are serving time primarily for one of just five serious offenses: murder (14.2 percent), rape or sexual assault (12.8 percent), robbery (13.1 percent), aggravated or simple assault (10.5 percent), and burglary (9.4 percent). . . . Those serving time primarily for drug offenses constitute less than 15 percent of state prisoners (who account for about 90 percent of the national prison population).”¹¹ As Jonathan W. Blodgett, the District Attorney for Essex County, Massachusetts, testified to the Commission: “Persons suffering from the disease of addiction, arrested for possessory offenses, are not clogging our prisons. They are, more often than not, offered multiple opportunities for drug treatment, through drug courts, diversion programs and community based assistance.”¹²

Remedying community distrust of police requires dispelling many of the narratives underlying that distrust, but it is even more important to stress that—regardless of the validity of these narratives—law enforcement officers should not be the subject of disrespect simply because of their position on the front lines of an embattled criminal justice system. As our predecessors noted in 1967: “They do not enact the laws that they are required to enforce.”¹³ Police officers may be the first and primary contact between the criminal justice system and the community, but they should not suffer the brunt of all social discontent simply because they are the agents of a system that the public primarily encounters.

It is therefore important to emphasize that law enforcement officers have an important but limited responsibility to execute the law, and that criticism towards officers should be accordingly limited to how they discharge that responsibility. In general, attacks towards the criminal justice system should not be directed at law enforcement officers simply because they are physically in

9 E. Ann Carson, *Prisoners in 2019* (Washington, DC: Bureau of Justice Statistics, 2020), 1, <https://www.bjs.gov/content/pub/pdf/p19.pdf>.

10 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 21, 2020) (statement of Rafael Mangual, Deputy Director, Legal Policy, Manhattan Institute), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearing>. For example, certain neighborhoods in Chicago and Baltimore experience “30 percent of the homicides seen in the whole of England and Wales, despite those subsections having a combined population that (at 292,898) is just 0.5 percent of England and Wales”; Mangual, *President's Commission on Law*, July 21, 2020.

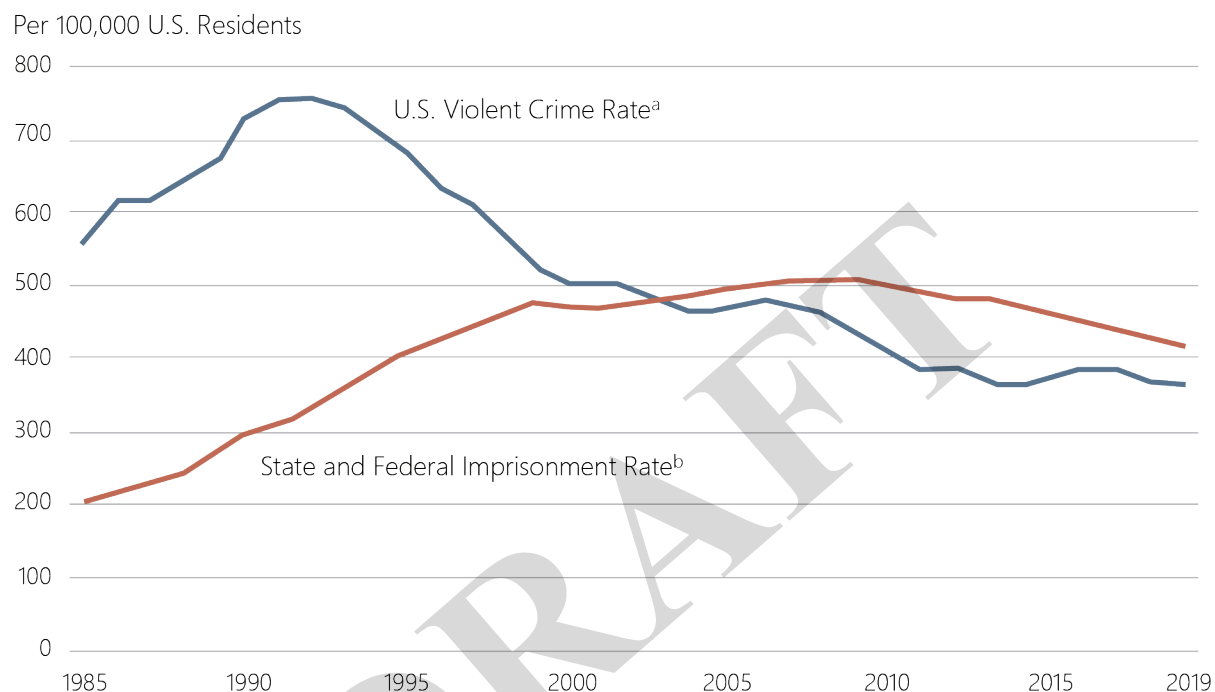
11 Mangual, *President's Commission on Law*, July 21, 2020.

12 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 22, 2020) (statement of Jonathan Blodgett, District Attorney, Essex County, Massachusetts), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

13 U.S. President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, DC: U.S. Government Printing Office, 1967), 92, <https://www.ncjrs.gov/pdffiles1/nij/42.pdf>.

the streets to take it. Reinforcing the separation of powers within the criminal justice system is therefore essential to fostering respect for law enforcement and the rule of law. One measure that the Commission believes is important is to discourage and restrain prosecutorial non-enforcement policies in order to maintain the clear and appropriate roles between legislators and law enforcement officials who execute the laws they enact.

Figure 1.1: State and federal imprisonment rate and the U.S. violent crime rate, 1985-2019



^a The imprisonment rate is based on the number of sentenced prisoners (i.e., those sentenced to more than one year) under state or federal jurisdiction on December 31 of each year and includes prisoners held in publicly and privately operated facilities. Resident population estimates are from the U.S. Census Bureau for January 1 of the following year.

^b Includes murder and non-negligent manslaughter, rape (legacy definition), robbery, and aggravated assault. Per the FBI, in 1995 the 168 murders and non-negligent homicides that resulted from the bombing of the Alfred P. Murrah Federal Building in Oklahoma City are included in the national estimate; and in 2001, the 2,823 murders and non-negligent homicides that resulted from the events of September 11, 2001, are not included in the national estimate.

Source: Bureau of Justice Statistics, Prisoners in 2019 (NCJ 255115, BJS, October 2020); <https://www.bjs.gov/content/pub/pdf/p19.pdf>

This is not to say that all criticism towards police is misplaced. In fact, the greatest source of distrust and disrespect for police today results from the unlawful use of force against citizens in the course of enforcing the law. Accordingly, the Commission recommends specific protocols and policies to minimize unjustified uses of force, which should function to restore community trust in law enforcement and their capacity to ably and safely do their job.

Police officers are far from perfect. There is always more work to be done. Genuine and enduring distrust between law enforcement and communities remains, and—as discussed below—there are many ways that law enforcement can continue to engage with the community and build relationships that promote respect for law enforcement as well as the rule of law that keeps citizens safe.

1.1 Respect for Law Enforcement and the Rule of Law by the Executive Branch

Respect for law enforcement depends on a clear demarcation and understanding of the duty of the executive branch to enforce the law. Respect for law enforcement and the rule of law must permeate all levels of society. Governors, mayors, city managers, county executives, U.S. attorneys, prosecutors, and all elected officials should demonstrate respect for the rule of law and the men and women responsible for enforcing the law. Respect for law enforcement must start at the highest levels of government:

We cannot expect parents to teach their children the importance of respecting those in authority, while elected leaders are demonizing their law enforcement agencies to gain political favor in times of crisis. We must implore methods of reconciliation to help restore the faith of the community that those officers responding to situations are there to help them, not hurt them. Similarly, our community leaders must sit down with local law enforcement to further develop that relationship. The safety of our citizens and our officers does not have to be diametrically opposed.¹⁴

A threat to the rule of law, and the ability of law enforcement to uphold it, has recently come from self-identified “progressive” or “social reform” prosecutors who purport to share the distrust and cynicism for law enforcement that some in their communities have.¹⁵ Despite their election to a position to enforce the law, these prosecutors view the very laws they enforce as unjust and illegitimate, and therefore seek to undermine that system by unilaterally deciding not to enforce certain laws.¹⁶ Unlike standard prosecutorial discretion, in which a prosecutor assesses whether to pursue charges after a case-by-case examination of the individual circumstances, non-enforcement policies remove that discretion entirely by prescribing that certain laws will be categorically unenforced.

The flaws of this approach are clear, as U.S. Attorney Macgregor Scott of the Eastern District of California testified to the Commission: It “1) usurps the constitutional role of the legislative branch; 2) miscasts who the prosecutor represents in a criminal case; 3) causes violent crime rates to go up, especially in minority communities; and 4) and forgets crime victims.”¹⁷

On a legal, even philosophical, level these prosecutors are not only violating the obligation of the Executive Branch to enforce the law, but they also are disregarding our system of separation of powers. In the language of the U.S. Constitution, the Executive Branch has the duty to “take care that the laws be faithfully executed.”¹⁸ If a prosecutor appropriates to him or herself the right to decide what crimes should be prosecuted, as one author has explained, “[i]t becomes an executive veto of the community’s right to define and punish penal offenses through its legislative representatives.”¹⁹ Moreover, when enforcement of the law depends on executive whim and not on the legislative will of the people, citizens may erroneously believe that law enforcement—not

14 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 22, 2020) (written statement of Leslie Rutledge, Attorney General, Arkansas), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

15 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 22, 2020) (written statement of William McSwain, U.S. Attorney, Eastern District, Pennsylvania), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

16 Mark Berman, “America’s New ‘Progressive Prosecutors’ Are Getting Pushback,” *Washington Post*, November 12, 2019, <https://www.washingtonpost.com/podcasts/post-reports/americas-new-crop-of-progressive-prosecutors-are-getting-pushback/>.

17 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 22, 2020) (written statement of Macgregor Scott, U.S. Attorney, Eastern District, California), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

18 U.S. Constitution art. II § III.

19 McCarthy, “The Progressive Prosecutor Project.”

lawmakers—are responsible for the laws they enforce. Recent events in the arena of immigration law exemplify the detriment to law enforcement that occurs when executive non-enforcement violates the separation of powers. In or around 2017, after a change of presidential administration resulted in increased enforcement of immigration laws, critics of those laws attacked and vilified federal immigration law enforcement officials—the United States Immigration and Customs Enforcement (ICE)—for simply enforcing the laws they were sworn to uphold. The misdirected hostility towards ICE stemmed from the fallacy that it was the executive branch, not the United States Congress, that determined what laws to enforce.

Non-enforcement also has clear practical consequences to public safety. The Commission notes one case in Massachusetts that Deputy Attorney General Rosen described regarding a woman brutally assaulted while walking her dog.²⁰ A criminal knocked her to the ground where she lay unconscious and suffering a skull fracture, among other injuries. The victim reportedly still copes with speech, vision, and hearing impairments. The prosecutor, a self-described social reform district attorney, had publicly stated that it was her responsibility to “represent not just the victim, but the defendant and the community.”²¹ The district attorney allowed the offender to plead guilty to a misdemeanor with a suspended sentence and one year of probation, even though the victim begged the prosecutor not to cut this deal and called it “flagrant, appalling, and disgusting.”²² Nor was this case an anomaly. An analysis by the local media revealed that the Massachusetts district attorney was dropping “more cases than before, but some of the cases don’t seem ‘low-level’ at all, involving serious bodily injury, major thefts, and career criminals.”²³ As the Deputy Attorney General stated, “victims deserve better.”²⁴ In fact, as District Attorney Blodgett told the Commission, the entire discussion around criminal justice reform ignores the victims of crime. Blodgett says, “The crime victim is the only one in the courtroom who didn’t ask to be there, who has suffered an incalculable loss that cannot be restored. . . . Their voices must be heard and respected.”²⁵

Categorical non-enforcement of certain laws—be it resisting arrest, petty theft or certain drug crimes—imperils the rule of law and only exacerbates disrespect for law enforcement. When communities can no longer depend on the criminal justice system to enforce the law and obtain justice for victims, trust in law enforcement deteriorates. Not only do victims deserve to have the rule of law respected, so do those who enforce the law. Widespread disrespect for the law endangers law enforcement officers and the communities they protect. In the aftermath of anti-police civil unrest in 2014 and 2020, for example, there have been unmistakable corresponding increases in crime.²⁶

20 Jeffrey A. Rosen, Deputy Attorney General, “Remarks as Prepared for Delivery,” presented at Wake Forest School of Law, Winston-Salem, NC, November 8, 2019, <https://www.justice.gov/opa/speech/deputy-attorney-general-jeffrey-rosen-delivers-remarks-wake-forest-school-law>.

21 Rosen, “Remarks as Prepared,” November 8, 2019.

22 Rosen, “Remarks as Prepared,” November 8, 2019.

23 Andrea Estes and Shelley Murphy, “Stopping Injustice or Putting the Public at Risk? Suffolk DA Rachael Rollins’s Tactics Spur Pushback,” *Boston Globe*, July 6, 2019, <https://www.bostonglobe.com/metro/2019/07/06/stopping-injustice-putting-public-risk-suffolk-rachael-rollins-tactics-spur-pushback/IFC6Rp4tVHiVhOf2t97bFI/story.html>.

24 Rosen, “Remarks as Prepared,” November 8, 2019.

25 Blodgett, *President’s Commission on Law*, July 22, 2020.

26 The national two-year homicide rate greatly increased from 2014 to 2016; “2016 Crime in the U.S.: Table 1,” Federal Bureau of Investigation, accessed November 20, 2020, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-1>. In 2020, murder rates and violent crime rates have risen in major cities like New York City, Washington, DC, and Minneapolis. In DC, the murder rate is up by 21 percent; “District Crime Data at a Glance: 2020 Year-to-Date Crime Comparison,” Metropolitan Police Department, November 20, 2020, <https://mpdc.dc.gov/page/district-crime-data-glance>. In New York City, murder is up 40 percent (344 v. 246) for the first nine months of 2020 when compared to the first nine months of 2019; “NYPD Announces Citywide Crime Statistics for September 2020,” New York City Police Department, October 2, 2020, <https://www1.nyc.gov/site/nypd/news/pr1002/nypd-citywide-crime-statistics-september-2020>. In Minneapolis, violent crimes were up 17 percent as of September 2020 from the previous five-year average, and violent crimes increased by 25 percent to date in 2020 as compared to 2019; “Stats Show Increase in Violent Crime Across Minneapolis,” *Minneapolis Post*, September 20, 2020, <https://www.minnpost.com/glean/2020/09/stats-show-increase-in-violent-crime-across-minneapolis/>; and “Crime Dashboard,” Minneapolis, MN, accessed November 20, 2020, <https://www.minneapolismn.gov/resident-services/public-safety/police-public-safety/crime-maps-dashboards/crime-dashboard/>.

1.1.1 Prosecutorial authorities who adopt non-enforcement policies should publish such policies in the interests of transparency.

Prosecutors should have discretion in prosecuting cases to account for case strengths and weaknesses and to accommodate the pursuit of successful criminal justice objectives. However, the public deserves to know if and when prosecutors forego that discretion completely by refusing to enforce valid laws enacted by the people. Given that categorical non-enforcement of a law is tantamount to its abolition, transparency and accountability demand that prosecutor's offices publicly share written guidelines for non-enforcement priorities that correspond with community crime data and proven strategies for reducing crime.

1.1.2 State officials should provide oversight of prosecutors who have blanket policies not to prosecute certain categories of crimes.

When a prosecutor unilaterally decides to not prosecute an entire category of crimes (i.e., deems it a low-level offense that does not warrant prosecution or otherwise fails to prosecute a case where probable cause for an arrest is present), that prosecutor is usurping legislative authority and ultimately the authority of the citizens of that community. These laws have been duly enacted by an elected legislative body, and the public has a reasonable expectation that breaking these laws will result in prosecution. State governments, through legislative committees and executive actions, should oversee local prosecutors who refuse to prosecute crimes by conducting hearings and issuing reports to the public about the impact of those policies. Where necessary, legislators should take legal action to prevent such policies from harming public safety.

1.1.3 The doctrine of qualified immunity for law enforcement officers should not be weakened.

A related aspect of appreciating the role of law enforcement in merely enforcing the law is protecting these officers in the course of good faith law enforcement. The doctrine of qualified immunity protects government officials, including law enforcement officers, from being personally subjected to a civil lawsuit for an action that does not violate a clearly established statutory or constitutional right. As Gail Heriot, professor of law at University of San Diego and member of the U.S. Commission on Civil Rights, explained to the Commission:

It is thought that otherwise there is a danger that public officials will protect themselves by opting for inaction. . . . This is a greater danger for public officials than it is for private citizens. In the private sector, diligence and industry tend to have a more direct link to reward than they do for public officials. . . . But when a police officer saves a life, he doesn't get to keep it. If only his errors and not his successes affect his fortunes, a reluctance to act at all may be the result.²⁷

When a federal judge grants qualified immunity, it may result in the early dismissal of a lawsuit for money damages and prevent a law enforcement official from having to go through the stresses and financial pressures of a long judicial process that can include discovery, depositions, and a

²⁷ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 21, 2020) (written statement of Gail Heriot, Professor of Law, University of San Diego), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

trial.²⁸ The doctrine of qualified immunity should not be weakened. Officers who use excessive force can still be punished under existing procedures. If an officer does violate the law, he is subject to criminal investigation and prosecution under state and federal statutes, and he can also be subject to administrative punishment, such as suspension or firing even if criminal charges are not brought.

In speaking against the idea of limiting qualified immunity, Attorney General William P. Barr said: “I don’t think you need to reduce immunity to go after the bad cops, because that would result certainly in police pulling back. Policing is the toughest job in the country. . . . The vast, overwhelming majority of police are good people. They’re civic-minded people who believe in serving the public. They do so bravely. They do so righteously.”²⁹

1.2 Building Relationships

Background

“While policing is demanding, it is also uniquely rewarding. It is one of our country’s highest callings, and we are blessed that there are men and women of character willing to serve selflessly so that their fellow citizens can live securely. We owe our officers the support and services they need to work their way through problems.”³⁰
- Attorney General William P. Barr

Respect for law enforcement increases when partnerships are forged between agencies and their communities; each benefits realizing the other’s perspective. When they can work through stereotypes and misunderstandings, years of false narratives can be dissolved, and new relationships can be cultivated.³¹ These new lines of open communication increases public safety and respect for law enforcement.

Over the years, programs that embrace a proactive and consistent outreach approach have effectively developed and sustained relationships between law enforcement and the community. Law enforcement agencies may overlook these programs and consider them only if time and staff are available. However, such a casual approach is ill advised, and law enforcement agencies that

do not engage in these programs do so at their own peril. Respect for law enforcement grows only through nurturing and sustaining these relationships.

Strong community-based partnerships can lead to greater trust between police and the public they serve. In turn, this trust should evolve and encourage a greater willingness for community members to assist in crime-reduction efforts. Another benefit of these relationships can be realized at the investigations level, as increased cooperation can strengthen investigations and help solve crimes.

²⁸ Robert Fagin, Attorney, San Diego County Sheriff’s Department, CA, email communication with Respect for Law Enforcement and the Rule of Law Working Group, email communication with Respect for Law Enforcement, June 24, 2020.

²⁹ “Transcript: Attorney General William Barr on ‘Face the Nation’” CBS News, June 7, 2020, <https://www.cbsnews.com/news/bill-barr-george-floyd-protests-blm-face-the-nation-transcript/>.

³⁰ William P. Barr, U.S. Attorney General, “Remarks as Prepared for Delivery,” presented at the International Association of Chiefs of Police Officer Safety and Wellness Symposium, Miami, FL, February 27, 2020, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-international-association-chiefs-police>.

³¹ Seth Stoughton, “8 Things We Still Get Wrong About Policing,” *Time*, May 15, 2015, <https://time.com/3859400/policing-misconceptions/>.

Michael “Mick” McHale, president of the National Association of Police Officers (NAPO), says that one way to build relationships between law enforcement and the community is to ensure citizens that any complaint against an officer will be heard and thoroughly investigated. NAPO supports the idea of “Comply, Then Complain.” Individuals, including youth, who are approached by a police officer should first “comply.” Then, if the individual feels they were treated unfairly or unlawfully, they can submit a formal complaint with guided assistance throughout the process. McHale says this process helps “rebuild trust with the community.”³²

1.2.1 Law enforcement agencies should continue to prioritize community outreach and developing and maintaining strong, positive relationships with various segments of the community, while providing a knowledge of and appreciation for the daily responsibilities of law enforcement.

| See Chapter 7: Business and Community Development.

Implementing strategies to accomplish stronger police–community relations can be daunting. Agencies looking to make these positive changes should look to other successful programs that already exist, such as citizen and youth police academies, clergy–police partnerships, youth mentoring, and business community partnerships.

Houston Police Chief Art Acevedo, president of the Major Cities Chiefs Association (MCCA), says the importance of building these relationships cannot be stressed enough: “Overwhelmingly, MCCA members have heard from their communities—we don’t want less police, we want better policing. It is imperative that law enforcement work tirelessly—in both good times and bad—to build strong relationships with the communities they serve. It is much easier to navigate a crisis when the public trusts law enforcement and knows their concerns will be taken seriously.”³³

In North Carolina, the Fayetteville Police Department prioritized community outreach by focusing on a variety of community-based engagement opportunities. The department identified and understood their audiences and recognized the need to use a diverse approach that covered a variety of interests, including community empowerment response teams, community watch groups, Citizens on Patrol, Coffee with a Cop, police activities leagues, and a Police Explorer program.³⁴

While it may not be feasible to immediately and directly touch every community member through these outreach efforts, social media has been shown to be another way to build a positive narrative that reinforces the work accomplished by the men and women in law enforcement, including stories that highlight the bravery, compassion, and dedication of their officers and show the people behind the badge. Agencies with limited resources or experience should look for partnership opportunities to share in these efforts (e.g., local government, neighboring agencies, or local labor or representative organization).

An informed community can help improve relationships between law enforcement and the communities they serve. When community members understand the daily responsibilities of an officer, the decisions they face, and the breadth of assistance they are expected to provide every day, they can become law enforcement’s strongest advocates and supporters. From citizen’s

³² Michael McHale, President, National Association of Police Officers, in discussion with Respect for Law Enforcement and the Rule of Law Working Group, virtual meeting, April 27, 2020.

³³ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 22 2020) (written statement of Art Acevedo, Chief of Police, Houston Police Department, TX), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

³⁴ “Community Policing,” City of Fayetteville, NC, March 23, 2020, <https://www.fayettevillenc.gov/city-services/police/community-policing>.

police academies to after-school programs, efforts that give citizens a greater awareness of the work of law enforcement can go a long way toward increasing respect for law enforcement.

Nicholas A. Trutanich, U.S. Attorney for Nevada, says that building those relationships is critical: “Community leaders and law enforcement should consider forming partnerships, involving regular meetings attended by executive-level officers, to build and maintain trust. Among other things, such meetings would allow law enforcement to solicit feedback from community leaders, and continually reinforce that the safety of the community (not arrests or convictions) is law enforcement’s highest priority.”³⁵

1.3 Promoting Transparency and Accountability When Officers Use Force

Law enforcement is a dangerous task, and officers may need to use physical force to subdue suspects. Sometimes (though rarely) this may include deadly force. Any understanding of these situations, and their importance to community trust, must account for the fact that such incidents can and will occur. Law enforcement officers must necessarily use force to “enforce” the law. Moreover, when a criminal suspect resists their authority, police do not have the option of simply standing down. If it were otherwise, citizens could avoid arrest by simple noncompliance. In fact, nearly all force used by police officers results from a citizen refusing to obey their orders. Therefore, the most effective measure to prevent police from using force remains for citizens to comply with law enforcement commands.

Nevertheless, police officers are not perfect. At times, use of force may be unwarranted or unjustified. In the aftermath of the killing of George Floyd on May 25, 2020, President Trump signed in the following month Executive Order No. 13929 entitled “Safe Policing for Safe Communities.”³⁶ Pursuant to this Executive Order, the Department of Justice has devised generalized standards for safe policing, most prominently those involving use of force, and mandated that law enforcement agencies certify that they meet these standards in order to receive federal funding.³⁷ These actions will ensure that police departments implement sound and standardized policies on officer use of force that will minimize incidents where officers engage in excessive or unwarranted force.

These measures are independent of the work of the Commission, but complement and comport with the Commission’s recommendations regarding use of force. For infrequent as these incidents may be, incidents involving police use of force garner widespread public attention, which is often driven by social media, 24/7 news cycles, and social divisions within the nation. When incidents of police use of force occur that result in death or serious injury, it is imperative that both prosecutor and law enforcement officers have transparent and effective protocols for handling such an event.

It is true that “police use of force is extremely rare. Rarer still are uses of force that are injurious and unwarranted.”³⁸ The Bureau of Justice Statistics estimates that law enforcement officers interact with members of the public on 50 million or more occasions per year.³⁹ Incidents involving use of

³⁵ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rule of Law* (July 22, 2020) (written statement of Nicholas A. Trutanich, U.S. Attorney, Nevada), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

³⁶ *Safe Policing for Safe Communities*, Exec. Order No. 13,929, 85 Fed. Reg. 119 (2020), <https://www.federalregister.gov/documents/2020/06/19/2020-13449/safe-policing-for-safe-communities>.

³⁷ Office of Public Affairs, “Department of Justice Announces Standards for Certifying Safe Policing Practices by Law Enforcement Agencies,” U.S. Department of Justice, October 28, 2020, <https://www.justice.gov/opa/pr/departments-justice-announces-standards-certifying-safe-policing-practices-law-enforcement>.

³⁸ Mangual, *President’s Commission on Law*, July 21, 2020.

³⁹ Elizabeth Davis, Anthony Whyde, and Lynn Langton, *Contacts Between Police and the Public, 2015* (Washington, DC: Bureau of Justice Statistics, 2018), 1, <https://www.bjs.gov/content/pub/pdf/cpp15.pdf>.

force are rare in this context. Citizen surveys indicate that physical force is used in 0.8 percent of interactions.⁴⁰ When an officer uses force, it is typically during an arrest, is at the low end of the use-of-force spectrum, and is the result of suspect resistance or aggression.⁴¹ At the extreme end of the spectrum, the suspect is usually armed when an officer uses deadly force.⁴² The data thus show that less than a half of a percent of police officers discharged their firearms in 2018, and only three arrests out of 1,000 involved use of a firearm.⁴³ Similarly, less than 1 percent of arrest used any physical force at all.⁴⁴

Nevertheless, even isolated incidents can nurture a cynicism about the criminal justice system that “erode[s] the public’s respect for the policing profession and the system of laws they’re sworn to uphold.”⁴⁵ This environment is challenging for law enforcement, as they have the additional burden of combatting negative perceptions that are based on a small—but magnified—sample of incidents. These incidents have spurred a national conversation over police practices, including the types of accountability mechanisms in place to investigate and adjudicate allegations of misconduct and excessive use of force. Trust in a process is important for building and maintaining legitimacy.⁴⁶

A prosecutor’s office will often have a substantial and important role in addressing and adjudging the actions of a law enforcement officer who has engaged in use of force resulting in serious injury or death. The Commission examines that role elsewhere in the report.

But the law enforcement agency of the involved officer necessarily has a role as well, and its accountability process may have a substantial impact on public trust and respect for law enforcement. These mechanisms, however, vary widely in their form and function in agencies nationwide. For example, criminal investigations can be conducted by the involved law enforcement agency or independently by another agency, task force, or prosecutor. There is a growing demand for independent criminal investigations on deadly force, as well. Furthermore, more than one investigation may take place. State and local law enforcement agencies may conduct an administrative investigation to determine if the use of force was within department policy, a criminal investigation to determine if the use of force was compliant with the law, or

40 Shelley S. Hyland, Lynn Langton, and Elizabeth Davis, *Nonfatal Police Use of Force, 2002–2011* (Washington, DC: Bureau of Justice Statistics, 2015), <https://www.bjs.gov/content/pub/pdf/punf0211.pdf>.

41 Kenneth Adams, “What We Know About Police Use of Force,” in *Use of Force by Police: Overview of National and Local Data* (Washington, DC: U.S. Department of Justice, 2019), <https://www.ncjrs.gov/pdffiles1/nij/176330.pdf>; Thomas D. Bazley, Kim Michelle Lersch, and Thomas Mieczkowski, “Officer Force Versus Suspect Resistance: A Gendered Analysis of Patrol Officers in an Urban Police Department,” *Journal of Criminal Justice* 35, no. 2 (2007), <https://doi.org/10.1016/j.jcrimjus.2007.01.005>; Hoon Lee et al., “An Examination of Police Use Of Force Utilizing Police Training and Neighborhood Contextual Factors: A Multilevel Analysis,” *Policing: An International Journal* 33, no. 4 (2010), <https://doi.org/10.1108/13639511011085088>; William Terrill and Stephen D. Mastrofski, “Situational and Officer-Based Determinants of Police Coercion,” *Justice Quarterly* 19, no. 2 (2002), <https://doi.org/10.1080/07418820200095221>; and Joel Garner, Christopher D. Maxwell, and Cedrick G. Heraux, “Characteristics Associated with the Prevalence and Severity of Force Used by the Police,” *Justice Quarterly* 19, no. 2 (2002), <https://doi.org/10.1080/07418820200095401>.

42 David Klinger et al., “Race, Crime, and the Micro-Ecology of Deadly Force,” *Criminology & Public Policy* 15, no. 1 (2016), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/1745-9133.12174>; Jon M. Shane, Brian Lawton, and Zoe Swenson, “The Prevalence of Fatal Police Shootings by U.S. Police, 2015–2016: Patterns and Answers from a New Dataset,” *Journal of Criminal Justice* 52 (2017), <https://doi.org/10.1016/j.jcrimjus.2017.05.001>; Michael D. White, “Identifying Situational Predictors of Police Shootings Using Multivariate Analysis,” *Policing: An International Journal* 25, no. 4 (2002), <https://doi.org/10.1108/13639510210450659>; and George Fachner and Steven Carter, *Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department* (Washington, DC: U.S. Department of Justice, 2015), <https://cops.usdoj.gov/RIC/Publications/cops-w0753-pub.pdf>.

43 Mangual, *President’s Commission on Law*, July 21, 2020.

44 Mangual, *President’s Commission on Law*, July 21, 2020.

45 Mangual, *President’s Commission on Law*, July 21, 2020.

46 Tom Tyler, “Enhancing Police Legitimacy,” *ANNALS of the American Academy of Political and Social Sciences* 593, no.1 (2004), <https://journals.sagepub.com/doi/10.1177/0002716203262627>.

both.⁴⁷ The process of an investigation needs to be explained clearly and executed transparently so that the public has confidence in the outcome.

At the same time, officers involved in a use-of-force incident have the right to due process. The Constitution grants that right to all Americans regardless of their chosen profession and law enforcement is not exempted. Bending the investigative process to political pressure erodes the Constitutional protection of due process. To ensure immunity from undue influence, the conduct of internal investigations must be consistent, transparent, and impartial. Two Supreme Court decisions have reinforced this. In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the court stated that law enforcement officers and other public employees have the right to be free from compulsory self-incrimination. Similarly in *Gardner v. Broderick*, 392 U.S. 273 (1968), the court ruled that a law enforcement officer who refuses to waive his constitutional protections cannot be dismissed from office because of that refusal.

Currently, rights for officers involved in administrative investigations vary depending on state and local law. In 2015, 14 states had a Law Enforcement Officers' Bill of Rights, which define and protect the due process rights of officers who are subject to such investigations. During the same period, 11 states were in the process of developing legislation. At the federal level, the Fraternal Order of Police has been working to pass legislation to define and protect due process.⁴⁸ These rights, for example, may extend to allowing officers direct access to body worn camera and in-car camera footage before giving their statements to investigators. In 2016, about 60 percent of agencies with body-worn cameras allowed the officers who made the recording direct access to the video.⁴⁹

The recommendations below provide guidance to law enforcement agencies and governments overseeing them to improve handling of use-of-force incidents that will promote transparency and public understanding in order to reduce community tensions in the aftermath of such an event.

1.3.1 Law enforcement agencies should have well-documented and publicly available protocols for conducting administrative investigations of alleged officer misconduct and any uses of force.

Law enforcement agencies have an obligation to maintain protocols for administrative and criminal investigations of misconduct, use of force, and integrity failures. These protocols should appropriately consider best practices and be reviewed by a competent legal authority to establish the legal foundation for all investigations. These protocols should consider thresholds that trigger an investigation, the unit responsible for conducting the investigation, and notifications of all appropriate parties. The protocols should also consider investigative practices, including evidence collection, interview procedures, incident analysis, investigative steps, target timeframes, adjudication considerations, dispositions and required notifications to license or certifying entities, and the due process rights of officers, including, in some instances, the right to representation.

Agencies should routinely review their protocols for potential updates, how to apply research or legal decisions, and best practices to improve the efficiency, effectiveness, and fairness of

47 International Association of Chiefs of Police, *Officer-Involved Shootings: A Guide for Law Enforcement Leaders* (Washington, DC: Office of Community Oriented Policing, 2016), https://www.theiacp.org/sites/default/files/2018-08/e051602754_Officer_Involved_v8.pdf; and Beau Thurnauer, *Best Practices Guide for Internal Affairs: A Strategy for Smaller Departments* (Washington, DC: International Association of Chiefs of Police, n.d.), <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>.

48 Eli Hager, "Blue Shield: Did You Know Police Have Their Own Bill of Rights?," The Marshall Project, <https://www.themarshallproject.org/2015/04/27/blue-shield#.Etqk3UTYF>; and "Due Process Rights for Law Enforcement Officers," Fraternal Order of Police, accessed July 22, 2020, <https://fop.net/CmsPage.aspx?id=97>.

49 Shelley S. Hyland, *Body-Worn Cameras in Law Enforcement Agencies, 2016* (Washington, DC: Bureau of Justice Statistics, 2018), 7, <https://www.bjs.gov/content/pub/pdf/bwclea16.pdf>.

investigations. Routine and systematic audits and inspections of investigative files can help agencies identify necessary refinements in training, policy, and practice in investigations.⁵⁰ Such audits can be conducted by qualified agency personnel. Alternatively, agencies can seek outside assistance. Agencies should account for cost, quality, timeliness, and capacity in determining the best approach.

1.3.2 Law enforcement agencies should publicly disseminate and educate the community on all use-of-force policies and procedures, including protocols for criminal and administrative investigations.

By making the investigative process more transparent, law enforcement agencies have an opportunity to educate the public, establish expectations, and engender trust. The Bureau of Justice Assistance's guide, *Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations*, states that the written protocol for criminal investigations of use-of-force incidents may be shared with the public to instill confidence in the fairness of the process.⁵¹ Likewise, an administrative investigation may demonstrate to the public that the agency is working to address a potential violation of policy and holds officers accountable when necessary. Public confidence and trust cannot exist without understanding of the agency's accountability process.

1.3.3 States should enact legislation that requires law enforcement agencies to have an independent, external agency that has met minimum training and accreditation standards conduct the criminal investigation of use-of-force incidents that result in death or serious bodily injury.

Independent criminal investigations increase transparency and public trust in the aftermath of use-of-force incidents. Specifically, a law enforcement agency not involved in the incident should conduct any criminal investigation involving a use-of-force incident. At a minimum, a use-of-force incident involving death or serious bodily injury should require an independent, external investigation.⁵² State legislation should outline the appropriate method for determining when and how an independent criminal investigation should be conducted, which should include "written protocols such as [memorandums of understanding] or standard operating procedures (SOPs) to identify and determine each jurisdiction's investigative response to a use-of-force incident, including which agency will serve as the primary investigative entity, the role of the prosecutor, and contact protocols. Agencies taking on the investigative responsibility should develop a uniform standard agreement to promote consistency and uniformity of approach."⁵³

1.4 Public Outreach

Programs that embrace a proactive and consistent outreach approach have effectively developed and sustained relationships between law enforcement and the community. Given the constant and

50 U.S. Department of Justice, *Law Enforcement Best Practices: Lessons Learned from the Field* (Washington, DC: Office of Community Oriented Policing Services, 2019), <https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf>

51 Bureau of Justice Assistance, *Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations* (Washington, DC: Bureau of Justice Assistance, 2017), <https://it.ojp.gov/GIST/1202/Considerations-and-Recommendations-Regarding-State-and-Local-Officer-Involved-Use-of-Force-Investigations>.

52 For this report, serious bodily injury is "bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty." See "National Use-of-Force Data Collection," Federal Bureau of Investigation, accessed August 14, 2020, <https://www.fbi.gov/services/cjis/ucr/use-of-force>.

53 Bureau of Justice Assistance, *Considerations and Recommendations*, 7–8.

stressful demands on law enforcement, law enforcement agencies might overlook these programs and consider them only if time and staff are available. However, such a casual approach is ill advised. Respect for law enforcement grows only through nurturing and sustaining these relationships.

Strong community-based partnerships can lead to greater trust between police and the public they serve. In turn, this trust should evolve and encourage a greater willingness for community members to assist in crime-reduction efforts.

Additionally, public celebrations like parades, notable civic or historic events, and community festivals are ideal places to both recognize the commitment and dedication of law enforcement personnel and encourage community members to show their support. Annual events such as National Night Out (a celebration of police–community partnerships) and National Police Week (the week when the nation commemorates the sacrifice of America’s fallen law enforcement officers) have also contributed to a positive image.⁵⁴

Furthermore, with the omnipresence of social media and the 24/7 news cycle, the public demands information almost immediately. The narrative is set within the first few hours of an event occurring or even sooner; if this narrative is negative, it is often difficult to overcome. Law enforcement professionals should, to the extent possible, promptly share the facts of an incident.

For years, police agencies have relied primarily on broadcast media to ensure communities receive public safety messages and alerts; however, that is no longer the sole method to accomplish those tasks. Multiple online tools, including social media platforms and blogs, enable community members to learn more about the reality of policing and the lives of law enforcement officers in near-real time.⁵⁵

1.4.1 Law enforcement agencies should prioritize community outreach and developing and maintaining strong, positive relationships with various segments of the community, while providing knowledge of and appreciation for the daily responsibilities of law enforcement.

Implementing strategies to accomplish stronger police–community relations can be daunting. Agencies looking to make these positive changes should look to other successful programs that already exist, such as citizen and youth police academies, clergy–police partnerships, youth mentoring, and business community partnerships.

While strong relationships between law enforcement executives and community stakeholders are essential, those relationships should not only exist at the senior leadership level. Many others throughout the organization, particularly line-level personnel, can benefit from those relationships. Law enforcement agencies should ensure that their relationships with the clergy, community groups, businesses, other groups, and the public are not limited to executive leadership. These

relationships should filter throughout the law enforcement organization and be built from the bottom up, and officers should be the linchpins for establishing those relationships.

⁵⁴ “National Night Out,” National Night Out, May 7, 2020, <https://natw.org/>; and “National Police Week,” National Law Enforcement Memorial Fund, accessed July 9, 2020, <https://nleomf.org/programs-events/national-police-week>.

⁵⁵ Gary Cordner and Elizabeth Beall Perkins, *E-COP: Using the Web to Enhance Community Oriented Policing* (Washington, DC: Office of Community Oriented Policing Services, 2013), <https://cops.usdoj.gov/RIC/Publications/cops-w0706-pub.pdf>.

1.4.2 New prosecutors should be trained on the work of law enforcement officers.

| See Chapter 6: Criminal Justice System Partners.

Training for new prosecutors should include highlighting the importance of the prosecutor's role of working alongside law enforcement officers to secure justice within a community. This training may include ride-alongs or periodic roundtables with law enforcement agencies to help a new prosecutor understand the perspective of law enforcement officers. Such training would improve prosecutors' understanding of the effort and resources that officers put into each arrest and the risks that officers encounter in the line of duty.

Training prosecutors this way would make their work more efficient and boost the morale of both prosecutors and law enforcement officers. This training would also help improve prosecutors' respect for law enforcement officers and officers' relationship with the prosecuting agency.

1.4.3 Law enforcement agencies should develop and maintain a strong social media presence and a comprehensive public outreach plan to consistently deliver accurate and timely messaging to the public.

When local law enforcement agencies lack a social media presence, it allows a counter-narrative to develop and direct perceptions and attitudes. Law enforcement agencies should use social media to build a narrative that reinforces the work accomplished by the people in law enforcement, including stories that highlight the bravery, compassion, and dedication of their officers and show the people behind the badge. This should include dedicated personnel to regularly share positive stories via social media, print and broadcast media, community websites, and other digital avenues. Agencies with limited resources or experience should look for partnership opportunities to share in these efforts, such as other police departments and sheriff's offices, national police organizations, and local or national labor organizations. Government executives should also convey a positive message about law enforcement officers who protect their communities.

Police leadership should look through a public lens to consider how well the public understands their agency's mission and priorities, and leadership should ensure that the agency's core values reflect the community's priorities.

1.4.4 Law enforcement agencies should ensure that their social media technology and strategies are current and constantly updated to remain responsive to their community.

People have become accustomed to prompt and efficient responses when communicating electronically, and law enforcement agencies are not exempt. Agencies have a variety of opportunities to engage using various social media platforms. In many ways, social media platforms have become the primary method in which law enforcement interacts with their communities. Social media can be used to quickly and directly disseminate information to the public. As cell phones take the place of home computers, police agencies should tailor social media messaging to mobile platforms. Additionally, agencies should maintain a traditional website to ensure optimum accessibility, outreach, and engagement opportunities.

Moreover, law enforcement agencies should create and maintain guidelines or policies regarding the use of personal media accounts. While employees of a law enforcement agency should be able to express themselves on social media, they should be aware of how their posts may affect the image of their agency and the department's ability to effectively maintain the trust of the community it serves.

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CHAPTER 2: VICTIM SERVICES

“Every year, millions of Americans suffer the shock and trauma of criminal victimization, affecting their well-being and sense of security and dignity. To these victims, we affirm our unwavering commitment to supporting them in their hour of need. We also commend the thousands of victim advocates and public safety professionals who labor tirelessly to secure victims’ rights and support survivors.”⁵⁶
- Attorney General William P. Barr, Department of Justice Commemorates National Crime Victims’ Rights Week

Overview

While the mission of law enforcement is often conceived as protecting the “general public,” it is individual victims of crimes that law enforcement officers encounter and protect on a day-to-day basis.⁵⁷

The increased challenges of keeping America safe today have taken their toll not only on American law enforcement officers, but also the citizens they police. Law enforcement plays an important role in the experiences of crime victims, as officers are often a victim’s first point of contact with the criminal justice system. These initial interactions can play a pivotal role in helping victims access needed services and resources on their way to recovery. Victims who receive broad access to services and information can begin to address the trauma they experienced as a result of the crime committed against them.

The rule of law cannot exist where victims of crime do not trust that law enforcement will keep them safe or that the legal system will deliver justice. As victims often play a pivotal role in assisting law enforcement investigate crime, it is important for officers and deputies to be trained on how to be sensitive and supportive of victims during their investigations. When victims trust the police, they are more likely to report to law enforcement and participate in the investigative process. A victim’s crime report and ultimately their participation in the investigative process is crucial to ensure that violent offenders are apprehended and taken off the streets, which in turn increases public safety.

To effectively respond to victims, many law enforcement agencies have strengthened their relationships with victim services organizations. Some agencies have embedded victim assistance units within their departments, as have many prosecutors’ offices.⁵⁸ Agencies have also begun establishing both formal and informal collaborations with victim service organizations in their

⁵⁶ Office of Public Affairs, “Department of Justice Commemorates National Crime Victims’ Rights Week,” U.S. Department of Justice, April 20, 2020, <https://www.justice.gov/opa/pr/departments-justice-commemorates-national-crime-victims-rights-week>.

⁵⁷ Under the Victims’ Rights and Restitution Act (VRRRA), 34 U.S.C. § 20141 (1990), a crime victim is a person who has suffered direct physical, emotional, or financial harm as a result of the commission of a crime. Victims may include deceased individuals and their families; physically injured individuals; those injured while trying to escape harm; individuals presumed to have suffered emotional harm by being present during the commission of a crime, by being potential targets of the crime, or by witnessing a violent crime; or individuals or businesses who suffer financial harm.

⁵⁸ “Enhancing Law Enforcement Response to Victims (ELERV),” International Association of Chiefs of Police, accessed July 15, 2020, <https://www.theiacp.org/projects/enhancing-law-enforcement-response-to-victims-elerv>.

communities. Additionally, other larger communities have established family justice centers (FJC) or children's advocacy centers (CAC) to address these issues.

This trend to establish and improve victim services ensures that victims are connected to community services that help understand and navigate a complex criminal justice system. Law enforcement also benefits from forming collaborative partnerships with victim services providers by creating safer communities and bolstering individual and community trust.

In its study, the Commission has reviewed many types of victimization, the vast number of victims, the overwhelming need for services, and the intricacies of service delivery from the field of stakeholders. Some types of victimization require specialized responses, and law enforcement agencies should ensure that they have both the capability and competency to support the victims of these types of crimes in addition to the knowledge of where to refer such victims for resources. These victimizations include crimes involving intimate partner violence, human trafficking, hate crimes, age-based crimes, multiple casualty violence, and victims of motor vehicle crashes.

Recommendations in this chapter offer ways to support local law enforcement in their efforts to enhance officers' training to approaching crime victims and connecting victims to needed services and resources.

2.1 Trauma-Informed Approach to and Protection for Crime Victims

Law enforcement must be able to recognize and address trauma and its effect on victims of crime when officers or deputies encounter them. Using a trauma-informed approach, law enforcement can have a greater awareness of a victim's needs, which leads to more successful investigations and being able to connect traumatized individuals to appropriate community services and support.⁵⁹

2.1.1 Local and state law enforcement agencies should enhance their in-house victim assistance programs to improve services to crime victims and increase public safety.

It is vital to have specially trained staff or specific policies and procedures for assisting victims of crimes.

A recent study by the Bureau of Justice Statistics found that many law enforcement agencies are lacking in the area of victim assistance:

- Only 13 percent of U.S. law enforcement agencies reported having specialized units with full- or part-time personnel dedicated to victim assistance.
- Another 12 percent of agencies have some dedicated personnel for victim assistance.
- About 50 percent of agencies had no personnel dedicated to victim assistance, but had related policies, procedures, and training.
- The remaining 20 percent of police agencies did not formally address how to provide victim assistance.⁶⁰

59 Altovise Love-Craighead, "Building Trust Through Trauma-Informed Policing," *Think Justice* (blog), March 20, 2015, <https://www.vera.org/blog/police-perspectives/building-trust-through-trauma-informed-policing>.

60 Heather Warnken, "What Does the Data Tell Us About Law Enforcement-Based Victim Services?," *Police Chief Magazine*, April 4, 2018, <https://www.policechiefmagazine.org/what-does-the-data-tell-us/>.

To help fill this void and sharpen the delivery of victim services within police agencies, the Department of Justice's (DOJ) Office for Victims of Crime (OVC) developed a unique funding opportunity in FY 2018, the Law Enforcement-Based Victim Services Program, which has continued in subsequent years by using non-taxpayer dollars from the Crime Victims Fund.⁶¹ To date, 76 large, medium, and small law enforcement agencies have been funded for a period of three years to take their in-house victim assistance programs to new levels.⁶²

OVC also has encouraged its state administering agencies, which receive millions in funding annually from the Crime Victims Fund, to consider funding similar programs within their states. As a result, Kentucky has developed a cutting-edge program to place victim assistance personnel in each of its 16 state police posts. In helping to launch the Kentucky Victim Advocate Support Services Program in September 2019, Katharine Sullivan, Principal Deputy Assistant Attorney General for DOJ's Office of Justice Programs, stated: "We know that Kentucky State Troopers do everything in their power to help a victim in need, and we are grateful that they are so fiercely committed to protecting their fellow citizens. But as highly trained professionals themselves, they understand the value of having well-trained victim advocates on hand to meet victims and make quality referrals."⁶³ Kentucky officials explained that these skilled professionals also serve as liaisons between law enforcement and the victim, simultaneously helping victims navigate the system and allowing detectives to focus more efficiently on the details of the case.⁶⁴



Katharine Sullivan, Principal Deputy Assistant Attorney General, Office of Justice Programs

OVC offers many resources, financial or otherwise, to assist law enforcement agencies with developing effective victim service programs.

2.1.2 The Peace Officers Standards and Training agency in each state should require the state's basic academy curriculum and continuing education courses include training on trauma-informed care, victim services, state's victims' rights laws, and the role of crime victim compensation.

This training requirement will ensure that officers are educated about new approaches, interventions, and research on trauma, trauma-informed care, and individualized victims' needs. It will also ensure that officers better understand the physical, psychological, and social needs of victims and the role trauma plays in how victims respond after a violent crime. It should provide information on the neurobiological impact of trauma, understanding perpetrator behavior, and conducting effective investigations. A trauma-informed training program complemented by a mandatory retraining requirement strengthens law enforcement's capacity to respond effectively to victims of crime while simultaneously holding offenders accountable.

61 Office of Victims of Crime, *OVC FY 2018 Law Enforcement-Based Direct Victim Services and Technical Assistance Program (LEV Program)* (Washington, DC: Office of Victims of Crime, 2018), <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/OVC-2018-14540.pdf>; and Lisa N. Sacco, *The Crime Victims Fund: Federal Support for Victims of Crime* (Washington, DC: Congressional Research Service, 2020), <https://crsreports.congress.gov/product/pdf/R/R42672>.

62 "Law Enforcement-Based Victim Services (LEV): Site List," International Association of Chiefs of Police, accessed August 18, 2020, <https://www.theiacp.org/site-list>.

63 Katharine Sullivan, Principal Deputy Assistant Attorney General, "Remarks as Prepared for Delivery," presented at the Kentucky Statewide Law Enforcement Victims' Coordinator Program, Elizabethtown, KY, September 12, 2019, <https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-office-justice-programs-katharine-t-sullivan>.

64 "Gov. Bevin, KSP Announced Statewide Victims Assistance Program," Kentucky State Police, September 12, 2019, <https://kentuckystatepolice.org/hq-9-12-19/>.

2.1.3 All states should ensure that their Victims Bill of Rights provides the same protection to victims of juvenile crime and adult crime. Victims of crime, regardless of the age of the offender, should have the same rights available to them.

All states have some form of victim protection, ranging from being notified of court hearings to having the opportunity to be present and be heard in court. However, to secure those rights in an ever-changing juvenile environment, states should incorporate victims' rights into law providing victims of juvenile crime legal protections that are comparable to those of defendants in the juvenile justice system.⁶⁵

2.2 Victims of Domestic and Intimate Partner Violence

Domestic violence, also referred to as intimate partner violence, includes physical, sexual, or emotional abuse as well as sexual coercion and stalking. Each year, millions of people experience intimate partner violence in the United States. It occurs in every community and has an impact on all people regardless of race, gender, socioeconomic status, geography, religion, or sexual orientation.⁶⁶

On average, nearly 20 people per minute are physically abused by an intimate partner in the United States.⁶⁷ Throughout the United States, 10 percent of women and 2 percent of men have reported being stalked by an intimate partner, and 9.4 percent reported experiencing intimate partner sexual assault.⁶⁸ When a woman's abuser has access to a firearm, her risk of intimate partner homicide increases by 500 percent.⁶⁹

Intimate partners are also responsible for 72 percent of murder-suicides.⁷⁰ Gun-related domestic homicides increased by 26 percent from 2010 to 2017.⁷¹ On a national level, the Centers for Disease Control and Prevention found that domestic violence costs the United States more than \$5.8 billion dollars annually, with 70 percent representing care and mental health expenses as a result of the crime.⁷²

In addition, 75 percent of children who witness domestic violence will grow up to repeat the same behavior.⁷³ The Anxiety and Depression Association of America has found that intimate partner violence has long-lasting, serious effects on a woman's physical and mental health and

65 "New Jersey Crime Victims Bill of Rights," New Jersey Office of the Attorney General, accessed June 15, 2020, <https://www.nj.gov/oag/njvictims/rights.html>.

66 "Domestic or Intimate Partner Violence," Office on Women's Health, accessed July 15, 2020, <https://www.womenshealth.gov/relationships-and-safety/domestic-violence>.

67 "National Statistics," National Coalition Against Domestic Violence, accessed June 26, 2020, <https://ncadv.org/statistics>.

68 "Preventing Intimate Partner Violence," Centers for Disease Control and Prevention, October 3, 2019, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>; and National Coalition Against Domestic Violence, Domestic Violence (Denver: National Coalition Against Domestic Violence, n.d.), 1, https://assets.speakcdn.com/assets/2497/domestic_violence2.pdf.

69 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 14, 2020) (statement of Kim Garrett, Chief Executive Officer and Founder, Palomar, Oklahoma City Family Justice Center), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

70 National Coalition Against Domestic Violence, *Domestic Violence*.

71 Laura M. Holson, "Murders by Intimate Partners Are on the Rise, Study Finds," *New York Times*, April 12, 2019, <https://www.nytimes.com/2019/04/12/us/domestic-violence-victims.html>.

72 Garrett, *President's Commission on Law*, April 14, 2020.

73 Kim Garrett, Chief Executive Officer and Founder, Palomar, Oklahoma City Family Justice Center (presentation to Victim Services Working Group, virtual meeting, April 16, 2020).

that women are up to 10 times more likely to report depression and 17 times more likely to report anxiety if they are in violent relationships.⁷⁴

Law enforcement professionals face significant challenges when encountering victims of intimate partner-related crimes who have multi-faceted needs for specific services. These services often extend in duration far beyond what the embedded law enforcement victim advocate can provide during the investigation, prosecution, and sentencing stages of an individual case. The needs of such victims may exceed the expertise, capability, and training of embedded law enforcement victim services personnel. Many victims need a variety of services, including child and family, mental health, job, housing, legal aid, substance abuse, health and wellness, medical, therapy, or spiritual services, and small and rural law enforcement agencies and prosecutor's offices are often simply unable to provide and sustain such embedded victim services or advocacy personnel.

Social service providers face significant challenges in meeting the unique needs of victims of intimate partner-related crimes. The Office on Violence Against Women (OVW) reports the most often-cited areas of need mentioned by OVW grantees are

- sustaining core services for victims, particularly safe transitional and permanent housing
- addressing victims' basic needs, including food, shelter, transportation, mental health services, and childcare
- providing culturally and linguistically competent services, outreach, and education, especially interpretation and translation
- providing services and support to immigrant and refugee victims and their communities and improving training for service providers on the particular needs of these populations
- improving offender accountability through monitoring, batterer intervention programs, and stricter enforcement of protective orders
- ensuring that services are accessible to people with disabilities and addressing the specific needs of older adult victims
- providing civil legal representation for low-income victims in cases involving divorce, custody, and visitation
- mitigating barriers to consistent and comprehensive services for victims in rural areas and tribal communities, such as challenges to maintaining confidentiality and lack of transportation⁷⁵

Although many governmental and nongovernmental (NGO) entities provide specific services to victims, these services are often independent of each other and siloed across the community. This leaves victims on their own to discover what services are available. This lack of coordination and co-location of services leaves victims confused and frustrated, resulting in many victims abandoning their pursuit of needed services and the case against their abuser.

In many areas, the family justice center (FJC) model has addressed this need and provided effective, collaborative victim services in a coordinated community response.⁷⁶ FJCs bring together multiple victim-centered service partners, each with their own area of expertise and specialized training, to work collaboratively under one roof. FJCs focus on reducing the number of times

⁷⁴ Luana Marques, "Intimate Partner Violence – What Is It and What Does It Look Like?," Anxiety and Depression Association of America, accessed June 26, 2020, <https://adaa.org/learn-from-us/from-the-experts/blog-posts/consumer/intimate-partner-violence-what-it-and-what-does>.

⁷⁵ Laura Rogers, Acting Director, Office of Violence Against Women, in discussion with Victim Services Working Group, virtual meeting, April 7, 2020.

⁷⁶ Rogers, in discussion with Victim Services, April 7, 2020.

victims tell their story, reducing the number of places victims must go for help, and increasing access to services and support for victims and their children from the moments following the abuse to far beyond the prosecution and sentencing of the offender.⁷⁷ This type of coordination allows for regular high-risk team meetings, which—together with law enforcement—ensure a rapid collective response to cases with the highest lethality potential.

When FJCs provide holistic, wrap-around services to the victim, law enforcement and prosecutors can more readily focus on the specific investigation and prosecution to ensure that the abuser is held accountable.

2.2.1 State and local governments should adopt family justice center collaborative models.

The FJC model supports the coordination and co-location of multi-agency (governmental and NGO) and multidisciplinary services. This model provides victims easy access to services, reducing the number of times they must tell their story and the number of different places they must go to be served. Ideally, funding would support multi-agency teams within an FJC to create new positions including, but not limited to

- prosecutors (both cross deputized and local)
- therapists and counselors
- civil legal assistance
- detectives
- advocates
- child and adult protective services assistance⁷⁸

2.3 Age-Based Victims

The elderly and youth are both vulnerable populations who may be unintentionally overlooked when discussing victims of crime. Both are often unable to defend or protect themselves against a perpetrator, and may be afraid to speak up for fear of additional harm. Moreover, their victimization often is the product of isolation, neglect, illness, or sheer opportunity. Despite the vigilant efforts of social service networks and law enforcement-based systems to better identify crimes against the elderly and youth, many crimes remain unreported. The nation's aging and young populations are statistically underrepresented in the reporting of crime but increasingly experience victimization.

ELDERLY VICTIMS OF CRIME

Elder abuse is an intentional or negligent act by any person that causes harm or a serious risk of harm to an older adult.⁷⁹ It is a term used to describe six subtypes of elder abuse: physical abuse, financial fraud, caregiver neglect and abandonment, psychological abuse, sexual abuse, and scams and exploitation. Elder abuse is a serious crime against some of the nation's most

⁷⁷ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 22, 2020) (statement of Joyce Bilyeu, Survivor, Director of Client Services, Sacramento Regional Family Justice Center), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁷⁸ Garrett, *President's Commission on Law*, April 14, 2020; and Lisa Bourgoyne, Director of Forensic Services, Children's Assessment Center, in discussion with Victim Services Working Group, virtual meeting, May 7, 2020.

⁷⁹ "Elder Justice Initiative (EJI)," U.S. Department of Justice, October 19, 2015, <https://www.justice.gov/elderjustice>.

vulnerable citizens, affecting at least 10 percent of older Americans every year.⁸⁰ Together with federal, state, local, and tribal partners, the DOJ is committed to combatting all forms of elder abuse and financial exploitation through enforcement actions, training and resources, research, victim services, and public awareness.⁸¹

The DOJ Elder Justice Initiative provides several resources to combat elder abuse and fraud, in addition to tools for law enforcement to better serve seniors within their respective communities.

The Justice Initiative states:

The 10 DOJ regional Elder Justice Task Forces bring together federal, state, and local prosecutors; law enforcement; and agencies that provide services to the elderly. These teams coordinate and enhance efforts to pursue nursing homes that provide grossly substandard care to their residents. The Elder Justice Task Forces are led by representatives from the U.S. attorneys' offices, state Medicaid Fraud Control Units, state and local prosecutors' offices, the Department of Health and Human Services (HHS), state Adult Protective Services agencies, Long-Term Care Ombudsman programs, and law enforcement.⁸²

The Elder Abuse Prevention and Prosecution Act, Pub. L. No. 115-69, 131 STAT. 1208 (2017), allowed for the creation of training and resources for elder justice professionals. Recognizing the importance of state, local, and tribal law enforcement officials in supporting the safety of the elder population, the Elder Justice Initiative collaborated with law enforcement agencies to create the Elder Abuse Guide for Law Enforcement (EAGLE). EAGLE is an online platform that provides law enforcement with "resources including a first responder checklist, evidence collection tips, information on how to recognize an abuser, a zip code locator for community resources, a list of state statutes and possible charges, and training activities such as law enforcement-tailored webinars."⁸³

According to the National Council on Aging, "approximately one in 10 Americans age 60 or older have experienced some form of elder abuse. Some estimates range as high as five million elders who are abused each year."⁸⁴ Unfortunately, a disproportionately low number of cases are reported. Both men and women have been found to be abusers.⁸⁵ An alarming number of perpetrators are family members—two-thirds of offenders are older children or intimate partners.⁸⁶

The risk of death increases by 300 percent for elders who are maltreated.⁸⁷ Estimates of monetary loss resulting from the financial abuse of and fraud against the elderly ranges from approximately \$2.9 billion to \$36.5 billion, but the loss may be underreported.⁸⁸ Those affected report financial abuse at a higher rate than other forms of abuse or neglect.⁸⁹

80 U.S. Department of Justice, "Elder Justice Initiative."

81 U.S. Department of Justice, "Elder Justice Initiative."

82 "Elder Justice Task Forces," U.S. Department of Justice, accessed July 15, 2020, <https://www.justice.gov/elderjustice/task-forces>.

83 Office of the Attorney General, *Attorney General's Annual Report to Congress on Department of Justice Activities to Combat Elder Fraud and Abuse* (Washington, DC: U.S. Department of Justice, 2019), 15-16, <https://www.justice.gov/file/1211066/download>.

84 "Elder Abuse Statistics and Facts," National Council on Aging, accessed June 26, 2020, <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/>

85 National Council on Aging, "Elder Abuse Statistics and Facts."

86 National Council on Aging, "Elder Abuse Statistics and Facts."

87 "Elder Abuse Statistics," Nursing Home Abuse Center, accessed June 26, 2020, <https://www.nursinghomeabusecenter.com/elder-abuse/statistics/>.

88 National Council on Aging, "Elder Abuse Statistics and Facts."

89 National Council on Aging, "Elder Abuse Statistics and Facts."

DOJ's commitment to eradicating elder scams, fraud, and exploitation is demonstrated in the establishment of the Transnational Elder Fraud Strike Force. DOJ's 2018 and 2019 Elder Fraud Sweeps, in addition to the 2018 Rural and Tribal Elder Justice Summit, brought criminal and civil proceedings against more than 500 perpetrators of fraud. These perpetrators caused a total loss of \$1.5 billion from three million victims.⁹⁰

| See Chapter 8: Reduction of Crime.

YOUTH VICTIMS OF CRIME

Every year, thousands of children are victims of crimes or maltreatment involving physical, sexual, or emotional abuse or neglect. Consequently, child victimization and abuse are associated with problem behaviors that may become apparent later in life. In addition, "abused and neglected children are 59 percent more likely to be arrested for juvenile crime [and] 28 percent more likely to be arrested as an adult."⁹¹ Also, 93 percent of youth in detention reported exposure to previous adverse events, including physical and sexual abuse.⁹²

| See Chapter 4: Juvenile Justice and Youth Crime.

Youth who have been victims of crime or who have experienced trauma may have even more difficulty cooperating with law enforcement.⁹³ For most children, police officers and deputy sheriffs are their first window into the justice system. These early interactions with law enforcement can color the views that young people hold about law enforcement throughout their adult lives. Further, when children witness a parent, guardian, or other family member being arrested, the child may experience long-term consequences. A 2014 report indicated that most law enforcement agencies do not have specific policies for protecting children who are present during an arrest.⁹⁴ Officers should have the training and tools to mitigate the trauma to children who are present during the arrest of an adult.⁹⁵

While not all child victims will engage in risky or delinquent conduct, almost all young people who end up in the juvenile justice system were also victims themselves. Approximately 70 percent of youth in the juvenile justice system have lived through prior victimization and trauma.⁹⁶

Generally, the lack of law enforcement policies and training around youth development, and specifically trauma-related behaviors, is detrimental to both officers and youth. As Lisa Bourgoyne, the director of Forensic Services for the Children's Assessment Center in Houston, Texas, notes: "Sometimes victims don't look the way [officers] think they should look, sometimes the stories don't always sound credible to [them], and sometimes officers don't know or understand victimization."⁹⁷ Officers need the training to recognize behaviors that are common responses to trauma in youth to de-escalate situations and accurately assess behaviors.⁹⁸

90 United States Attorney's Office, Eastern District of New York, "Justice Department Announces Transnational Elder Fraud Strike Force," U.S. Department of Justice, June 13, 2019, <https://www.justice.gov/usao-edny/pr/justice-department-announces-transnational-elder-fraud-strike-force>.

91 Bourgoyne, in discussion with Victim Services, May 7, 2020.

92 Bourgoyne, in discussion with Victim Services, May 7, 2020.

93 Rhonda McKitten, Youth Policy and Training Specialist, Philadelphia Police Department, PA, email communication with Victim Services Working Group, May 11, 2020.

94 International Association of Chiefs of Police, *Safeguarding Children of Arrested Parents Toolkit* (Alexandria, VA: International Association of Chiefs of Police, 2014), <https://www.theiacp.org/resources/safeguarding-children-of-arrested-parents-toolkit>.

95 McKitten, email communication with Victim Services, May 11, 2020.

96 Renee VandenWallBake, "Considering Childhood Trauma in the Juvenile Justice System: Guidance for Attorneys and Judges," American Bar Association, accessed August 5, 2020, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol_32/november-2013/considering-childhood-trauma-in-the-juvenile-justice-system--gui/.

97 Bourgoyne, in discussion with Victim Services, May 7, 2020.

98 McKitten, email communication with Victim Services, May 11, 2020.

Despite being victimized more often than other age groups, adolescents are the least likely to report their victimization.⁹⁹ The Bureau of Justice Statistics' National Crime Victimization Survey (NCVS) asks victims of crime whether the crimes were reported to the authorities. The 2018 NCVS report states, "The rate of violent victimizations not reported to police rose from 9.5 per 1,000 persons age 12 or older in 2015 to 12.9 per 1,000 in 2018, while the rate of violent victimizations reported to police showed no statistically significant change."¹⁰⁰

According to the Adverse Childhood Experiences study, one in 10 children will be sexually abused before they turn 18, but most sexual assaults are never reported.¹⁰¹ BJS reports that only a third of sexual assaults against youth were reported to police.¹⁰² Often, it is difficult for victims of crime to come to terms with their experience. The shock and stigma surrounding victimization can deter victims from reporting the crime. This is no different for teens who may have to contend with additional concerns, such as difficulty processing the fact that they were victimized and fearing retribution. Teens may also find it difficult to trust adults, and they may not have sufficient access to or knowledge about the appropriate services.¹⁰³ In addition, "legal issues involved in working with minors, such as parental consent and mandatory reporting, make some victim service providers reluctant to reach out to them. As a result of these factors, needed services are not reaching many teen victims."¹⁰⁴

Children's advocacy centers (CACs) provide a comprehensive model for tending to the needs of children. Their primary mission is to improve how cases of abuse and neglect are handled, increase the number of offenders that are brought to justice, and provide cost-effective integrated treatment services. At a CAC, a collaborative team of multiple service providers, including local government agencies, conduct interviews together and manage and investigate cases as a team. Some CACs have a designated team focused primarily on child fatalities resulting from abuse or neglect. These designated teams work towards preventing child abuse fatalities. In a span of 10 years, CACs have been implemented in approximately 300 communities.¹⁰⁵

Most states mandate courses for basic training, in-service training for officers, and special training for law enforcement executives. The recommended training should be included in all three of these training programs. Chief Ken Walker of the West University Place Police Department in Texas states: "The training won't be standalone, but rolled into trainings that are already mandated. This will cut travel expenses."¹⁰⁶

2.3.1 Local governments should implement ongoing elder abuse training opportunities for first responders, prosecutors, judges, and advocates.

As the elderly population grows, law enforcement should have the necessary training and resources to handle crimes against the elderly. To address these needs, DOJ's Elder Justice Initiative

99 Rachel E. Morgan and Barbara A. Oudekerk, *Criminal Victimization*, 2018 (Washington, DC: Bureau of Justice Statistics, 2019), <https://www.bjs.gov/content/pub/pdf/cv18.pdf>.

100 Morgan and Oudekerk, *Criminal Victimization*, 2018, 1.

101 Bourgoyne, in discussion with Victim Services, May 7, 2020; and Catherine Townsend and Alyssa A. Rheingold, *Estimating a Child Sexual Abuse Prevalence Rate for Practitioners: A Review of Child Sexual Abuse Prevalence Studies* (Charleston, SC: Darkness to Light, 2013), <https://www.d2l.org/wp-content/uploads/2017/02/PREVALENCE-RATE-WHITE-PAPER-D2L.pdf>.

102 Lawrence A. Greenfeld, *Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault* (Washington, DC: Bureau of Justice Statistics, 1997), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=3963>.

103 Julie Whitman and Elizabeth Joyce, *Reaching and Serving Teen Victims: A Practical Handbook* (Washington, DC: National Crime Prevention Council, 2005), 1-2, <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/ncj211701.pdf>.

104 Whitman and Joyce, *Reaching and Serving Teen Victims*, 1-2.

105 Office of Juvenile Justice and Delinquency Prevention, *Combating Violence and Delinquency: The National Juvenile Justice Action Plan* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1996), 65, <https://www.ncjrs.gov/pdffiles/jjplanfr.pdf>.

106 Ken Walker, Chief of Police, West University Place Police Department, TX, in discussion with Victim Services Working Group, virtual meeting, May 28, 2020.

created a video series to educate law enforcement on recognizing signs of abuse and a resource to help track areas of potential criminal activity.¹⁰⁷

2.3.2 Congress should increase funding to support children's advocacy centers and system-based victim advocates trained to work with young victims.

CACs should be prioritized for long-term federal funding to support the coordination and co-location of multiagency (i.e., governmental and NGO) and multidisciplinary services. This model provides victims easy access to services, which reduces the number of times they need to tell their story and the number of different places they need to go to be served. Funding should support multiagency teams within a CAC. System-based victim advocates provide a crucial service to youth by focusing on "supporting victims through the criminal justice system; providing information, education, and notification about what is occurring with their case; and [ensuring] that their rights are upheld."¹⁰⁸ The delicate issues concerning the abuse of youth require the use of qualified advocates who can support youth through traumatic times in their lives.

2.3.3 Law enforcement agencies should engage with their Internet Crimes Against Children task force to further protect youth from exploitation.

Internet Crimes Against Children (ICAC) is a national network of 61 coordinated task forces that represents more than 4,500 federal, state, and local law enforcement and prosecutorial agencies throughout the 50 states. This network is engaged in the proactive and reactive investigations and prosecutions of persons involved in child abuse and exploitation through the internet.¹⁰⁹

ICAC was developed in response to the increasing number of children and teenagers using the internet and other technology, the proliferation of child sexual abuse images available electronically, and the increased online activity by predators who seek unsupervised contact with potential underage victims. Understanding that arrests are only one component of a coordinated strategy to address technology-facilitated child sexual exploitation. The ICAC program provides training to law enforcement officers and prosecutors, and it educates parents and youth about the potential dangers of online activity.

Law enforcement agencies should create a login on the ICAC Training and Technical Assistance website and, once verified, begin accessing the resources available there.¹¹⁰

2.3.4 Congress should increase funding to support local coordinated community response teams.

Coordinated community response teams address systems change, advancing both victim safety and offender accountability. They also support programs to prevent crimes against youth through multidisciplinary efforts, including case coordination teams and other models of collaboration, forensic centers, and child fatality review teams.

107 "Identifying and Responding to Elder Abuse: An Officer's Role," International Association of Chiefs of Police, accessed August 5, 2020, <https://www.theiacp.org/elder-abuse>.

108 Maureen Baker, Erica King, and Tara Wheeler, "Section 5: Building Partnerships," National Institute of Corrections, 2016, <https://info.nicic.gov/wwwc/node/9>.

109 Office of Juvenile Justice and Delinquency Prevention, *2019 Annual Report*, 16.

110 "ICAC Training and Technical Assistance," Internet Crimes Against Children Task Force, accessed June 12, 2020, <https://www.icactaskforce.org/Pages/Home.aspx>.

2.4 Victims of Human Trafficking, Hate Crime, Mass Casualty Violence, and Traffic Crashes

Certain types of crimes create a distinct kind of victim necessitating a specific response from law enforcement and tailored services to meet their needs resulting from the crime. Domestic and intimate partner violence is one such prominent crime that creates specific victim needs, as highlighted above. The Commission also considered victims of four other specific crimes: human trafficking, hate crimes, mass casualty violence, and traffic crashes.

HUMAN TRAFFICKING

Human trafficking is a unique crime, requiring a specific investigative process and with a victimology considerably different from other crimes. The trauma caused to the victims can be so harmful that many may not identify themselves as victims or ask for help. Law enforcement should adopt a victim-centered approach to human trafficking by embedding victim advocates within their investigative units. Interviewing and reporting by law enforcement are integral parts of gathering data and building relationships with human trafficking victims. The recovery and restoration of the victims over the long term enhances the ability for a successful prosecution, as the victim is more trusting of law enforcement and is better able to testify. Funding or grants should be provided for victim advocates to be embedded with law enforcement, and funding for training law enforcement on a victim-centered approach to human trafficking investigations is beneficial.

HATE CRIMES

The Federal Bureau of Investigation (FBI) defines a hate crime as “a criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”¹¹¹ The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. § 249 (2009) gives DOJ “the power to investigate and prosecute defendants who selected their crime victim based on race, color, religion, national origin, gender, sexual orientation, gender identity, or disability.”¹¹² While hate crimes are most commonly directed towards individuals, businesses and other organizations can also be victims. Some victims of hate crime feel that their experience is not worthy of law enforcement’s time or that it will not be taken seriously, which prevents them from reporting the crime. Similarly, police officers may be hesitant to make a hate crimes arrest in these instances because of their own lack of awareness and education.¹¹³ The key to understanding when a crime is a hate crime is to discern whether or not the victim was targeted based on the factors outlined in the Hate Crimes Prevention Act. Effective training will help law enforcement officers understand and correctly assess, report, and document hate crimes. It will also help them provide informed victim services.

MASS CASUALTY VIOLENCE

Certain violent events can involve multitudes of victims who are indiscriminately subjected to violence to inflict mass casualties. This type of violence is usually defined as “an intentional violent criminal act that results in physical, emotional, or psychological injury to a large number

111 “Hate Crimes,” Federal Bureau of Investigation, accessed June 29, 2020, <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

112 Legal Information Institute, “Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act,” Cornell Law School, accessed June 29, 2020, https://www.law.cornell.edu/wex/matthew_shepard_and_james_byrd_jr_hate_crimes_prevention_act; and The Legacies of James Byrd Jr. and Matthew Shepard: Two Decades Later, *Police Chief Magazine*, March 6, 2019, <https://www.policchiefmagazine.org/legacies-byrd-and-shepard/>.

113 Brittany E. Hayes, Assistant Professor, University of Cincinnati, “Evidence-Based Best Practices for Victims of Hate Crimes” (PowerPoint presentation, Victim Services Working Group, virtual meeting, May 19, 2020).

of people.”¹¹⁴ Schools, churches, and other areas such as offices, restaurants, and stores are often prime targets for mass attacks. While some communities have plans and resources in place to address the law enforcement, fire, and emergency medical services response to a mass casualty event, few are equipped to manage the challenging response of meeting the needs of the victims and their survivors.

By their very nature, mass casualty events are chaotic and disorganized. Therefore, each jurisdiction's emergency response plan should take into account the unique victimology faced during the response to this type of crime, including providing victim service workers, designating a temporary reception or notification center, establishing a suitable place for a victim or family assistance center, enacting protocols for building an official list of survivors and victims, issuing death notifications, handling victims' personal effects, and providing timely and informative updates to all victims and survivors.

Local governments can turn to the FBI's Victim Services Division for an effective model that integrates victim services into an emergency response plan. The FBI has a strong Victim Services Response Team (VSRT), which is one of the most requested FBI assets in the aftermath of a mass casualty event. The VSRT will assist local governments that are underprepared to respond to such events. Furthermore, each local plan should proactively identify and engage with additional partners that can bring extensive experience and resources to a mass casualty response. Law enforcement can engage the American Red Cross and others in the nonprofit community. Partner organizations should regularly meet and review victim service response plans prior to an incident to identify gaps and ensure synchronization among them.¹¹⁵ When necessary, the FBI's Victim Services Division can assist through the Excellence in Law Enforcement-based Victim Assistance Training and Enrichment (ELEVATE) program, which teaches communities how to build, grow, or sustain a law enforcement victim assistance program. It also offers mentoring and specialized training for crisis intervention and mass casualty response.¹¹⁶

MOTOR VEHICLE CRASHES

In 2018, approximately 4.5 million motor vehicle crashes resulted in injuries that required medical care. According to the Department of Transportation's National Highway Traffic Safety Administration, approximately 36,120 deaths resulted from crashes involving motor vehicles in 2019.¹¹⁷ Motor vehicle crashes involving severe injuries, such as paralysis, have significant and lasting effects on a victim in the same manner that the traumatic experience of a violent crime can have on a victim.¹¹⁸

According to Dolores Poeppel, director of Colorado State Patrol's Victims' Assistance Unit, motor vehicle crash victims in Colorado are considered to be victims of crime, yet they receive very little assistance in the aftermath of crashes where individuals are either seriously injured or killed.¹¹⁹

114 "Mass Violence," Victim Connect Resource Center, accessed June 29, 2020, <https://victimconnect.org/learn/types-of-crime/mass-violence/>.

115 "Helping Victims of Mass Violence and Terrorism: Planning, Response, Recovery, and Resources," Office for Victims of Crime, accessed June 29, 2020, <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/mvt-toolkit/index.html>.

116 "ELEVATE: A Focus on Victim Services," Federal Bureau of Investigation Law Enforcement Bulletin, accessed July 16, 2020, <https://leb.fbi.gov/bulletin-highlights/additional-highlights/elevate-a-focus-on-victim-services>.

117 National Safety Council, "Overview: Motor Vehicle Injury Facts," Injury Facts, accessed August 5, 2020, <https://injuryfacts.nsc.org/motor-vehicle/overview/introduction/>; and "Early Estimates of 2019 Motor Vehicle Traffic Data Show Reduced Fatalities for Third Consecutive Year," National Highway Traffic Safety Administration, May 5, 2020, <https://www.nhtsa.gov/press-releases/early-estimates-traffic-fatalities-2019>.

118 Bessel van der Kolk, "Posttraumatic Stress Disorder and the Nature of Trauma," Abstract, *Dialogues in Clinical Neuroscience* 2, no.1 (2000), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3181584/>; and Richard Mayou, Sally Tydnel, and Bridget Bryant, "Long-Term Outcome of Motor Vehicle Accident Injury," Abstract, *Psychosomatic Medicine* 59, no.6 (1997), <https://pubmed.ncbi.nlm.nih.gov/9407575/>.

119 Dolores Poeppel, Director, Victims' Assistance Unit, Colorado State Patrol (presentation, Victim Services Working Group, virtual meeting, May 14, 2020).

Often, these motor vehicle crashes are the result of a violation of law, and sometimes they are a result of a felony violation. When there are no victim services available, the families may be left on their own to navigate a complex court process, and they may never be made aware of their rights as victims. In those cases, they may have no one other than the law enforcement investigator to answer their questions.¹²⁰ Commissioner Craig Price, the secretary of the South Dakota Department of Public Safety, states, “It’s imperative to have victim services assigned to crash victims so officers can concentrate on patrolling and responding to other calls for service. Having a crash assistance program embedded into a law enforcement agency has proven to be successful—motor vehicle crash victims are better served, and law enforcement resources aren’t taken off the streets.”¹²¹

Agencies that adopt a crash assistance program similar to Colorado’s are able to have victim advocates provide immediate crisis intervention and support the victim until family arrives. The victim advocate can arrange any travel to bring family members to the victim, provide factual details about the crash to help the healing process, and serve as a point of contact for the law enforcement agency until the officer is available to meet with the victim’s family.¹²² Victim advocates do not always have to be paid staff; instead, agencies can develop a victim advocate volunteer program, which allows members of the department to give back to the community. Additionally, the creation of a national policy on crash assistance programs by the Department of Transportation would help law enforcement, victim service providers, and advocates clearly delineate the necessary components of crash assistance programs.

120 Craig Price, Secretary, South Dakota Department of Public Safety, email communication with Josephine Debrah, Report Writer, Victim Services Working Group, May 21, 2020.

121 Price, email communication with Josephine Debrah, May 21, 2020.

122 Poeppel, presentation to Victim Services, May 14, 2020.

DRAFT

Part II

THE COMPLEMENTS TO EFFECTIVE LAW ENFORCEMENT

Law Enforcement Cannot Solve the Problem of Crime Alone

While law enforcement is critical to the fabric of our society, law enforcement does not always have the capacity to fulfill competing demands on their time, which range from traditional crime problems to societal issues such as mental illness, substance abuse, and homelessness. This Commission has determined that the modern law enforcement officer continues to be asked to do too much with too little. The problem of crime is a complex issue, and law enforcement cannot address it alone. Law enforcement must partner with the community, religious and academic institutions, the private sector, nonprofit organizations, social service agencies, correctional facilities, and others to deter and prevent criminal behavior. The failure of any of these institutions can result in the ultimate and unrealistic assignment of responsibility to law enforcement as a catch-all backstop to “fix” the social consequences that come in the form of criminal activity.

This section offers recommendations to help bolster these institutions and services, while alleviating the unfair burden that their limitations create for law enforcement.

DRAFT

CHAPTER 3: ALLEVIATING THE IMPACT OF SOCIAL PROBLEMS ON PUBLIC SAFETY

Overview

Crime is a complex issue that derives from a multitude of causes. While it is the principal duty of law enforcement to protect communities from crime, it is unrealistic and unworkable to expect law enforcement to manage the underlying social conditions—such as homelessness, mental illness, substance abuse—that motivate and accompany some criminal behavior. In its study of American law enforcement, the Commission has found that law enforcement has indeed borne the burden of the failure of and abdication by other public institutions better suited to address these and other social ills that afflict communities and drive crime. This has resulted in police officers and deputy sheriffs diverting a significant amount of time and effort to duties beyond their expertise, resources, and authority to remedy, which has ultimately diminished law enforcement’s capacity to fulfill its core mission of public safety.

“It has never been the intention nor the design for law enforcement to be the sole solution to address homelessness, drug addiction, or the mentally ill. . . . Law enforcement should not be the strategy or the first face of government these individuals encounter or rely upon for help; law enforcement should be the last form of government these people encounter, and only when the intervention efforts have failed, resulting in a criminal violation of law.”¹²³ - Sheriff Don Barnes, Orange County, California

Many social ills (e.g., substance abuse) violate the law, but that does not mean that law enforcement is the only answer to the problem. Law enforcement alone is not a cure-all for criminal behavior, nor is it a substitute for valid behavioral health systems. It cannot backstop social programs that do not adequately treat the predicate conditions of crime in the first place. Tasking law enforcement officers with these duties impairs the rule of law insofar as their duties become confused and fragmented, which can result in unwarranted blame directed at officers for problems they were never supposed to remedy. Effective law enforcement requires restoring officers to their fundamental duty of preventing and reducing crime.

However, unless and until state and local governments provide the investments necessary to support the work of non-law enforcement professionals, police officers and deputy sheriffs must be trained and equipped to handle the complex issues tied to homelessness, substance abuse, and mental illness they now encounter on a daily basis. While law enforcement will always have some role addressing social problems that have an impact on public safety, the Commission recommends enhanced programs and systems to reduce the reliance on law enforcement to be the first provider of social services.

¹²³ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 25, 2020) (written statement of Don Barnes, Sheriff, Orange County Sheriff’s Department, CA), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

A look at three separate studies found that about 44 percent of jail inmates and 37 percent of prisoners were previously told they had a mental health disorder.¹²⁴ Sixty-one percent of sentenced jail inmates and 54 percent of state prisoners incarcerated for violent offenses met the criteria for drug dependence or abuse.¹²⁵ Approximately 15 percent of those incarcerated had been homeless in the past year.¹²⁶ At the time of booking, the number of people in San Diego who reported being homeless in the last 30 days increased from 22 percent in 2014 to 39 percent in 2018; the number who reported being homeless at some point in the past increased from 60 percent in 2014 to 66 percent in 2018.¹²⁷

Responding to and transporting those with mental illness accounts for an estimated 21 percent of a law enforcement officer's total time.¹²⁸ Sergeant Sarah Shimko of the Madison Police Department in Wisconsin noted that her department investigated 44,623 distinct cases in 2019.¹²⁹ Among those, nearly 10 percent (4,275) had an element that involved mental health, and law enforcement officers spent approximately 33,895 hours addressing those cases. In calendar year 2019, the Orange County Sheriff's Department in California devoted approximately 11,600 hours to homeless-related calls for service, the equivalent of 6.5 patrol deputies working full time on these kinds of calls.¹³⁰

The recommendations that follow in this chapter cover four areas—the community, law enforcement, courts, and corrections—that must address these social problems and ease the burden on law enforcement. They focus on rebuilding the community safety net of behavioral health treatment services to address such social problems at their roots, while simultaneously acknowledging that officers will still need to be equipped when called upon to respond to situations with individuals in crisis.

3.1 Rebuilding Behavioral Health Treatment Services in the Community

“Since the mid-twentieth century, America has witnessed a reduction in targeted mental health treatment. Ineffective policies have left more individuals with mental health needs on our nation’s streets, which has expanded the responsibilities of law enforcement officers.”¹³¹ - President Donald J. Trump, Exec. Order No. 13,929

Over the past 60 years, public policies have degraded the community's ability to understand, prioritize, and appropriately address mental illness, substance use disorders, and homelessness. One of the most significant impacts of these policies occurred in the 1960s with the shuttering (i.e., deinstitutionalization) of inpatient psychiatric treatment facilities. According to the *Psychiatric*

124 Jennifer Bronson and Marcus Berzofsky, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011–2012* (Washington, DC: Bureau of Justice Statistics, 2017), 1, <https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>.

125 Jennifer Bronson et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007–2009* (Washington DC: Bureau of Justice Statistics, 2017), 27, <https://www.bjs.gov/content/pub/pdf/dudaspij0709.pdf>.

126 Greg A. Greenberg and Robert A. Rosenheck, “Jail Incarceration, Homelessness, and Mental Health: A National Study,” *Abstract, Psychiatric Services* 59, no. 2 (2008), <https://doi.org/10.1176/ps.2008.59.2.170>.

127 “Homelessness Among Justice System-Involved Individuals in San Diego County,” *CJ Flash* 21, no. 9 (2019), 1, https://www.sandag.org/uploads/publicationid_publicationid_4631_26706.pdf.

128 E. Sinclair, *Road Runners: The Role and Impact of Law Enforcement in Transporting Individuals with Severe Mental Illness, A National Survey* (Arlington, VA: Treatment Advocacy Center, 2019), 9, <https://www.treatmentadvocacycenter.org/road-runners>.

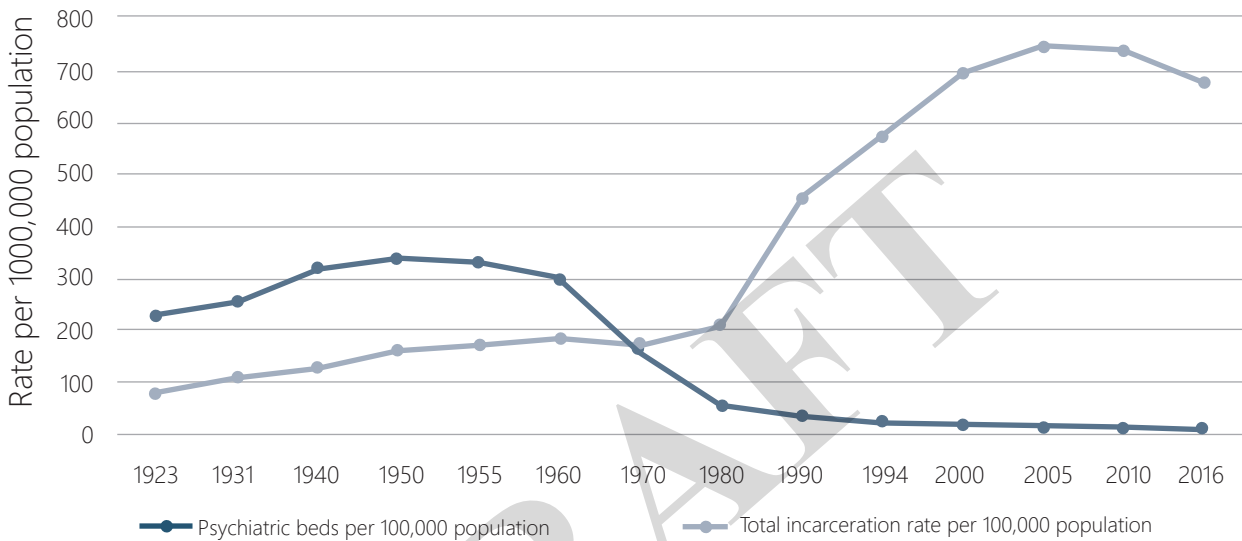
129 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 24, 2020) (written statement of Sarah Shimko, Sergeant, Mental Health Unit, Madison Police Department, WI), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

130 Raymond Grangoff, Chief of Staff, Orange County Sheriff's Office, CA, email communication with Social Problems Impacting Public Safety Working Group, May 26, 2020.

131 “Executive Order on Safe Policing for Safe Communities,” The White House, June 16, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/>.

Times, “In 1955 there were 558,239 state and county psychiatric beds available, or about 340 beds per 100,000 population. Currently, there are about 35,000 state psychiatric beds available, or about 11 beds per 100,000 population.”¹³² In addition to these closures, psychiatric drugs developed to treat many symptoms of mental illness became available, and concern for the civil rights of patients became more important—which helped reinforce the push toward outpatient care.¹³³

Figure 3.1: Psychiatric Bed Rate vs. Incarceration Rate



Sources: Doris A. Fuller et al., *Going, Going, Gone: Trends and Consequences of Eliminating State Psychiatric Beds, 2016* (Arlington, VA: Treatment Advocacy Center, 2016), <https://www.treatmentadvocacycenter.org/storage/documents/going-going-gone.pdf>; E. Fuller Torrey et al., *No Room at the Inn: Trends and Consequences of Closing Public Psychiatric Hospitals 2005–2010* (Arlington, VA: Treatment Advocacy Center, 2012), https://www.treatmentadvocacycenter.org/storage/documents/no_room_at_the_inn-2012.pdf; and “State Prisons, Local Jails, and Federal Prisons, Incarceration Rates and Counts, 1925–2016,” Prison Policy Initiative, accessed September 29, 2020, <https://www.prisonpolicy.org/data/>.

Researchers found that “deinstitutionalization was poorly organized and conducted without adequate build-up of supportive housing, social services, or outpatient community mental health infrastructure.”¹³⁴ Many of those placed into communities became the least successful there. As addiction and mental illness are closely intertwined, the decrease in the community treatment options for mental health resulted in an increase in people with untreated mental illness and substance use disorders.

Additionally, in the 1970s, the public began to view drug use as a criminal justice problem instead of a biomedical problem, while correctional settings had little to no capability to treat substance use disorders.¹³⁵

The decrease in community behavioral health treatment and the increase in housing costs also factor into an increase in the homeless population.¹³⁶ Homelessness is often directly related to

¹³² E. Fuller Torrey, “A Dearth of Psychiatric Beds,” *Psychiatric Times*, February 25, 2016, <https://www.psychiatristimes.com/dearth-psychiatric-beds>.

¹³³ Gregory G. Grecco and R. Andrew Chambers, “The Penrose Effect and Its Acceleration by the War on Drugs: A Crisis of Untranslated Neuroscience and Untreated Addiction and Mental Illness,” *Translational Psychiatry* 9, no. 1 (2019), <https://doi.org/10.1038/s41398-019-0661-9>.

¹³⁴ Grecco and Chambers, “The Penrose Effect,” 2.

¹³⁵ Redonna K. Chandler, Bennett W. Fletcher, and Nora D. Volkow, “Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety,” *Journal of the American Medical Association* 301, no. 2 (2009), <https://doi.org/10.1001/jama.2008.976>.

¹³⁶ Council of Economic Advisers, *The State of Homelessness in America* (Washington, DC: Executive Office of the President of the U.S., 2019), <https://www.whitehouse.gov/wp-content/uploads/2019/09/The-State-of-Homelessness-in-America.pdf>.

behavioral health disorders, physical health issues, and trauma, and the unsheltered homeless experience the worst health conditions and the longest period of homelessness.¹³⁷

The longer one stays homeless, the more their health deteriorates.¹³⁸ Those who are mentally ill and reentering the community from correctional settings are especially high-risk of becoming homeless, as a criminal record makes it difficult to acquire housing or a job.¹³⁹

As outlined in “The State of Homelessness in America” presented by the Council of Economic Advisors in 2019, homelessness may have many underlying factors, including the lack of affordable housing due to the overregulation of housing markets, street conditions that are more comfortable for sleeping when not sheltered (e.g., warmer conditions), the availability of shelter beds, behavioral health disorders, past incarceration, few social ties, and low income.¹⁴⁰ Increasing permanent and affordable housing would greatly benefit those who are most at risk of entering or reentering the criminal justice system: persons who are homeless and who suffer from severe mental health and substance use disorders.¹⁴¹

“Being homeless is not a crime. Having mental illness is not a crime. Having substance use disorder is not a crime.”¹⁴² - Chief Mike Brown, Salt Lake City, Utah

Steps have been made to improve the nation’s community treatment capacity. Various pieces of legislation in recent years have included efforts to enhance mental health and substance use coverage, treatment capacity, and access to quality treatment in communities. For example, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) passed in 2018 was landmark legislation expanding the substance use treatment workforce and access to quality treatment.¹⁴³ Yet there are still roadblocks. According to a report from the Centers for Disease Control and Prevention, “Despite state and community planning efforts, behavioral healthcare systems lack sufficient capacity for addressing the needs of the population they serve. These systems were developed in the midst of funding shortages, shifting healthcare priorities, and decentralized planning efforts. . . . As a result, community behavioral healthcare systems have gaps in comprehensive care and redundancy of resource allocation.”¹⁴⁴ Additionally, inflexible privacy laws can deter patient-centered care if relevant information cannot be shared between providers. Updating the Health Insurance Portability and Accountability Act (HIPAA) to provide for basic information sharing among first responders, criminal justice practitioners, and service partners could further support successful outcomes.

Through the following recommendations, the Commission offers solutions to help address the nation’s lack of treatment capacity through improving treatment availability, quality, and ease of

137 Janey Rountree, Nathan Hess, and Austin Lyke, *Health Conditions Among Unsheltered Adults in the U.S.* (Los Angeles, CA: California Policy Lab, 2019), <https://www.capolicylab.org/wp-content/uploads/2019/10/Health-Conditions-Among-Unsheltered-Adults-in-the-U.S.pdf>.

138 Rountree, Hess, and Lyke, *Health Conditions Among Unsheltered Adults*.

139 “The Homeless Mentally Ill,” *Harvard Health*, accessed June 4, 2020, https://www.health.harvard.edu/newsletter_article/The_homeless_mentally_ill.

140 Council of Economic Advisers, *The State of Homelessness*.

141 Andrew J Baxter et al., “Effects of Housing First Approaches on Health and Well-Being of Adults Who Are Homeless or at Risk of Homelessness: Systematic Review and Meta-Analysis of Randomised Controlled Trials,” *Journal of Epidemiology and Community Health* 73, no. 5 (2019), <https://doi.org/10.1136/jech-2018-210981>.

142 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 31, 2020) (statement of Michael Brown, Chief of Police, Salt Lake City Police Department, UT), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

143 Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, H.R. 6, 115th Cong., P.L. 115-271 (2018), <https://www.congress.gov/bill/115th-congress/house-bill/6>.

144 Brandon Green et al., “A Tool for Assessing a Community’s Capacity for Substance Abuse Care,” *Preventing Chronic Disease* 13 (2016), 2, <https://doi.org/10.5888/pcd13.160190>.

access; increasing prevention; removing barriers to treatment; and reducing stigma and increasing education. This system should also be able to serve the needs of people involved in the criminal justice system.

3.1.1 State and local governments should implement or enhance co-located, comprehensive, one-stop-shop systems of care to screen, assess, and treat people with mental illness and substance use disorders that meets the demand of the community, including criminal defendants.

Through a comprehensive system of care, communities can respond to and serve persons in need before they interact with law enforcement, during their involvement with criminal justice professionals, or after reentering society from a correctional institution.¹⁴⁵

A local comprehensive system of care should include, but is not limited to, an appropriate treatment capacity administered by professionals trained in evidence-based practices for appropriate screening, assessment, and treatment. These systems should have telehealth, particularly to support rural, tribal, and special populations, and prescribe medications when appropriate (i.e., medication-assisted treatment, or MAT). There should also be integrated dual diagnosis disorder treatment for people with co-occurring substance use and mental health disorders, as well as sufficient funding to directly fund or reimburse services.¹⁴⁶

Various models currently exist that address these comprehensive needs in a coordinated way. One such model is the Certified Community Behavioral Health Clinics, which emphasize a wide range of services, including behavioral health provided in the community and correctional facilities, to treat the whole-person rather than disconnected parts of the person's needs.¹⁴⁷ These clinics have expanded access to care and increased the scope of services in the community to include those referred by the criminal justice system.¹⁴⁸

Another model comes from the Office of Care Coordination in Orange County, California, which developed an integrated service plan for community corrections.¹⁴⁹ In reference to the Orange County jail, Sheriff Don Barnes states: "Sadly, this population of inmates often cycle in and out of custody multiple times throughout a single year. The integrated services plan is the solution to this destructive cycle that has impacted the safety of neighborhoods and put a drain on our existing resources."¹⁵⁰ This plan offers a road map as a model, laying out a vision for increasing the capacity and quality of care by 2025 for both the community and those who are referred to the criminal justice system.

145 Interdepartmental Serious Mental Illness Coordinating Committee, *The Way Forward: Federal Action for a System That Works for All People Living With SMI and SED and Their Families and Caregivers* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017), https://www.samhsa.gov/sites/default/files/programs_campaigns/ismicc_2017_report_to_congress.pdf.

146 "The Center of Excellence for Integrated Health Solutions," National Council for Behavioral Health, accessed June 14, 2020, <https://www.thenationalcouncil.org/integrated-health-coe/>.

147 Center for Mental Health Services, *Certified Community Behavioral Health Clinics Demonstration Program: Report to Congress, 2017* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017), https://www.samhsa.gov/sites/default/files/ccbh_clinicdemonstrationprogram_071118.pdf; and U.S. Department of Health and Human Services, *Certified Community Behavioral Health Clinics Demonstration Program: Report to Congress, 2018* (Washington, DC: U.S. Department of Health and Human Services, 2019), <https://aspe.hhs.gov/report/certified-community-behavioral-health-clinics-demonstration-program-report-congress-2018>.

148 National Council for Behavioral Health, *CCBHC Impact Survey* (Washington D.C: National Council for Behavioral Health, 2017), <https://www.thenationalcouncil.org/wp-content/uploads/2019/09/National-CCBHC-Impact-Survey-FINAL-11-28-17.pdf?daf=375ateTbd56>; and National Council for Behavioral Health, *How Community Behavioral Health Providers Are Supporting Police and Reducing Recidivism* (Washington D.C: National Council for Behavioral Health, 2019), <https://www.thenationalcouncil.org/wp-content/uploads/2019/09/CCBHC-Criminal-Justice-Full-Report-4.13.18.pdf?daf=375ateTbd56>.

149 County of Orange Community Corrections System, *Integrated Services: 2025 Vision* (Orange County, CA: County of Orange Community Corrections System, 2019), http://cams.ocgov.com/Web_Publisher_Sam/Agenda10_22_2019_files/images/ATTACHMENT%20A_INTEGRATED%20SERVICES%202025%20VISION%20-LS_9853914.pdf.

150 County of Orange Community Corrections System, *Integrated Services: 2025 Vision*, 6.

3.1.2 State and local governments should develop multi-service centers to provide triage and connections to longer-term care for people with mental health disorders, with substance use disorders, and who are homeless.

Sergeant Sarah Shimko of the Madison Police Department notes: “Another gap in our community’s continuum of crisis care is the lack of a single entry point crisis resource center. Law enforcement officers are tasked with navigating a complex and vast array of possible services and facilities in their attempts to reach the best possible resolution. They are often met with any number of barriers to connecting individuals in crisis with appropriate levels of support in their moment of need.”¹⁵¹

These one-stop centers of centralized care can serve as crisis receiving centers while also providing other treatment and support services to those in the community.¹⁵² Crisis stabilization centers improve mental health outcomes and alleviate strains on emergency departments.¹⁵³ Successful models are run by behavioral health agencies or hospitals who have direct access to providers and medications. Creating a receiving center for those who are experiencing homelessness or a mental health crisis offers both law enforcement and the community an alternative to jails and emergency rooms.¹⁵⁴

The Crisis Response Center (CRC) in Tucson, Arizona—centrally located to collaborate with other local services—has a comprehensive approach that attempts to address every part of the crisis continuum: prevention, early intervention, response, and post-intervention services. Since its inception, the CRC has provided programs encompassing such services as peer-run wraparound services to pet therapy. Its crisis line relieves the burden from 911 and allows those in need to speak with someone who is specially trained to help them.¹⁵⁵

The CRC works closely to serve the needs of the Tucson Police Department by providing 24/7 access with minimal turnaround time and ensuring that there are no clinical barriers to care. The police department can refer or divert persons in need to the CRC, or patients can enter the CRC in other ways, including voluntary or involuntary admissions, walk-ins, or delivery through crisis mobile teams, law enforcement, or specialty courts.

Strong multi-service centers are an indispensable partner to law enforcement and the criminal justice system. Rural areas should consider regional centers or parallel services using telehealth.

3.1.3 Congress should eliminate Medicaid’s institutions for mental disease exclusion and Medicaid’s inmate exclusion policy.

Medicaid defines an institution for mental disease (IMD) as a facility with greater than 16 beds that provides services to treat behavioral health disorders.¹⁵⁶ The Social Security Act Amendments

151 Shimko, *President’s Commission on Law*, March 24, 2020.

152 Center for Mental Health Services, *National Guidelines for Behavioral Health Crisis Care: Best Practice Toolkit* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2020), <https://www.samhsa.gov/sites/default/files/national-guidelines-for-behavioral-health-crisis-care-02242020.pdf>.

153 Substance Abuse and Mental Health Services Administration, *Crisis Services: Effectiveness, Cost-Effectiveness, and Funding Strategies* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014), <https://store.samhsa.gov/product/Crisis-Services-Effectiveness-Cost-Effectiveness-and-Funding-Strategies/sma14-4848>.

154 Substance Abuse and Mental Health Services Administration, *Crisis Services: Effectiveness*.

155 Margie Balfour and Jason Winsky, “The Tucson Model’s Comprehensive Approach to Crisis and Public Safety” (webinar hosted by Substance Abuse and Mental Health Services’s GAINS Center for Behavioral Health and Justice Transformation, April 22, 2020).

156 Congressional Research Service, *Medicaid’s Institutions for Mental Disease (IMD) Exclusion* (Washington, DC: Congressional Research Service, 2019), <https://crsreports.congress.gov/product/pdf/IF/IF10222>.

of 1965, which created Medicaid, continued previous federal prohibitions of payments for IMD facilities in most circumstances. As a result, states have been responsible for the majority of treatment costs in IMDs and encouraged less intensive treatment options for individuals within the community. In 2018, Congress partially waived these restrictions to allow limited payment to IMD facilities as a comprehensive approach to opioid use disorder.¹⁵⁷

D.J. Jaffe, executive director of mentalillnesspolicy.org and author of *How the Mental Health Industry Fails the Mentally Ill*, says, “The IMD Exclusion precludes states from receiving Medicaid for adults in state hospitals which forces states to close the beds. . . . When an officer wants someone admitted they sometimes sit in the ER for hours only to have the hospital overrule the officer or discharge the person before they are stabilized because of the lack of beds. They become ‘round-trippers’ and ‘frequent-flyers.’”¹⁵⁸

To ensure that all treatment options are available to those that need them, Congress should eliminate the Medicaid IMD exclusion. Furthermore, under Section 1905(a)(A) of the Social Security Act, inmates are not eligible to receive Medicaid. This prohibition prevents state governments from shifting the health care costs of convicted prison inmates to the federal health and disability programs. However, the language has a disparate impact on local jails holding inmates who are in pretrial detention. Persons in pretrial custody with a substance use or mental illness disorder (or both) have costly medical expenses that burden limited county resources. To reduce the burden on an already stretched correctional system and to reduce recidivism of those with substance use and mental health disorders, Congress should enact legislation that eliminates the applicability of this exclusion policy to local jails.

3.1.4 Local government leaders should develop and implement a formal data-informed collaboration of criminal justice, public health, and social service agencies to reduce the communities’ unmet behavioral health treatment and homeless service needs.

Local governments should develop solutions to collaborate on data collection and data-informed collaborations to optimize accountability and target resources to assess and understand the problem, and plan and implement collective evidence-based community-supported strategies, when possible.

For example Prince George’s County, Maryland, initiated CountyStat, a layered approach to addressing social problems and crime in the county—sharing and examining data across multiple agencies and guiding and coordinating initiatives to improve the quality of life for county residents. The core understanding of CountyStat is that law enforcement is not solely suited to address the county’s social problems. Through data-driven performance measures, CountyStat holds government agencies accountable by focusing on key indicators and providing the agencies the tools to improve their own performance.¹⁵⁹

157 Athena Mandros, “IMD Waivers Change the Behavioral Health Treatment Landscape – In Some States,” *OPEN MINDS* (blog), December 12, 2019, <https://www.openminds.com/market-intelligence/executive-briefings/imd-waivers-change-the-behavioral-health-treatment-landscape-in-some-states/>; and Centers for Medicare and Medicaid Services, “CMS Announces New Medicaid Demonstration Opportunity to Expand Mental Health Treatment Services,” Centers for Medicare and Medicaid Services, November 13, 2018, <https://www.cms.gov/newsroom/press-releases/cms-announces-new-medicare-demonstration-opportunity-expand-mental-health-treatment-services>.

158 DJ Jaffe, Executive Director, Mental Illness Policy Org., public comment to President’s Commission on Law Enforcement and the Administration of Justice, March 26, 2020.

159 Natalie Ortiz and Vernon Smith, “Building Data-Driven Justice in Prince George’s County, MD,” National Association of Counties, June 26, 2018, <https://www.naco.org/resources/building-data-driven-justice-prince-georges-county-md>.

CountyStat is currently part of an integrated services program focused on the needs of frequent users—those identified as “high-risk, high-utilizing Medicaid beneficiaries who have four or more emergency visits per year or have two or more chronic conditions—including mental illnesses and substance abuse disorders—and are at risk of institutional placement or homelessness following release from a publicly funded institution such as a health care facility, jail, or other corrections program.”¹⁶⁰ The county also works to share data among the jail, social services, and other health providers by focusing on identifying those incarcerated who need permanent housing upon reentry. Individuals incarcerated more than 90 days lose their federal benefits because they are no longer considered chronically homeless, so it is critical to identify such individuals early to ensure their housing needs are met prior to release.¹⁶¹

Chief Hank Stawinski from the Prince George's County Police Department in Maryland states, “We must acknowledge that we will never have limitless resources with which to effect change . . . we can demonstrate to the community that the investments that we are making with the resources that we do have will yield the greatest return . . . in terms of producing public safety and enhancing the quality of life for all persons.”¹⁶²

3.1.5 Congress should fund the Department of Health and Human Services to increase the awareness capacity, quality, uniformity, and coverage of 211 and 988 services nationwide to reduce the burden of call response in situations involving the police.

In 2000, the Federal Communications Commission designated 211 as a shortcut for community information and referral services at the local level, providing an alternative to calling 911 for non-emergency, community service assistance.¹⁶³ The local 211 call takers proactively assist those needing behavioral health services, housing, food, or other local services, with specialized services for veterans.¹⁶⁴

The San Diego 211 center in California serves as a model site with an integrated concierge approach. Trained call takers ask specific questions with the goal of improving the quality of life one individual at a time.¹⁶⁵ The call takers connect the callers with services based on geography and need from a list of 1,500 service providers.¹⁶⁶ In fact, 211 has created a thriving information exchange between community service providers.¹⁶⁷ The call-takers integrate a person-centered approach, tracking the referrals and following up with high-risk clients while continuing to assist them.¹⁶⁸ Local police both refer individuals to 211 for services and use 211 to locate services for citizens, including open shelter beds.¹⁶⁹

160 Ortiz and Smith, “Building Data-Driven Justice.”

161 Ortiz and Smith, “Building Data-Driven Justice.”

162 Hank Stawinski, Chief of Police, Prince George's County Police Department, MD, email communication with Social Problems Impacting Public Safety Working Group, May 21, 2020.

163 *2-1-1 Report to the Federal Communications Commission* (Washington, DC: Federal Communications Commission, 2000), <https://ecfsapi.fcc.gov/file/6518190732.pdf>.

164 Greg Cox, Supervisor, San Diego Board of Supervisors, in discussion with Social Problems Impacting Public Safety Working Group, virtual meeting, April 23, 2020.

165 William York, President and Chief Executive Officer, and Karis Grounds, Vice President of Health and Community Impact, San Diego 211, in discussion with the Social Problems Impacting Public Safety Working Group, virtual meeting, May 8, 2020.

166 Cox, in discussion with Social Problems, April 23, 2020.

167 “CIE Toolkit,” Community Information Exchange San Diego, accessed June 5, 2020, <https://ciesandiego.org/toolkit/>; and “Community Information Exchange,” Community Information Exchange San Diego, accessed June 5, 2020, <https://ciesandiego.org/>.

168 National Association of Counties, *Connecting the Unconnected Through 211 and Other Centralized Call Centers* (Washington, DC: National Association of Counties, 2019), <https://www.naco.org/sites/default/files/documents/211-Toolkit.pdf>.

169 Cox, in discussion with Social Problems, April 23, 2020.

The 211 service is often run at the county or regional level and “is available to approximately 309 million people, which is 94.6 percent of the total U.S. population.”¹⁷⁰ Funding and operation for centers is locally dependent, and 70 percent are partially funded and managed by the United Way.¹⁷¹ These centers vary in funding strategies. The San Diego 211 center combines local and state funding with financial support from the service agencies who provide services to the callers.¹⁷² Quality and scope vary greatly. Although 98.3 percent of California’s population has access to 211 services, 13 counties received 211 services as recently as November 2019 for disaster-related services only, while 7 counties do not have access to 211 services as of 2020.¹⁷³

On December 19, 2019, the Federal Communications Commission designated 988 as the new number for the National Suicide Prevention Lifeline.¹⁷⁴ Having a three-digit number akin to 911 will increase awareness and normalize requests for assistance during a mental health crisis.¹⁷⁵ The more people are aware of this lifeline, the more lives will be saved and the number of suicide-related calls to 911 will decrease.

The Substance Abuse and Mental Health Services Administration (SAMHSA) currently funds the lifeline’s administration through a 2018 grant totaling upwards of \$18 million to the Mental Health Association of New York City.¹⁷⁶ When an individual calls the hotline, veterans are given the choice to be routed to a line run by the U.S. Department of Veterans Affairs (VA),¹⁷⁷ while all other calls will be routed to a call center close to their location. The veterans’ calls are funded through the VA, and the local call centers have different funding streams and are mostly staffed by specially trained volunteers.¹⁷⁸

As 988 use increases, the Department of Justice should coordinate an interagency collaboration with SAMHSA and the VA to ensure appropriate planning, coordination, and resource allocation to increase awareness, match the increase in call volume, and improve the lifeline’s effectiveness. John Draper, the director of Lifeline, says, “Lifeline administrators predict that calls could double to 5 million in the first year and keep growing to 12 to 16 million by the fifth. Meeting that need will require more funding and staff for the local call centers, many of which are already struggling to meet the demand for their services.”¹⁷⁹

Increased federal funding can help support increased awareness and support to meet the expected increases in volume of the new 988 number. It would also help to support public advertising campaigns, technical assistance, and the establishment of model 211 sites, which would help set standards for local 211 centers, improve services and awareness, and reduce involvement by law enforcement to address people who need community assistance. It would also help 211 centers decrease the burden on criminal justice professionals, encourage partnerships with law

170 “Dial 211 for Essential Community Services,” Federal Communications Commission, December 31, 2019, <https://www.fcc.gov/consumers/guides/dial-211-essential-community-services>.

171 “About 211,” 211, accessed June 5, 2020, <https://www.211.org/pages/about>.

172 William York, President and Chief Executive Officer, San Diego 211, in discussion with the Social Problems Impacting Public Safety Working Group, virtual meeting, May 8, 2020.

173 “2-1-1 Information Services,” California Public Utilities Commission, accessed April, 26, 2020, <https://www.cpuc.ca.gov/General.aspx?id=7846>.

174 Federal Communications Commission, “FCC Proposes Designating 988 as National Suicide Prevention and Mental Health Hotline Number,” Federal Trade Commission News, December 12, 2019, <https://docs.fcc.gov/public/attachments/DOC-361337A1.pdf>.

175 Federal Communications Commission Implementation of the National Suicide Hotline Improvement Act of 2018, Docket No. 18-336 (December 16, 2019) (statement of Ajit Pai, Chairman, Federal Trade Commission), <https://docs.fcc.gov/public/attachments/DOC-361337A2.pdf>.

176 “SAMHSA awards \$61.1 million in suicide prevention funding,” Substance Abuse and Mental Health Services Administration, September 21, 2018, <https://www.samhsa.gov/newsroom/press-announcements/201809211000>.

177 “What to Expect,” Veterans Crisis Line, accessed June 5, 2020, <https://www.veteranscrisisline.net/about/what-to-expect>.

178 Greg Miller, “Can Three Numbers Stem the Tide of American Suicides?,” *The Atlantic*, September 23, 2019, <https://www.theatlantic.com/health/archive/2019/09/suicide-prevention-hotline-988/598588/>.

179 Miller, “Can Three Numbers Stem.”

enforcement, and identify effective ways to fill service gaps in rural and tribal communities, such as increasing telehealth and video-enabled assistance.

| See Chapter 13: Rural and Tribal Law Enforcement.

3.2 Law Enforcement's Role and Responsibilities to Address Social Problems

It is self-evident that law enforcement officers should be expected to enforce the law. However, due to a lack of adequate social and behavioral community health services, law enforcement by default has become responsible for responding to a myriad of social problems while simultaneously conducting their traditional duties to protect public safety. Using law enforcement to address these social issues, however, is not a solution that best serves the individuals they are confronting nor the communities being served. Additionally, research found that such encounters use a greater level of resources—90 percent—as compared to encounters with individuals who are not mentally ill.¹⁸⁰ Salt Lake City Chief Michael Brown in testimony before the Commission said it best: “We are the most expensive, least effective tool to directly impact the underlying issues of mental health and substance abuse that lead to homelessness. In essence we became the Swiss Army knife of social reform.”¹⁸¹ The community safety net needs repair, yet law enforcement continues to bear a significant burden in responding to and determining the next steps for those who are mentally ill, substance involved, or homeless.

Michael Stuart, United States Attorney for West Virginia, notes that these additional responsibilities directly impact officer morale, in particular “the seemingly tremendous fatigue among law enforcement and a general sense that the enforcement of substance abuse crimes is a way of life that will never really resolve itself.”¹⁸²

| See Chapter 15: Law Enforcement Recruitment and Training.

While the best case scenario for response to someone in immediate mental health and/or substance use crisis would be a behavioral health professional, that is not always possible. Due to the lack of resources, in many cases, law enforcement are the first and only line of response to any crisis. Without other options, officers may have no other choice but to arrest. In other cases, an individual with mental health or substance use issues or someone who is homeless may have in fact committed a crime. These incidents require a level of accountability and enforcement by the law.

Because law enforcement has and will continue to be involved in response to incidents with individuals experiencing mental health disorders, substance use disorders, and/or homelessness, diversion strategies are key to address the treatment needs of individuals and, if appropriate, referral to an alternate path instead of incarceration if a crime has occurred.

The following recommendations seek to disseminate policies, procedures, and partnerships that drawn upon the appropriate roles and strengths of law enforcement and behavioral health professionals.

180 Yanick Charette, Anne G. Crocker, and Isabelle Billette, “Police Encounters Involving Citizens With Mental Illness: Use of Resources and Outcomes,” *Psychiatric Services* 65, no. 4 (2014): 515, <https://doi.org/10.1176/appi.ps.201300053>.

181 Brown, *President's Commission on Law*, March 31, 2020.

182 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (April 2, 2020) (written statement of Michael Stuart, United States Attorney, West Virginia), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

3.2.1 States should develop policies and baseline training for local call takers for all N11 codes (e.g., 911, 211, 411, or 311). These policies should include procedures to effectively triage calls for individuals experiencing mental illness, substance use disorders, and homelessness during a crisis or a non-crisis situation.

Recognizing that the numbers and services connected to them vary by locality, governments and call centers should tailor the policies and training to best fit the N11 exchange codes (e.g., 911, 211, 411, or 311 exchanges) and needs of their geographic coverage. State policies and training should create a base level of standardization across all codes and call taking services to ensure consistency;¹⁸³ professionalism in assisting callers; knowledge and understanding of mental health, substance use, and homeless issues; collaboration and coordination across systems; and, above all else, knowledge and understanding to direct or redirect calls to the correct service and level of response as quickly as possible.

“911 call takers can be trained to triage crisis calls and identify whether the person in crisis is a danger to themselves or an immediate threat to someone else. If not, then the call can be transferred to appropriate care in the mental health crisis system through a warm hand-off to a crisis line.”¹⁸⁴ - Ron Bruno, Executive Director, CIT International

Model state policy and training for 911 call takers on these issues should include, but not be limited to, education on the unique needs and optimal responses—including hand-offs to other exchanges. This way, the call taker can triage the call and ensure all needed information is provided to those who are responding to the call while also preparing the caller for the arrival of the responding agency or service. The model state policy should provide guidance on proper data collection, including how to appropriately record and code calls that involve individuals who have behavioral health challenges or are experiencing homelessness.¹⁸⁵

In Prince George’s County, Maryland, all new 911 and dispatch employees receive eight weeks of academic training that includes the completion of six certifications. This is followed by four months of hands-on, practical training in the performance of their duties.¹⁸⁶ A standardized state or local mandate for minimum requirements would help ensure that all 911 personnel possess the same critical life safety skills.

3.2.2 Law enforcement agencies should have policies and procedures specifying officer response protocols for calls for service that involve individuals with a mental health disorder or substance use disorder or those who are homeless, including the integration of behavioral health professionals and other community services providers.

¹⁸³ Pai, *Federal Communications Commission Implementation*, December 16, 2019.

¹⁸⁴ Ron Bruno, Executive Director, Crisis Intervention Team International, public comment to President’s Commission on Law Enforcement and the Administration of Justice, March 30, 2020.

¹⁸⁵ Council of State Governments Justice Center, *Police-Mental Health Collaborations: A Framework for Implementing Effective Law Enforcement Responses for People Who Have Mental Health Needs* (New York: Council of State Governments Justice Center, 2019), <https://csgjusticecenter.org/wp-content/uploads/2020/02/Police-Mental-Health-Collaborations-Framework.pdf>.

¹⁸⁶ Charlynn Flaherty, Deputy Director, Public Safety Communications, Office of Homeland Security, Prince George’s County, MD, email communication to Social Problems Impacting Public Safety Working Group, April 28, 2020.

In 2019, the Council of State Governments Justice Center issued "Police-Mental Health Collaborations," a framework to help law enforcement implement effective responses to people with mental health needs. The report notes, "Written policies and procedures that are communicated clearly to staff are critical to the overall success of a Police Mental Health Collaboration (PMHC) and empower officers to take actions that can enhance their safety and the safety of others. . . . The PMHC will only realize success, and policies and procedures will only be effective, when these policies and procedures are disseminated, followed, and enforced by leaders in both the law enforcement and behavioral health agencies."¹⁸⁷

The council's framework applies to developing a policy response to those individuals with mental health needs, but it can also be applied to policy development for individuals who are substance-use dependent or homeless.¹⁸⁸ The framework recommends a study and improvement of the agency's current process flow, including strengthening agency procedures and improving connections to community resources (e.g., behavioral health providers).¹⁸⁹ Through clear policies and training, officers should be fully aware of the process to follow and resources available (e.g., crisis intervention officers or social workers) when assisting an individual who has a behavioral health need or is homeless, regardless of whether a crime was committed. Officers should have the knowledge to make an optimal decision when answering a call, which includes knowing when to refer or seek care for an individual, arrest an individual, or ask a supervisor for guidance.

Though law enforcement officers will undoubtedly respond to calls involving individuals with mental health, substance abuse, or homeless issues, integrating or even embedding behavioral health professionals in policies and procedures will help to not only reduce burden on law enforcement, but also enlist trained professionals on site or on call to immediately address the crisis.

The President's Executive Order on Safe Policing for Safe Communities reinforces the integral role of behavioral health professionals in addressing social problems, stating,

The Attorney General shall, in consultation with the Secretary of Health and Human Services as appropriate, identify and develop opportunities to train law enforcement officers with respect to encounters with individuals suffering from impaired mental health, homelessness, and addiction; to increase the capacity of social workers working directly with law enforcement agencies; and to provide guidance regarding the development and implementation of co-responder programs, which involve social workers or other mental health professionals working alongside law enforcement officers so that they arrive and address situations together.¹⁹⁰

Various collaborative or co-response models that already exist across the country offer alternatives to jail and treat the underlying issues in frequent users of the criminal justice system.¹⁹¹ The purpose of the partnerships is to connect individuals to services for immediate help and allow officers to be more responsive to other calls.¹⁹² As Jessica Waters, director of the social work program at the Salt Lake City Police Department (SLCPD), says, "This allows us to reach the most vulnerable individuals, living on the fringe, who are often service and shelter resistant."¹⁹³ The

187 Council of State Governments Justice Center, *Police-Mental Health Collaborations*, 8.

188 Council of State Governments Justice Center, *Police-Mental Health Collaborations*.

189 Council of State Governments Justice Center, *Police-Mental Health Collaborations*.

190 The White House, "Executive Order on Safe Policing."

191 Jessica Waters, Director of Social Work Program, Salt Lake City Police Department, UT, email communication with Social Problems Impacting Public Safety Working Group, April 29, 2020.

192 Stephen Puntis et al., "A Systematic Review of Co-Responder Models of Police Mental Health 'Street' Triage," *Abstract, BMC Psychiatry* 18, no. 256 (2018), <https://doi.org/10.1186/s12888-018-1836-2>.

193 Waters, email communication with Social Problems, April 29, 2020.

SLCPD has a team of social workers who work in a co-responder model, responding to 911 calls that are social issue-related (e.g., mental health, suicide, substance use, or homelessness).

A number of response models across law enforcement agencies have been developed dependent on the resources and needs of the jurisdiction.¹⁹⁴ Crisis intervention teams (CITs) have specific training on how to de-escalate those in crisis and divert individuals to treatment;¹⁹⁵ the co-responder team, such as the one used by SLCPD, include responses conducted by an officer in conjunction with a treatment professional. A mobile crisis team has treatment professionals who assist with stabilizing the crisis. Case management teams are behavioral health professionals or service providers who often focus on high-service users or specific places (e.g., tent cities) and work with officers to solve the problem. Case managers take a person-centered approach, assisting with services such as lining up stable housing, obtaining essential documents, and following through on treatment plans.

Support for this policy development and the success of the responses that result requires collaborative partnerships from experts in behavioral health treatment and homeless assistance. Those partnerships, in turn, are dependent on community and government resources.¹⁹⁶ The focus should be on enhancing the treatment and service infrastructure in the community. Most importantly, such collaborative responses will require moving away from specialized programs and toward partnerships in which behavioral health and service providers take on the weight of the response instead of law enforcement continuing to shoulder the burden and blame for systems failures.

3.2.3 Law enforcement agencies should develop a training program for contact with individuals with a mental health disorder or substance use disorder or those who are homeless.

“It is the policy of the United States to promote the use of appropriate social services as the primary response to individuals who suffer from impaired mental health, homelessness, and addiction, recognizing that, because law enforcement officers often encounter such individuals suffering from these conditions in the course of their duties, all officers should be properly trained for such encounters.”¹⁹⁷ - President Donald J. Trump, Exec. Order No. 13,929

Because officers will encounter individuals with mental health, substance use, or homeless issues, law enforcement agencies should have a base training program in the academy, a booster training as an in-service option, and training for officers and specialized units according to the law enforcement agency policy. An important part of the base training should include a basic understanding of the root causes of behavioral health disorders and homelessness, how to recognize a need or crisis, when and how to include community partners (e.g., behavioral health experts), how to de-escalate a crisis, and how to stay safe in a response.

| See Chapter 14: Law Enforcement Health and Wellness.

¹⁹⁴ Council of State Governments Justice Center, *Police-Mental Health Collaborations*.

¹⁹⁵ Michael S. Rogers, Dale E. McNeil, and Renée L. Binder, “Effectiveness of Police Crisis Intervention Training Programs,” *Journal of the American Academy of Psychiatry and the Law Online* 48, no. 2 (2019), <http://jaapl.org/content/early/2019/09/24/JAAPL.003863-19>.

¹⁹⁶ International Association of Chiefs of Police, *Improving Police Response to Persons Affected by Mental Illness: Report from the March 2016 IACP Symposium* (Alexandria, VA: International Association of Chiefs of Police, 2018), <https://www.theiacp.org/sites/default/files/2018-08/ImprovingPoliceResponseToPersonsWithMentalIllnessSymposiumReport.pdf>.

¹⁹⁷ The White House, “Executive Order on Safe Policing.”

For example, the Tucson Police Department has an easily replicable stratified training program for responding to incidents involving mental illness with additional models that can be added on substance use disorder and homelessness. The police department also offers a voluntary in-depth 40-hour Crisis Intervention Team (CIT) training.¹⁹⁸ All specialized units in the Tucson Police Department are required to complete CIT training, and they are also required to take part in the advanced booster sessions.

See Chapter 15: Law Enforcement Recruitment and Training and Chapter 13: Rural and Tribal Law Enforcement.

3.3 Improving State Court Responses to Social Problems

While the impact of local law enforcement's high rate of arrests of individuals with mental health disorders, substance use disorders, and homelessness falls predominantly on state and local courts, prosecutors and judges do not traditionally or typically address behavioral health, housing, or treatment services for these defendants. As a result, sentencing options for individuals in need are limited, treatment needs are unmet, and those who work in the courts see these individuals repeatedly.¹⁹⁹ This revolving door not only creates a financial burden on the system and community, but also reinforces the reality that, without an increase in community services, crimes associated with these illnesses or circumstance will continue.²⁰⁰

Carson Fox, chief executive officer of the National Association of Drug Court Professionals, expressed his frustration with revolving-door justice: "I began my career as a prosecutor in rural South Carolina, where I saw firsthand the devastation, crime, and exorbitant cost associated with addiction. Time and again, the same individuals would appear before the courts for crimes committed in service of their addiction, with the courts, law enforcement, and taxpayers bearing the greatest burden. It was clear that this cycle needed to change, but there was no remedy."²⁰¹

State courts play a very important role in not only holding accountable those who commit crimes, but also in recognizing and using its power and position to address the needs of individuals with behavioral health disorders. Specifically, court diversion programs—drug courts, mental health courts, homeless courts, and other specialty area problem solving courts—have been shown to be effective in reducing time in jail, recidivism, and overall costs to the system while not increasing risk to the public.²⁰² For example, in the San Diego homeless court, cases are often resolved in one hearing; approximately 90 percent of offenses are dismissed.²⁰³

While there are similarities across each type of diversion court, there are also differences in determining those that qualify for such a diversion program, including the level of risk,

198 Balfour and Winsky, "The Tucson Model's Comprehensive."

199 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (April 2, 2020) (written statement of Carson Fox, Chief Executive Officer, National Association of Drug Court Professionals), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

200 KiDeuk Kim, Miriam Becker-Cohen, and Maria Serakos, *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System* (Washington, DC: Urban Institute, 2015), https://www.urban.org/research/publication/processing-and-treatment-mentally-ill-persons-criminal-justice-system/view/full_report; Joye C. Anestis and Joyce L. Carbonell, "Stopping the Revolving Door: Effectiveness of Mental Health Court in Reducing Recidivism by Mentally Ill Offenders," *Psychiatric Services* 65, no. 5 (2014), <https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201300305>; Tara D. Warner and John H. Kramer, "Closing the Revolving Door?: Substance Abuse Treatment as an Alternative to Traditional Sentencing for Drug-Dependent Offenders," *Criminal Justice and Behavior* 36, no. 1 (2009), <https://doi.org/10.1177/0093854808326743>; and Fred L. Cheesman II et al., "Drug Court Effectiveness and Efficiency: Findings for Virginia," *Alcoholism Treatment Quarterly* 34, no. 2 (2016), <https://doi.org/10.1080/07347324.2016.1148486>.

201 Carson, *President's Commission on Law*, April 2, 2020.

202 Center for Mental Health Services National GAINS Center, *Practical Advice on Jail Diversion: Ten Years of Learnings on Jail Diversion from the CMHS National GAINS Center* (Delmar, NY: Center for Mental Health Services National GAINS Center, 2007), <http://www.pacenterofexcellence.pitt.edu/documents/PracticalAdviceOnJailDiversion.pdf>.

203 Commission on Homelessness and Poverty, *Homeless Courts: Taking the Court*.

seriousness of illness, and type of crime committed. For those defendants who would qualify, treatment—or problem-solving—courts provide an alternative to incarceration, with drug courts being the most prominent.²⁰⁴

Although diversion programs can help to address these social problems, the need is greater than the supply. A recent survey found that 45 percent of prosecutors' offices do not have prosecutor-led diversion programs.²⁰⁵ The National Drug Court Institute estimates that only 10 percent of potential drug court candidates are being served in drug courts.²⁰⁶

The following recommendations focus on the opportunities provided by diversion programs and expanding these programs, the importance of improving the application of state treatment court practices to best serve the needs of these special populations, and the need to take into account both the barriers and the challenges in providing services to these individuals.

3.3.1 States should expand their use of treatment courts, provide oversight to ensure adherence to the model, and provide funding for treatment and service specialists.

The large number of people who either have behavioral health disorders or are homeless when entering the correctional system and the high recidivism rates of those exiting the correctional system suggests that treatment and other specialty courts should be expanded to meet the need.²⁰⁷

While increasing the number of treatment courts, officials should also ensure that these courts maintain adherence to the evidence-based practices and established frameworks of the model, which are proven to reduce recidivism and increase positive treatment outcomes while decreasing the burden on law enforcement and the criminal justice system.²⁰⁸ Courts should also incorporate quality assurance and improving processes to stay up to date and examine their own practices for opportunities for improvement.²⁰⁹

All jurisdictions, but especially local jurisdictions, should ensure funding for quality treatment and service specialists who serve the needs of the treatment court's population. These specialists should be an equal member and voice within the court team; the court should ensure that they can provide or connect defendants to an array of treatment based on their specialized needs.

| See Chapter 6: Criminal Justice System Partners.

204 Substance Abuse and Mental Health Services Administration, *Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015), <https://store.samhsa.gov/product/Municipal-Courts-An-Effective-Tool-for-Diverting-People-with-Mental-and-Substance-Use-Disorders-from-the-Criminal-Justice-System/SMA15-4929>.

205 Lowry and Kerodal, *Prosecutor-Led Diversion*, iv.

206 Celinda Franco, *Drug Courts: Background, Effectiveness, and Policy Issues for Congress* (Washington, DC: Congressional Research Service, 2010), <https://fas.org/sgp/crs/misc/R41448.pdf>.

207 Avi Bhati, John Roman, and Aaron Chalfin, *To Treat or Not to Treat* (Washington, DC: Urban Institute, 2008), xv, <https://www.urban.org/research/publication/treat-or-not-treat>.

208 M Ojmarrh Mitchell et al., "Drug Courts' Effects on Criminal Offending for Juveniles and Adults," Campbell Collaboration, 2012, <https://campbellcollaboration.org/better-evidence/drug-courts-effects-on-criminal-offending.html>.

209 National Association of Drug Court Professionals, *Defining Drug Courts: The Key Components* (Washington, DC: Bureau of Justice Assistance, 2004), <https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>; and "Center for Research Partnerships and Program Evaluation (CRPPE): Overview," Bureau of Justice Assistance, December 9, 2019, <https://bjao.gov/program/crppe/overview>.

3.3.2 States should adopt programs to reduce the bottleneck of the process for competency restoration to stand trial.

An individual who has an active mental or intellectual disability and who is arrested for committing a crime may be deemed not competent to stand trial. "Competency" is a legal term that focuses on the need of the criminal justice system; it is not necessarily focused on the need to provide treatment to assist the individual.

This process can be lengthy. An analysis of 68 studies found that competency restoration, which took 90–120 days, was eventually successful for 81 percent of the individuals.²¹⁰ The length of stay varies by state, with 25 of the 30 states holding individuals for competency restoration for 60 or more days, 13 holding individuals for more than 120 days, and 2 holding individuals more than 360 days.²¹¹

Hallie Fader-Towe and Ethan Kelly of the Council of State Governments Justice Center note the lack of an effective national conversation around how to address and relieve the competency restoration process across state and local jurisdictions.²¹² This has many parts, such as treatment considerations, availability of treatment space, and local standards for commitment. These and other elements make the barriers to competency restoration difficult to study, understand, and address.

Individuals court-ordered to competency restoration require treatment to regain competency, but there is a critical shortage of state treatment beds, especially for those criminally charged. A study by Danzer et al. states,

It appears that hospital beds used for competency restoration might be best reserved for defendants facing serious and violent charges, with psychotic disorders, cognitive impairment, medication non-adherence, and lesser concern about malingering. . . . If defendants are suspected of malingering, refuse to participate in hospital-based services, or show that volitional, antisocial, or aggressive behavior is clearly the major impediment to restoration, jail may be more appropriate and, in some cases, incentivizing.²¹³

The burden to restore individuals to competency and the accompanying system backlog are costly to the community, frustrating for victims and criminal justice practitioners, and devastating to the individual and their family. Individuals who are part of this process often spend more time at each stage of the criminal justice system, which ultimately decreases their chances for a positive outcome.²¹⁴ Because of this frustration, the settlement in *Trueblood et al. vs. Washington State Department of Social and Human Services*, Case No. 14-cv-01178-MJP (2018), resulted in a phased implementation plan, which included an increase in treatment services, training for court and correctional staff, and a more timely restoration process.²¹⁵

210 Gianni Pirelli, William H. Gottdiener, and Patricia A. Zapf, "A Meta-Analytic Review of Competency to Stand Trial Research," *Psychology, Public Policy, and Law* 17, no. 1 (2011), <https://doi.org/10.1037/a0021713>.

211 W. Lawrence Fitch, *Forensic Mental Health Services in the United States: 2014* (Alexandria, VA: National Association of State Mental Health Program Directors, 2014), <https://nasmhpd.org/sites/default/files/Assessment%203%20-%20Updated%20Forensic%20Mental%20Health%20Services.pdf>.

212 Hallie Fader-Towe, Program Director, and Ethan Kelly, Senior Policy Analyst, Council of State Governments Justice Center, "Restoration to Competency and Data-Driven Practices" (PowerPoint presentation, Social Problems Impacting Public Safety Working Group, virtual meeting, May 15, 2020).

213 Graham S. Danzer et al., "Competency Restoration for Adult Defendants in Different Treatment Environments," *Journal of the American Academy of Psychiatry and the Law Online*, (2019), 13, <http://jaapl.org/content/early/2019/02/08/JAAPL.003819-19>.

214 Lisa Callahan and Debra A. Pinals, "Challenges to Reforming the Competence to Stand Trial and Competence Restoration System," *Psychiatric Services* 71, no. 2 (2020), <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201900483>.

215 "A.B. by and through *Trueblood v. DSHS*," *Disability Rights Washington* (blog), accessed June 7, 2020, <https://www.disabilityrightswa.org/cases/trueblood/>; and *Trueblood v. Washington State Department of Social and Human Services*, Case No. 14-cv-01178-MJP (2018), https://www.dshs.wa.gov/sites/default/files/BHSIA/FMHS/Trueblood/2018Trueblood/599_1_AmendedAgreement.pdf

This bottleneck can be reduced by increasing the community behavioral health treatment capacity so people either do not enter the system or, when possible, are diverted to the community. When diversion is not possible, courts and prosecutors may consider different factors and alternatives to ordering competency restoration, including reviewing the severity of the charges and the severity of the disability.

3.3.3 The Department of Justice should examine how local laws and policies that decriminalize or reduce sanctions for drug use or activities related to homelessness impact law enforcement and public safety.

While law enforcement certainly plays a role in addressing the needs of individuals with substance use disorders and those who experience homelessness, they are also responsible for enforcing the law and maintaining public safety. Certain localities across this country have decriminalized or reduced sanctions for drug use, such as in the case of marijuana, or “quality of life” crimes—actions that are often a result of homelessness—such as public urination.

“While I agree that homelessness should not be criminalized or punished simply for their homeless status, *Martin v. City of Boise* has inherently made enforcing laws such as trespassing more difficult. While mandating shelters for the homeless in a 1:1 ratio is a noble idea, the applicability of the mandate must be questioned considering Los Angeles County alone has around 50,000 homeless people.”²¹⁶
- Deputy Sheriff Tyrone S. Enriquez, Orange County, California

United States Attorney for the District of Vermont Christina E. Nolan explains, “When something is decriminalized, it takes a tool away from law enforcement, signals that the behavior is OK and will not have consequences, and logically will lead to more of the undesirable behavior. . . . Decriminalization of drugs will lead to more use, more related crime, and more drain on law enforcement resources and morale.”²¹⁷

Decriminalization and reduction in sanctions merely raise the bar for law enforcement arrests, but they do not account for the reality that law enforcement officers still must address the complaints about these individuals from community members, respond to the noncriminal results of untreated substance use problems (e.g., overdoses), or interact with large homeless populations. This often results in an increase in the number of people in need who intersect with law enforcement, while the mechanisms to sanction these behaviors and shepherd people into court-mandated treatment programs are removed. This may have a greater cost to the community, including escalation and long-term drug use.

Sheriff Don Barnes of Orange County states, “In 2018, my department led an effort to address a large homeless encampment on the Santa Ana Riverbed. The encampment approached 1,000 people, many of whom were mentally ill and drug addicted . . . In remediating the riverbed we collected 13,950 used hypodermic syringes. This staggering number is a direct result of the decriminalization of drugs. In California, possession of drugs results in nothing more than a

²¹⁶ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 24, 2020) (written statement of Tyrone S. Enriquez, Deputy Sheriff, Orange County Sheriff’s Department, CA), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

²¹⁷ Christina E. Nolan, United States Attorney, Vermont, email communication with Social Problems Impacting Public Safety Working Group, May 22, 2020.

misdeemeanor citation.”²¹⁸ Sheriff Barnes emphasized that he was not advocating incarcerating drug-addicted individuals. Instead, he notes, “Crimes committed without consequence invite more crime, negatively impacting the community and systems that lack individual accountability exacerbate the problem by encouraging bad behavior.”²¹⁹

The Department of Justice as well as state and local governments should evaluate the impact and side effects that the laws and policies of local and jurisdictions have on the safety of their community and effectiveness of their criminal justice system to better inform legislation, community services planning, and directing resources.

3.4 Prioritizing Treatment in Corrections

Multiple sources of data show that the prevalence of behavioral health disorders, including drug dependence, in the jail and prison populations is higher than in the general population. According to the Department of Justice’s Bureau of Justice Statistics, from 2007 to 2009 more than half (58 percent) of state prisoners and two-thirds (63 percent) of sentenced jail inmates met the criteria for drug dependence or abuse. In comparison, approximately 5 percent of the total general population age 18 or older met the criteria for drug dependence or abuse.²²⁰ Table 3.1 provides estimates from a 2016 SAMHSA publication, indicating that the prevalence rates of mental health, substance use, and co-occurring disorders is greater in correctional settings than in the community.²²¹

Table 3.1: Estimated Prevalence of Serious Mental Illness, Substance Use Disorder, and Co-occurring Disorder in the Community, Jails, and Prisons

	Community	Jail	Prison
Serious mental illness	5%	17%	16%
Substance use disorder	9%	68%	53%
Co-occurring disorder	14–25%	33–60%	33–60%

Source: Substance Abuse and Mental Health Services Administration, *Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017), 3, <https://store.samhsa.gov/product/Guidelines-for-Successful-Transition-of-People-with-Mental-or-Substance-Use-Disorders-from-Jail-and-Prison-Implementation-Guide/SMA16-4998>.

Although studies estimate that more than 50 percent of inmates have a substance use disorder, only about 22–28 percent are treated for it.²²² In addition to an increased prevalence of behavioral health disorders in correctional facilities, these individuals also stay in jail longer, have more trouble coping with correctional settings, and have more behavioral problems.²²³

218 Barnes, *President’s Commission on Law*, March 25, 2020.

219 Barnes, *President’s Commission on Law*, March 25, 2020.

220 Bronson et al., *Drug Use, Dependence, and Abuse*, 1.

221 Estimates compiled by Substance Abuse and Mental Health Services Administration after a review of literature. See original source for more information. Substance Abuse and Mental Health Services Administration, *Guidelines for Successful Transition of People with Mental or Substance Use Disorders from Jail and Prison: Implementation Guide* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2017), 3, <https://store.samhsa.gov/product/Guidelines-for-Successful-Transition-of-People-with-Mental-or-Substance-Use-Disorders-from-Jail-and-Prison-Implementation-Guide/SMA16-4998>.

222 Bronson et al., *Drug Use, Dependence, and Abuse*, 1.

223 Kimberly A. Houser, Steven Belenko, and Pauline K. Brennan, “The Effects of Mental Health and Substance Abuse Disorders on Institutional Misconduct Among Female Inmates,” *Justice Quarterly* 29, no. 6 (2012), <https://doi.org/10.1080/07418825.2011.641026>; and Council of State Governments Justice Center, *Improving Outcomes for People With Mental Illnesses Involved With New York City’s Criminal Court And Correction Systems*, (New York: Council of State Governments Justice Center, 2012), <https://csgjusticecenter.org/publications/improving-outcomes-for-people-with-mental-illnesses-involved-with-new-york-citys-criminal-court-and-correction-systems/>.

Just as individuals are treated for physical health needs while in prison or jail, we should also prioritize the provision of substance use disorder and mental health treatment in correctional facilities given the prevalence of these issues in this population. To increase positive outcomes, reduce recidivism, and decrease the burden on the criminal justice system, communities should build treatment and service capacity and provide needed treatment and services for the incarcerated population.²²⁴ Provision of services should begin in the corrections facility and follow individuals into the community to ensure continuity of treatment. An integrated case management system and network of formalized partnerships—sharing individual-level data and integrated program plans across law enforcement, corrections, behavioral health, service providers, and program partners—is key to assuring a seamless system of care spanning the correctional system and the community.

| See Chapter 5: Reentry Programs and Initiatives.

According to data presented by Sheriff Peter Koutoujian of Middlesex County, Massachusetts, during the first three months of the Middlesex jail's expanded MAT program, 58 percent of individuals at the jail tested positive for illicit drug use at the time of intake.²²⁵ Noting that community-based overdose deaths increased over six consecutive years, the sheriff's office developed an MAT program known as Medication-Assisted Treatment and Directed Opioid Recovery (MATADOR), which combines pharmaceutical and behavioral interventions. The program also uses navigators who work with individuals upon reentry and coordinate with community health care providers. The program has seen a one-year post-release recidivism rate of 10.87 percent for inmates treated with naltrexone, while the recidivism rate for a control group was more than twice that (24.75 percent). With respect to health outcomes, of the more than 500 inmates who received one or more naltrexone treatments since the program's inception, 95.44 percent have not succumbed to fatal overdose. MATADOR, which began initially with naltrexone treatments, expanded in September of 2019 to include methadone and buprenorphine.²²⁶

Leaders in the field, such as Orange County, California, or Maricopa County, Arizona, have begun to integrate treatment into facilities and provide the necessary assistance both to ensure that this treatment continues upon an individual's reentry and that housing will be made available. These facilities implement screening and assessment tools to identify individuals with behavioral health disorders and other needs.²²⁷ This information provides direct paths to treatment plans, including the gold standard treatment for opioid use disorders, MAT, talk therapies that incorporate cognitive behavioral therapy and motivational interviewing, and peer-group support models

224 Substance Abuse and Mental Health Services Administration, *Principles of Community-Based Behavioral Health Services for Justice-Involved Individuals: A Research-Based Guide* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2019), <https://store.samhsa.gov/product/Principles-of-Community-based-Behavioral-Health-Services-for-Justice-involved-Individuals-A-Research-based-Guide/SMA19-5097>; and Grant Duwe, *The Use and Impact of Correctional Programming for Inmates on Pre- and Post-Release Outcomes* (Washington, DC: National Institute of Justice, 2017), <https://www.ncjrs.gov/pdffiles1/nij/250476.pdf>.

225 Middlesex County Sheriff's Office, *Opioid Treatment Program: 120-Day Fact Sheet* (September 1–December 31, 2019) (Medford, MA: Middlesex County Sheriff's Office, 2020).

226 Shawn MacMaster, Director, Strategic Development and Project Planning, Middlesex County Sheriff's Office, MA, email communication with Robbye Braxton, Federal Program Manager, Reentry Programs and Initiatives Working Group, May 28, 2020.

227 Joe Balicki, Commander, Orange County Sheriff's Department, CA, and Erin Winger, Deputy Agency Director, Correctional Health Services, Orange County Health Care Agency, "Orange County Jail-Based Programming to Address Addiction and Mental Illness" (PowerPoint presentation, Social Problems Impacting Public Safety Working Group, virtual meeting, May 19, 2020).

(e.g., alcoholics anonymous and narcotics anonymous).²²⁸ In addition to screening for inmates, it is also critical for correctional leaders to integrate training for their staff to understand behavioral health disorders and the importance of providing treatment so they can better assist those in their custody.

“By default, the Orange County Jail has become the largest mental health hospital in our county. As I have made clear many times, if our jail system is going to function as a mental health hospital, then it is going to be a good one.”²²⁹ - Sheriff Don Barnes, Orange County, California

The challenges faced by Orange County highlight what correctional facilities face nationwide and provide an insight into potential solutions. Of the 5,000 inmates housed in the Orange County jail, up to 2,000 require mental health treatment. To meet this challenge, the jail implemented a new jail classification system that enhances out-of-cell time with increased access to necessary and critical programming, eliminates late-night releases, and constructs new mental health housing modules. This system also increases staffing ratios for those units, which includes specific staff being trained in CIT, expands the use of MAT programs to treat 500–600 people per day, implements medically supervised substance use disorder step-down units to treat the 100–120 people per day who are detoxing off alcohol or drugs, and creates a housing unit for military veterans, connecting them to services and care.²³⁰

Dr. Shannon Robinson, an expert in addiction issues from Health Management Associates, explains: “Trauma, mental illness, substance use disorders and homelessness have bidirectional influences upon each other. To stop the multi-generational effects of these issues and ever-increasing resource utilization, we can treat [mental health and substance use disorders] with evidence-based treatments including motivational interviewing, cognitive behavioral therapy, contingency management, and MAT.”²³¹

While cost can be a major barrier to prioritizing and implementing treatment capacity within correctional facilities, other challenges also exist, including the lack of standards of care in correctional settings and the shortage of treatment specialists who are willing to work in such settings.²³² In addition, programs that fit within the short time frame of jail sentences may be

228 Raymond Chip Tafrate, Damon Mitchell, and David J. Simourd, *CBT with Justice-Involved Clients: Interventions for Antisocial and Self-Destructive Behaviors* (New York: Guilford Publications, 2018); *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 26, 2020) (statement of Keith Humphreys, Section Director for Mental Health Policy, Department of Psychiatry and Behavioral Services, Stanford University), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>; and Balicki and Winger, “Orange County Jail-Based Programming,” May 19, 2020.

229 County of Orange Community Corrections, *Integrated Services: 2025 Vision*, 6.

230 Don Barnes, Sheriff, Orange County Sheriff's Office, CA, email communication with Social Problems Impacting Public Safety Working Group, April 28, 2020; and Balicki and Winger, “Orange County Jail-Based Programming,” May 19, 2020.

231 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 25, 2020) (statement of Shannon Robinson, Principal, Health Management Associates), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

232 Susan Pollitt and Luke Woollard, “Barriers to Access and Inadequate Levels of Care in North Carolina Jails,” *North Carolina Medical Journal* 80, no. 6 (2019), <https://doi.org/10.18043/ncm.80.6.345>.

difficult to find.²³³ As individuals leave the institution and reenter the community, they may have trouble connecting with needed services.²³⁴

Although the provision of mental health and substance use disorder treatment and capacity has increased in jails and prisons, far too many institutionalized settings do not have or provide access to evidence-based treatment programs. The most effective method of ensuring positive outcomes and reducing recidivism requires identification of treatment need early, provision of evidence-based treatment while incarcerated, and continuity of care upon release.

Furthermore, while HIPAA allows for protected health information to be shared between correctional institutions and health providers for the purposes of treatment, records created as part of substance use treatment typically require consent authorization.²³⁵ As a result, inflexible privacy laws can deter patient-centered care if relevant information cannot be shared between providers. Other state and federal medical record confidentiality laws may further constrain this type of sharing. HIPAA regulations preempt state laws that are less stringent than HIPAA, but HIPAA is then preempted by state laws that are more stringent. In the context of information disclosure, these state laws are more protective of privacy (45 C.F.R. § 160.203(b)).

It is difficult for treatment and service providers to make a comprehensive recommendation without sufficient information regarding a defendant's substance use disorder history. This information helps providers coordinate with correctional staff to address an individual's specific needs; inform the probability that the individual is willing or able to comply with court orders; and evaluate an individual's likelihood for success while on supervision, in a correctional setting, or in the community.

Regarding individuals in correctional facilities, Congress should update HIPAA laws to provide clearer statutes that consider basic information sharing of records relating to treatment and health information among first responders, criminal justice practitioners, and service partners to support successful outcomes.

| See Chapter 5: Reentry Programs and Initiatives.

3.4.1 Jails should screen every individual booked into the facility for substance use disorder and mental health disorder. Jails should follow up with a full assessment for anyone who screens positive.

Jails that systematically screen every inmate can help identify and properly diagnose mental health or substance use disorders.²³⁶ Screening and assessment tools should be valid, reliable,

233 Center for Substance Abuse Treatment, "8 Treatment Issues Specific to Jails," in *Substance Abuse Treatment for Adults in the Criminal Justice System* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2005), <https://www.ncbi.nlm.nih.gov/books/NBK64145/>.

234 Ingrid A Binswanger et al., "From the Prison Door Right to the Sidewalk, Everything Went Downhill," A Qualitative Study of the Health Experiences of Recently Released Inmates," *International Journal of Law and Psychiatry* 34, no. 4 (2011), <https://pubmed.ncbi.nlm.nih.gov/21802731/>.

235 Christina Abernathy, *Corrections and Reentry: Protected Health Information Privacy Framework for Information Sharing* (Tallahassee: Institute for Intergovernmental Research, 2014), <http://www.appa-net.org/eweb/docs/APPA/pubs/CRPHIPFIS.pdf>; and U.S. Department of Health and Human Services, "Confidentiality of Substance Use Disorder Patient Records," *Federal Register* 82, no. 11 (2017), <https://www.govinfo.gov/content/pkg/FR-2017-01-18/pdf/2017-00719.pdf>.

236 Substance Abuse and Mental Health Services Administration, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2019), <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf>; Keith Scott and Pat Tucker, "Housing Instability Risk: How to Recognize It and What to Do When You See It," (webinar hosted by Substance Abuse and Mental Health Services Administration, October 26, 2017); Substance Abuse and Mental Health Services Administration, *Principles of Community-Based Behavioral*; and Interdepartmental Serious Mental Illness Coordinating Committee, *The Way Forward*.

and developed from evidence-based research.²³⁷ This information can inform programming and improve efforts to reduce recidivism.

| See Chapter 5: Reentry Programs and Initiatives.

Regarding Maricopa County, Sheriff Paul Penzone says: "Every detainee goes through a comprehensive evaluation upon entering our custody. On average, between 3,000–3,500 detainees will have a comprehensive mental health evaluation. Approximately 28 percent of those evaluated will be classified as having some level of mental illness. Additionally, 8–10 percent will be designated as seriously mentally ill (SMI). Of the SMI population, 28 percent will report some level of homelessness or home instability and an estimated 34 percent self-report some degree of substance abuse as an additional factor complicating the behaviors and threat to safety."²³⁸ For example, the Sheriff's Department in Orange County uses screening data to design comprehensive programming that will inform Orange County as it helps inmates achieve mental health stability, maintain sobriety, and avoid returning to custody upon release.

3.4.2 Correctional facilities should provide evidence-based treatment for inmates with behavioral health disorders while they also address the inmates' criminal behaviors and trends.

The use of evidence-based treatment and services in correctional facilities has been shown to have a positive impact on curtailing substance use disorders and increasing stability for those who have mental health disorders.²³⁹ Treatment and services should also incorporate and address an assessment of an individual's level of risk for recidivism, criminal behaviors and trends, and other individual characteristics, such as gender.²⁴⁰

| See Chapter 5: Reentry Programs and Initiatives.

As correctional facilities work to adopt these programs and implement best practices, costs and resources can deter progress. Regardless, they must be fiscally prioritized as their success speaks for itself. Evidence-based services, like MAT, are effective and necessary tools to achieve sobriety and mental health stability and reduce recidivism. Resources should also be prioritized to assure seamless care into the community. For instance, people leaving institutions should have a long-term care plan and, when appropriate, be prescribed a 90-day supply of medications by institution health officials to ensure there is no gap in medication delivery.

237 Substance Abuse and Mental Health Services Administration, *Screening and Assessment of Co-Occurring Disorders in the Justice System* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2019), <https://store.samhsa.gov/product/Screening-and-Assessment-of-Co-Occurring-Disorders-in-the-Justice-System/PEP19-SCREEN-CODJS>.

238 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (March 25, 2020) (written statement of Paul Penzone, Sheriff, Maricopa County Sheriff's Office, AZ), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

239 Steven Belenko, Matthew Hiller, and Leah Hamilton, "Treating Substance Use Disorders in the Criminal Justice System," *Current Psychiatry Reports* 15, no. 11 (2013), <https://doi.org/10.1007/s11920-013-0414-z>; and Heather Menzies Munthe-Kass, Rigmor C. Berg, and Nora Blaasvaer, "Effectiveness of Interventions to Reduce Homelessness: A Systematic Review and Meta-Analysis," *Campbell Systematic Reviews* 14, no. 1 (2018), <https://onlinelibrary.wiley.com/doi/10.4073/csr.2018.3>.

240 Jennifer L. Skeem, Sarah Manchak, and Jillian K Peterson, "Correctional Policy for Offenders with Mental Illness: Creating a New Paradigm for Recidivism Reduction," *Law and Human Behavior* 35, no. 2 (2011), <https://pubmed.ncbi.nlm.nih.gov/20390443/>; and Ryan M. Labrecque, "Specialized or Segregated Housing Units: Implementing the Principles of Risk, Needs, and Responsivity," in *Routledge Handbook on Offenders with Special Needs*, ed. Kimberly D. Dodson (New York: Routledge, 2018).

CHAPTER 4: JUVENILE JUSTICE AND YOUTH CRIME

Overview

In 1992, during his first tenure as Attorney General of the United States, Attorney General William P. Barr stated, “Society’s concern over how we deal with juveniles should not start after the juvenile has already gone astray.”²⁴¹ This remains true in a system of justice that does not start at the courthouse. Instead, it starts with a “constellation of private and public institutions that socialize the child and shape his or her moral character.”²⁴² That constellation includes families, schools, religious leaders, and community-serving agencies. The Attorney General has observed: “Smart punishments are those which seek to instill in a young offender the values, the discipline, and the responsibility that are necessary for self-control.”²⁴³



United States Attorney General
William P. Barr

Juvenile justice systems differ by state and territory, and each presents a range of challenges to law enforcement officers, judges, prosecutors, defenders, and juvenile justice professionals in probation, detention, and child/youth/family services. These challenges call for innovative approaches to addressing juvenile justice.

The juvenile justice system is vital to creating safe, secure, and successful communities. It is in this arena that social interventions and law enforcement contacts are likely to have the most lasting impact towards preventing crime, as sound juvenile justice policy can prevent mistakes made in youth from hardening into a criminal career in adulthood. To support our nation’s youth, it is essential to have an effective, efficient, and balanced juvenile justice system that prevents juvenile crime and delinquency, examines the causes of youth crime and violence, and supports law enforcement’s role in both the apprehension of juvenile offenders and, when appropriate, diversion and community-based resources. Our nation must continue to develop qualified juvenile justice professionals who can enhance the awareness and knowledge of all stakeholders, fostering collaboration vital to crime prevention and community safety.

Juvenile justice systems include the courts, which must hold young people accountable when they commit serious and violent crimes in our communities.²⁴⁴ This includes creating, enhancing, and using diversionary programs for youth who commit low-level offenses that can be handled swiftly and consistently.²⁴⁵ As the officers of the juvenile court, probation officers serve as the linchpin of the juvenile justice system and should be supported appropriately at both the state and local levels. Gregory Stuber, senior deputy probation officer and president of the Sacramento County

241 William P. Barr, United States Attorney General, “Remarks of the U.S. Attorney General as Prepared for Delivery,” presented at the Governor’s Conference on Juvenile Crime, Drugs, and Gangs, Milwaukee, WI, April 1, 1992, <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/04-01-1992.pdf>.

242 Barr, “Remarks of the U.S. Attorney General,” April 1, 1992.

243 Barr, “Remarks of the U.S. Attorney General,” April 1, 1992.

244 James Backstrom, “The Proper Intersection of Restorative Justice and Public Safety in Juvenile,” *The Prosecutor* 54, no. 2 (2020).

245 Marty Beyer, *Best Practices in Juvenile Accountability: Overview* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2003), 1, <https://www.ncjrs.gov/pdffiles1/ojjdp/184745.pdf>.

Probation Association, notes that the “arrest and sentencing of a youth are usually completed within a few months, depending upon the alleged crime, but a youth may be placed on probation supervision for three to five years. Thus, the vast majority of interaction a youth has with the juvenile justice system is through their probation officer.”²⁴⁶ Because of their unique vantage point, probation officers can be both a social worker and a law enforcement officer, which allows them the opportunity to be highly effective in producing positive outcomes for youth and their families.

States should continue to collect data as part of the formal court process and use it to explore what works and help intelligently and intentionally guide reform.²⁴⁷ Placing a juvenile in a well-designed treatment plan focused on changing the juvenile’s individual behavior and teaching core skills may prevent future delinquency and encourage successful reentry into the community.²⁴⁸

Different types of youth assessments should be applied at different points in the juvenile justice system, including diversion, pre-adjudication, adjudication, and reentry. Instruments and measurements need to be in place and encouraged so that every state studies, tests, and implements standardized assessment tools that will help determine risk and needs for the young people entering the juvenile justice system. The end result is to reduce recidivism and ensure public safety. These systems should use consistent assessments to discover and address the risks and needs of the young people they encounter.²⁴⁹ All parts of juvenile justice systems must come together to hold youth who commit crimes and endanger the public accountable, use appropriate risk and needs assessments to inform supervision levels and programming types and dosages, and engage key stakeholders in the efforts to prevent youth crime with early intervention.

A well-functioning juvenile justice system can reduce crime by preventing youth from becoming criminals in the first place. While juveniles comprise a segment of the criminal population, they are more capable of being corrected and are more receptive to social programs and interventions. Law enforcement must receive distinct training to protect and serve juveniles in all contexts of criminal justice—as offenders, witnesses, or victims. The juvenile justice system should instill accountability by imposing consequences for behavior, which may include less punitive options such as diversion programs and probation.

Encouragingly, in recent years there has been a decline in the number of juveniles entering the justice system. According to 2017 data from the Federal Bureau of Investigation’s Uniform Crime Reporting program, arrests of juveniles that year reached their lowest levels in nearly four decades.²⁵⁰ The decline in arrests since 1996 was greater for juveniles than for adults. As a result, juveniles accounted for 7 percent of arrests in 2017.²⁵¹

Ultimately, consistent with the theme of juvenile justice as a system that functions to preempt future crime more than punish present actions, the objective is to keep youths out of the criminal justice system in the first place. To that end, the Commission also emphasizes the importance of social outreach and interventions as key elements of any juvenile justice.

246 Gregory Stuber, Senior Deputy Probation Officer, Sacramento County Probation Association, in discussion with Juvenile Justice and Youth Crime Working Group, virtual meeting, May 27, 2020.

247 Edward J. Latessa, “From Theory to Practice: What Works in Reducing Recidivism?,” in *State of Crime and Justice in Ohio* (Columbus, OH: Ohio Office of Criminal Justice Services, 2004), https://www.uc.edu/content/dam/uc/ccjr/docs/articles/Theory_Practice.pdf.

248 Latessa, “From Theory to Practice.”

249 Jennifer Pealer and Edward J. Latessa, “Technology Transfer-A Case Study in Implementing the Principles of Effective Cognitive and Behavioral Interventions for At-Risk Juveniles,” in *Cognitive Behavioral Interventions for At-Risk Youth*, ed. Barry Glick (Kingston, NJ: Civic Research Institute, 2006).

250 Charles Puzanchara, *Arrest Characteristics of Older Juveniles and Young Adults* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2019), https://www.ojjdp.gov/ojstatbb/snapshots/DataSnapshot_UCR2017.pdf.

251 Puzanchara, *Arrest Characteristics of Older Juveniles*, 1.

4.1 The Role of Law Enforcement and Detention/Corrections Staff

Approximately 25 percent of the U.S. population is age 17 or younger, which is the age group commonly referred to as juveniles. This percentage has grown since the mid-1980s and is projected to continue its growth until at least 2060.²⁵²

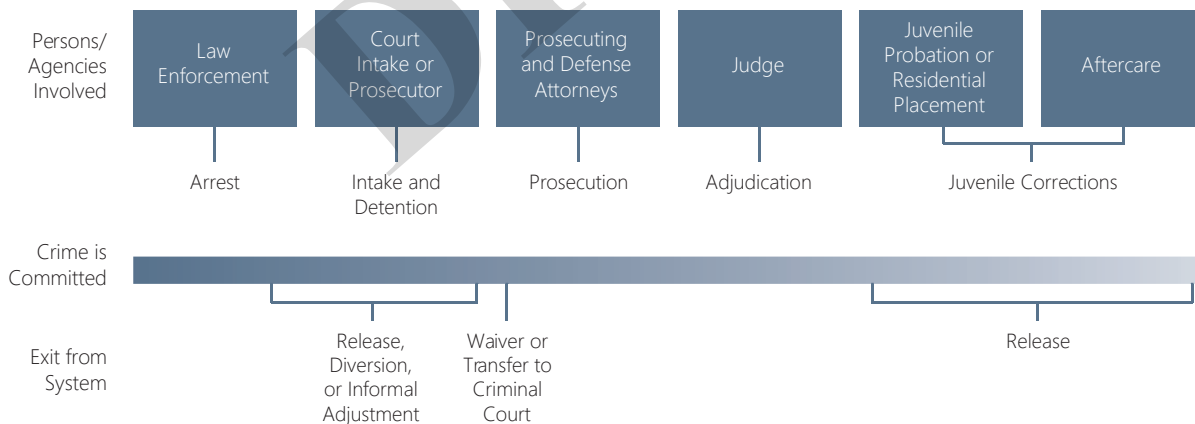
Figure 4.1. Juvenile Justice System



Source: Ann H. Crowe, Jurisdictional Technical Assistance Package for Juvenile Corrections (Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 2000), https://www.ncjrs.gov/hTml/ojjdp/juris_Tap_report/

Although statistics are available on both juvenile offenses and juveniles as victims, “often, law enforcement statistics are used as a proxy for examining trends in juvenile crime and offending. Law enforcement provides ‘input’ for the rest of the juvenile justice system, and thus understanding these inputs is critical for examining how the system responds to juvenile crime.”²⁵³ Over the past few decades, arrest statistics have been used as the main barometer of juvenile delinquent activity, yet juvenile offenses often go unreported.²⁵⁴

Figure 4.2. Juvenile Justice Process and Components



Source: Office of Juvenile Justice and Delinquency Prevention, Jurisdictional Technical Assistance Package for Juvenile Corrections, 2000

252 “Juvenile Population Characteristics: Overview,” Office of Juvenile Justice and Delinquency Prevention Statistical Briefing Book, accessed August 11, 2020, <https://www.ojjdp.gov/ojstatbb/population/overview.html>.

253 “Offending by Juveniles: Overview,” Office of Juvenile Justice and Delinquency Prevention Statistical Briefing Book, accessed June 4, 2020, <https://www.ojjdp.gov/ojstatbb/offenders/overview.html>.

254 Office of Juvenile Justice and Delinquency Prevention Statistical Briefing Book, “Offending by Juveniles.”

Children Exposed to Violence and Childhood Trauma: A Toolkit for Law Enforcement

When given the tools to provide trauma-informed, developmentally appropriate responses to children exposed to violence, law enforcement officers can

- provide a safe environment to assist youth in re-establishing a sense of security and stability
- help youth and their families begin to heal
- support and reshape attitudes towards law enforcement²⁵⁵

Whether addressing the needs of youth at scenes of domestic violence, interacting with youth of different ages who have experienced traumatic stress, or providing death notifications to children, specific protocols and training will greatly assist a law enforcement officer's ability to properly protect and serve the juvenile community.

Law enforcement agencies should enhance their capacity to respond to children exposed to violence by completing an organizational self-assessment.²⁵⁶

4.1.1 Criminal justice professionals who interact with juvenile offenders should receive specialized training.

Both law enforcement agencies and correctional facilities should ensure that employees who will interact with juveniles or be responsible for engaging in the juvenile justice system receive specialized training on the unique aspects of juvenile justice. Youth who enter the juvenile justice system require specific handling to ensure minimization of harm. Additionally, specialized training is required to identify signs of trauma, abuse, or exploitation. Identification of gang involvement or human trafficking is also essential and can provide for early intervention. If the needs of the juveniles are appropriately identified as a result of specific training and appropriate services provided, positive outcomes increase exponentially. This will greatly reduce the percentage of recidivism. This training can also ensure compliance with policies and procedures based on best practices.

4.2 The Need for Accountability

Our youth who violate the law need to be held accountable to improve the quality of life in our communities. The traditional juvenile justice system defined accountability as punishment or adherence to rules laid down by the system, a similar approach to that taken with adults. For juvenile offenders to take responsibility for their actions, they "must be helped to think beyond

255 International Association of Chiefs of Police and Yale Child Study Center, *Enhancing Law Enforcement Response to Children Exposed to Violence and Childhood Trauma: A Toolkit for Law Enforcement* (Alexandria, VA: International Association of Chiefs of Police, 2018), <https://www.theiacp.org/sites/default/files/2018-08/CEVToolkit.pdf>.

256 International Association of Chiefs of Police and Yale Child Study Center, *Enhancing Law Enforcement Response*.

their first response to the perceived or real unfairness of adults, lack of opportunity, or rivalry with another group and assisted in understanding consequences.”²⁵⁷

Given the way adolescent brains develop,²⁵⁸ sometimes a juvenile who commits an offense may feel that their behavior, although illegal, is an appropriate response. This is why the Balanced and Restorative Justice Model was created. It defines accountability as an obligation or willingness to accept responsibility for one’s actions and taking certain steps to repair the harm. This includes a combination of building skills, repairing the harm done to victims, and protecting the community. This approach encourages positive development of youth so that they can become productive members of our communities.²⁵⁹

“The glue that makes community-based programming work is accountability. Through accountability . . . trust is earned. These trusting relationships are achieved by fostering an informed and communicative environment that promotes clear follow-through. And, with trust, comes freedom.”²⁶⁰ - Timothy E. Irwin, Juvenile Court Judge of Knox County, Tennessee

The juvenile court system helps hold juveniles accountable and provides the structure for needed change when other influences have not worked. Juvenile court judges can be a strong tool for holding youth accountable and helping them make positive changes in their lives. Another successful tool that courts have is the use of probation. Probation officers are responsible for the community supervision of youth assigned to them and provide an immediate law enforcement response when necessary. Probation officers also act as a rehabilitative conduit by assessing the risk and needs of a youth and their families and then implementing a strategic plan for them, which includes referrals into county-provided programs or community-based organizations.

States should adopt the Department of Justice’s Office of Juvenile Justice and Delinquency Prevention’s mission statement to “support the efforts of states, tribes, and communities to develop and implement effective and equitable juvenile justice systems that enhance public safety, ensure youth are held appropriately accountable to both crime victims and communities, and empower youth to live productive, law abiding lives.”²⁶¹ This includes creating, enhancing, and using diversionary programs for youth who commit low-level offenses which can be handled swiftly and consistently.²⁶²

As part of holding juveniles accountable, states should also ensure that their Victims Bill of Rights provides the same protections to victims of juvenile crime as to those of adult crime. Regardless of the age of the offender, victims should be protected and offenders should be held accountable for their harms to victims.

| See Chapter 2: Victim Services.

257 Beyer, *Best Practices in Juvenile Accountability*.

258 Sarah Spinks, “Adolescent Brains Are A Work In Progress: Here’s Why,” *Frontline*, accessed July 8, 2020, <https://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/work/adolescent.html>.

259 D. Maloney, T. Armstrong, and D. Romig, “Juvenile Probation: The Balanced Approach,” Centre for Justice and Conciliation, April 23, 2002, <http://restorativejustice.org/rj-library/juvenile-probation-the-balanced-approach/757/#sthash.CZl0kq7i.TQ0xLTp9.dpbs>.

260 Timothy E. Irwin, Juvenile Court Judge, Knox County, TN, in discussion with Juvenile Justice and Youth Crime Working Group, virtual meeting, May 29, 2020.

261 “About OJJDP: Mission Statement,” Office of Juvenile Justice and Delinquency Prevention, accessed August 11, 2020, <https://ojjdp.ojp.gov/about>.

262 Beyer, *Best Practices in Juvenile Accountability*.

4.2.1 Congress should reinstitute funding for the Juvenile Accountability Block Grants program.

The Juvenile Accountability Block Grants (JABG) program, originally established in 1998, was renamed and authorized under the Omnibus Crime Control and Safe Streets Act, 34 U.S.C. § 10401 (2002).²⁶³ With a goal of “reducing juvenile offending through accountability-based programs focused on both the juvenile offender and the juvenile justice system, the JABG program supported states and territories in implementing graduated sanctions that were proportionate to the offenses, both as a matter of basic justice and as a way to combat juvenile delinquency and improve the quality of life in the nation’s communities.”²⁶⁴

In 1998, JABG had an initial appropriation of \$250 million dollars and was funded at decreasing amounts in subsequent years. No federal funding has been allocated to JABG since 2013.²⁶⁵

4.2.2 Law enforcement agencies should implement the Office of Juvenile Justice and Delinquency Prevention’s Comprehensive Gang Model.

In an effort to highlight the administration’s commitment to addressing gang-related threats to public safety, President Donald J. Trump has proclaimed a National Gang Violence Prevention Week for the past several years. The proclamations have renewed the administration’s “dedication to identifying and dismantling the criminal networks that seek to wreak havoc on our communities and to bringing the individuals who participate in them to justice” and reaffirmed support “for the heroes of law enforcement who have taken a sacred pledge to defend the Nation and its people.”²⁶⁶

A 2015 study that appeared in the *Journal of Adolescent Health* estimates that there are more than one million juvenile gang members in the United States, which is more than three times the number estimated by law enforcement.²⁶⁷ Youth gang membership challenges many popular demographic stereotypes about gangs in the nation. The study found that an average of 2 percent of youth are gang members, and youth age 14 have the highest gang involvement (5 percent).²⁶⁸ Additionally, the study found that youth in gangs come from all types of backgrounds.

Law enforcement severely undercounts juvenile gang members. National estimates place the number of youth in gangs at 300,000, which is less than a third of what the study found.²⁶⁹ Author David Pyrooz says, “law enforcement uses a top-down strategy, recording older and more

263 Safe Streets Act of 2002, 34 U.S.C. § 10401 (2020), <https://www.govinfo.gov/content/pkg/USCODE-2017-title34/html/USCODE-2017-title34.htm>.

264 Office of Justice Programs, *JABG Award Language for Recipients* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2013).

265 Coalition for Juvenile Justice, *Protecting Our Children and Communities: The Essential Role of Funding Under the Juvenile Justice and Delinquency Prevention Act* (Washington, DC: Coalition for Juvenile Justice, 2017), <http://www.juvjustice.org/sites/default/files/resource-files/JJDPFPA%20Funding%20Final.pdf>.

266 Donald J. Trump, President of the U.S., “Presidential Proclamation on National Gang Violence Prevention Week, 2019,” Washington, DC, September 13, 2019, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-national-gang-violence-prevention-week-2019/>.

267 David C. Pyrooz and Gary Sweeten, “Gang Membership Between Ages 5 and 17 Years in the United States,” Abstract, *Journal of Adolescent Health* 56, no. 414 (2015), <https://doi.org/10.1016/j.jadohealth.2014.11.018>.

268 Sam Houston State University, “Juvenile Gang Members in US Top 1 Million, New Study Finds,” ScienceDaily, February 12, 2015, <https://www.sciencedaily.com/releases/2015/02/150212131817.htm>.

269 Pyrooz and Sweeten, “Gang Membership Between Ages.”

criminally-involved youth as gang members, which ignores younger and more peripherally gang-involved youth, all of whom are captured in the bottom-up strategy we use in this study.”²⁷⁰

While law enforcement plays a critical role in addressing gang problems, it alone will not stem the flow of youth gang involvement. A community simply cannot arrest its way out of serious, violent, and entrenched youth gang problems. Law enforcement agencies may collaborate with citizens and organizations to implement strategies that address both the immediate threat of youth gangs and the conditions that allow them to exist. As Attorney General Barr stated in 1992, “the first part of any meaningful juvenile justice reform must involve the strengthening of society’s most important socializing institutions—the family, schools, community associations, and religious institutions. These are the primary vehicles by which values and ethics are instilled in our children, and their importance cannot be overstated.”²⁷¹

Agencies should also consider creating specialized units in the juvenile field to address the specific needs of certain youth offenders, including units focused on home supervision and electronic monitoring, juvenile justice diversion programs, commercially sexually exploited children, sex offenders, arson, and gang suppression.

4.2.3 States should delay the automatic expungement of juvenile arrest and court records until adulthood. Instead, states should implement limited access relief, which allows criminal justice system stakeholders access to offender history while maintaining confidentiality.

When a juvenile reoffends, automatic expungement blinds the system, taking away the law enforcement’s ability to see the inherent risks presented by previous behavior.²⁷²

Unless a juvenile delinquency matter has been dismissed for failing to establish probable cause or guilt, or expungement is based upon a change in the substantive criminal law of that jurisdiction, automatic expungement for juveniles goes against the goals of the juvenile justice system. As Thomas Lemmer, member of the Fraternal Order of Police Lodge #7 and deputy chief of the Chicago Police Department, states, “expunging these records while youth are still youth is problematic, as it leaves police and social service workers blinded, as they seek to identify the intervention approaches appropriate for those youth.”²⁷³ It also gives juveniles a false confidence that they continue in criminal behaviors without serious consequence.

Juvenile justice is a system that requires knowledge and information about young people so as to properly assess and ultimately provide effective intervention. That cannot be accomplished if the system is not aware of the underlying challenges facing that young person, including prior arrests and dispositions. A system based on a balanced approach to justice would be designed to enhance public safety, ensure that youth are held appropriately accountable to both crime victims and communities, and empower youth to live productive, law-abiding lives.²⁷⁴

Crime victims may suffer the consequences as well, as orders designed for their protection may disappear or become inaccessible. The youth will also suffer because of the inability to match

270 Pyrooz and Sweeten, “Gang Membership Between Ages.”

271 Barr, “Remarks of the U.S. Attorney General,” April 1, 1992.

272 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (May 6, 2020) (written statement of Thomas J. Lemmer, Member, Chicago Lodge 7, Fraternal Order of Police), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

273 Lemmer, *President’s Commission on Law*, May 6, 2020.

274 Office of Juvenile Justice and Delinquency Prevention, “About OJJDP: Mission Statement.”

services with needs. Providers—those most expected to have information on the services needed to provide appropriate intervention—will be unable to do so. To that end, “Expunging juvenile arrest records does nothing to lower the victimization risk for the involved youth; it only conceals that risk from police and others seeking to identify the need for intervention approaches. An expungement process that leaves youth vulnerable to victimization is not in their best interests.”²⁷⁵ Instead, states should implement another form of relief for juveniles called limited access. This relief seals the juvenile’s record, allowing only stakeholders in the juvenile justice system to have access to their entire history of adjudication.

4.3 Risk and Needs Assessment

A standardized risk and needs assessment helps identify a youth’s risk of reoffending and any factors that, if addressed, would help reduce the likelihood of re-offense.²⁷⁶ These assessment findings also assist with developing treatment and service plans to treat the youth’s individual needs, which will in turn help ensure the best possible outcome.²⁷⁷ Once the youth’s risk of reoffending and their criminological needs—such as family issues, competency, level of education, and self-esteem issues—have been identified, then the appropriate response can be administered by the juvenile justice system.²⁷⁸

“Smart punishments are those which seek to instill in a young offender the values, the discipline, and the responsibility that are necessary for self-control.”²⁷⁹ - Attorney General William P. Barr

4.3.1 States should study, test, and implement a standardized assessment tool at both the state and local levels to determine risk and needs for juveniles entering a juvenile justice system.

Many assessment instruments are used by researchers, juvenile justice professionals, and other experts. These assessments may range from a brief screening for early determination of the juvenile’s risk factors for reoffending to a comprehensive assessment covering both the level of risk and the needs of the juvenile. They can also be used at various stages in the juvenile justice system, including diversion, adjudication, and disposition.

Risk and needs assessments are not only designed to inform and guide decisions about estimating a juvenile’s likelihood to recidivate.²⁸⁰ These measures are also helpful when creating plans for appropriate treatment or services. They allow juvenile justice professionals and practitioners to classify offenders and target limited resources to juveniles who may need intensive supervision and services.²⁸¹

275 Lemmer, *President’s Commission on Law*, May 6, 2020.

276 Gina Vincent et al., *Studying Drivers of Risk and Needs Assessment Instrument Implementation in Juvenile Justice* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, December 1, 2018), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/251809.pdf>.

277 Vincent et al., *Studying Drivers of Risk and Needs Assessment*.

278 Edward J. Latessa, Professor and Director, School of Criminal Justice, University of Cincinnati, in discussion with Juvenile Justice and Youth Crime Working Group, virtual meeting, April 14, 2020.

279 Barr, “Remarks of the U.S. Attorney General,” April 1, 1992.

280 Development Services Group, Inc., *Risk and Needs Assessment for Youths* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2015), 1, <https://www.ojjdp.gov/mpg/litreviews/RiskandNeeds.pdf>.

281 The Pew Center on the States, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders* (Washington, DC: Pew Charitable Trusts, 2011), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2011/pewriskassessmentbrief.pdf.

4.4 Enhancing Engagement in Support of Prevention and Early Intervention

A justice system, schools, and the community should openly communicate to keep the children who intersect with them safe and healthy. Youth who are harmed or victimized often then harm and victimize in return. Thus, protecting our youth in schools and from online threats, in addition to prevention and early intervention efforts, all serve critical roles in keeping youth from becoming offenders and entering the justice system in the first place. Courts and law enforcement cannot provide a balanced approach to juvenile justice on their own. Instead, families and communities need to be actively engaged in breaking down barriers in these systems. Often, coordination between community service-based agencies and the juvenile justice systems has been difficult because of agency barriers that impede communication.²⁸²

Internet safety and victimization also need to be addressed through the lens of bullying and cyber harassment. First Lady Melania Trump's BE BEST Initiative focuses on online safety as a key pillar that requires tools and skills in support of the emotional, social, and physical health of our nation's youth.²⁸³ While bullying has always been an issue among young people, the rise of social media has allowed new forms of anonymous bullying to occur. This bullying and the resulting trauma needs to be addressed through a detailed internet safety agenda.

Many youth who commit crimes present with co-occurring issues that require multiple services to communicate regarding their care.²⁸⁴ To address this, local agencies and communities nationwide have developed multi-discipline coalitions that help plan and create solutions for sound juvenile development.

A critical partnership should exist between the school and law enforcement. Around the nation, these types of partnerships are only beginning, despite youth spending a significant amount of their day inside a school. Due to time spent with children during the school day, school resource officers (SROs) are in the unique position to positively influence, protect, and aid them during this vulnerable and formative time in their lives. SROs help create a safe learning environment which allows the children to thrive and school officials to concentrate on the education process.²⁸⁵

4.4.1 Law enforcement and their local school system should create and implement a memorandum of understanding so that school resource officers and school personnel train, learn, and respond collectively on issues confronting their individual school populations.

SROs play an integral role in contemporary school settings. Not only do they provide the first line of defense against threats, they are often part a school's culture because of their everyday presence on campus. SROs cultivate and strengthen relationships with students, staff, administrators, and parents. Building these relationships is key to resolving conflict, creative problem solving, and creating a positive, safe environment for students to learn and grow.²⁸⁶

282 Christy K. Scott et al., "Juvenile Justice Systems of Care: Results of a National Survey of Community Supervision Agencies and Behavioral Health Providers on Services Provision and Cross-System Interactions," *Health and Justice* 7, no. 1 (2019), <https://doi.org/10.1186/s40352-019-0093-x>.

283 "BE BEST: First Lady Melania Trump's Initiative," The White House, accessed August 18, 2020, <https://www.whitehouse.gov/bebest/>.

284 Scott et al., "Juvenile Justice Systems of Care."

285 National Association of School Resource Officers, *To Protect and Educate: The School Resource Officer and the Prevention of Violence at School* (Hoover, AL: National Association of School Resource Officers, 2018), <https://www.nasro.org/clientuploads/resources/NASRO-Protect-and-Educate.pdf>.

286 Tim Evinger, "Succeeding as a School Resource Officer in a Changing World," *Lexipol* (blog), November 16, 2019, <https://www.lexipol.com/resources/blog/succeeding-as-a-school-resource-officer-in-a-changing-world/>.

For both educators and law enforcement to be successful, their memorandum of agreement should outline the appropriate response to mandatory and permissive referrals and clearly document when a law enforcement response is required. For both educators and law enforcement to be successful, their memorandum of agreement should outline the appropriate response to mandatory and permissive referrals and clearly document when a law enforcement response is required. Additionally, it should outline mandatory joint training between school and law enforcement to reinforce roles. Ideally, this school–justice partnership should require data collection to inform and guide future action and response from both the school and law enforcement agencies.

To partner effectively, both the school and the law enforcement agency identified in the memorandum of agreement should be involved in the SRO selection process to ensure a suitable candidate is selected. Not all law enforcement officers have the attributes to work most effectively within a school setting. Accordingly, organizations such as schools and juvenile justice agencies should partner with law enforcement in the selection and assignment of SROs. Using this approach not only results in a better match for the critical partnership, but it also reinforces the shared responsibility of all parties to provide a safe learning environment for the children.

In addition, all school district personnel, law enforcement officers, and other appropriate authorities should be required to take training on school-based policing and school law. Both basic and advanced training courses promote the role of an SRO as a teacher, informal counselor, and law enforcement officer and stress the importance of active involvement from the partner organization.

4.4.2 Counties that are responsible for the prosecution of juvenile delinquency should form a youth service commission as part of their juvenile justice continuum.

Key stakeholders should consolidate to plan, implement, and evaluate the juvenile justice service system in their community. The resulting commission should serve as the primary advisory board on youth who are at risk, are involved with the family court or the child welfare system, or are on probation or parole. Further, it should mobilize the community to advance child, youth, and family well-being through planned, intentional collaboration.²⁸⁷ These services should also focus on those youth identified to be at risk of entering a system.

These juvenile justice commissions can help reduce youth crime in local communities and increase the accountability, effectiveness, and efficiency of the youth justice system.²⁸⁸ Local commission membership “should represent a broad coalition of government, nonprofit agencies, youth and parent advocates, sheriff’s department, prosecutor’s office, education, the family court, public defender, and probation with the purpose of bringing together key leaders of the local juvenile justice continuum.”²⁸⁹

287 Anthony V. Pierro, Juvenile Chief, Prosecutor’s Office, Ocean County, NJ, email communication with Scott Pestrige, Federal Program Manager, Juvenile Justice and Youth Crime Working Group, June 26, 2020.

288 Pierro, email communication with Scott Pestrige, June 26, 2020.

289 Pierro, email communication with Scott Pestrige, June 26, 2020.

4.4.3 Law enforcement agencies, community partners, and the private sector should partner to create agency-wide mentoring initiatives that engage youth and promote law enforcement–youth interactions.

Mentoring is an excellent tool to engage the community and increase respect for law enforcement within it. Adult role models are often scarce in high-crime neighborhoods, and mentorship is a practical solution to address this need. When the family disintegrates, mentorship is the last great hope. Law enforcement executives should encourage their officers—especially those in urban areas struggling with high crime rates—to engage as role models and mentors in youth development programs.²⁹⁰ Through this support, an officer will help at-risk youth make healthy behavioral decisions, which in turn promotes trust building between law enforcement and youth. Probation officers serve as mentors to the youth assigned to them and are able to build rapport with them and provide guidance and counseling to them in their everyday activities.

Bigs in Blue, an Office of Juvenile Justice and Delinquency Prevention-funded program of Big Brothers Big Sisters of America, matches police officers (“bigs”) with children (“littles”) who come largely from poor or single-parent homes or who have an incarcerated parent. Nationwide, there are 82 Bigs in Blue initiatives that have matched 1,090 police officers with children in the communities they patrol.²⁹¹

4.4.4 Law enforcement and juvenile justice-serving agencies should include child internet safety education as a primary prevention tool.

“Some of the recommendations I would love to see is . . . trying to figure out and bring resources to bear that help homes become more stable, to help people come together, and including the nonprofits and the churches being involved . . . together to help stabilize a home and often mentor a parent that may need some help.”²⁹²
- Sheriff Bill Waybourn, Tarrant County, Texas

Education and prevention are critical to addressing online exploitation and abuse, and key stakeholders need to be part of that solution. School–justice partnerships should prioritize education and training to both students and their guardians about internet safety and the ease with which dangerous situations occur. This coordination and integration of services will achieve the appropriate knowledge base needed to coordinate and integrate the existing support services in the community available for juveniles and their families who are in the formal juvenile justice system.

Perpetrators often seek young people on the internet. John F. Clark, president and chief executive officer of the National Center for Missing and Exploited Children (NCMEC), says, “After the internet became more accessible to the general public in the 1990s, NCMEC started to see a growing

290 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Juvenile Justice* (May 7, 2020) (statement of Steve Salem, President and Chief Executive Officer, Cal Ripken Senior Foundation), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

291 Office of Juvenile Justice and Delinquency Prevention, *Office of Juvenile Justice and Delinquency Prevention: 2019 Annual Report* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 2019), 2, <https://ojjdp.ojp.gov/library/publications/office-juvenile-justice-and-delinquency-prevention-fiscal-year-2019-annual>.

292 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Juvenile Justice* (May 6, 2020) (statement of Bill Waybourn, Sheriff, Tarrant County Sheriff’s Office, TX), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

threat to children being sexually exploited, enticed, and groomed into abusive situations by online predators.”²⁹³ Both young people and their parents and guardians must understand the dangers that lurk beyond their keyboard. One such danger is sextortion, which “occurs when someone threatens to distribute your private and sensitive material if you don’t provide them images of a sexual nature, sexual favors, or money.”²⁹⁴ When an offender’s goal is to obtain sexually explicit content from a child, the blackmail that happens after occurs almost immediately.²⁹⁵ This trend highlights the urgency in detecting and reporting this victimization so that appropriate intervention can remove the child from the situation and safeguard them from continuing harm.

4.5 Training and Professionalizing the Juvenile Justice System

Juvenile justice is a specialty area of jurisprudence. It is a unique court system that has independent rules and requirements that are different than its adult counterpart, and inexperienced professionals are no match for the work that is required in juvenile courts. The lack of recognition that juvenile justice is a stand-alone specialty has negatively affected the profession in both staff retention and training, and juvenile professionals are often underappreciated in their workplace. Justice systems should recognize juvenile justice as an independent and unique area of jurisprudence, and training should be provided to those currently in the field. While law enforcement officers are often highly trained in many aspects of their interface with society, such as tactics and crime recognition, that same training does not always cover how to deal with young people. In fact, most police are only trained in the basics of juvenile justice, including the laws of arrest of their state.

4.5.1 States should provide tailored training to prosecutors, law enforcement executives, and court personnel on the importance of juvenile justice, the impact juvenile justice has on community safety, and the unique role each has to play in addressing juvenile offending and effective adjudication.

Prosecutors, law enforcement executives, judges, court personnel, and probation officers each have critical and multi-faceted roles that touch every aspect of the criminal justice system, and targeted training on maximizing their tools will strengthen the juvenile justice system.

Prosecutors are the gatekeepers to the courthouse. Everything that happens in a juvenile justice courtroom has occurred with the knowledge of a prosecutor. Therefore, the success of any juvenile justice system requires retaining the most experienced and well-balanced prosecutors to work on juvenile cases. Training topics for prosecutors should include how to appropriately prioritize juvenile prosecution in their offices, which includes prosecution of online victimization. Similarly, law enforcement executives should understand how to support juvenile investigations with appropriate staffing and the importance of selecting school resource officers in their department. Finally, judges, court personnel, and probation chiefs should receive training on prioritizing juvenile court dockets equally with adult criminal dockets, and in understanding the need for staffing seasoned probation officers in their juvenile field divisions, youth detention facilities, and juvenile court divisions.

293 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Juvenile Justice* (May 6, 2020) (statement of Bill Waybourn, Sheriff, Tarrant County Sheriff's Office, TX), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

294 “*What Is Sextortion?: An FBI Special Agent Defines Sextortion and Provides Tips to Avoid Falling Prey to Online Predators*,” Federal Bureau of Investigation, accessed June 12, 2020, <https://www.fbi.gov/video-repository/newss-what-is-sexortion/view>.

295 Federal Bureau of Investigation, “*What is Sextortion?*”

CHAPTER 5: REENTRY PROGRAMS AND INITIATIVES

Overview

The high rates at which criminals reoffend demonstrate that the criminal justice system alone is insufficient to deter and prevent crime. The specter of arrest and prosecution is important to criminal justice and discouraging crime, but recidivism remains a critical driver of crime: an estimated 68 percent of released prisoners are rearrested within three years, 79 percent within six years, and 83 percent within nine years.²⁹⁶ As reaffirmed elsewhere in this report, law enforcement is but one aspect of any effort to prevent and reduce crime. It stands to reason, therefore, that crime prevention should focus not only on helping victims, but also on criminal offenders and the circumstances under which they commit and recommit crime.

Juvenile justice and social welfare programs are critical front-end measures to do this, but once crime has occurred and the punishment has been served, these systems are not specifically tailored to help returning citizens later break the cycle of recidivism. Reentry programming serves that critical function by proactively engaging convicted offenders on their return to society and focusing on what measures can be taken to place them in a better situation than the one that led them to commit crime in the first place. Preventing offenders from reoffending is just as important to public safety as preventing crime at the outset insofar as, former criminal offenders are an especially at-risk population to engage in criminal behavior.

Reentry programs and initiatives are critical to assisting law enforcement prevent and reduce crime. Because the reentering population is the population most likely to commit crime, they must be directed towards support programs, both while incarcerated and upon release, to help divert these individuals away from returning to a life of crime. Law enforcement agencies should therefore join and support reentry initiatives in their communities in order to strengthen their crime prevention and reduction work.

Tony Lowden, executive director of the Federal Interagency Council on Crime Prevention and Improving Reentry (established by Exec. Order No. 13,826, 83 Fed. Reg. 10771 (2018)), says, “I believe making improvements in the way we prepare offenders to reenter society is critical. It’s a critical element for an effective crime prevention strategy—not just from what we do as staff, correction officers to reentry officers—but what we do for the aftercare, too, so that those individuals do not return back to our facilities.”²⁹⁷

It is important for law enforcement to recognize that reentry begins at arrest. Jails and corrections systems need to assess the behaviors, trends, and risk factors of criminals when they enter the system. Proper assessment can help to ensure incarcerated persons have access to appropriate programming and services. These programs should have a strong focus on education and job skills training to ensure that, once released, former offenders are ready to enter the workforce.

296 “Reentry Trends in the U.S.: Releases from State Prison,” Bureau of Justice Statistics, accessed June 16, 2020, <https://www.bjs.gov/content/reentry/releases.cfm>.

297 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Reentry* (April 23, 2020) (statement of Tony Lowden, Executive Director, Federal Interagency Council on Crime Prevention and Improving Reentry), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

Stable employment and housing are fundamental to successful reentry. These are cornerstones that provide new opportunities to former offenders once released and provide pathways to success instead of pathways back to crime.

In studying the importance of reentry programs, the Commission principally finds that formerly incarcerated persons need, above all else, a strong support network. This can consist of their families, communities, or other appropriate networks that can help ensure accountability. It may require a combination of support networks to be successful.

5.1 Risk and Needs Assessment Tools

In December 2018, President Donald J. Trump signed into law the First Step Act of 2018.²⁹⁸ The First Step Act requires the Attorney General, in consultation with the Independent Review Committee authorized by the act, to develop and release publicly on the Department of Justice website a risk and needs assessment system for the Federal Bureau of Prisons. This system is to be used to “determine the recidivism risk of each prisoner as part of the intake process and classify each prisoner as having minimum, low, medium, or high risk for recidivism; assess and determine, to the extent practicable, the risk of violent or serious misconduct of each prisoner; determine the type and amount of evidence-based recidivism reduction programs that are appropriate for each prisoner and assign each prisoner to such programs accordingly, and based on the prisoner’s specific criminogenic needs.”²⁹⁹ Furthermore, this model legislation highlights the need to “reassess the recidivism risk of each prisoner periodically” and “reassign the prisoner to appropriate evidence-based recidivism reduction programs or productive activities based on the revised determination.”³⁰⁰ The assessment system developed from the First Step Act of 2018 seeks to ensure that “all prisoners at each risk level have a meaningful opportunity to reduce their [risk] classification during the period of incarceration, to address the specific criminogenic needs of the prisoner, and all prisoners are able to successfully participate in such programs.”³⁰¹

5.1.1 Jails and prisons should implement and standardize risk and needs assessment tools modeling the First Step Act to inform programming and positive reentry outcomes. These tools should be administered upon entry to correctional facilities and on a regular, recurring basis during and after incarceration, if released onto community supervision.

While examining the use of risk assessments to determine sentencing, researchers found that, “Across the U.S., states are using risk assessment to inform decisions about the imprisonment of higher-risk offenders, the supervised release of lower-risk offenders, and the treatment of offenders in efforts to reduce risk.”³⁰² In this era of targeted criminal justice improvement, people who pose a low risk to public safety are often diverted to alternative settings so that increased time, money, and effort can be focused on those who pose a high risk to public safety.³⁰³

298 First Step Act of 2018, 18 U.S.C. §§ 3621-3632 (2018), <https://www.congress.gov/115/plaws/publ391/PLAW-115publ391.pdf>.

299 First Step Act of 2018, 18 U.S.C. §§ 3632 (2018).

300 First Step Act of 2018, 18 U.S.C. §§ 3632 (2018).

301 Office of the Attorney General, *The First Step Act of 2018: Risk and Needs Assessment System* (Washington, DC: U.S. Department of Justice, 2020), 5, https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf.

302 John Monahan and Jennifer L. Skeem, “Risk Assessment in Criminal Sentencing,” *Annual Review of Clinical Psychology* 12, no. 1 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2662082.

303 Pamela M. Casey et al., *Offender Risk and Needs Assessment Instruments: A Primer for Courts* (Washington, DC: National Center for State Courts, 2014), https://www.ncsc.org/__data/assets/pdf_file/0018/26226/bja-rna-final-report_combined-files-8-22-14.pdf.

Risk assessment tools should be used to inform the reentry planning for all jail and prison populations, as they allow the correctional facilities to tailor programming and determine the best ways to target and allocate their resources. To reduce the risk of recidivism and improve the chances of successful reintegration into the community, prisons and jails must be responsible for implementing various risk and needs assessments for their populations. There are various considerations and options in selecting the best tool(s).³⁰⁴

While some corrections systems use the most current generation of assessment tools (e.g., Ohio, which uses the Ohio Risk Assessment System, and Georgia, which uses the Next Generation Assessment), the way systems implement these tools and use them to inform programming and practice varies widely.³⁰⁵

Currently, the Bureau of Justice Assistance maintains a clearinghouse on public safety risk assessments tools.³⁰⁶ Agencies may use this tool to determine the best assessment for their jail or prison and to help ensure the assessment tool is as consistent, fair, and effective as possible.

| See Chapter 6: Criminal Justice System Partners.

Incarcerated individuals may experience significant changes both while in a facility and after release. To account for these changes and to proactively manage and plan reentry efforts, corrections systems should conduct regular reassessments to identify the effect of those changes and how to adjust for them. Reassessments should also be administered when a person experiences a significant life event, such as a death, birth, marriage, divorce, or job change.

Staff in jails and prisons should be trained to understand, effectively administer, and accurately interpret the assessment tool to obtain the most accurate results.

5.2 Reentry Programming for Jails and Prisons

Developing and implementing reentry programming requires facilities to allocate appropriate resources, leverage technology effectively, and meet the needs of the population served.

5.2.1 Jails and prisons should allocate resources to recidivism reduction programs.

As discussed in “Chapter 3: Alleviating the Impact of Social Problems on Public Safety,” mental health and substance use disorders are prevalent in the jail and prison population. Without case management, treatment and support programs, as well as the continuation of care upon reentry, those disorders will persist and may contribute to criminal behavior that results in recidivism. For inmates with alcohol and opioid use disorders, Food and Drug Administration-approved medications can assist with treatment, and these inmates should be screened, assessed, and started on medications prior to release and connected to community-based treatment providers for continued care post release.

304 Sarah L. Desmarais and Jay P. Singh, *Risk Assessment Instruments Validated and Implemented in Correctional Settings in the United States* (New York: Council of State Governments Justice Center, 2013), <https://csgjusticecenter.org/wp-content/uploads/2020/02/Risk-Assessment-Instruments-Validated-and-Implemented-in-Correctional-Settings-in-the-United-States.pdf>.

305 “Ohio Risk Assessment System,” Ohio Department of Rehabilitation and Corrections, accessed June 16, 2020, <https://drc.ohio.gov/oras>; and “Assessment,” Georgia Department of Corrections, accessed June 16, 2020, <http://dcor.state.ga.us/Divisions/InmateServices/RiskReduction/Assessment>.

306 “Using Risk Assessment for Safer Communities,” Public Safety Risk Assessment Clearinghouse, accessed June 18, 2020, <https://psrac.bja.ojp.gov>.

Education and employment are two other programming areas that are vital to successful reentry and, therefore, key to programming in jails and prisons.

The Bureau of Justice Statistics reports that 65 percent of state prisoners do not have a high school degree.³⁰⁷ Another report found that high school dropouts are 47 more times likely to be incarcerated than peers with a four-year degree.³⁰⁸

Programs addressing the family unit, such as parenthood/fatherhood programming, have also been a focus for many institutions, as the family unit is key to the support of individuals upon reentry and key to breaking the cycle of criminal behavior in future generations.

See Chapter 6: Criminal Justice System Partners and Chapter 3: Alleviating the Impact of Social Problems on Public Safety.

Many recidivism reduction programs and other related productive activities have been shown not only to lower recidivism rates, but also to decrease behavior infractions while in jail or prison. Therefore, it is in the best interest of corrections institutions to allocate resources to and increase inmate participation in evidence-based programs and activities. Various federal resources exist that catalogue such programs and activities, and they can serve as a resource for jails and prisons to identify programs to implement in their facilities including the Federal Interagency Reentry Council, the Department of Justice's Crime Solutions.gov, the Bureau of Prisons list of Evidence-based Recidivism Reduction Programs and Productive Activities, and the Substance Abuse and Mental Health Services Administration's Evidence-Based Practices Resource Center.³⁰⁹

5.2.2 Jails and prisons should develop incentives to increase participation in recidivism reduction programs, and they should also develop technology solutions to facilitate these programs. These could include tele-health and tele-therapy programs, as well as technologies that could support educational and job-related skill-building.

When populations in jails and prisons are allowed to decide whether to participate in recidivism reduction programming, the institution's ability to have a significant impact on recidivism decreases. Instead, jails and prisons should provide incentives to the population to participate in programming by developing strategies that encourage such participation (e.g., good time credits, improved housing, increased visitations, or program participation for work credits). The First Step Act seeks to improve recidivism reduction programming in the Federal Bureau of Prisons by using similar incentives. Jails and prisons may struggle with balancing using technology (e.g., internet access, cell phones, and tablets) and prioritizing security of both inmates and staff. Technology can help institutions increase their number of program offerings, which in turn reduces the amount of programming time lost due to lack of physical space, shortage of staff, or a short incarceration sentence. Jails and prisons should both maintain safety and security and improve the delivery of programs at the same time.

307 Caroline Wolf Harlow, *Education and Correctional Populations* (Washington, DC: Bureau of Justice Statistics, 2003), 1, <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=814>.

308 Caitlin Curley, "How Education Deficiency Drives Mass Incarceration," GenFKD, November 18, 2016, <http://www.genfkd.org/education-deficiency-drives-mass-incarceration>.

309 "CrimeSolutions.Gov," National Institute of Justice, accessed June 16, 2020, <https://www.crimesolutions.gov>; Federal Bureau of Prisons, *Evidence-Based Recidivism Reduction Programs and Productive Activities* (Washington, DC: Federal Bureau of Prisons, n.d.), https://www.bop.gov/inmates/fsa/docs/evidence_based_recidivism_reduction_programs.pdf; and "Evidence-Based Practices Resource Center," Substance Abuse and Mental Health Services Administration, accessed July 6, 2020, <https://www.samhsa.gov/ebp-resource-center>.

5.2.3 Jails and prisons should develop unique reentry and reintegration program offerings for specific populations, including veterans, parents, and women.

The population in jails and prisons encompasses a range of people. By addressing the needs of specific populations, prisons and jails can improve their reentry outcomes.

In his testimony before the President’s Commission on Law Enforcement, Dr. Jean Wright explained, “What is often lost in the traditional reentry models is that the men and women returning to their communities often have children. This fact requires us to reframe our concept of ‘reentry’ into a vision of ‘reintegration.’”³¹⁰ Dr. Wright reminds us that “reentry into community focuses on the requisite necessity to develop a marketable skill/vocation, etc. Whereas, reintegration into community requires we focus on more ‘quality of life’ skills to assist returning citizens to develop a more well-rounded (i.e., ‘holistic’) approach to include aspects of being that will anchor the returning citizen into community life.”³¹¹

One example of a reintegration program is the Fathers and Children Together Program (PA-FACT) in Philadelphia, Pennsylvania. As Dr. Wright explains

PA-FACT Inc. is a unique program because while it provides services and supports to children and their families in the community; it also reconnects children to their father while he is incarcerated. This unique fatherhood program is designed to heal relationships between fathers and their children. The program teaches incarcerated fathers the importance of developing positive relationships with their children through one-to-one visitation and intensive parenting classes, and also provides individual and group counseling for incarcerated fathers, for the children, and for the primary caregiver (most often, mother). PA-FACT strives to end the generational cycle of incarceration and recidivism that plagues children of incarcerated parents.³¹²

“At one time in their lives, these [veterans] took an oath to protect us. If they were willing to lay themselves on the line for us, we owe them this much.”³¹³ - Sheriff Peter J. Koutoujian, Middlesex County, Massachusetts

5.3 Transition Planning and Release

Successful reentry begins at arrest and, therefore, transition planning should begin on that first day. This could be with the risk and needs assessments which leads to appropriate programming and services while incarcerated and awaiting trial. After the trial, as an inmate approaches their release date, transition planning is essential. Transition planning is a proactive way to link people

³¹⁰ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Reentry* (April 29, 2020) (statement of H. Jean Wright, Director, Behavioral Health and Justice Related Services, Department of Behavioral Health and Intellectual Disability Services, Philadelphia, PA), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

³¹¹ Wright, *President’s Commission on Law*, April 29, 2020.

³¹² Wright, *President’s Commission on Law*, April 29, 2020.

³¹³ Middlesex Sheriff’s Office, *Housing Unit for Military Veterans (HUMV) White Paper* (Medford, MA: Middlesex Sheriff’s Office, 2019).

to the community services necessary for a successful reentry, but it does require coordination among various agencies.

“We must craft policies to ensure that Americans with criminal records have a fair shot at a decent life. We must remove barriers to employment, housing, public assistance, education, and building good credit.”³¹⁴ - The Sentencing Project

The conditions that may have played a role in an individual being incarcerated in jail and prison are not likely to have changed upon release. Unstable housing, under or unemployment, lack of an education, lack of family ties or support, or under or untreated mental health or substance use disorders will all remain if they are not addressed while a person is incarcerated and if no continuity of services exists upon release. The addition of a criminal record can have further and longer lasting effects on a person's ability to successfully reenter and not recidivate. In addition to programming and services while incarcerated, it is critical for jails and prisons to provide effective transition planning.

5.3.1 State legislatures, in collaboration with criminal justice leaders, should review, identify, and eliminate legislation and regulations that pose barriers to successful reentry.

According to the National Inventory of Collateral Consequences of Conviction, “collateral consequences are legal and regulatory restrictions that limit or prohibit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities.”³¹⁵ Each state should review its laws and regulations in collaboration with representatives from corrections, courts, and community supervision agencies. By reviewing and eliminating such laws and regulations, states can remove unnecessary barriers to successful reintegration into the community.

According to a 2019 U.S. Commission on Civil Rights report, once an individual has completed the court-imposed sentence, there are often additional consequences that result in a worsened punishment, overlaying the initial criminal conviction. While some of these consequences effectuate public safety, many are either not connected to the crime that led to the conviction or have no bearing on public safety. Further, defendants, defense and prosecuting attorneys, and judges—and even the general public—often do not know the reach of these consequences. Such a lack of knowledge or awareness undoes any possible deterrent effect that might have resulted from connecting these consequences to criminal convictions.³¹⁶

The 2019 Commission report recommends, “Collateral consequences should be tailored to serve public safety. Policymakers should avoid punitive mandatory consequences that do not serve public safety, bear no rational relationship to the offense committed, and impede people convicted of crimes from safely reentering and becoming contributing members of society. Jurisdictions should periodically review the consequences imposed by law or regulation to

314 Half in Ten, The Sentencing Project, and Community Legal Services, *Americans with Criminal Records* (Washington, DC: Half in Ten, 2015), <https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

315 “What are Collateral Consequences?,” Council of State Governments Justice Center, accessed July 6, 2020, <https://niccc.csgjusticecenter.org/about/>.

316 U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities, Briefing Before the United States Commission on Civil Rights* (Washington, DC: U.S. Commission on Civil Rights, 2019), <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>.

evaluate whether they are necessary to protect public safety and if they are related to the underlying offenses.”³¹⁷

Changes to legislation can improve an individual’s chances for reentering the community successfully. Organizations like the National Center for State Courts extend assistance to help states restructure this type of legislation. In addition, the Uniform Law Commission offers a Uniform Collateral Consequences of Conviction Law for states to consider.³¹⁸

5.3.2 States or counties should establish reentry councils—in collaboration with service agencies, nonprofit organizations, and private businesses—to enhance the development, coordination, and success of jail and prison reentry initiatives.

Reentry councils are a collaboration of a variety of community entities that all play a role in the successful reentry of incarcerated individuals, including housing, employment, education, and medical service providers; departments of motor vehicles; nonprofit organizations, such as faith-based groups; departments of corrections, jails, law enforcement, sheriffs, prosecutors, and community supervision agencies; legislators; and the courts. These councils should promote coordination across these entities and the importance of reducing recidivism and victimization. They should also identify gaps in services and address barriers to reentry. Such councils currently operate locally and statewide across the country.

One such barrier can be the financial burden created by court fees and fines. People returning to their communities from jails and prisons are often unable to pay fines because it is often difficult for them to obtain employment that provides a living wage. An estimated 60–75 percent of persons previously incarcerated are still unemployed a year after release.³¹⁹ As they continue to seek meaningful employment, fees and fines unjustly burden people with debt.³²⁰

Tim Johnson, Founder and President of the Orlando Serve Foundation, whose foundation’s mission is “Connecting communities and resources to provide systems of care to individuals and families in need in Central Florida,” provides innovative ways to help keep burdens such as financial debt and suspended licenses from becoming obstacles to reentry. One of the foundation’s innovative ways to support those returning to their communities is through the “He Got Up!” campaign, which hosts events in the community. At the events, Mr. Johnson states,

guests register to determine their eligibility to restore their suspended driver’s licenses due to unpaid court costs, fees or fines. If eligible, they sign up for a reduced-cost payment plan that removes them from collections. The plan considers their ability to pay and offers lower minimum payments than typical. Depending on the county, they will see the Clerk at the event or at the Courthouse the following week. Alternatively, in Orange County, guests can sign up to perform community service hours in lieu of payment. In this case, they register at the event with the Department of Corrections and then see a judge in the weeks following to have the community service ordered. Upon sign-up for either plan, the

317 U.S. Commission on Civil Rights, *Collateral Consequences*.

318 “Collateral Consequences of Conviction Act,” Uniform Law Commission, accessed July 9, 2020, <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=74d9914f-f15e-49aa-a5b0-f15f6e5f258a&tab=librarydocuments&LibraryFolderKey=&DefaultView=>.

319 Jared Meyer, “States Need to Give Ex-Cons a Fresh Start,” *Forbes*, January 21, 2018, <https://www.forbes.com/sites/jaredmeyer/2018/01/21/states-need-to-give-ex-cons-a-fresh-start/#7b51cbcd2fad>.

320 Mathew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines* (New York: The Brennan Center, 2019), <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.

suspension from the guest's driver's license is removed, and if they honor their payment plan or community service agreement, their license remains valid.³²¹

5.3.3 The Departments of Justice, Housing and Urban Development, and Agriculture should develop housing strategies for people who were formerly incarcerated that increase positive reentry outcomes.

According to the Prison Policy Initiative, “formerly incarcerated people are almost 10 times more likely to be homeless than the general public.”³²² Affordable housing and homelessness is a critical social problem for the larger community, which means people formerly incarcerated compete with the larger community for scarce resources. Currently, few jails and prisons have implemented housing strategies or programs, and that leads to negative reentry outcomes. Lack of housing can cause instability, which may lead to homelessness. Even if issues of substance use, mental health disorders, education, or employment are addressed, the lack of stable housing can be disruptive to reentry efforts.

In his testimony before the Commission, Secretary John Wetzel from the Pennsylvania Department of Corrections suggested that obtaining post release housing is the number one challenge upon release. In Pennsylvania, Secretary Wetzel testified they have found success with performance contracts that pay halfway houses based on recidivism rates. He states, “Lower recidivism rates result in a bonus, one standard deviation of the average is normal pay, and an increase in two successive six month periods results in a contract loss. Incentives and accountability work when partnering with the private sector.”³²³

| See Chapter 3: Alleviating the Impact of Social Problems on Public Safety.

5.4 Community Reintegration and Supervision

Because a majority of people who were incarcerated will be placed on some level of community supervision after serving time in jail or prison, community supervision agencies become an integral part of the criminal justice system at the point of reentry, and the community supervision agency must maintain public safety and ensure that those who were incarcerated are monitored and comply with conditions of release.

The Bureau of Justice Statistics reports that at least 95 percent of all state prisoners will be released from prison at some point and that nearly 80 percent will be released onto parole supervision.³²⁴ By the end of 2016, more than 4.5 million people—1 in 55 adults—were on some type of community supervision.³²⁵ At the same time, 2.3 million people were incarcerated in jail or

321 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reentry* (April 29, 2020) (statement of Tim Johnson, Founder and President, Orlando Serve Foundation), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

322 Lucius Couloute, “Nowhere to Go: Homelessness Among Formerly Incarcerated People,” Prison Policy Initiative, August 2018, <https://www.prisonpolicy.org/reports/housing.html>.

323 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reentry* (April 28, 2020) (statement of John E. Wetzel, Secretary of Corrections, Pennsylvania Department of Corrections), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

324 Bureau of Justice Statistics, “Reentry Trends in the U.S.”

325 Danielle Kaeble, *Probation and Parole in the United States, 2016* (Washington, DC: Bureau of Justice Statistics, 2018), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6226>.

state or federal prison, meaning two-thirds of people under correctional control in 2016 were in the community.³²⁶

The large number of people on community supervision and consequent high caseloads have made it difficult for supervision agencies to implement tailored recidivism-reduction strategies. In some states, community supervision officers are responsible for monitoring and managing the reentry needs of more than 100 people on supervision. Additionally, many people on community supervision are returned to jails and prisons for noncriminal violations. A quarter of all state admissions in 2017 were for breaking minor supervision rules known as technical violations—such as opening a credit account or missing an appointment.³²⁷

Finally, it is important that jails and prisons share case management information with community supervision so that it can be used to develop the supervision case plan. The jail or prison case management file provides the community supervision officer with information about the individual's adjustments, changes, and needs while that person was incarcerated. This collaboration helps build the roadmap for what the person needs upon reentry. Jails and prisons should also ensure people have primary identification documents and eligible benefits at least 60 days prior to release. Government benefits often require people to have a birth certificate, driver's license, and a social security card to obtain public benefits and employment; a formal process to obtain peoples' identification documents, assess the types of benefits or services they are eligible for, and complete applications to secure those benefits can greatly smooth the transition back into the community.

John Koufos, Right on Crime National Director of Reentry Initiatives, says, "every inmate needs to leave incarceration with a DMV—a Department of Motor Vehicles—non-driver identification card or a driver's license, not a prison ID."³²⁸

5.4.1 Community supervision agencies should adopt the case management model and initiate plans that are consistent with the plans developed by jails and prisons, tailored appropriately, and include engagement strategies to reduce recidivism.

Parolees who receive consistent and properly sequenced services throughout their time in the criminal justice system are significantly less likely to be rearrested or reconvicted for new crimes within 18 months of release.³²⁹ Recidivists are most likely to commit their new offense within two years of release.³³⁰ Therefore, community supervision agencies should increase officers' efforts, time, and resources during this critical time frame. Because they serve as both a law enforcement officer and social worker, supervision officers are uniquely situated to engage the reentering offender at the earliest possible stage, facilitate support and opportunity, and hold the parolee accountable. To ensure success of the system, the supervision officer must be properly and continually trained to identify the programs of proven effectiveness in the community for a

326 Danielle Kaeble and Mary Cowhig, *Correctional Populations in the United States, 2016* (Washington, DC: Bureau of Justice Statistics, 2018), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6226>.

327 "The Confined and Costly: How Supervision Violations are Filling Prisons and Burdening Budgets," Council of State Governments Justice Center, June 18, 2019, <https://csgjusticecenter.org/publications/confined-costly/>.

328 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reentry* (April 23, 2020) (statement of John Koufos, National Director of Reentry Initiatives, Right on Crime), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

329 Michael Ostermann and Jordan M. Hyatt, "When Frontloading Backfires: Exploring the Impact of Outsourcing Correctional Interventions on Mechanisms of Social Control," *Law & Social Inquiry* 43, no. 4 (2018), <https://doi.org/10.1111/lisi.12300>.

330 Bill Keller, "Seven Things to Know About Repeat Offenders," *The Marshall Project*, March 10, 2016, <https://www.themarshallproject.org/2016/03/09/seven-things-to-know-about-repeat-offenders>.

reentering individual. Positive social and community interactions help improve reentry outcomes. At the Iowa Department of Community Supervision, for example, officers are trained to mitigate a person's risk for recidivism by using case management plans that are designed to maximize community interactions, provide needed support services, and decrease the probability a person will commit a new crime.³³¹

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³³¹ Sally Kreamer, Director, 5th Judicial District, Iowa Department of Correctional Services, Reentry Working Group virtual site visit of the Judicial District Community Supervision, May 13, 2020.

CHAPTER 6: CRIMINAL JUSTICE SYSTEM PARTNERS

Overview

No element of our criminal justice system, historically and currently, has been as successful at protecting the public as law enforcement. But effective law enforcement necessarily depends on the success of all aspects of the criminal justice system and it is problematic when the other elements of the system fail to help protect public safety. When prosecutors fail to pursue just punishments for criminal offenders, or when courts fail to punish offenders adequately for their crimes, the work of law enforcement is undermined and public safety suffers.

Law enforcement initiates the legal process through investigations and arrests, but it operates predominantly in the earliest phase of a sequential legal process that must be borne out by the rest of the criminal justice system in order to prevent crime and to defend victims. Every part of that system—prosecutors, defense attorneys, courts, and correctional personnel—must carry out its dedicated function in order to effectuate the rule of law.

The federal government establishes and develops national policies and initiatives that help standardize and unify the administration of justice, and it is responsible for ensuring that an individual's rights are not violated by criminal justice system personnel. Further, federal grant funding can play a role in shaping criminal justice practices at the state and local level while also tracking key outcomes using evidence-based practices and evaluations.

In studying how other aspects of the criminal justice system can best work to achieve justice and assist victims, the Commission identified issues at the intersection of criminal justice components, which include promising programs and practices that should be supported and further developed to increase efficiency. Topics, all interrelated, are arranged in sequential order based on the component most responsible for or affected by it.

6.1 Law Enforcement

While law enforcement personnel frequently interact with many other criminal justice components, peace officers often collaborate with prosecutors, sharing investigative information as prosecutorial decisions are assessed and cases move forward. The relationship between law enforcement and prosecutors is also valuable in assuring that law enforcement practices and procedures meet constitutional standards.

- 6.1.1 Local prosecutor's offices, where practical, should arrange for 24/7 access to prosecutors who can provide law enforcement officers real-time assistance to address issues relating to search and seizure and serving warrants. In rural areas, regional partnerships could be a practical solution to overcome personnel shortages and geographic limitations.

Sometimes officers need access to real-time information when making time-sensitive decisions on the legality and constitutionality of executing a search, seizure, warrant, or arrest. Quite often, these situations occur outside of normal business hours. While some prosecutors' offices assign personnel to be on-call for these circumstances, many do not.³³² This is particularly true in smaller and rural jurisdictions.

On-call prosecutor services—especially during evenings, weekends, and holidays—would offer guidance and reassurance for officers that their investigative actions are prudent and lawful, which would decrease the likelihood that law enforcement actions will be overturned later in the criminal justice process. Such a system would also provide timely assistance and coordination for investigators working complex investigations to build evidence for a viable criminal case.

Neighboring jurisdictions with limited resources should consider forming regional partnerships. State prosecutor or district attorney associations may help coordinate the development of regional on-call services.

6.1.2 States should consider permitting discretionary summonses by law enforcement officers.

Law enforcement officers have considerable discretion when deciding whether to make an arrest based on various factors. Historically, the authority to issue a summons—ordering the subject to appear in court on a certain date or upon subsequent notice—has been limited to judges. Now, in a growing number of states, officers can use their discretion to issue a summons in lieu of making an arrest. This process is similar to issuing a traffic summons but applies to low-level offenses, typically misdemeanors. This process provides a third option beyond doing nothing or making an arrest, and it can help the officer prioritize more urgent matters, thereby relieving potential burdens on the system.

Properly implemented, a discretionary summons for misdemeanors and low-level offenses strengthens rather than diminishes the authority of law enforcement. Officers and deputies would still retain the discretion to make an arrest instead of issuing a summons. More importantly, the strict dichotomy of “arrest or nothing” has led to a disregard of low-level crimes to the detriment of the rule of law. The choice between enforcing all laws and undermining the legitimacy of law enforcement should not be binary.

In Virginia, officers may exercise discretion in issuing a summons. However, Virginia Code § 46.2-940 (2020) requires an officer to make an arrest when the person is believed to have committed a felony. In addition, the law stipulates that an officer should make an arrest for a misdemeanor if the officer believes the suspect is “likely to disregard a summons or refuses to give a written promise to appear under the provisions.”³³³

While the use of discretionary summonses can have strategic benefits generally, in response to COVID-19, some law enforcement agencies have opted to limit arrests either by taking advantage of current laws or by issuing new administrative edicts. Law enforcement agencies in Nevada County, California, have increased the frequency of issuing summonses.³³⁴ In March 2020, law enforcement officers in Tucson, Arizona, used “cite and release” for nonviolent crimes as frequently

332 Adam M. Gershowitz, *Justice on the Line: Prosecutorial Screening Before Arrest* (Williamsburg, VA: William & Mary Law School Scholarship Repository, 2019), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2965&context=facpubs>.

333 Va. Code Ann. § 46.2-940 (2020), <https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-940/>.

334 Liz Keller, “Cite and Release, Not Jail, for Some over COVID-19 Concerns,” *The Union* (Nevada County, CA), March 18, 2020, <https://www.theunion.com/news/cite-and-release-not-jail-for-some-over-covid-19-concerns/>.

as possible to reduce the spread of COVID-19, and they only served misdemeanor warrants that were necessary for public safety reasons (e.g., domestic abuse).³³⁵

6.2 Prosecution and Defense

Under the adversarial criminal justice system, a prosecutor's primary responsibility is charging and prosecuting a suspect. The prosecutor should

seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.³³⁶

In contrast, the role of the criminal defense lawyer is to investigate the case on behalf of the defendant, provide guidance to the defendant on how to plead, and, if necessary, represent the defendant at trial. Like prosecutors, they also have a larger role. According to American Bar Association standards, this includes, "a duty to be open to possible negotiated dispositions of the matter, including the possible benefits and disadvantages of cooperating with the prosecution."³³⁷

While these formal roles depict how opposing counsel are intended to operate, prosecutors and defense attorneys often find themselves in situations where they cooperate with each other, including in cases where they consider a plea bargain and when deciding to refer a defendant to treatment courts rather than traditional criminal courts.

Felony thresholds refer to the classification of theft crimes as either felonies or misdemeanors based on the monetary value of the stolen good(s). Felony thresholds in 2018 ranged from a low of \$200 in Massachusetts to a high of \$2,250 in Texas and Wisconsin; some states have not updated their felony thresholds since 2000 or earlier.³³⁸ The failure of state legislatures to regularly update the felony theft threshold results in a large pool of offenders facing their first felony charge. The lower thresholds also put a strain on limited prosecutorial resources and contribute to a sense of unfairness and illegitimacy in the criminal justice system. Felony thresholds adjusted for inflation using the Consumer Price Index ensures that theft classifications and sanctions are commensurate with the real value of the stolen property. This approach also reduces the number of individuals who, while still being held accountable, are not confronting a felony charge and the associated collateral and myriad consequences of a felony conviction.

Regarding the intersection of criminal justice agencies, the Commission focused on a few key concerns: the need for increased transparency in the plea bargaining process, the collaboration of federal and state prosecutors relevant to particularly serious and violent offenders, and the

335 Stephanie Casanova, "Tucson Officers Citing Minor Offenders Instead of Taking Them to Jail to Reduce Coronavirus Risk," Arizona Daily Star, March 27, 2020, https://tucson.com/news/local/tucson-officers-citing-minor-offenders-instead-of-taking-them-to-jail-to-reduce-coronavirus-risk/article_7c4ddcdf-b552-5246-8bee-ff294068d461.html.

336 "Criminal Justice Standards for the Prosecution Function," American Bar Association, 2017, https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/.

337 "Criminal Justice Standards for the Defense Function," American Bar Association, 2017, https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/.

338 Jake Horowitz and Monica Fuhrmann, "States Can Safely Raise Their Felony Theft Thresholds: Research Shows Outdated Statutes Lead to Serious Charges for Lower-Level Offenses," Pew Charitable Trusts, May 22, 2018, <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/05/22/states-can-safely-raise-their-felony-theft-thresholds-research-shows>.

role of the prosecutor in addressing police use-of-force incidents that result in death or serious bodily injury.

6.2.1 States should establish procedures that foster transparency, victim input, and judicial oversight over guilty plea resolutions to ensure plea agreements serve justice.

The Constitution guarantees certain rights to criminal defendants, including the rights to due process, a public trial without unnecessary delay, counsel, an impartial jury, knowing the nature of the charges and evidence against them, and confronting witnesses. In many jurisdictions, criminal court dockets are crowded, and prosecutors, defense counsel, and judges may feel pressured to move cases quickly through the system. Some experts estimate that approximately 90 to 95 percent of the criminal cases in state and federal court are resolved through plea agreements, which have become a necessary function in our criminal justice system.³³⁹ However, putting key elements of a plea bargain on the record not only increases transparency, but also allows for appropriate judicial review.³⁴⁰

Additionally, more transparency and accountability with the practice of plea bargaining could boost confidence in the criminal justice system, especially among those directly involved in the case. When defendants plea to charges and receive sentences for crimes that are far less serious than represented in the indictment, law enforcement officers and victims may become demoralized, and police officers and deputy sheriffs may conclude that their efforts at securing a lawful arrest do not matter, eventually eroding the incentive to make future arrests.³⁴¹

Despite the necessity to settle some cases through plea bargaining, stakeholders have expressed concerns, which has led to the federal government and several states establishing rules or enacting legislation to encourage a greater level of accountability with plea bargains.

Plea negotiations are akin to settlement discussions and should remain confidential. The bargaining process itself, and the respective give-and-take between prosecutor and defense attorney, should remain insulated from interference and disclosure. However, this does not mean that prosecutors should stop communicating with victims or law enforcement officers regarding formal plea offers, or to notify or consult them about a potential disposition of a case. It also does not intend to eliminate a judge's oversight role over a criminal judgment simply because it is entered by way of a plea agreement.

Federal Rules of Criminal Procedure Rule 11 requires that "the court must address the defendant personally in open court" and stipulates procedural requirements, including a determination that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).³⁴² In Illinois, the state supreme court's rules on waivers and pleas specify

339 Linda Devers, *Plea and Charge Bargaining: Research Summary* (Washington, DC: Bureau of Justice Assistance, 2011), 1, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf>.

340 Joel Mallord, "Putting Plea Bargaining on the Record," *University of Pennsylvania Law Review* 162, no. 3 (2014), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4582&context=penn_law_review; and Robert C. Underwood, "Let's Put Plea Discussions and Agreements on Record," *Loyola University Chicago Law Journal* 1, no. 1 (1970), <https://pdfs.semanticscholar.org/7e52/1097fefdc0500bebcd2fec6584549b8f14a3.pdf>.

341 Jonathan Abel, "Cops and Pleas: Police Officers' Influence on Plea Bargaining," *Yale Law Journal* 126, no. 6 (2016), <https://www.yalelawjournal.org/essay/cops-and-pleas-police-officers-influence-on-plea-bargaining>.

342 Pleas, Fed. R. Crim. P. 11(b)(1) (2014), https://www.uscourts.gov/sites/default/files/federal_rules/FRCrP12.1.2014.pdf; and Legal Information Institute, "Federal Rules of Criminal Procedure, Rule 11. Pleas," Cornell Law School, accessed June 5, 2020, https://www.law.cornell.edu/rules/frcrmp/rule_11.

numerous conditions, including articulating the conditions in which a judge may participate in plea negotiations, exercise oversight, and approve the plea bargain.³⁴³

Further, legislation from Maine states, “Whenever practicable, before submitting a negotiated plea to the court, the attorney for the State shall make a good faith effort to inform the relevant law enforcement officers of the details of the plea agreement reached in any prosecution where the defendant was originally charged with murder, a Class A, B or C crime [as well as certain classes of gun crimes].”³⁴⁴ Likewise, many states have enacted victims’ rights laws to assure their involvement at various phases of the criminal justice proceedings—particularly with plea agreements.³⁴⁵

6.2.2 United States Attorneys’ offices should develop regular systems of collaboration with state prosecutors for serious crimes that are eligible for prosecution in either the state or federal jurisdiction.

Some crimes violate both state and federal law, empowering either or both levels of government to bring criminal charges. Once a federal nexus is established for a serious offense, the state prosecutor and the U.S. attorney’s office should discuss the optimal prosecution strategies. Sometimes these partnerships are called “adoptive case mechanisms.”

By continually collaborating on investigations, federal and local law enforcement and prosecutors can offer input and ensure procedures and evidence-gathering practices receive priority attention. Further, state prosecutors should consider the benefits of adopting vertical prosecution strategies (i.e., the same prosecutor stays with the case from the investigative stages through to final prosecution) rather than horizontal prosecution (i.e., different prosecutors are assigned for each stage). United States Attorneys’ offices typically follow vertical prosecution strategies.

The decision whether to prosecute a case in state or federal court depends on a number of factors. Often, a deciding factor is the severity of sentencing in the respective courts for the applicable charge(s). Other factors may include the resources available or policies of the local state attorney’s office. For serious offenses—particularly those involving gangs, habitual violent offenders, drugs, or human trafficking—the attorneys would obviously consider public safety and maximum sanctions.

Sentences in the federal system are typically longer than those set by state courts, and cases are often pursued through federal courts to maximize the sanction and, while incarcerated in a federal facility, remove the ability of the offender to continue contact with criminal associates. Many Department of Justice-supported initiatives encourage ongoing collaboration between United States Attorney’s offices and state prosecutors, including the Bureau of Alcohol, Tobacco, Firearms and Explosives’ Crime Gun Intelligence Centers, Human Trafficking Task Forces, Project Guardian, and Project Safe Neighborhoods.³⁴⁶ The Prosecutor-to-Prosecutor Program (P3), which the Department of Justice has identified as a “best practice” under Project Safe Neighborhoods, was launched in the Northern District of Alabama by former United States Attorney Jay E. Town.³⁴⁷

343 Waivers and Pleas, Illinois Supreme Court art. IV pt. A (1984), http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_IV/ArtIV.htm.

344 Negotiated Pleas, Maine Rev. Stat. Ann. tit. 15. § 812 (2019), <https://codes.findlaw.com/me/title-15-court-procedure-criminal/me-rev-st-tit-15-sect-812.html>.

345 Office for Victims of Crime, *Victim Input Into Plea Agreements* (Washington, DC: Office for Victims of Crime, 2002), https://www.ncjrs.gov/ovc_archives/bulletins/legalservices/bulletin7/ncj189188.pdf.

346 “Fact Sheet – Crime Gun Intelligence Centers (CGIC),” Bureau of Alcohol, Tobacco, Firearms and Explosives, May 2018, <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-crime-gun-intelligence-centers-cgic>; “Project Guardian,” U.S. Department of Justice, December 13, 2019, <https://www.justice.gov/projectguardian>; and “Project Safe Neighborhoods,” U.S. Department of Justice, accessed June 5, 2020, <https://www.justice.gov/psn>.

347 United States Attorney’s Office, Northern District of Alabama, “U.S. Attorney Presents Program to Streamline Decision on State or Federal Prosecution,” U.S. Department Justice, January 18, 2018, <https://www.justice.gov/usao-ndal/pr/us-attorney-presents-program-streamline-decision-state-or-federal-prosecution>.

This partnership with state prosecutors offers a structured process by which these officials jointly decide the best jurisdiction for prosecution.

6.2.3 States should develop specific and special protocols for investigating and prosecuting law enforcement use-of-force incidents that result in death or serious bodily injury.

Past and present, occasions in which law enforcement officers use force that results in death or serious bodily injury have attracted enormous notoriety, attention, and concern from communities. While rare, an unjustified and unlawful shooting by a law enforcement officer constitutes, among other offenses, an extraordinary abuse of authority and jeopardizes social trust in that authority to uphold the rule of law. Both recently and in the distant past, officer-involved shootings—justified or not—have spurred substantial outrage in the community and civil unrest. This civil unrest brings a disrespect for law enforcement that all too often devolves into a disregard for the legal order itself.

Under such circumstances, an officer-involved shooting and lethal use of force demand special procedures for jurisdictions to reassure the community that it is the legal system, not the public furor against it that will deliver justice. In implementing these procedures, jurisdictions should not sacrifice justice to quell social unrest, and they should take care to preserve both impartiality and the due process owed to the law enforcement officer involved. These procedures require defined standards and full transparency, and jurisdictions should have a plan in place before such an event occurs.

Impartiality, both in appearance and in fact, is essential. It should not be presumed that a local prosecutor's office or law enforcement agency has a per se conflict of interest and cannot impartially administer an investigation and prosecution of the incident. Nevertheless, in the event of any use-of-force case that involves death or serious bodily injury, law enforcement agencies may consider transferring the investigation to an independent law enforcement entity. Prosecutors should also consider a similar transfer to an independent agency when a real or perceived conflict of interest exists between the prosecutor's office and an individual officer or agency that is the subject of an investigation. In all of these situations, the independent body should be responsible for any investigation, charging decisions, and trial activities.

| See Chapter 1: Respect for the Rule of Law and Law Enforcement.

Connecticut enacted a law in 2012 that requires the Division of Criminal Justice to investigate all police-involved deaths. It also allows the state's chief attorney to appoint a special independent prosecutor when deemed necessary.³⁴⁸ That independent prosecutor is empowered to act in lieu of the state's attorney in the county where the incident occurred.

While this example is restricted to investigations of officer-involved deaths, it may be adapted by a state and applied to any use-of-force incident involving death, serious bodily injury, or a conflict of interest.

348 Connecticut Gen. Stat. § 51-277 (2012), <https://law.justia.com/codes/connecticut/2012/title-51/chapter-886/section-51-277/>.

In sensitive, high-profile cases, an independent prosecutor is often better situated to achieve transparency and accountability. This independent prosecutor can optimize trust and integrity by establishing standardized approaches to ensure investigations are thorough and fair.

There are multiple solutions to achieve prosecutorial independence while investigating these complex, high-profile incidents. All local prosecutors should follow the laws, policies, and legal precedents of their respective states. States should also adjust their approaches to align with local considerations (e.g., municipal statutes or civilian oversight bodies). In general, reassigning the case to an independent prosecutorial entity should be discretionary rather than mandatory, and one should also consider that a reassignment may validate an inference of a conflict of interest where none existed.

Two models show how independent prosecutors handle cases that involve use of force. First, a state may establish or designate a special prosecutor's office that reviews all use-of-force cases that resulted in death or serious bodily injury. To establish a clear and consistent approach, a state should select a lead prosecutor who is qualified, objective, and independent (e.g., unaffected by political party affiliation or other biases) to build public trust. It may be challenging to establish and maintain such independence because the special prosecutor typically will serve under the supervision of the governor or state attorney general, each likely a member of a political party. States that pursue this approach should consider mitigating efforts, such as terms in office that do not align with gubernatorial terms. In addition, states should proactively identify a special prosecutor for cases involving use of force prior to requiring their services to avoid claims of favoritism, politicization, or partiality.

Second, a state may legislate, mandate, or otherwise promote the automatic transfer of cases to another prosecutor's office (i.e., a sister agency) within the state. This approach may take several forms. One form includes developing guidelines for transferring prosecution of defined cases to a neighboring jurisdiction or county prosecutor's office within the state. The other form involves having specialized independent bodies act on behalf of the local prosecutor. These bodies may be organized within the local jurisdiction or on a regional basis.

As an example, the prosecutor in Clark County, Washington, used a "transfer to another jurisdiction" approach following an officer-involved shooting.³⁴⁹ Clark County Prosecuting Attorney Tony Golik transferred the investigation to nearby Thurston County. He describes his rationale:

We need to work to avoid a situation where reviews are done by a local prosecutor and then there are calls from the community for a second review. . . . That situation can politicize these cases, and I think that's bad all around. So, my intent is to work to see a systemic change where these cases are regularly reviewed by a prosecutor outside the jurisdiction, a prosecutor's office that's well removed, or the attorney general's office, so the community can have confidence. Families who have lost someone can have confidence and involved officers can have confidence that these situations do not become politicized.³⁵⁰

Another possible solution involves the transfer of cases to a local or regional body that assumes responsibility for independent investigation and prosecution. In August 2019, the Northern District of Alabama's U.S. Attorney's Office established an Independent Shooting Review Advisory Council (ISRAC), which is available to all district attorneys in the area. Former United States Attorney Jay Town described ISRAC as "an effort between the United States Attorney's office and active and/or

349 Ken Vance, "Clark County Prosecutor Explains His Decision to Send Officer-Involved Shooting Investigation Review to Thurston County," June 19, 2020, <https://www.clarkcountytoday.com/news/clark-county-prosecutor-explains-his-decision-to-send-officer-involved-shooting-investigation-review-to-thurston-county/>.

350 Vance, "Clark County Prosecutor Explains."

retired members of law enforcement, to include prosecutors, designed to conduct an [officer-involved shooting review] at the request of a particular district attorney (or law enforcement agency).³⁵¹

While ISRAC is an advisory council rather than an investigative authority, it provides a model framework. As a standing advisory council, the ISRAC can be activated only when needed to provide a review and recommendations to the prosecuting authority.³⁵² Because of many variables, local prosecutors should have clear protocols on how they will investigate and prosecute incidents involving use of force.

Former Maricopa County (Arizona) Attorney Bill Montgomery explains that out of a growing sense of responsibility following many high-profile use-of-force incidents nationwide, prosecutors must establish “an affirmative duty to assume a leadership role in the management of critical incidents.”³⁵³ He continues, “An officer-involved shooting should be responded to in a manner that conveys confidence, trust, authority, transparency, and justice to both the police department involved in the use of deadly force and the community that the law enforcement agency serves.”³⁵⁴

The following elements are considered essential:

- Every prosecutor’s office should have a properly trained attorney to serve as a law enforcement liaison to coordinate with law enforcement agencies within the jurisdiction.
- The written protocol should establish timelines, deadlines and procedures for the delivery of a final investigation to the prosecutor’s office for a formal charging decision.
- Timely notice of that decision should be distributed to the involved agency, the involved employee(s), the victim’s representative, and the public.³⁵⁵

Having established protocols in place can bring order and predictability to chaotic and volatile situations and create a system of checks and balances.

| **See Chapter 1: Respect for the Rule of Law and Law Enforcement.**

Prosecutors’ offices should take steps to inform the public of prosecutorial standards and protocols that apply to use-of-force incidents. These standards and transfer protocols should be written in language that is easily understood and shared proactively using media and other information platforms. The National District Attorney’s Association provides general guidance, applicable to the rules of ethical conduct, regarding prosecutors’ interaction with the news media, which indicates that “information may be released by the prosecution if such release will aid the law enforcement process, promote public safety, dispel widespread concern or unrest, or promote confidence in the criminal justice system. The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose.”³⁵⁶

| **See Chapter 1: Respect for the Rule of Law and Law Enforcement.**

351 United States Attorney’s Office, Northern District of Alabama, “United States Attorney Jay E. Town Announces the Formation of the Independent Shooting Review Advisory Council,” U.S. Department of Justice, November 21, 2019. <https://www.justice.gov/usao-ndal/pr/united-states-attorney-jay-e-town-announces-formation-independent-shooting-review>.

352 United States Attorney’s Office, Northern District of Alabama, “United States Attorney Jay E. Town.”

353 Bill Montgomery, “The Time to Prepare for a Police Shooting Is Before It Happens,” *Route Fifty*, September 6, 2017, <https://www.routefifty.com/public-safety/2017/09/prepare-police-use-of-force-beforehand-protocol/140783/>.

354 Montgomery, “The Time to Prepare.”

355 Montgomery, “The Time to Prepare.”

356 National District Attorneys Association, *National Prosecution Standards* (Arlington, VA: National District Attorneys Association, updated 2009), 39, <https://ndaa.org/wp-content/uploads/NDAA-NPS-3rd-Ed.-w-Revised-Commentary.pdf>.

6.3 Courts

Under our adversarial criminal justice system, the formal function of a judge presiding over a criminal court is to adjudicate legal disputes between the prosecution and defense and carry out the administration of justice in accordance with the rule of law in a fair and impartial manner. However, the formal role of the court does not adequately represent the real-world responsibilities that judges often undertake.

For example, in drug courts, the judge largely leads the “drug court team” rather than acting as a neutral arbiter.³⁵⁷ Besides the judge, the team consists of prosecutors, defense attorneys, and treatment providers who all collaborate in the best interest of the defendant. In addition, the judge has direct and personal contact with the defendant and understands the effect substance use has on the lives of offenders, their families, the court system, and the community at large.

The Commission identified three issues centered on courts that have impacts across the entire criminal justice system: expanding and refining the use of treatment courts, improving indigent defense, and increasing and assessing the use of videoconferencing for court proceedings.

6.3.1 The Department of Justice should examine the feasibility of establishing voluntary certification programs for treatment court judges. If found feasible, the Department should support the development of judicial certification standards.

Treatment courts refer to a general class of courts that emphasize treatment as an alternative to punishment. Drug treatment courts guide defendants who have substance use disorders by leading them away from jail and into treatment with the goals to reduce drug dependence, criminal behavior, and improve the quality of life for offenders and their families.³⁵⁸ At present, there are more than 3,000 drug courts across the country spanning all 50 states with approximately half for adults and the other half for juveniles.³⁵⁹

The popularity and success of drug courts spurred the development of other treatment courts, also referred to as specialty or problem-solving courts, with the most common additional types being, veterans, mental health, and homelessness courts.

Eligibility criteria for entering a drug court program are determined by certain factors including offense type, criminal history, and substance use history. Typically, drug court programs do not allow violent offenders to participate. Early drug courts were designed to serve first-time offenders,³⁶⁰ but, over the years, they have evolved to also target serious and high-risk offenders to make more efficient use of resources.

| See Chapter 3: Alleviating the Impact of Social Problems on Public Safety.

Training is critical for any new treatment court, as it serves to distribute crucial information and help inform and improve practices. Treatment court judges should receive specific training, given their pivotal role as leaders of treatment court teams and their unique position of creating a more collaborative and proactive approach to the participants’ outcomes. However, some treatment

357 Douglas B. Marlowe and William G. Meyer, eds., *The Drug Court Judicial Benchbook* (Alexandria, VA: National Drug Court Institute, 2011), https://www.ndci.org/sites/default/files/nadcp/14146_NDCI_Benchbook_v6.pdf.

358 Emily F. Wood, Monica K. Miller, and Tatyana Kaplan, “Specialty Courts: Time for a Thorough Assessment,” *Mississippi College Law Review* 36, no. 2 (2018), <https://heinonline.org/HOL/P?h=hein.journals/miscollr36&i=254>.

359 Office of Justice Programs, *Drug Courts* (Washington, DC: Office Justice Programs, 2020), <https://www.ncjrs.gov/pdffiles1/nij/238527.pdf>.

360 W. Clinton Terry III, ed., *The Early Drug Courts: Case Studies in Judicial Innovation* (Thousand Oaks, CA: Sage Publications, 1999).

court judges may not be accessing available training options that include the role of the judge, what works, key components of drug courts, and how to manage co-occurring disorders.³⁶¹

Several states, including Illinois, Massachusetts, New Mexico, and Utah, require drug court certification.³⁶² According to the Administrative Office of Illinois Courts, under the auspices of the Illinois Supreme Court, "In order for a court to secure [problem-solving court, or PSC] certification, the court shall demonstrate compliance with the PSC Standards and a commitment to adopting evidence-based practices. Each new and existing adult PSC shall complete and submit an application for certification through the [Administrative Office of Illinois Courts]. The PSC certification process entails a review of the application detailing the court's policies, procedures, operations, and on-site review."³⁶³

Developing a certification procedure or track that treatment court judges could reinforce the important role treatment courts play.

6.3.2 The Department of Justice should evaluate the effectiveness of all types of treatment courts, including mental health, veterans, and homelessness courts.

The majority of research on problem-solving courts has focused on drug courts rather than mental health, veterans, and homelessness courts. According to the National Institute of Justice, drug courts are often successful in accomplishing their goals. For instance, graduates have lower rates of recidivism and substance use, and treatment is more cost effective than incarceration.³⁶⁴

Conversely, far less research has been conducted on other types of treatment courts; therefore, it would be ideal to identify the impacts of these other problem-solving courts, determine what elements of their treatment programs leads to success, and develop best practices and evidence-based standards.³⁶⁵

6.3.3 The Department of Justice should support the development of treatment court models or protocols for populations with co-occurring problems.

Defendants who appear in treatment courts often experience multiple types of problems (e.g., substance use disorders, mental health disorders, and homelessness). While some treatment court standards and guidance address this reality, additional protocols, best practices, and research addressing co-occurring disorders would benefit the treatment court practitioners and participants.

361 Carolyn Hardin, Chief of Training and Research, National Association of Drug Court Professionals, email communication with John Markovic, Federal Program Manager, Criminal Justice System Personnel Intersection Working Group, April 21, 2020.

362 Michael J. Tardy, *Problem-Solving Courts Certification Process and Application* (Springfield, IL: Administrative Office of the Illinois Courts, updated 2019), https://courts.illinois.gov/Probation/Problem-Solving_Courts/PSC_Certification.pdf; *Adult Drug Court Manual 2015 A Guide to Starting and Operating Adult Drug Courts in Massachusetts* (Boston: Executive Office of the Trial Court, 2015), <https://www.macoe.org/sites/macoe.org/files/files/Adult%20Drug%20Court%20Manual.pdf>; "Problem Solving Courts," New Mexico Courts, accessed June 5, 2020, <https://pscourts.nmcourts.gov/nm-drug-court-certification.aspx>; and "Utah Judicial Council Adult Drug Court Certification Checklist Revised," Utah Judicial Council, last modified December 16, 2019, https://www.utcourts.gov/psc/docs/Utah_Adult_Drug_Court_Certification_Checklist.pdf.

363 Tardy, *Problem-Solving Courts Certification*.

364 "Adult Drug Court Research to Practice (R2P) Initiative," National Institute of Justice, April 1, 2019, <https://nij.ojp.gov/topics/articles/adult-drug-court-research-practice-r2p-initiative>.

365 "The Efficacy of Drug Courts," Evidence-Based Professionals Society, accessed June 15, 2020, <https://www.ebpsociety.org/blog/education/271-efficacy-drug-courts>.

The underlying problems addressed within different treatment courts are often co-occurring.³⁶⁶ A veteran arrested and eligible for diversion may have a substance use disorder, experience mental health issues, and be homeless. Assuming there are multiple treatment court options in the jurisdiction, the defendant should be referred to the treatment court that best suits their needs.

6.3.4 The Department of Justice should provide funding to examine the cost, efficiency, and effectiveness of various forms of indigent defense. This research should consider factors that vary at the local level, such as population density or volume of criminal caseload.

The Sixth Amendment establishes the right to counsel in federal criminal prosecution. Through a series of landmark decisions by the U.S. Supreme Court, notably *Gideon v. Wainwright*, 372 U.S. 335 (1968), the right to counsel has been extended to all criminal prosecutions that carry a sentence of imprisonment.³⁶⁷

Under the federal system, there are three basic forms of indigent defense:

- public defender organizations, which are federal entities whose staff are federal employees
- community defender organizations, which are nonprofit defense counsel organizations incorporated under state laws; these attorneys operate in federal districts through federal grants³⁶⁸
- panel attorneys, who are private lawyers paid at an hourly rate to serve as indigent defense for federal defendants³⁶⁹

Within state and local courts, three general forms of indigent defense parallel the operations at the federal level: public defender programs, assigned counsel, and contract attorneys. Public defender programs are public defenders that are organized and paid by the state. Assigned counsel (i.e., court-appointed attorneys) are private attorneys who may work for a set fee per case or at an hourly rate. Contract attorneys provide indigent defense through contracts with one or more private attorneys or law firms that operate for profit.³⁷⁰

A 2016 report by the Bureau of Justice Statistics found that approximately 66 percent of felony defendants in federal court and 82 percent of felony defendants in large state courts were represented by indigent defense lawyers.³⁷¹ The different forms of indigent defense systems could be strengthened and adapted to local needs with appropriate research.

366 Gerald Goldstein et al., "Comorbidity between Psychiatric and General Medical Disorders in Homeless Veterans," *Psychiatric Quarterly* 80, no. 4 (2009), <https://dx.doi.org/10.1007%2Fs11126-009-9106-6>; James P. LePage et al., "The Effects of Homelessness on Veterans' Health Care Service Use: An Evaluation of Independence from Comorbidities," *Public Health* 128, no. 11 (2014), <https://doi.org/10.1016/j.puhe.2014.07.004>; Jane Topolovec-Vranic et al., "The High Burden of Traumatic Brain Injury and Comorbidities Amongst Homeless Adults With Mental Illness," *Journal of Psychiatric Research* 87 (2017), <https://doi.org/10.1016/j.jpsychires.2016.12.004>; and Nahama Broner, Randy Borum, and Kristen Gawley, "Criminal Justice Diversion of Individuals with Co-Occurring Mental Illness and Substance Abuse Disorders: An Overview," in *Serving Mentally Ill Offenders: Challenges & Opportunities for Mental Health Professionals*, eds. Gerald Landsberg, Marjorie Rock, and Lawrence K.W. Berg (New York: Springer Publishing, 2002).

367 *Gideon v. Wainwright*, 372 U.S. 335 (1968). Other landmark decisions include *Argersinger v. Hamlin*, 407 U.S. 25 (1972), in which the Supreme Court extended *Gideon v. Wainwright* to include lesser offenses that carried a possible sentence of incarceration, and *In re Gault*, 387 U.S. 1 (1967), which extended the right to counsel to include all juveniles involved in delinquency proceedings that face possible incarceration.

368 Criminal Justice Act, 18 U.S.C. § 3006A (1986), <https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partII-chap201-sec3006A>.

369 "Chapter 2: Appointment and Payment of Counsel," in *Guide to Judiciary Policy, Vol. 7: Defender Services, Part A: Guidelines for Administering the CJA and Related Statutes*, (Washington, DC: U.S. Courts, 2020), <https://www.uscourts.gov/sites/default/files/vol07a-ch02.pdf>.

370 Caroline Wolf Harlow, *Defense Counsel in Criminal Cases* (Washington, DC: Bureau of Justice Statistics, 2000), <https://www.bjs.gov/content/pub/pdf/dccc.pdf>.

371 Suzanne M. Strong, *State-Administered Indigent Defense Systems, 2013* (Washington, DC: Bureau of Justice Statistics, revised 2017), <https://www.bjs.gov/content/pub/pdf/saids13.pdf>.

Tony Fabelo, Senior Fellow for Justice Policy at the Meadows Mental Health Policy Institute of Texas, suggests,

A significant problem facing policymakers is the lack of comprehensive research to guide public defense policy and reform. Advocates for improving public defense services debate issues regarding the best way to deliver quality public defense services, with a strong bias in favor of enhancing public defender offices. As expected, advocates favor spending more money rather than less on these services. For policymakers, however, a basic obstacle to promoting reform is the lack of systematic research to guide policy development.³⁷²

Given the lack of research and the challenges that states and localities face while attempting to improve their indigent defense services, the Commission believes additional research is needed nationally, and that states and localities should be supported in their assessments of what works.

Research should be conducted to fully understand the types of indigent defense services, policy, and practice. The best delivery methods may differ in rural and urban jurisdictions depending on the volume and types of criminal cases. Because the demands and needs vary greatly, research should be conducted to identify factors that affect the cost, efficiency, and effectiveness of indigent defense delivery at the local level.

6.3.5 The Department of Justice should provide funding to states and localities to determine if jurisdictions that have adopted a holistic defense approach have realized improved outcomes and efficiencies.

One innovation in indigent defense that emerged in the 1990s is the adoption of a holistic model, which stresses extending services beyond only providing representation for criminal charges.³⁷³ A core feature of the model is that public defenders collaborate with social workers to provide referrals and address underlying factors, such as poverty, mental illness, unemployment, homelessness, and substance use disorder, that may contribute to the defendant's criminal behavior and may keep them cycling through the criminal justice system. This approach differs fundamentally from the traditional model of public defense.³⁷⁴

The Knox County Public Defender's Community Law Office in Tennessee is an example of a holistic defense approach that began in 2013. Mark Stephens, the former elected public defender for Knox County, notes,

Those folks generally don't wake up one morning and decide to go commit a crime. It's people living in chaos and dysfunction, however, [who] can get themselves in a place where engaging in criminal activity seems . . . a viable alternative to their circumstances. Living in chaos and dysfunction is exhausting. I've also learned that a client's first arrest is an opportunity. When people are arrested for the first time they often experience that moment where they recognize they really need to make a change in their life. Their behavior has landed them in jail. And most are ashamed and embarrassed as to what has happened. At that moment many clients are contemplating behavior modification in their

372 Geoffrey Burkhart, Executive Director, Texas Indigent Defense Commission, email communication with Criminal Justice System Personnel Intersection Working Group, March 27, 2020.

373 Robin Steinberg, "Heeding Gideon's Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm," *Washington and Lee Law Review* 70, no. 2 (2013), https://heinonline.org/HOL/Page?handle=hein.journals/waslee70&div=24&g_sent=1&casa_token=&collection=journals.

374 Sarah Buchanan and Roger M. Nooe, "Defining Social Work Within Holistic Public Defense: Challenges and Implications for Practice," *Social Work* 62, no. 4 (2017), <https://doi.org/10.1093/sw/swx032>.

life. However, most don't know what to do or how to bring about change. And that's where the public defender can come in.³⁷⁵

Limited research regarding the effectiveness and efficiency of the approach includes a rigorous empirical evaluation undertaken at the Bronx Criminal Court. The study involved comparing the outcomes between two different indigent defense providers: the Bronx Defenders (a holistic defense provider) and the Legal Aid Society (a traditional approach). Using administrative data and analyzing court outcomes for more than half a million criminal court cases, several encouraging findings resulted. Based on 10 years of data, researchers found the holistic defense approach reduced the likelihood of a custodial sentence by 16 percent and sentence length by 24 percent without affecting conviction rates.³⁷⁶

6.3.6 Criminal justice agencies should develop the capacity to engage in videoconferencing for selected court proceedings, including arraignments. Criminal justice agencies should purchase video technology and update the infrastructure necessary to support virtual courtrooms.

The COVID-19 pandemic hastened the adoption of videoconferencing in many federal, state, and local courts, resulting in questions about how a jurisdiction can best leverage videoconferencing. As stay-at-home and social-distancing orders became common, videoconferencing in courts escalated.

On March 19, 2020, Ohio Supreme Court Chief Justice Maureen O'Connor announced plans to release \$4 million in emergency grant funding across the state to allow courts to purchase videoconferencing technology for arraignments and other needs.³⁷⁷ On March 30, 2020, the U.S. Courts website approved the use of video and teleconferencing for certain criminal proceedings.³⁷⁸

In November 2018, the National Institute of Justice convened a panel of subject matter experts for a Court Appearances through Telepresence Advisory Workshop. The final report identified numerous advantages of videoconferencing in criminal proceedings, including increased safety for court personnel, reductions in costs, and enhanced court efficiency.³⁷⁹ Further, subject matter experts noted that teleconferencing reduced the need to secure and transport defendants to court and time spent in jail awaiting a hearing. These experts assert that teleconferencing could increase access to expert witnesses and other witnesses who might be fearful about testifying in person. Workshop participants also said that videoconferences allow non-English speakers and individuals with disabilities to access the criminal justice system more easily.

| See Chapter 2: Victim Services.

Workshop participants also identified some potential disadvantages of videoconferencing in criminal court, which included concerns that the judgment and behavior of criminal justice

375 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Role of Public Defense* (June 2, 2020) (statement of Mark Stephens, Public Defender (former), Knox County, TN), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

376 James M. Anderson, Maya Buenaventura, and Paul Heaton, "The Effects of Holistic Defense on Criminal Justice Outcomes," *Harvard Law Review*, January 10, 2019, <https://harvardlawreview.org/2019/01/the-effects-of-holistic-defense-on-criminal-justice-outcomes/>.

377 Jacob Fisher, "Ohio Supreme Court to Release \$4M in Emergency Grants amid Coronavirus Pandemic," *Dayton Business Journal*, May 19, 2020, <https://www.bizjournals.com/columbus/news/2020/03/19/ohio-supreme-court-to-release-4m-in-emergency.html>.

378 "Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic," U.S. Courts, March 31, 2020, <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic>.

379 Camille Gourdet et al., *Court Appearances in Criminal Proceedings through Telepresence* (Santa Monica, CA: RAND Corporation, 2020), https://www.rand.org/pubs/research_reports/RR3222.html.

personnel who appear in court remotely might be different than at an in-person proceeding. In addition, defendants and witnesses who are not physically present might not fully appreciate the gravity of the proceedings. Teleconferencing could also adversely affect the attorney–client relationship and ability to have private communications.³⁸⁰

While conducting courtroom proceedings by videoconferencing has existed since at least 1998, the COVID-19 pandemic has accelerated the adoption of this technology and expanded it greatly. Increasing the capacity to carry out videoconferencing effectively and advance virtual courts could prove useful to jurisdictions of all sizes.

6.3.7 State and local jurisdictions should amend laws or administrative rules to allow videoconferencing.

As noted, teleconferencing or videoconferencing in court proceedings has substantially increased during the COVID-19 pandemic. Any state or local rules originally written limiting its use should be revised to ensure improved access to courts while also protecting important constitutional rights. If statutory limits exist, lawmakers may wish to consider eliminating those barriers.

6.4 Detention and Corrections

For this chapter, “corrections” refers to all agencies in the criminal justice system that deal with individuals who have been convicted of a crime. The correctional system ensures that an offender’s sentence is carried out in jail, in prison, on probation, or in court-ordered community service under the supervision of the state. “Detention” refers to the use of jails as pretrial detention where defendants are held without bail or are being detained because they cannot post bail to secure their release before trial. Well beyond their custodial role, both correctional and detention staff work closely with other criminal justice agencies to provide treatment and services.

The primary justification for pretrial detention is to ensure that a criminal defendant appears in court, but the federal government and the majority of states allow judges to preventively detain defendants when certain public safety factors exist;³⁸¹ the perception of the danger a defendant poses to victims, witnesses, or the general public; likelihood of flight risk; or probability to engage in criminal behavior while on release.

The Commission identified the following recommendations related to detention and corrections, which will have an impact on the wider criminal justice system including responding to bail reform initiatives and addressing the existence of contraband cell phones in prison.

6.4.1 Any jurisdiction planning to eliminate its system of cash bail should first establish a comprehensive pretrial release program that addresses public safety concerns—particularly for victims and witnesses—and potential flight risk. Such programs should use a validated risk assessment tool that sets realistic conditions of release reflecting the seriousness of the charged offense(s) and should ensure that meaningful and effective sanctions for violations of pretrial release are defined and enforced.

³⁸⁰ Gourdet et al., *Court Appearances in Criminal*.

³⁸¹ Rafael A. Mangual, *Reforming New York’s Bail Reform: A Public Safety-Minded Proposal* (New York: Manhattan Institute, 2020), <https://media4.manhattan-institute.org/sites/default/files/reforming-ny-bail-reformRM.pdf>.

Bail refers to pretrial restrictions imposed on a person charged with a criminal offense to ensure compliance with the judicial process. In the United States, bail commonly implies a money or property bond that the suspect deposits to the court to ensure court appearance. Under this system, defendants who post bail are released; they will forfeit that bail if they fail to appear or if they violate the conditions of release.

Nationally, more than 60 percent of persons held in jail are pretrial detainees.³⁸² Many bail reform advocates have criticized the use of cash bail as discriminatory. A growing number of states—including California, Illinois, New Jersey and New York—have taken steps to eliminate cash bail for most misdemeanors and some felonies.³⁸³ Reform advocates believe this trend will save money as fewer individuals will be detained awaiting trial.³⁸⁴

However, one argument against the bail reform movement is that removing judicial discretion and eliminating the practice of preventive detention could lead to increased crime rates.³⁸⁵ In fact, after New York State's bail reform took effect on January 1, 2020, crime in New York City increased noticeably; since then, the state has been revisiting the issue in response to these crime spikes.³⁸⁶

Prior to making decisions regarding bail (pretrial), prosecutors and court officials should address the following:

- the collection and analysis of defendant information to determine risk
- recommendations to the court concerning conditions of release
- plans to supervise the defendant who is released from custody during the pretrial phase

Eliminating cash bail without these points addressed disregards the important roles of incentives and accountability that help assure defendants appear in court, while also deterring additional criminal behavior or violations of pretrial conditions.

In January 2017, New Jersey shifted away from using a cash bail system as an element of criminal justice reform. In lieu of using money to determine who is released or detained, New Jersey began relying on a “public safety assessment tool,” which considers nine factors from an individual's criminal history to predict their likelihood of returning to court for future hearings and remaining crime-free while on pretrial release.³⁸⁷

When properly validated and implemented, these tools can assist in the decision making to minimize dangers to the community.

382 Todd Minton and Zhen Zeng, *Jail Inmates at Midyear 2014* (Washington, DC: Bureau of Justice Statistics, 2015), <https://www.bjs.gov/content/pub/pdf/jim14.pdf>.

383 Mitch Arvidson, “Time to Bail on Cash Bail? A Growing Number of States are Scrutinizing Current Systems, and Exploring Alternatives Such as Use of Risk-Assessment Tools,” Council of State Governments Knowledge Center, May 2, 2019, <https://knowledgecenter.csg.org/kc/content/time-bail-cash-bail-growing-number-states-are-scrutinizing-current-systems-and-exploring>.

384 Colin Doyle, Chiraag Bains, and Brook Hopkins, *Bail Reform: A Local Guide for State and Local Policymakers* (Cambridge, MA: Harvard Law School, 2019), http://cjpp.law.harvard.edu/assets/BailReform_WEB.pdf.

385 Paul G. Cassell and Richard Fowles, “Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois,” *University of Utah College of Law Research Paper*, no. 349 (2020), <http://dx.doi.org/10.2139/ssrn.3541091>.

386 Ashley Southall and Jesse McKinley, “Spike in Crime Inflames Debate Over Bail Law in New York,” *New York Times*, February 4, 2020, <https://www.nytimes.com/2020/02/04/nyregion/crime-stats-nyc-bail-reform.html>; Jamiles Larty, “New York Tried to Get Rid of Bail. Then the Backlash Came,” *Politico*, April 23, 2020, <https://www.politico.com/news/magazine/2020/04/23/bail-reform-coronavirus-new-york-backlash-148299>; and Dan Frosch and Ben Chapman, “New Bail Laws Leading to Release of Dangerous Criminals, Some Prosecutors Say,” *Wall Street Journal*, February 10, 2020, <https://www.wsj.com/articles/bail-reform-needs-reform-growing-group-of-opponents-claim-11581348077>.

387 Chloe Anderson, Cindy Redcross, and Erin Jacobs Valentine, *Evaluation of Pretrial Justice System Reforms That Use the Public Safety Assessment* (Washington, DC: MDRC, 2019), 2, <https://www.mdrc.org/publication/evaluation-pretrial-justice-system-reforms-use-public-safety-assessment-0>.

Eliminating cash bail removes a major incentive for defendants to appear in court, comply with conditions of release, and refrain from criminal behavior while on pretrial release. This is particularly true of habitual offenders with extensive criminal histories. Subsequently, judges may want to amend release decisions, conditions, and enforce revocation more often than before bail reforms occurred.

One option for providing meaningful accountability for defendants released pretrial, absent cash bail, is the use of sanctions that are “swift, certain, and fair,” following the tenets of Hawaii’s Opportunity Probation with Enforcement (HOPE) probation program, a high-intensity supervision program.³⁸⁸ Like probation, pretrial release can be viewed as a form of community supervision, which should include sanctions for violations.³⁸⁹

6.4.2 The Department of Justice should define the minimum constitutional standards for cash bail systems based on U.S. Supreme Court and federal circuit court precedent. This definition should specify the due process and equal protection requirements.

Until recently, nearly every jurisdiction in the United States relied upon cash bail as a condition of pretrial release. Currently, the parameters for issuing bail vary by state, locality, and judicial district preference. DOJ guidance on the minimal constitutional standards would allow states, localities, and their elected officials to better maintain a lawful system of bail. This guidance could also address the primary concern of public safety in ensuring that habitual offenders and dangerous defendants are not released.

6.4.3 The Department of Justice should commit funding to research the nature and length of detention of defendants who are held in jails to accurately assess the seriousness of their charges, assess how much danger they pose to the community, and determine how often new offenses are committed by defendants who are out on bail.

Advocates of bail reform often assert that the majority of defendants held in jail on cash bonds are held for low-level charges and that many of them are first-time arrestees. Determining the true nature of this population can help criminal justice practitioners more accurately determine the severity of the situation at the local level. To maintain objectivity, funding should be prioritized for local jail jurisdictions that commit to working in partnership with an independent research organization.

Considering the current trend toward bail reform, more defendants are likely to be released pretrial than would have been in years past, which increases the potential to release defendants with a high risk of reoffending. Additional research would allow local officials to assess the potential tradeoffs of bail reform and make any necessary legal and policy adjustments. This research should include an assessment of the types and severity of criminal conduct, unlawful contacts with victims or witnesses, and how much of a danger the defendant poses to the community.

388 Mark A.R. Kleiman, “Swift-Certain-Fair: What Do We Know Now, and What Do We Need to Know?,” *Criminology & Public Policy* 15 (2016), <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12258>.

389 Mark A.R. Kleiman, Beau Kilmer, and Daniel T. Fisher, “Response to Stephanie A. Duriez, Francis T. Cullen, and Sarah M. Manchak: Theory and Evidence on the Swift-Certain-Fair Approach to Enforcing Conditions of Community Supervision,” *Federal Probation* 78, no. 2 (2014), https://www.uscourts.gov/sites/default/files/78_2_8_0.pdf.

6.4.4 Congress should enact federal legislation that would permit state prison systems to use cell phone jamming equipment in correctional facilities.

Cell phones are considered contraband in federal and state prisons because of the many dangers they present and the criminal behavior that is often initiated because of mobile phones. Therefore, in most jurisdictions, it is illegal for an inmate to possess a cell phone or use cell phone signals. However, 10,988 contraband cell phones were confiscated in Alabama's prisons between 2017 and 2019, according to Alabama Department of Corrections Commissioner Jeff Dunn.³⁹⁰ These cell phones are typically smuggled into prisons by corrupt staff or visitors, dropped in prison yards, or thrown over fences.

Inmates use phones to commit fraud on businesses and individuals; engage in drug trafficking and other criminal enterprises; organize retribution on victims, prison staff, government officials, or other inmates; harass individuals; and instigate and coordinate inmate disturbances.

| See Chapter 8: Reduction of Crime.

Most egregiously, contraband cell phones have been used to coordinate and order homicides and attempted murders both inside and outside prisons. Bryan Stirling, director of the South Carolina Department of Corrections, relayed the story of Captain Robert Johnson who, after having confiscated a cell phone at a prison, was "targeted and shot in his house five or six times point blank because he was doing his job at Lee Correctional to find contraband cell phones."³⁹¹ Director Stirling said, "Inmates are physically taken out of society by going to prison; however, they are virtually out there amongst us still committing crimes."³⁹² Fortunately, Captain Johnson survived the shooting.

| See Chapter 11: Technology.

Federal prisons have implemented a series of technologies and interdiction strategies to address the problem of contraband phones, including whole-body imaging, sophisticated walk-through metal detectors, thermal fencing, K-9 units, and fixed-sensor and handheld radio-frequency detection devices that can identify cell signals. Technical solutions designed to disable contraband cell phones in prisons and jails show promise, including managed access systems (MAS) and micro-jamming. MAS allows calls from approved phone numbers but blocks unapproved numbers, while micro-jamming disrupts phone signals within a precise area.

Current regulations under the Federal Communications Commission Act of 1934, 47 U.S.C. §§ 151-614 (1934), have been interpreted as prohibiting state prisons from deploying cell phone jamming equipment in their facilities, but the legal interpretation is open to question regarding jamming in federal prisons.

³⁹⁰ Jefferson Dunn, Commissioner, Alabama Department of Corrections, email communication with John Markovic, Federal Program Manager, Criminal Justice System Personnel Intersection Working Group, March 24, 2020.

³⁹¹ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 15, 2020) (statement of Bryan Stirling, Director, South Carolina Department of Corrections), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

³⁹² Stirling, *President's Commission on Law*, April 15, 2020.

Federal Communications Commission's Role with Contraband Cell Phones

While micro-jamming is a viable technology solution, only federal prison facilities can use it. The prohibition against state prison use of micro-jamming stems from the Federal Communications Commission Act of 1934, 47 U.S.C. §§ 151-614 (1934), which states, "No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government."³⁹³

The Federal Communications Commission convened a diverse group of stakeholders who released the *Contraband Phone Task Force Status Report* in April 2019.³⁹⁴ Both MAS and cell phone jamming were addressed, but no conclusions were made about technical viability or their legal status.

Positive Cell Phone Jamming Tests in Federal and State Prisons

With the assistance of a grant from the National Institute of Justice, the Cumberland Federal Correction Institute in Maryland conducted a pilot test of cell phone jamming technology, and "data from the test show that the micro-jammer's signal disrupted commercial wireless signals inside the prison cell, which meant that if cellphones were operating inside the cell, they would have been rendered inoperable. At 20 ft. and 100 ft. outside the cell, however, the micro-jammer signals did not disrupt the commercial wireless signals."³⁹⁵

In a similar test, the Federal Bureau of Prisons collaborated with the Broad River Correctional Institution in Columbia, South Carolina, to test jamming technology. Director Stirling states, "We did observe cell signals inside the housing unit were blocked, text messages, data connections, everything, but calls outside the one-foot perimeter of the exterior of the inmate housing unit could be made. So these are promising test results."³⁹⁶

6.5 Criminal Justice Coordinating Councils

Despite significant advances in information sharing, some criminal justice agencies still operate in silos, making communication and collaboration difficult to initiate and maintain. This often leads to inefficient systems that are not meeting the needs and expectations of the people. To counter this, some jurisdictions have created Criminal Justice Coordinating Councils (CJCC) to support strategic planning and information sharing, and to foster ongoing communications. Most CJCCs include personnel from law enforcement, prosecution, defense, courts, and corrections agencies.

393 Willful or Malicious Interference, 47 U.S.C. § 333 (1934), <https://www.govinfo.gov/content/pkg/USCODE-2011-title47/pdf/USCODE-2011-title47-chap5-subchapIII-partI-sec333.pdf>.

394 Cellular Telecommunications Industry Association and Association of State Correctional Administrators, *Contraband Phone Task Force Status Report*, (Iona, ID: Association of State Correctional Administrators, 2019), <https://api.ctia.org/wp-content/uploads/2019/04/Contraband-Phone-Task-Force-Status-Report-Combined.pdf>.

395 Office of Public Affairs, "Prison Test Shows Micro-Jamming May Counter Criminal Threat of Contraband Cell Phones," U.S. Department of Justice, July 15, 2018, <https://www.justice.gov/opa/pr/prison-test-shows-micro-jamming-may-counter-criminal-threat-contraband-cell-phones>.

396 Stirling, *President's Commission on Law*, April 15, 2020.

6.5.1 Local and state governments should develop or contribute to statewide or regional criminal justice coordinating councils.

CJCCs typically use a data-guided, structured process to identify, analyze, and solve (or manage) issues that have a system-wide impact, such as with resource reductions, improving case outcomes and efficiencies, streamlining the local criminal justice system generally, and developing strategies for challenging client populations (e.g., those with substance use disorders, mental illness disorders, or who are homeless).

Currently, the National Network of Criminal Justice Coordinating Councils supports 30 network member councils that represent a diverse cross-section of the country.

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CHAPTER 7: BUSINESS AND COMMUNITY DEVELOPMENT

Overview

For law enforcement to uphold the rule of law and protect the communities they serve, they must be supported in their work by a larger public architecture of businesses and community institutions. Community organizations, churches, faith-based institutions, and businesses can play a pivotal role in the work of crime reduction through reentry programs, second-chance employment opportunities, youth mentorship programs, after-school activities for at-risk youth, and resources for parents and families. These community partners can help meet needs that law enforcement is not meant or equipped to fulfill and, by doing so, help law enforcement reduce and prevent crime.

Communities are most successful when the institutions that comprise them work together to ensure they are safe, secure, and stable. Businesses, nonprofits, faith-based, and community organizations, along with law enforcement, all have their own particular expertise, tools, and leverage that—when combined—can improve public safety and encourage economic development. The insight and engagement of these groups are critical to community revitalization.

There is an undeniable correlation between crime and a lack of economic opportunity. Economically depressed areas suffer higher rates of crime. Businesses are discouraged from locating to these communities, which reduces economic opportunities and creates a downward cycle that further increases poverty and crime.³⁹⁷ To address this problem, President Trump created the Opportunity Zones program and Business Revitalization Council. As described by The United States Department of Housing and Urban Development: “Opportunity Zones are economically distressed communities, defined by individual census tract, nominated by America’s governors, and certified by the U.S. Secretary of the Treasury via his delegation of that authority to the Internal Revenue Service. There are 8,764 Opportunity Zones in the United States, many of which have experienced a lack of investment for decades. The Opportunity Zones initiative is not a top-down government program from Washington but an incentive to spur private and public investment in America’s underserved communities.”³⁹⁸

The creation of the White House Opportunity and Revitalization Council targets and streamlines resources into Opportunity Zone projects, such as housing, education, and job creation (new or the expansion of existing businesses) to revitalize the most vulnerable and forgotten communities. As Scott Turner, executive director of the President’s Opportunity and Revitalization Council, highlights, “when all of us come together for the eradication of poverty and to build citizens up with self-sustainability and to help them to live the American dream, it really is something to see.”³⁹⁹

³⁹⁷ Chase Sackett, “Neighborhoods and Violent Crime,” *Evidence Matters*, Summer 2016, <https://www.huduser.gov/portal/periodicals/em/summer16/highlight2.html>.

³⁹⁸ “Opportunity Zones – Home,” Opportunity Now, accessed September 25, 2020, <https://opportunityzones.hud.gov/home>.

³⁹⁹ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Community Engagement* (June 18, 2020) (statement of Scott Turner, Executive Director, President’s Opportunity and Revitalization Council), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

Furthermore, in June 2020, President Donald J. Trump issued Executive Order 13,929 on Safe Policing for Safe Communities. Not only does the Executive Order address the need for assessment of law enforcement use-of-force policies, President Trump also acknowledges the need for community and law enforcement engagement. Executive Order 13,929 directs the Attorney General to work with Congress to develop legislation that, in part, would create community engagement programs “aimed at developing or improving relationships between law enforcement and the communities they serve . . . and supporting nonprofit organizations that focus on improving stressed relationships between law enforcement officers and the communities they serve.”⁴⁰⁰

The following recommendations provide guidance on how business and community leaders can better enhance their engagement and work with law enforcement to cultivate prosperous and safe neighborhoods for the residents they serve and protect, thereby aiding law enforcement’s important work of protecting the citizens of their communities by combatting and preventing crime.

7.1 Law Enforcement and Industry Collaboration to Reduce Crime

Small, visible signs of disorder or decay (e.g., graffiti and loitering) can signal that a neighborhood is uncared for, creating fear and withdrawal among residents. This leads to fewer people engaging in community life and creates the perception that these places are available for criminal activities. Over time, as the cycle is perpetuated, neighborhoods continue to spiral into decay.⁴⁰¹ For this reason in the 1980s law enforcement began to implement the Broken Windows theory of policing, whereby officers enforce public order laws—such as laws against graffiti, trespassing, and illegal street vending—which reduces both the fear of crime and crime itself, and thus makes for safer communities.⁴⁰² Eliminating, or even reducing, low-level misdemeanor enforcement has significant implications, both for violent crime rates and for the quality of urban life. Misdemeanor enforcement can interrupt criminal behavior before it ripens into a felony, and it can help develop a community so residents and businesses can flourish.

Businesses also play an important role in crime reduction, as they serve an important economic function in providing jobs to local residents, access to retail, other essential services, and recreation activities. Together, these components make neighborhoods more appealing and livable. On the other hand, the presence of crime and disorder can deter shoppers, causing financial hardship for businesses. Therefore, business clearly has an economic interest in public safety and plays an important role in community stability.

Law enforcement and businesses thus exist in a mutually reinforcing relationship. As law enforcement enforces quality of life crimes and engages in proactive community policing, areas become safer for businesses, businesses can flourish and thrive, and it creates a virtuous cycle as more businesses move into the area. The community is revitalized and crime is then further reduced.

400 “Executive Order on Safe Policing for Safe Communities,” The White House, June 16, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/>.

401 Bernadette C. Hohl et al., “Creating Safe and Healthy Neighborhoods with Place-Based Violence Interventions,” *Health Affairs* 38, no. 10 (2019), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.00707>.

402 George L. Kelling and James Q. Wilson, “Broken Windows: The Police and Neighborhood Safety,” *The Atlantic*, <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

Oftentimes, the most effective solutions to crime address the environmental and social conditions that give rise to crime in the first place. Law enforcement cannot institute these interventions alone; instead, they should be accomplished with the cooperation and involvement of community leaders and institutions. For example, the 7-Eleven Crime Deterrence Program compiled data from convenience store robberies over a 20-year period beginning in the mid-1970s to gain insight into how criminals think and what deters them from committing robberies; subsequently, 7-Eleven's parent company implemented new security strategies that drastically cut crime.⁴⁰³ The company learned that using closed-circuit television cameras and alarms, reducing to a minimum the number of escape routes, and developing a strong relationship with local police helped reduce crime at its stores. The stores also use a 500-pound cash control unit that can hold cash in a secure container and are brightly lit so employees and cash registers are clearly visible. These strategies have helped the company reduce robberies substantially and have made company employees feel safer.⁴⁰⁴

State and local law enforcement agencies and public and private industry groups should also partner to address emerging crime trends. In many cases, the relationship between law enforcement and local companies is situational and based on the need of a given moment, such as an active investigation. However, leaders in the business community who develop long-term collaborative relationships with law enforcement become more engaged in public safety. In turn, these relationships make information gathering easier for law enforcement while also providing businesses with a greater sense of security for their employees, customers, and property. These collaborations could include providing training for industry employees, creating more efficient mechanisms to share the types of information needed to assist in criminal investigations, and identifying streamlined processes that employees use to alert law enforcement of crimes. Such collaborative relationships can be instrumental in tackling a number of criminal activities, including human trafficking, organized retail theft, auto theft, burglary, robbery, and assault.

One example to look to is how Uber has formed partnerships with local law enforcement. Uber has worked with law enforcement agencies to combat human trafficking, domestic violence, and campus safety. As part of this, Uber drivers are trained to spot indicators that a crime is taking place, and the driver app includes features that notify law enforcement about crimes in progress and coordinates with anti-human trafficking organizations. Uber also created a 24/7 response team of former law enforcement officers and federal agents that provides an online portal where law enforcement can request information from Uber to assist in investigations and in emergencies.⁴⁰⁵

Recently, in response to the challenges presented by COVID-19, Florida Attorney General Ashley Moody announced that Uber will offer free rides in three Florida counties to help victims of domestic violence escape abuse.⁴⁰⁶ Uber worked with state and local agencies to start the program.

403 Scot Lins and Rosemary J. Ericson, "Stores Learn to Inconvenience Robbers: 7-Eleven Shares Many of Its Robbery Deterrence Strategies," Abstract, *Security Management* 42, no. 11 (1998), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=176768>.

404 Lins and Ericson, "Stores Learn to Inconvenience Robbers."

405 Danielle McMullan, U.S. Southeast Law Enforcement Liaison, Uber, "Uber Law Enforcement Operations" (PowerPoint presentation, Business and Community Development Working Group, virtual meeting, May 8, 2020).

406 Florida Office of the Attorney General, "VIDEO: Attorney General Moody Works with Uber to Provide Rides to Help Victims of Domestic Violence Escape Abuse," May 6, 2020, https://www.einnews.com/pr_news/516343980/video-attorney-general-moody-works-with-uber-to-provide-rides-to-help-victims-of-domestic-violence-escape-abuse.

"Victims of domestic violence need to know that help is still available [despite the challenges of COVID-19] and there are people who care deeply about their health and safety. Victims do not have to stay isolated with their abusers Through this new program with Uber, I am hopeful that we can connect more victims with the shelter and life-saving services they need to escape abuse and begin the healing process."⁴⁰⁷ - Ashley Moody, Florida Attorney General

7.1.1 Law enforcement agencies should partner with public and private entities to gain access to public-facing, privately owned cameras to serve as a deterrent to crime and to assist criminal investigations.

Cameras have become a standard feature of our lives. Modern reality is full of privately owned cameras that are public-facing and constantly surveilling neighborhoods and cities; most are used by businesses and households to keep their property or families safe.

Traditionally, if access to video footage was needed to assist with an investigation, law enforcement would request that access from each camera owner. However, by developing relationships in the community, law enforcement can help facilitate a smoother and quicker process to turn these cameras into tools to deter and/or solve crime.

One successful program for agencies to look to is Project Green Light in Detroit. The Detroit Police Department began Project Green Light in January 2016 in partnership with eight gas station owners who installed high-definition cameras to surveil publicly accessible areas in and around their businesses. They agreed to allow crime analysts and police officers at the Detroit Police Department's Real Time Crime Center to monitor these feeds, which are also useful after the fact to assist with criminal investigations. Participating businesses are also required to store footage for 30 days and to post signage in and around their buildings alerting the public that the building is monitored by police, and to indicate this by installing a flashing green light.⁴⁰⁸

Research shows that cameras have a deterrent effect, but only when the offender is made well aware of their existence.⁴⁰⁹ This effect further increases when there is evidence that the camera is working in conjunction with other anti-crime measures.⁴¹⁰ Since the pilot, the Detroit project has demonstrated significant growth. As of April 2020, nearly 700 businesses were participating in the program, giving department personnel access to deter would-be offenders with more than 2,800 live camera feeds at Project Green Light locations—and a significant number of businesses are in the pipeline waiting to join the program.⁴¹¹ Assistant Chief David LeValley states, "Efforts to bring these businesses and more into the program are fueled by the belief that the more businesses in the program, the higher the reduction in crime will be."⁴¹²

407 Florida Office of the Attorney General, "VIDEO: Attorney General Moody," May 6, 2020.

408 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 16, 2020) (written statement of David LeValley, Deputy Chief, Detroit Police Department, MI), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

409 Jerry H. Ratcliffe, *Video Surveillance in Public Places* (Washington, DC: Office of Community Oriented Policing Services, updated 2011), https://popcenter.asu.edu/sites/default/files/video_surveillance.pdf.

410 Brandon C. Welsh, David P. Farrington, and Sema A. Taheri, "Effectiveness and Social Costs of Public Area Surveillance for Crime Prevention," Abstract, *Annual Review of Law and Social Science* 11 (2015), <https://www.annualreviews.org/doi/pdf/10.1146/annurev-lawsocsci-120814-121649>.

411 LeValley, *President's Commission on Law*, April 16, 2020.

412 LeValley, *President's Commission on Law*, April 16, 2020.

“According to a recent analysis conducted by the Project Green Light team, the original eight participating businesses have experienced an overall reduction of violent crime of 44.9 percent when comparing 2015 [before Project Green Light] to 2019.”⁴¹³ - David LeValley, Assistant Chief of the Detroit Police Department

7.1.2 The Department of Justice should establish a National Public Safety Officers Council that is composed of representatives from the business community and federal, state, local, and tribal law enforcement. This council should meet twice per year to address current and emerging public safety threats and needs and hold an annual summit with the White House.

With continuous shifts in criminal activities and constant advancements in technology, law enforcement has to proactively monitor, respond to, and ideally prevent crime trends. Unfortunately, the country lacks a national strategy that can spot these movements and incorporate a best practices approach.

A federal-level advisory council should be formed to review developments around public-private collaborative relationships and determine how local successes can be replicated in other parts of the country. This council should consist of senior law enforcement leadership and top security officials from major companies and business associations.

“Great ideas and practices are best when they are shared widely and open for additional input.”⁴¹⁴ - Sheriff Dennis Lemma, Seminole County, Florida

The advisory council should meet twice per year to collaborate on science-based approaches that both law enforcement and private industry can take to reduce crime and improve the quality of life in their communities. The Department of Justice (DOJ) should invite business leaders from an array of industries, such as retail, services, and technology, as well as national conglomerates, to broaden the scope of how private companies can contribute to public safety. Corporate leaders could share successful practices they use in areas of workforce management, recruitment, retention, organizational culture, and leadership development—concepts law enforcement leaders may be able to replicate.

A federal advisory board has several advantages, including the ability to draw on more resources and make its recommendations directly to DOJ leadership. The board should also disseminate reports to law enforcement agencies, look at the system more holistically, and tailor recommendations for different types of jurisdictions and communities nationwide.

As part of the council activities, the DOJ and the White House could also convene an innovation and technology summit for business, law enforcement, and senior-level community development leaders to identify opportunities to develop strategies and solutions to address specific public safety technology issues. This approach was highlighted by Reverend Markel Hutchins, president and chief executive officer of MovementForward, Inc. He suggested a high-level roundtable meeting with corporate and business leaders “so that they can bring their expertise and resources

⁴¹³ LeValley, *President’s Commission on Law*, April 16, 2020.

⁴¹⁴ Nicole Nelson, Executive Administrator, Seminole County Sheriff’s Office, FL, email communication with Antonio Tovar, Federal Program Manager, Business and Community Development Working Group, April 22, 2020.

to bear to enable law enforcement to become better connected to the populations they serve."⁴¹⁵ He elaborated that this "is not only in line with the values of our great corporate sector, but it will also lead to communities in which businesses are able to thrive."⁴¹⁶

7.1.3 State and local governments should build collaborative relationships with higher education institutions to identify and offer college classes and degrees that better prepare future and current law enforcement officers.

The law enforcement field has changed significantly over the past couple centuries. Police officers are expected to know a lot beyond what traditional law enforcement training provides, including how to use advanced technology, understand evidence-based policing, solve new and emerging crime trends, identify behaviors that are indicative of mental illness, and interact with diverse communities.

Institutions of higher education can—and often do—help bridge this gap. However, these colleges and universities would be able to better train and educate current and future officers if law enforcement agencies (or organizations) developed more formal collaborations with educational institutions. Further, universities can add value to law enforcement careers by offering certificates that combine courses that might not often be thought of as directly relating to law enforcement, including sociology, foreign languages, and computer science.

Police leadership, scholars, and public officials, including the 1967 Johnson Commission report, have often recommended that those interested in applying to become police officers should obtain a college education.⁴¹⁷ A study published by *Police Quarterly* provides evidence that officers with higher education are less likely to use force in encounters, which suggests an increased ability in finding alternatives when making arrests.⁴¹⁸

State and local agencies could also collaborate with higher education institutions to sponsor eligible candidates to attend a law enforcement academy. Such sponsorships allow for individuals to pursue a law enforcement career when they otherwise would not have the financial means.

| See Chapter 15: Law Enforcement Recruitment and Training.

7.1.4 Local governments should create collaborations with area employers to provide summer employment and paid internship opportunities for youth, with a focus on disadvantaged youth.

| See Chapter 4: Juvenile Justice and Youth Crime.

Young offenders, particularly youth living in impoverished communities, commit a disproportionate share of crime.⁴¹⁹ This is especially true of violent crime. One of the most effective ways to reduce crime is to provide employment opportunities for these youth, which also makes

⁴¹⁵ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Community Engagement* (June 18, 2020) (statement of Rev. Markel Hutchins, President and CEO, MovementForward, Inc.), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁴¹⁶ Hutchins, *President's Commission on Law*, June 18, 2020.

⁴¹⁷ David L. Carter and Allen D. Sapp, "The Evolution of Higher Education in Law Enforcement: Preliminary Findings from a National Study," *Journal of Criminal Justice Education* 1, no. 1 (2006), <https://doi.org/10.1080/10511259000082061>; and Jason Rydberg and William Terrill, "The Effect of Higher Education on Police Behavior," *Police Quarterly* 13, no. 1 (2010), <https://doi.org/10.1177/1098611109357325>.

⁴¹⁸ Rydberg and Terrill, "The Effect of Higher Education."

⁴¹⁹ "From Juvenile Delinquency to Young Adult Offending," National Institute of Justice, March 10, 2014, <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending>.

economic sense, as vocational training for youth saves \$12 in costs to the judicial system for every \$1 spent.⁴²⁰

Local governments can provide incentives to employers to hire these at-risk youth. One possible incentive includes reducing employer recruitment costs by contributing human resource functions from the local government to advertise, accept applications, vet candidates, and match them to job opportunities. They can also organize advertising and encourage employers by demonstrating how this will help engender community good will. Some governments may also choose to subsidize wages and employee insurance liability for participating companies.

Forming partnerships and offering these experiences to teenagers can provide many benefits to the employers, including the opportunity to give back to the community, the chance to develop the future workforce, and the ability to start an internship program without taking on the full cost or responsibility of doing it alone.

7.1.5 Local governments should collaborate with area employers to provide employment opportunities for individuals who are transitioning out of incarceration or secured detention.

| See Chapter 5: Reentry Programs and Initiatives.

Job training and placement assistance programs can help significantly reduce recidivism rates among offenders, though this may only be the case when it leads to long-term employment.⁴²¹

“Effective reentry leads to safer and more prosperous communities by ensuring that people with criminal records have the tools to lead law-abiding lives. Successful reentry empowers people to participate in meaningful work opportunities, which helps many pay child support and restitution, and strengthens tax bases.”⁴²²

- John Koufos, National Director of Reentry Initiatives, Right on Crime

The challenge is considerable given the business community’s reluctance to hire individuals with criminal records. A research trial published by the American Economic Association demonstrated that employers were 60 percent more likely to call back applicants without records, even over applicants with minor records such as low-level, nonviolent felonies committed two years prior.⁴²³ According to the National Employment Law Project, an employment rights advocacy group, the chances of a person finding work drops as much as 50 percent if they have a criminal record. Additionally, as most individuals who are released from prison tend to have less formal education, the odds are even less in their favor.⁴²⁴

To be effective, reentry programs should provide comprehensive assistance in the job application process, offer job training, and focus on preparing inmates for fields where they can obtain long-

420 Brandon C. Welsh et al., “Promoting Change, Changing Lives: Effective Prevention and Intervention to Reduce Serious Offending,” in *From Juvenile Delinquency to Adult Crime: Criminal Careers, Justice Policy, and Prevention*, eds. Rolf Loeber and David P. Farrington (New York: Oxford University Press, 2012).

421 Aaron Yelowitz and Christopher Bollinger, “Prison-to-Work: The Benefits of Intensive Job-Search Assistance for Former Inmates,” *Civic Report*, no. 96 (2015), https://media4.manhattan-institute.org/sites/default/files/cr_96.pdf.

422 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Reentry* (April 23, 2020) (written statement of John Koufos, National Director of Reentry Initiatives, Right on Crime), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

423 Amanda Agan and Sonja B. Starr, “The Effect of Criminal Records on Access to Employment,” *American Economic Review: Papers & Proceedings* 107, no. 5 (2017): 560, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2892&context=articles>.

424 Yelowitz and Bollinger, “Prison-to-Work.”

term gainful employment. Therefore, local governments or organizations with reentry programs should consider these factors in their development. Reentry programs should collaborate with businesses in the community.

Sheriff Dennis Lemma of Seminole County, Florida, states, "By creating employment opportunities for individuals transitioning out of incarceration within a community, vital second-chance prospects are created for those citizens who may feel they have no other option than to return to the high-risk lifestyles that were damaging to themselves and their community. These collaborative relationships with area employers, quite literally, can change the course of a person's life and create a positive ripple of impact within their community."⁴²⁵

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⁴²⁵ Nelson, email communication with Antonio Tovar, April 22, 2020.

Part III

CRIME REDUCTION

Prominent Strategies and Methods to Reduce Crime

A primary takeaway of the Commission's study is the need to refocus and return law enforcement officers to their traditional mission of apprehending criminals who pose a threat to public safety. The scale and scope of criminal problems confronting American law enforcement has expanded considerably in the half century since the 1967 Commission, and criminals have exploited new technologies and innovations to commit and conceal criminal activity that threatens homeland security and the safety of the American people. While violent crime rates have fallen over recent decades, those decreases are neither inevitable nor accidental. Law enforcement should prioritize targeting the most violent criminal actors and their organizations.

This section addresses the proliferation of potent synthetic opioids such as fentanyl, and the resurgence of methamphetamine, as well as firearms trafficking, gangs, human trafficking, child exploitation, elder abuse, sexual assault, domestic violence, terrorism, border security, partnerships and information-sharing, and cyber security.

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CHAPTER 8: REDUCTION OF CRIME

Overview

Crime is not simply a violation of the rules of civil society—it harms the safety and security of actual victims. No society can prosper where communities do not have faith that laws and the police who enforce them will keep them safe. Protecting American citizens from crime, therefore, is the paramount duty of law enforcement.

This duty is as difficult as ever. As discussed elsewhere in the report, criminals have adapted technology to commit and conceal their crimes in ever more inventive ways, and collateral social ills that predicate much the criminal activity often divert police attention and resources from the fundamental task of crimefighting. New kinds of criminal threats involving homeland security and cyberattacks have also emerged.

Even where the nature of the criminal activity has not materially changed, there is still much work to be done. Despite notable decreases in national crime rates over the past three decades, there remain many communities—especially in rural, tribal, and urban jurisdictions—that suffer from disproportionately high levels of violence and victimization. No citizen and no community should be left behind from crime reduction efforts. The rule of law must apply everywhere and to all people for it to properly guarantee citizens their peace and liberty. Unfortunately, violent gangs and drug trafficking organizations, empowered and armed by the illicit firearms trade, still terrorize neighborhoods. Criminals continue to abuse vulnerable populations, including women and children, at unacceptable rates in the form of human trafficking, sex abuse, and domestic violence.

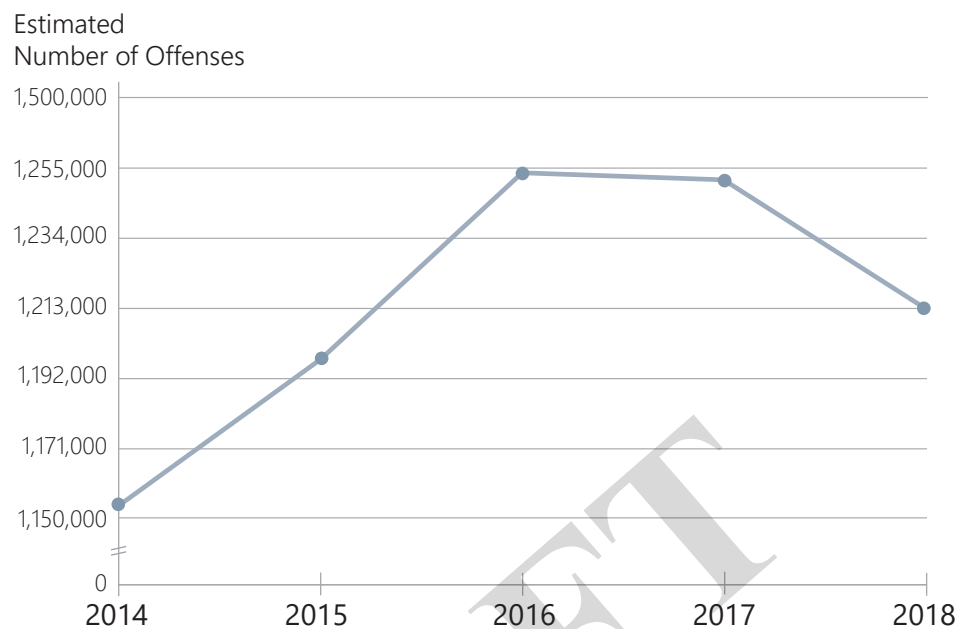
In studying the state of crime reduction efforts, the Commission has proposed several ways for law enforcement to better assess, address, and combat the salient criminal threats of our time. In doing so, it bears remembering that crime itself is a social phenomena of many causes and forms. So while this chapter focuses on law enforcement capabilities, the most effective program to reduce crime is a holistic concert of government and social programs, which intersect and correlate throughout this report, that address and prevent the root causes of crime.

Violent crime remains at the forefront of any study of crime reduction. According to the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program, approximately 1.2 million violent crimes were committed in the United States in 2018. Between 2017 and 2018, crime decreased across the board. The rate of violent crimes such as murder, robbery, and aggravated assault declined; rape was the only violent crime that increased (up 2.7 percent).⁴²⁶ In 2018, the rate of violent crime was at 381 offenses per 100,000 people, a significant decline from 758 offenses per 100,000 people in 1991.⁴²⁷

⁴²⁶ Federal Bureau of Investigation, "FBI Releases 2018 Crime Statistics," September 30, 2019, <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2018-crime-statistics>.

⁴²⁷ Samuel Stebbins, "Dangerous States: Which States Have the Highest Rates of Violent Crime and Most Murders?," *USA Today*, January 13, 2020, <https://www.usatoday.com/story/money/2020/01/13/most-dangerous-states-in-america-violent-crime-murder-rate/40968963/>.

Figure 8.1. Violent Crime Offense, 2014–2018



Source: Federal Bureau of Investigation, Uniform Crime Reporting Program <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/violent-crime>

The causes of violent crime are many and varied, and while crime reduction strategies should be tailored to the problems facing different communities, certain general principles apply categorically. These principles include developing effective relationships between law enforcement and the communities they serve and encouraging proactive and strategic collaboration among federal, state, local, and tribal law enforcement.

As remarked above, there is a prominent need for crime reduction concentrated in certain American cities that suffer from crime rates several times the national average. In combatting such crime, Attorney General William P. Barr has fashioned two distinct law enforcement initiatives—Operation Relentless Pursuit and Operation Legend—to target high crime areas in select cities using a tailored model of federal and state collaboration.

As stated by Attorney General Barr, “Americans deserve to live in safety. . . . And while nationwide violent crime rates are down, many cities continue to see levels of extraordinary violence. Operation Relentless Pursuit seeks to ensure that no American city is excluded from the peace and security felt by the majority of Americans, while also supporting those who serve and protect in these communities with the resources, training, and equipment they need to stay safe.”⁴²⁸

These two examples highlight a general strategy that has been successfully implemented multiple times for addressing violent crime: establishing an operation or task force composed of all necessary federal, state, local, and tribal law enforcement partners to jointly combat a specific issue with dedicated resources and attention.

Another successful collaborative model is Project Safe Neighborhoods (PSN), reinstated by the Department of Justice (DOJ) in 2017. PSN is a nationwide initiative that brings together federal, state, local, and tribal law enforcement officials, prosecutors, and community leaders to identify

⁴²⁸ Office of Public Affairs, “Attorney General William P. Barr Announces Launch of Operation Relentless Pursuit,” U.S. Department of Justice, December 18, 2019, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-launch-operation-relentless-pursuit>.

the most pressing violent crime problems in a community and develop comprehensive solutions to address them. PSN is implemented by each U.S. attorney's office to address the particular violent crimes in that community.⁴²⁹

It is also important for law enforcement to partner with their communities to prevent crime before it occurs. Crime reduction strategies should consider community members' perception of their local police and promote cooperation between police and community stakeholders. Such efforts are critical for programs to be implemented successfully, and they should be prioritized. Scott Thomson, retired chief from Camden County, New Jersey, states, "the only way to significantly reduce fear, crime, and disorder, and then sustain these gains is to leverage the greatest force multiplier: the people of the community themselves."⁴³⁰

Successful reentry and juvenile justice programs are two primary means of how law enforcement can partner with their communities to prevent and reduce crime. The recommendations in this chapter draw on targeted deterrence approaches to reduce violent crime, and new and developing methodologies, technologies, and approaches to combat criminal activity, delinquency, and public disorder.

8.1 Gangs and Criminal Organizations

Gangs are one of the greatest crime threats to law enforcement today. In the 2019 National Threat Picture provided by the Major Cities Chiefs Association, 65 percent of agencies placed criminal gangs and organizations as one of their top five major issues. The central region of the United States ranked gangs as its second greatest concern, and both the eastern and western regions ranked gangs as their third largest concern.⁴³¹ In 2019, gang activity increased more than 25 percent.⁴³² While drug and weapon trafficking have been major components of criminal activity in gangs, an increasing trend is gang involvement in human trafficking. Often, the internet helps gangs further human trafficking efforts for their own gain.⁴³³

Gangs are increasingly more numerous in number and membership. The number of gang members in the United States likely exceeds one million.⁴³⁴ The FBI states that "approximately 33,000 violent street gangs, motorcycle gangs, and prison gangs are criminally active in the U.S. today."⁴³⁵ While some may be sophisticated and well organized, others are best described as cliques that control smaller territories or crews and engage in particular types of concerted criminal activity.

Gangs also vary in type, structure, and organization. Prison gangs form and operate mainly in the prison system, but also continue their criminal activity outside of the prison system.⁴³⁶ Outlaw motorcycle gangs are extremely structured, and their members participate in violent

429 "Project Safe Neighborhoods," U.S. Department of Justice, accessed September 23, 2020, <https://www.justice.gov/psn>.

430 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 7, 2020) (statement of J. Scott Thomson, Chief of Police (Ret.), Camden County Police Department, NJ), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

431 "Measuring the Extent of Gang Problems Estimated Number of Gangs," National Gang Center, accessed June 27, 2020, <https://www.nationalgangcenter.gov/survey-analysis/measuring-the-extent-of-gang-problems>.

432 Major Cities Chiefs Association, *2019 National Threat Picture: Top Threat Issues of Major City Law Enforcement Agencies* (Washington, DC: Major Cities Chiefs Association, 2019), 1, https://majorcitieschiefs.com/pdf/news/2019_mcca_us_national_threat_picture_report.pdf.

433 "Gangs and Human Trafficking," *National Gang Center* (blog), January 31, 2020, <https://www.nationalgangcenter.gov/Blog/47/Gangs-and-Human-Trafficking>.

434 David C. Pyrooz and Gary Sweeten, "Gang Membership Between Ages 5 and 17 Years in the United States," Abstract, *Journal of Adolescent Health* 56, no. 4 (2015), <https://doi.org/10.1016/j.jadohealth.2014.11.018>.

435 "Gangs," Federal Bureau of Investigation, accessed June 19, 2020, <https://www.fbi.gov/investigate/violent-crime/gangs>.

436 Drug Enforcement Administration, *2019 National Drug Threat Assessment* (Washington, DC: Drug Enforcement Administration, 2019), https://www.dea.gov/sites/default/files/2020-01/2019-NDTA-final-01-14-2020_Low_Web-DIR-007-20_2019.pdf.

crime and weapons and drug trafficking. Their crimes are facilitated through motorcycle clubs. Some of the most powerful organizations are nationwide gangs structured to operate with a formal hierarchy and set of rules. However, a substantial portion of gang violence results from provincial neighborhood gangs that operate by informal ties of kinship and locality rather than the organizational structure characteristic of national gangs.⁴³⁷

Gangs promote and sustain their existence through illegal sources of profit, including robbery, extortion, drug trafficking, gun trafficking, prostitution and human trafficking, and other theft and fraud schemes. These groups often exist for territorial dominance over specific neighborhoods and direct violence against rival groups perceived to threaten their power, influence, or business.

According to the National Gang Center, gangs have “become more entrenched over the past 25 years,” but “gang activity is localized in nature and tends to follow a cyclical pattern with upswings followed by downturns.”⁴³⁸ The cycles largely emanate from the transient nature of conflict and competition with other gangs and criminal organizations. Gangs are mostly found in highly populated areas, as “more than 50 percent of the net increase in gangs and gang members over the past five years was due to overall increases in larger cities.”⁴³⁹

The available evidence demonstrates that a disproportionately small group of individuals is responsible for the majority of criminal activity. Preventing and reducing gang violence requires intervention programs, not just law enforcement operations, to identify prolific criminal actors and use the support of community, law enforcement, and social services to offer a pathway to law-abiding behavior. With this model, criminals are offered social service assistance and notified of the consequences for any additional criminal activity.⁴⁴⁰

Accordingly, as noted above, law enforcement operations to reduce crime should proceed in concert with focused deterrence strategies (the “pulling levers” policing method) that have historically showed a significant decrease in violent crime. These strategies have resulted in numerous successful results, including a 44 percent decrease in gun assault offenses in Lowell, Massachusetts; a 42 percent decrease in gun homicides in Stockton, California; a 41 percent decrease in homicides of members of criminal organizations in Cincinnati, Ohio; and a 34 percent decrease in total homicides in Indianapolis, Indiana.⁴⁴¹

The Tampa Police Department in Florida has used a modified focused deterrence approach and decided to target specific offenders who were the biggest contributors to local crime with greater efficiency and accuracy.⁴⁴² As Dr. Briana Fox, an associate professor from the Department of Criminology at the University of South Florida, notes, “after a three-year evaluation, even when controlling for the decline in violent crime since 2016, Tampa still had an additional 23 percent reduction in violent crime and 47 percent reduction in gun violence, compared to the other agencies in the surrounding area.”⁴⁴³

437 Drug Enforcement Administration, *2019 National Drug Threat Assessment*.

438 “Frequently Asked Questions About Gangs,” National Gang Center, accessed June 19, 2020, <https://www.nationalgangcenter.gov/about/FAQ>

439 National Gang Center, “Frequently Asked Questions About Gangs.”

440 “Practice Profile: Focused Deterrence Strategies,” CrimeSolutions.gov, accessed June 19, 2020, <https://www.crimesolutions.gov/PracticeDetails.aspx?ID=11>.

441 The Bridgespan Group, *Needle-Moving Community Collaboratives Case Study: Boston* (Boston: The Bridgespan Group, 2012), 5, <https://www.bridgespan.org/bridgespan/Images/articles/needle-moving-community-collaboratives/profiles/community-collaboratives-case-study-boston.pdf>.

442 Bryana Fox, Associate Professor, University of Florida Department of Criminology, in discussion with Reduction of Crime Working Group, virtual meeting, April 23, 2020.

443 Fox, in discussion with Reduction of Crime, April 23, 2020.

While gangs are a significant driver of crime in many areas, interventions are available to law enforcement to reduce gang activity.

8.1.1 Law enforcement agencies should fund crime analysts to identify violent crime trends among individuals and groups.

Law enforcement should develop, gather, and leverage all available data and intelligence to identify leaders of gangs or criminal organizations and the principal violent actors within such gangs. In doing so, they should work with correctional facility intelligence teams and share data across jurisdictions and agencies. In addition to coordinating information regarding gangs and violent organizations, law enforcement should develop and amass the intelligence necessary for law enforcement to discern the best use of resources to dismantle violent gangs. This cultivation of data is an important aspect of crime reduction generally, but it is especially important for gang investigations.

Crime analysts can provide accurate data (e.g., affiliations, current charges, or social media) to law enforcement officers whose areas are most likely affected by these individuals or groups. Even after an investigation commences, crime analysts can perform the vital role of digesting and assessing investigative data (e.g., wiretaps and other forms of electronic surveillance) to gather evidence against these organizations and organizational leaders. Technology companies should provide access to such information when law enforcement has lawful authority to obtain it, including using court orders. Crime gun intelligence (CGI) tools—such as the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) National Integrated Ballistics Information Network (NIBIN), firearm tracing, and acoustic gunshot detection technology—are also essential analytical assets for the identification of the most violent criminal organizations and associates.

As an example, the FBI Cleveland Office initiated Operation Hadley's Hope when they received intelligence from the Metropolitan Richland County drug task force. They used wiretaps, which resulted in the dismantling of three large drug trafficking organizations in October 2017, February 2019, and March 2020. According to Justin Herdman, U.S. attorney for the Northern District of Ohio, "the investigation resulted in the seizure of 51 firearms and the arrest of 145 individuals. And most importantly violent crime was reduced by 19 percent in 2018 following the first takedown and a further 6.2 percent decrease in 2019 following the second takedown."⁴⁴⁴

| See Chapter 11: Technology.

8.1.2 Local law enforcement should coordinate joint strategies with other state and federal law enforcement agencies to combat gang violence, to include forming and participating in regionalized gang task forces.

Integrating multiple investigative approaches is essential to effective anti-gang initiatives. Law enforcement agencies often solely rely on their own personnel to combat gang-related violence and criminal enterprises.⁴⁴⁵ As a result, many agencies lack proper personnel and resources to control the accelerated growth of criminal street gangs.⁴⁴⁶

⁴⁴⁴ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 7, 2020) (statement of Justin Herdman, United States Attorney, Northern District of Ohio), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁴⁴⁵ John McMahon, Sheriff, San Bernardino County Sheriff's Office, CA, email communication with Kristie Brackens, Federal Program Manager, Reduction of Crime Working Group, May 29, 2020.

⁴⁴⁶ McMahon, email communication with Kristie Brackens, May 29, 2020.

Local law enforcement should coordinate their operations and strategy with other state and federal law enforcement agencies to collect, combine, and share all available resources in the fight against gang violence. In addition to general operational meetings to share information and coordinate strategies, law enforcement should formulate gang task forces, where possible, that include investigators from at least three local agencies within the affected region in addition to representatives from state parole, state police, prosecuting bodies, corrections and probation departments, the FBI, and the Department of Homeland Security.⁴⁴⁷ The task force may increase its resources as well as its drug and gun expertise by partnering with ATF and the Drug Enforcement Administration.⁴⁴⁸

Combining and coordinating resources across law enforcement agencies empowers a gang task force to employ the kind of comprehensive investigation necessary to dismantle criminal organizations. Wiretaps, electronic surveillance, and other sophisticated investigative techniques can gather valuable criminal evidence and intelligence about the leadership of a criminal street gang. A task force is ideal for financing and staffing such measures because it can use resources from several involved agencies.⁴⁴⁹ Additionally, the combination of federal and state participation in such investigations allows law enforcement to draw intelligence from a larger base.⁴⁵⁰

Every gang task force should also deploy a corrections-based intelligence strategy. It is common practice for gang members to continue to facilitate criminal activity after incarceration. Bryan Stirling, director of South Carolina Department of Corrections, noted that “in the hands of inmates, cell phones undermine the foundation of the criminal justice system by allowing convicted criminals to further their criminal activities behind bars. Through the use of contraband cell phones, inmates are able to coordinate illegal drug shipments, direct acts of violence, perpetuate gang activity, commit acts of fraud, and plan escapes.”⁴⁵¹ Wiretaps used in correctional settings can assist in investigations into these criminal activities.

8.1.3 Local law enforcement, in collaboration with federal law enforcement, should implement targeted enforcement and patrols in designated and confined geographical areas to gather, collect, and share intelligence on known gang members for arrest and prosecution.

While gang task forces conduct covert investigations behind the scenes for periods of months, local law enforcement must still manage gang violence on the streets on a daily basis. Accordingly, using similar methods of identifying sources of violence, it is important for local law enforcement to direct resources to the hotspots that disproportionately contribute to violent crime. Hotspot mapping or risk terrain modeling are used to direct patrol assignments, allocate resources, and supplement initiatives that benefit the mission of violent crime reduction. Such techniques detect trends and patterns in crime displacement and crime diffusion that result from law enforcement

447 Gang Intelligence Strategy Committee, *Guidelines for Establishing and Operating Gang Intelligence Units and Task Forces* (Washington, DC: Bureau of Justice Assistance, 2008), <https://it.ojp.gov/documents/d/guidelines%20for%20establishing%20Gang%20Intelligence%20units.pdf>.

448 Gang Intelligence Strategy Committee, *Guidelines for Establishing and Operating Gang*.

449 John Lausch, United States Attorney, Northern District of Illinois, email communication with Kristie Brackens, Federal Program Manager, Reduction of Crime Working Group, May 29, 2020.

450 Lausch, email communication with Kristie Brackens, May 29, 2020.

451 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 15, 2020) (statement of Bryan Stirling, Director, South Carolina Department of Corrections), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

crime control efforts.⁴⁵² These techniques should be incorporated into broader community-oriented approaches to crime prevention, as community members frequently exhibit positive reactions to such targeted police actions.⁴⁵³

David Kennedy, professor at the John Jay College of Criminal Justice and the executive director of National Network for Safe Communities, explains that “there exist extreme concentrations of violence” within the country.⁴⁵⁴

Among other methods of identifying the source of gang violence discussed elsewhere in this chapter, Social Network Analysis (SNA) provides an analytical assessment of the connections among individuals and identifies gang structures, drug market networks, and key individuals to investigate. Social networks can explain criminal relationships, behaviors, and patterns that may exist. SNA reveals these links and allows researchers to understand criminal relationships, networks, and influences.⁴⁵⁵

It is critical for local law enforcement to understand the structure of criminal networks to help them predict and disrupt future crimes. Many departments use SNA in conjunction with intelligence and data analysis to identify individuals to target for focused deterrence intervention.

| See Chapter 7: Business and Community Development.

8.1.4 Federal, state, local, and tribal governments should increase funding for community-oriented crime reduction programs focused on both adult and youth populations.

The honed enforcement of criminal laws by itself is unlikely to permanently abate the high levels of violence observed in many American communities. Just as criminal behavior generally derives for many reasons outside of the legal system, law enforcement is not the sole means to remedy gang violence. Many “intervention” programs can address crime reduction without punishment, and such programs include hospital-based violence intervention programs, place-centric or community-based crime reduction programs, programs designed to modify a community’s physical and social environment, and prevention and reentry programs.

Interventions that include street outreach address violence risk factors like community-level trauma and cultural or social norms that normalize violence as a way to resolve problems. Such interventions include having trained personnel reach out to community residents who are known to have engaged in or who may be at increased risk for violence, promoting nonviolence norms

452 Kate Bowers et al., “Spatial Displacement and Diffusion of Benefits Among Geographically-Focused Policing Initiatives,” *Campbell Collaboration* 7, no. 1 (2011), <https://campbellcollaboration.org/better-evidence/geographically-focused-policing.html>; and Weisburd et al., “Does Crime Just Move Around the Corner? A Controlled Study of Spatial Displacement and Diffusion of Crime Control Benefits,” *Criminology* 44, no. 3 (2006), <https://doi.org/10.1111/j.1745-9125.2006.00057.x>.

453 Anthony A. Braga, Andrew V. Papachristos, and David M. Hureau, “The Effects of Hot Spots Policing on Crime: An Updated Systematic Review and Meta-Analysis,” *Justice Quarterly* 31, no.4 (2014), <https://doi.org/10.1080/07418825.2012.673632>; and Anthony Braga et al., “Hot Spots Policing and Crime Reduction,” *Journal of Experimental Criminology* 15 (2019), <https://link.springer.com/article/10.1007/s11292-019-09372-3>.

454 Stephen Lurie, “There’s No Such Thing as a Dangerous Neighborhood,” Bloomberg City Lab, February 25, 2019, <https://www.bloomberg.com/news/articles/2019-02-25/beyond-broken-windows-what-really-drives-urban-crime>.

455 Jason Gravel and George E. Tita, “Network Perspectives on Crime,” *Oxford Research Encyclopedia of Criminology and Criminal Justice* (Oxford, UK: Oxford University Press, 2017), <https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-251>.

and nonviolent conflict mediation, and connecting community members to available social supports and services.⁴⁵⁶

Long-term, comprehensive interventions for children with behavioral problems can reduce violent crime in adulthood. Youth violence, which includes fighting, bullying, gang activity, and dating violence, has been described by the Centers for Disease Control and Prevention as a significant public health problem.⁴⁵⁷ Local school districts should incorporate interventions to increase protective factors that can reduce crime for children, youth, and families, such as quality early childhood programs (e.g., early Head Start and Head Start), good school attendance programs (e.g., Check and Connect and Positive Action), after school and youth development programs (e.g., GEAR UP), literacy programs (e.g., READ 180), social-emotional interventions, and mentoring programs.⁴⁵⁸ These programs have far-reaching, positive effects. Head Start programs, followed by effective and well-funded K–12 schools, are related to positive outcomes, including reduced adult incarceration.⁴⁵⁹

| See Chapter 4: Juvenile Justice and Youth Crime.

8.2 Illegal Possession, Use, and Trafficking of Firearms

The most significant instrument of violent crime is an illegal firearm. More often than not, it is illegal guns (those that are unlawfully obtained or possessed) that criminals use to commit crimes.⁴⁶⁰ Eighty-five percent of criminal firearm possessors are not the original purchaser.⁴⁶¹

Criminals arm themselves through firearm traffickers, thefts, illicit retail markets (i.e., lie-and-try), privately-made firearms (i.e., un-serialized firearms often referred to as “ghost guns”), and unlawful private market sales (e.g., gun shows and flea markets). A 2016 study conducted by the Bureau of Justice Statistics found that an estimated 287,400 state and federal prisoners had possessed a firearm during their offense, with more than half (56 percent) having acquired it by purchasing it “on the street” (43 percent), finding it at the crime scene (7 percent), or stealing it (6 percent).⁴⁶² Research on gun violence illustrates the importance of focusing on the highest-risk places, people, and weapons.⁴⁶³

456 National Network of Hospital-based Violence Intervention Programs, *Hospital-Based Violence Intervention: Practices and Policies to End the Cycle of Violence* (Jersey City, NJ: National Network of Hospital-based Violence Intervention Programs, 2019), <https://static1.squarespace.com/static/5d6f61730a2b610001135b79/t/5d83c0d9056f4d4cbdb9acd9/1568915699707/NNHVIP+White+Paper.pdf>.

457 Corinne David-Ferdon et al., *A Comprehensive Technical Package for the Prevention of Youth Violence and Associated Risk Behaviors* (Atlanta, GA: Centers for Disease Control and Prevention, 2016), <https://www.cdc.gov/violenceprevention/pdf/yv-technicalpackage.pdf>.

458 “Applying for the Head Start Program,” Early Childhood Learning and Knowledge Center, accessed June 19, 2020, <https://eclkc.ohs.acf.hhs.gov/how-apply>; “Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP),” U.S. Department of Education, November 21, 2019, <https://www2.ed.gov/programs/gearup/index.html>; and “Read 180 Unlock Whole-Brain Reading Through Blended Learning Intervention,” Houghton Mifflin Harcourt, accessed June 26, 2020, <https://www.hmco.com/programs/read-180-universal>.

459 Rucker C. Johnson and C. Kirabo Jackson, “Reducing Inequality Through Dynamic Complementarity: Evidence from Head Start and Public School Spending,” *American Economic Journal: Economic Policy* 11, no. 4 (2019), <https://doi.org/10.1257/pol.20180510>.

460 Anthony A. Braga et al., “The Illegal Supply of Firearms,” *Crime and Justice* 29 (2002), <https://doi.org/10.1086/652223>; National Research Council, *Understanding and Preventing Violence: Volume 1* (Washington, DC: The National Academies Press, 1993), <https://www.nap.edu/catalog/1861/understanding-and-preventing-violence-volume-1>; and James D. Wright and Peter H. Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms* (Hawthorne, NY: Aldine de Gruyter Publishing Co., 1994), <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=155885>.

461 Daniel W. Webster, Jon S. Vernick, and Maria T. Bulzacchelli, “Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking,” *Journal of Urban Health* 86, no. 4 (2009): 526, <https://dx.doi.org/10.1007%2Fs11524-009-9351-x>.

462 Mariel Alper and Lauren Glaze, *Source and Use of Firearms Involved in Crimes: Survey of Prison Inmates, 2016* (Washington, DC: Bureau of Justice Statistics, 2019), 1, <https://www.bjs.gov/content/pub/pdf/suficspi16.pdf>.

463 Lawrence W. Sherman and Dennis P. Rogan, “Effects of Gun Seizures on Gun Violence: ‘Hot spots’ Patrol in Kansas City,” *Justice Quarterly* 12, no. 4 (1995), <https://doi.org/10.1080/07418829500096241>.

“In 2017, on average, there were 105 gun fatalities every day—a fact often overlooked in light of mass shootings, which amounted to 117 deaths over that entire year. The impact of gun violence extends well beyond those cases that end in death: any shooting results in serious and sometimes debilitating injury, often requiring life-long medical attention.”⁴⁶⁴ - G. Zachary Terwilliger, U.S. Attorney for the Eastern District of Virginia

While criminal intelligence often focuses on the individuals driving the violence in a particular community, identifying and evaluating the use of firearms can and should factor into any crime analysis of where to devote law enforcement resources. CGI is currently one of the most successful means available for law enforcement in combatting gun crimes, and more specifically within CGI is using the NIBIN. ATF established NIBIN in 1997 with a mission to provide partner agencies around the country—local, state, and federal law enforcement—with an automated ballistic imaging network. NIBIN is the only national network for compiling ballistic evidence and is used to help solve violent crimes involving firearms by comparing ballistics evidence from around the country. NIBIN provides investigators with the ability to determine potential links between crimes that they would not have been able to realize without it. NIBIN data, in conjunction with comprehensive firearms tracing, forms the cornerstone of CGI.⁴⁶⁵

The ATF Forensic Science Laboratory and several other laboratories in the United States and Europe have also recently developed methods to successfully obtain DNA profiles from fired cartridge cases. Forensic DNA analysis compares DNA recovered from biological material deposited on items of evidence to individuals potentially related to the criminal investigation. DNA profiles that are developed from crime scene evidence can be compared to a national database of convicted offenders and other crime scene DNA profiles to generate leads (i.e., Combined DNA Index System, or CODIS). DNA analysis can now be combined with CGI tools to provide investigators more information to solve firearm-related crimes.⁴⁶⁶

A constellation of federal and state laws regulates the possession, use, sale, and transfer of firearms, and otherwise prohibits many criminals from receiving firearms in the first place. It is not enough for law enforcement to simply punish criminals for using firearms in crimes. Law enforcement must proactively investigate and prevent criminals from illegally possessing firearms in the first place.

The recommendations that follow aim to enhance law enforcement’s ability to reduce illegal firearms and crimes committed by them.

464 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 8, 2020) (statement of Zachary Terwilliger, U.S. Attorney, Eastern District of Virginia), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

465 “Fact Sheet- National Integrated Ballistic Information Network,” Bureau of Alcohol, Tobacco, Firearms and Explosives, June 2020, <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-integrated-ballistic-information-network>.

466 Todd W. Bille et al., “An Improved Process for the Collection and DNA Analysis of Fired Cartridge Cases,” *Forensic Science International: Genetics* 46 (2020), <https://doi.org/10.1016/j.fsigen.2020.102238>.

8.2.1 Federal and local law enforcement agencies should partner to increase investigations and prosecutions of individuals who illegally possess, use, and traffic firearms.

Gun traffickers, unlicensed dealers, and straw purchasers (i.e., individuals without a criminal record who purchase firearms for drug dealers, violent criminals, or persons who are prohibited by law from receiving firearms) should be investigated and prosecuted to deter the illegal use of firearms. Research indicates that offenders who use firearms in the commission of their crimes are more likely to recidivate than non-firearms offenders.⁴⁶⁷ Additionally, when those offenders are rearrested, it is often for more serious crimes than offenders who did not use a firearm during their initial offense.⁴⁶⁸ Reoffenders who were firearms offenders are most commonly charged with assault (29 percent), followed by drug trafficking (13.5 percent) and public order crimes (12.6 percent).⁴⁶⁹

Accordingly, it is critical that law enforcement investigates and apprehends individuals who illegally possess, transfer, or traffic firearms in order to preempt the flow of guns to communities engulfed by gun violence.

8.2.2 Law enforcement agencies should collect and quickly process ballistics evidence in all shootings and gun recoveries, regardless of whether there is an immediately identifiable offender or victim.

Comprehensive collection of all available firearms intelligence is the foundation of NIBIN. It maximizes the firearm data available to law enforcement to detect, track, and identify violent crimes and the individuals who commit them. Partner agencies should collect and submit all evidence suitable for entry into NIBIN, regardless of the severity of a crime. Evidence includes cartridge cases recovered from crime scenes and test fires from recovered crime guns. Shooting events tend to escalate, so agency policies should be instituted to recover all suitable ballistic evidence from crime scenes and process it through NIBIN. A Rutgers University study detailed that when three or more shooting events are linked by NIBIN, 50 percent of the time the third shooting occurred within 90 days of the second.⁴⁷⁰ Low-priority shooting events routinely link with higher-priority events. Law enforcement should prioritize a victimless shot fired call with the same urgency and attention as a homicide case.⁴⁷¹ Nonfatal shootings constitute the majority of all gun assaults, occurring approximately four times as often as gun homicides.⁴⁷²

Timely turnaround is crucial, as violent crime investigations turn cold fast.⁴⁷³ As a result, timely intelligence and investigative leads gained through NIBIN are critical to solving violent crimes and stopping violent offenders before they can reoffend. Quick turnaround is vital during all phases of NIBIN analysis, including the entry and acquisition into NIBIN, correlation reviews, and the dissemination of NIBIN leads.⁴⁷⁴

467 U.S. Sentencing Commission, *Recidivism Among Federal Firearms Offenders* (Washington, DC: U.S. Sentencing Commission, 2019), <https://www.ussc.gov/research/research-reports/recidivism-among-federal-firearms-offenders>.

468 U.S. Sentencing Commission, *Recidivism Among Federal Firearms*.

469 U.S. Sentencing Commission, *Recidivism Among Federal Firearms*, 4.

470 Sue Weston, "Ballistics Analysis Project Externship," University of Rutgers, accessed June 22, 2020, <https://mbs.rutgers.edu/articles/ballistics-analysis-project-externship>.

471 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 16, 2020) (written statement of Christopher Amon, Division Chief, Firearms Operations Division, Bureau of Alcohol, Tobacco, Firearms and Explosives), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

472 Natalie K. Hipple and Lauren A. Magee, "The Difference Between Living and Dying: Victim Characteristics and Motive Among Nonfatal Shooting and Gun Homicides." *Violence and Victims* 32, no. 6 (2017), <https://doi.org/10.1891/0886-6708.vv-d-16-00150>.

473 Bureau of Alcohol, Tobacco, Firearms and Explosives, "Fact Sheet- National Integrated Ballistic."

474 Amon, *President's Commission on Law*, April 16, 2020.

8.2.3 Congress should provide additional funding to the Department of Justice to increase the number of National Integrated Ballistic Information Network (NIBIN) sites, and the Department of Justice should provide additional grant funding to the Local Law Enforcement Crime Gun Intelligence Centers Integration Initiative.

The Crime Gun Intelligence Centers (CGICs) model is built on partnerships with local law enforcement, district attorney offices, and U.S. attorney's offices. CGICs use forensic science and data analysis to identify offenders and the sources of crime guns. The forensic technology used by CGICs to focus law enforcement investigations helps state and federal courts prosecute the most violent armed offenders.⁴⁷⁵

There are currently 225 NIBIN sites in the country.⁴⁷⁶ In 2018, violent crime in rural areas increased above the national average for the first time in a decade.⁴⁷⁷ To effectively navigate this increase in crime, NIBIN should be expanded to fill gaps across the country in urban and rural areas.

CGIC tools, such as acoustic gunshot detection technology, firearms tracing, and NIBIN, have been widely recognized as effective measures to reduce crime. CGICs help law enforcement disrupt criminal gangs. Comprehensive collection of ballistic evidence is critical for NIBIN to be successful, and acoustic gunshot detection technology alerts law enforcement to shooting incidents where there may not be a victim or witness. NIBIN can serve as a tool to point law enforcement towards violent gang members. A 2017 Police Foundation brief ranked ballistic imaging as the most useful federal resource in preventing gun violence through the expedited identification and arrest of shooters and gun traffickers.⁴⁷⁸ As an example, in three years, the Cincinnati Police Department reduced the number of people shot in Cincinnati, Ohio, from 479 in 2015 to 333 in 2018, a 30 percent reduction.⁴⁷⁹ Assistant Police Chief Paul Neudigate attributes this substantial reduction to a layered strategy based upon the principles of CGI: NIBIN, e-Trace, acoustic gunshot detection technology systems, identifying priority offenders, enhanced federal prosecution, and strong relationships.⁴⁸⁰

Additionally, to be the most effective, law enforcement agencies that have purchased or been provided NIBIN technology should share this tool with other state or local partners within their geographical area. These partnerships with both large and small law enforcement agencies leverage NIBIN technology beyond jurisdictional boundaries to combat firearm violence. One of ATF's first regional NIBIN joint initiative programs was established with the Frederick County Sheriff's Office in Maryland to serve all western Maryland law enforcement. All of the NIBIN equipment and the technicians are located at the Frederick County Law Enforcement Center, where they rapidly process the ballistic evidence for law enforcement officers from four western Maryland counties.

475 National Police Foundation, *5 Things You Need To Know About Crime Gun Intelligence Centers* (Washington, DC: National Police Foundation, 2018), <https://www.policefoundation.org/publication/5-things-you-need-to-know-about-crime-gun-intelligence-centers-2/>.

476 Pete Gagliardi, *The 13 Critical Tasks: An Inside-Out Approach to Solving More Gun Crime* (Québec, Canada: Ultra Electronic Forensic Technology, Inc., 2019), 244.

477 Shibani Mahtani, "Nothing But You and the Cows and the Sirens' - Crime Tests Sheriffs Who Police Small Towns," *Wall Street Journal*, May 12, 2018, <https://www.wsj.com/articles/nothing-but-you-and-the-cows-and-the-sirens-crime-tests-small-town-sheriffs-1526122800>.

478 National Police Foundation and Major Cities Chiefs Association, *Reducing Violent Crime in American Cities: An Opportunity to Lead - Full Report* (Washington, DC: National Police Foundation, 2017), <https://www.policefoundation.org/publication/reducing-violent-crime-in-american-cities-an-opportunity-to-lead-full-report/>.

479 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 8, 2020) (written statement of Paul Neudigate, Assistant Chief of Police, Cincinnati Police Department, OH), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

480 Neudigate, *President's Commission on Law*, April 8, 2020.

The CGIC program has great potential to reduce gun crime.⁴⁸¹ Departments should use NIBIN consistently and adhere to each phase of the CGIC model (i.e., comprehensive evidence collection, timeliness, follow-up, and implementing a feedback loop) to realize its full potential.⁴⁸²

8.2.4 Congress should continue to fund the NIBIN National Correlation and Training Center.

NIBIN involves a multi-step process. The cartridge case must be acquired by law enforcement, uploaded into NIBIN via an acquisition machine, and reviewed via correlation review software. Through additional funding to the ATF's National Correlation and Training Center (NNCTC), local law enforcement partners would no longer be required to purchase their own correlation review equipment. Instead, they could focus on timely acquisitions.

Currently, the NNCTC conducts ballistics image correlations and returns investigative leads to more than 500 law enforcement agencies across the nation within 48–72 hours. This alleviates an intensive funding and personnel burden, thereby increasing efficiency and generating leads for investigators as quickly as possible.⁴⁸³ The NNCTC accounts for approximately 35 percent of all ballistic image acquisitions in the United States.⁴⁸⁴ Working in tandem with local law enforcement, the NNCTC give sites the ability to concentrate limited resources on other critical aspects of the NIBIN process, thereby increasing their ability to provide critical violent gun crime leads to investigators in a timely fashion.⁴⁸⁵

As of May 2020, the NNCTC has conducted 277,445 correlation reviews, resulting in more than 71,669 leads to partner sites while maintaining a 99.6 percent confirmation rate of the leads disseminated to partner sites.⁴⁸⁶ The NNCTC helps solve homicides, attempted homicides, robberies, and other shooting incidents.⁴⁸⁷ Further funding of the NNCTC will aid both large and small law enforcement organizations to reduce firearm violence in their communities.⁴⁸⁸

8.2.5 Congress should enact a federal firearms trafficking statute that strengthens penalties for fraudulent and illegal firearm transfers.

The trafficking of firearms to violent criminals, gangs, and drug trafficking organizations—whether into our cities or across the Southwest Border—presents a grave threat to public safety. Straw purchasers are the linchpin of most firearms trafficking operations. Straw purchasers may acquire firearms directly for prohibited persons or purchase them for other middlemen on behalf of violent criminals. Not only do straw purchasers allow prohibited persons to come into possession of firearms, they make it extremely difficult for law enforcement officers to trace firearms to aid law enforcement in the investigation of crimes.⁴⁸⁹

481 Christopher Koper, Heather Vovak, and Brett Cowell, *Evaluation of the Milwaukee Police Department's Crime Gun Intelligence Center* (Washington, DC: National Police Foundation, 2019), <https://www.policefoundation.org/new-report-the-evaluation-of-the-milwaukee-police-departments-cgic/>.

482 National Police Foundation, *5 Things You Need To Know*.

483 Bureau of Alcohol, Tobacco, Firearms and Explosives, "Fact Sheet- National Integrated Ballistic"; and Christopher Amon, Division Chief, Firearms Operations Division, Bureau of Alcohol, Tobacco, Firearms and Explosives, email communication with Kristie Brackens, Federal Program Manager, Reduction of Crime Working Group, July 10, 2020.

484 Amon, email communication with Kristie Brackens, July 10, 2020.

485 National Police Foundation, *5 Things You Need To Know*.

486 Amon, email communication with Kristie Brackens, July 10, 2020.

487 Amon, email communication with Kristie Brackens, July 10, 2020.

488 Amon, email communication with Kristie Brackens, July 10, 2020.

489 Eric M. Epstein, Senior Policy Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosives, email communication with Reduction of Crime Working Group, May 1, 2020.

Federal law could deter firearms traffickers by expressly prohibiting and imposing mandatory minimum penalties for straw purchasing and illicit diversion of firearms. Under current law, there is no statute specifically directed at straw purchasing or firearms trafficking. Instead, prosecutors rely primarily on 18 U.S.C. § 922(a)(6), which prohibits making a material false statement, typically on a Firearms Transaction Record (ATF Form 4473) in connection with the purchase of a firearm from a Federal Firearms Licensee (FFL). Prosecutors also rely on 18 U.S.C. § 924(a)(1)(A), which prohibits making a false statement with regard to any information that FFLs are required by law to keep on file, including the identity of the actual purchaser.⁴⁹⁰

It is difficult to prove the intent of a straw purchaser or firearms trafficker to transfer a firearm to other persons. Congress should therefore authorize the use of Title III electronic surveillance to investigate violations of such a firearm trafficking statute. Additionally, Congress should amend federal law to add straw purchasing and firearms trafficking as predicates for racketeering violations, including Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 (1970), and Violent Crimes in Aid of Racketeering, 18 U.S.C. § 1959 (2006), and make them specified unlawful activities for money laundering.⁴⁹¹ The effective use of such law enforcement tools could deter straw purchasers and other traffickers by depriving them and their organizations of the proceeds they use to acquire additional weapons or otherwise support their illicit activities.

Another way to stymie firearms traffickers is for Congress to mandate that FFLs immediately report any firearms theft, burglary, or robbery directly to ATF upon discovery. Current law permits FFLs to wait 48 hours before reporting the crime to ATF, which enables the criminals to gain a tremendous advantage over law enforcement. Reducing the time it takes to report this crime allows ATF to accelerate the deployment of federal resources, including sending additional investigators to conduct interviews or surveillance, making timely requests for cell tower data, identifying witnesses, preserving evidence (e.g., video footage), and requesting forensic lab assistance. Additionally, the sooner ATF responds, the quicker the serial numbers of the stolen firearms can be documented and sent to the National Tracing Center, which then develops investigative leads when any of the stolen firearms are recovered by law enforcement.

8.2.6 The Department of Justice should increase the sworn complement of Bureau of Alcohol, Tobacco, Firearms and Explosives special agents.

Given the current focus on firearm-related violence across the United States, ATF shares an important mission with law enforcement to identify and arrest violent firearm offenders. ATF continues to accomplish this mission with a staff of approximately 5,100 employees, including 2,630 special agents and 842 industry operations investigators. Its 2018 budget was nearly \$1.3 billion. Since 1972, this represents an increase of only 1,272 employees.⁴⁹²

Assistant Chief Neudigate recommends, “If addressing gun violence is a national priority, and as ATF has the most co-aligned mission with local law enforcement and the least amount of sworn agents of any of the major federal law enforcement agencies, increase the sworn complement of ATF field agents.”⁴⁹³

490 Epstein, email communication with Reduction of Crime, May 1, 2020.

491 Epstein, email communication with Reduction of Crime, May 1, 2020.

492 “Fact Sheet – Staffing and Budget,” Bureau of Alcohol, Tobacco, Firearms and Explosives, May 2019, <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-staffing-and-budget>.

493 Neudigate, *President’s Commission on Law*, April 8, 2020.

8.2.7 Congress should provide additional funding and guidance to help state agencies improve the accuracy of reporting of mental health records and protection orders to the National Instant Check System (NICS).

NICS is critical to keeping firearms out of the hands of those who are legally prohibited from purchasing or possessing them. To function effectively, NICS requires access to complete, accurate, and timely information submitted by relevant agencies in all levels of government nationwide. However, key information on prohibiting factors is missing from NICS, including mental health adjudications. While significant improvements have been made, a background check is only as good as the records in the database, and further improvements are needed.

As detailed by the National Sports Shooting Foundation, states should improve the NICS database by submitting any and all records establishing an individual is a prohibited person (e.g., mental health records showing someone is an “adjudicated mental defective” or involuntarily committed to a mental institution) and official government records showing someone is the subject of a domestic violence protective order, has a substance use disorder, or is subject to another prohibited category.⁴⁹⁴ Including these missing records will help ensure more accurate and complete background checks.⁴⁹⁵

| See Chapter 6: Criminal Justice System Partners.

8.2.8 The Federal Bureau of Investigation should include nonfatal shootings as a separate category in the National Incident-Based Reporting System (NIBRS).

In 2021, the FBI will complete the transition from the UCR program to NIBRS. NIBRS provides an extensive view of crime in the United States by compiling comprehensive data on individual crime incidents in the country. An update to the Summary Reporting System, NIBRS offers greater flexibility in the compilation of data and its analysis. NIBRS can identify details about the crime, such as where and when a crime occurred, the characteristics of its victims and offenders, and whether it has been cleared.⁴⁹⁶

Currently, murders are the only direct measure of local gun violence captured by UCR. Law enforcement agencies cannot extract nonfatal shooting incidents that meet the recommended definition. Adding nonfatal shootings as a UCR category will allow for a more accurate understanding of local gun violence and will allow agencies to better address community concerns and allocate resources. A person who has been involved in prior nonfatal shootings is at high risk for being involved in future shootings and homicides.⁴⁹⁷ The ability to only capture murders does not provide an accurate picture of gun violence in communities. Natalie Hipple, associate professor of criminal justice at Indiana University, notes, “Comprehensive nonfatal

494 “NSSF Praises States for Record Submission of Disqualifying Mental Health Records to Background Check System,” National Shooting Sport Foundation, September 25, 2019, <https://www.nssf.org/nssf-praises-states-for-record-submission-of-disqualifying-mental-health-records-to-background-check-system>.

495 “NSSF, ATF Jointly Launch Operation Secure Store,” National Shooting Sport Foundation, January 23, 2018, <https://www.nssf.org/nssf-atf-jointly-launch-operation-secure-store>.

496 “National Incident-Based Reporting System (NIBRS),” Federal Bureau of Investigation, accessed July 27, 2020, <https://www.fbi.gov/services/cjis/ucr/nibrs>.

497 Andrew V. Papachristos, Christopher Wildeman, and Elizabeth Roberto, “Tragic, But Not Random: The Social Contagion of Nonfatal Gunshot Injuries,” *Social Science & Medicine* 125 (2015), <https://doi.org/10.1016/j.socscimed.2014.01.056>.

shooting data can assist law enforcement in understanding the context of local gun violence and serve to better inform policy and practice.⁴⁹⁸

8.3 Drug Trafficking

The trafficking of deadly drugs into and throughout the country continues to kill citizens and wreak havoc on communities. Dramatic increases in drug overdoses have occurred as a result of opioids (such as fentanyl), and recently the United States has seen a dangerous resurgence in the trafficking of methamphetamine as well, which has particularly affected rural America.

| See Chapter 13: Rural and Tribal Law Enforcement.

Mexican transnational criminal organizations (TCOs) continue to control lucrative drug trafficking corridors, primarily across the Southwest Border, and are responsible for the vast majority of illicit fentanyl, methamphetamine, cocaine, and heroin trafficked in the United States.⁴⁹⁹ These TCOs work with transnational gangs, U.S.-based street gangs, and prison gangs to distribute deadly substances across the nation.⁵⁰⁰ The gangs engage in and expand their drug operations through violent criminal activity that accompanies drug trafficking and distribution. The Drug Enforcement Administration (DEA) notes: “Drug traffickers—including cartels and street gangs—will stop at nothing to turn a profit, often using violence and intimidation to expand their reach.”⁵⁰¹

The fundamental motivation of drug traffickers is money, and TCOs will continue to adapt to make profits through drug production, trafficking, and money laundering. According to the DEA, Mexican TCOs remain the greatest criminal drug threat to the United States, and no other organizations are positioned to challenge them.⁵⁰² Mexican TCOs have increasingly shifted to producing and trafficking potent synthetic illicit substances: methamphetamine and fentanyl.⁵⁰³ These synthetic drugs can be produced in clandestine labs with precursor chemicals, which substantially reduces production costs that are associated with plant-based illicit drugs that require land, water, time, and labor to harvest.

Traffickers of these highly potent substances frequently explore novel ways to hide their products and find new routes of importation. Methamphetamine and fentanyl can be smuggled in modest amounts given their synthetic development and, therefore, can be more easily concealed than naturally derived narcotics, which tend to be bulkier. Synthetic drugs can also be found and bought on the dark web more cheaply by clients using cryptocurrencies and shipped through international mail or in express consignment. As the Office of National Drug Control Policy found, this “combination of low production cost, the anonymity of the dark web and cryptocurrencies, and drugs with higher potency than their plant-based counterparts creates a favorable risk-reward structure.”⁵⁰⁴

The end result of these prolific drug trafficking crimes are the deaths of thousands of Americans. American drug overdose deaths in 2018 totaled more than 67,000.⁵⁰⁵ Many of these deaths were

498 Edmund F. McGarrell et al., *Tale of Four Cities: Improving our Understanding of Gun Violence* (n.p., 2019), <https://www.ncjrs.gov/pdffiles1/nij/grants/254127.pdf>.

499 Drug Enforcement Administration, *2019 National Drug Threat Assessment*.

500 Drug Enforcement Administration, *2019 National Drug Threat Assessment*.

501 Office of Public Affairs, “Attorney General William P. Barr Announces.”

502 Drug Enforcement Administration, *2019 National Drug Threat Assessment*.

503 Executive Office of the President of the U.S., *National Drug Control Strategy Report by the Office of National Drug Control Policy*, (Washington, DC: Executive Office of the President of the U.S., 2020), <https://www.whitehouse.gov/wp-content/uploads/2020/02/2020-NDCS.pdf>.

504 Executive Office of the President of the U.S., *National Drug Control Strategy*, 3.

505 Holly Hedegaard, Arialdi M. Miniño, and Margaret Warner, *Drug Overdose Deaths in the United States, 1999–2018* (Washington, DC: National Center for Health Statistics, 2020), <https://www.cdc.gov/nchs/data/databriefs/db356-h.pdf>.

driven by fentanyl, of which fatal overdoses increased 10 percent in 2017. Additionally, between 2012 and 2018, deaths from cocaine overdose tripled and deaths from methamphetamine increased fivefold.⁵⁰⁶ Over the past few years, deaths from cocaine and methamphetamine overdoses have risen due to drug trafficking organizations mixing fentanyl in these substances. Methamphetamine overdoses have also risen due to the low cost, high purity, and high potency meth that the cartels are trafficking into the U.S. In addition, TCOs have been producing counterfeit controlled prescription drugs (e.g., oxycodone) as a way to capitalize on opioid addiction. These counterfeit pills are pressed with heroin and fentanyl and are virtually indistinguishable from licit opioid pills.

One useful tool in disrupting illegal enterprises is asset forfeiture, which deprives criminals of the proceeds of their illegal activity. It also helps to deter crime and the seizures can be used to restore property to the victims. The DOJ has made use of criminal and civil asset forfeiture as an effective mechanism to counter sophisticated criminal actors. Since 2002, the DOJ has transferred more than \$8.5 billion in forfeited funds to victims of crime, and notably, forfeited funds are reinvested back into state and local law enforcement through the Equitable Sharing Program to promote and enhance cooperation among federal, state, local, and tribal law enforcement agencies. In the last five years, the DOJ has equitably shared approximately \$1.75 billion with state, local, and tribal law enforcement agencies.⁵⁰⁷

In order to save American lives and protect our communities from more crime, federal, state, and local law enforcement partners need to continue adapting their strategies to aggressively target, disrupt, and dismantle these TCOs.

One current initiative of the DOJ addressing drug trafficking is Operation Crystal Shield. This operation run by the DEA directs enforcement resources to methamphetamine “transportation hubs”—areas where methamphetamine is often trafficked in bulk and then distributed across the country. While the DEA continues to focus on stopping drugs being smuggled across the border, Operation Crystal Shield has ramped up DEA’s enforcement to block their further distribution into America’s neighborhoods.⁵⁰⁸

Operation Crystal Shield’s efforts are being concentrated in nine major methamphetamine transportation hubs identified by the DEA: Atlanta, Dallas, El Paso, Houston, Los Angeles, New Orleans, Phoenix, San Diego, and St. Louis. Together, these DEA Field Divisions accounted for more than 75 percent of methamphetamine seized in the U.S. in 2019.⁵⁰⁹

“While meth is not a new drug, it has seen a troubling resurgence over the past few years,” said Attorney General Barr. “Manufactured mostly in Mexican labs and smuggled into the United States across the southwest border, meth is a drug that is both cheap and potent, creating a deadly combination. Just as the Trump Administration has acted swiftly to stem the tide of opioid fatalities, it will use every weapon in its arsenal—such as the DEA’s Operation Crystal Shield—to stop dangerous methamphetamine from reaching American neighborhoods and harming American families.”⁵¹⁰

506 Hedegaard, Miniño, and Warner, *Drug Overdose Deaths*.

507 Office of the Inspector General, *Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2019* (Washington, DC: U.S. Department of Justice, 2019), <https://oig.justice.gov/reports/2019/a20014.pdf#page=1>.

508 Office of Public Affairs, “DEA Announces Launch of Operation Crystal Shield,” U.S. Department of Justice, February 20, 2020, <https://www.justice.gov/opa/pr/dea-announces-launch-operation-crystal-shield>.

509 “Attorney General Barr Announces Results of DEA Operation Crystal Shield,” Drug Enforcement Administration, September 10, 2020, <https://www.dea.gov/press-releases/2020/09/10/attorney-general-barr-announces-results-dea-operation-crystal-shield>.

510 Office of Public Affairs, “DEA Announces Launch.”

These dangerous drugs are also linked to other violent crimes. U.S. Attorney Ron Parsons commented that the greatest threat to rural America right now is methamphetamine because of its presence in almost every crime law enforcement responds to in his district, like robbery, assault, domestic violence, and homicides. Thus, interdicting drugs that are being trafficked will not only reduce drug crimes, but also other crimes as well.⁵¹¹

The below recommendations offer ways for law enforcement to combat drug trafficking and dismantle drug trafficking networks.

8.3.1 Local law enforcement should actively participate in a regional high-intensity drug trafficking area or task forces led by the Drug Enforcement Administration.

DEA's Task Force Program builds on the successful collaboration of DEA with its state and local law enforcement partners. Because it has fewer than 5,000 DEA special agents, DEA could not effectively conduct its mission without the more than 3,000 sworn task force offices (TFOs).⁵¹² As part of the TFO program, DEA funding supports overtime, training, and operational expenses for state and local TFOs. Since 2017, the DEA has increased the number of its TFOs by nearly 400 (20 percent).⁵¹³

The High Intensity Drug Trafficking Area (HIDTA) task force program is managed by the White House Office of National Drug Control Policy and coordinates and assists federal, state, local, and tribal law enforcement across all 50 states to reduce regional drug threats and reduce drug trafficking and drug production.

Both of these federal programs offer local and state law enforcement support in confronting drug trafficking crimes.

8.3.2 Sheriffs should partner with local and state law enforcement to implement flexible cooperative criminal highway interdiction efforts in contiguous counties that cover major national or state highways designated as drug transportation corridors.

An interdiction unit is a cost-effective way to use one of a sheriff's key strengths—jurisdiction—to fight the smuggling of illegal narcotics, weapons, bulk cash, and victims of human trafficking by organized crime in a location they must use: highways and roads.⁵¹⁴ Highway interdiction is effective in terms of arrests; seizures of illegal drugs, weapons, and bulk cash; recovery of stolen vehicles; and the rescue of children and undocumented immigrants. This efficacy can be enhanced by the DOJ offering state law enforcement grants to fund highway criminal interdiction units.

The North Texas Criminal Interdiction Unit (NTXCIU) is a cooperative interdiction effort among sheriffs in eight counties in Northeast Texas. In just over two years of operations, the NTXCIU has arrested more than 130 smugglers; seized tons of illegal narcotics and marijuana, several military-style weapons, and more than \$1.5 million in bulk cash; and recovered approximately 100 stolen

511 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Rural and Tribal Justice* (May 19, 2020) (statement of Ron Parsons, U.S. Attorney, South Dakota), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

512 Sean Mitchell, Chief, Intergovernmental Affairs, Drug Enforcement Administration, email communication with Kristie Brackens, Federal Program Manager, Reduction of Crime Working Group, July 7, 2020.

513 Mitchell, email communication with Kristie Brackens, July 7, 2020.

514 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 7, 2020) (statement of John Skinner, Sheriff, Collin County, TX). <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

vehicles.⁵¹⁵ The NTXCIU's deputy sheriffs have also stopped three cargo loads of undocumented immigrants. More importantly, the NTXCIU has rescued three missing or abducted children in unrelated highway stops.⁵¹⁶

8.3.3 Congress should permanently schedule the entire class of fentanyl and related analogues.

In response to the proliferation of fentanyl-related analogues coming predominately from China, the DEA scheduled the entire class of fentanyl and related analogues in February 2018 on a temporary emergency basis.⁵¹⁷ On May 1, 2019—due largely to U.S. pressure—China permanently scheduled all fentanyl-related substances.⁵¹⁸ These controls, along with the U.S. temporary emergency scheduling order, successfully slowed the rate at which new fentanyl-related substances appeared on the illicit market. Specifically, there has been a significant decline in law enforcement reports to the National Forensic Laboratory Information System (NFLIS) of fentanyl-related substances. Amanda Liskamm, the director of DOJ's Opioid Enforcement Efforts, stated: "In the 24 months preceding the temporary order (February 2016 through January 2018), there were over 17,500 reports of these substances to NFLIS, excluding those controlled prior to 2016. . . . Since the temporary class control (February 2018 through December 2019), there were fewer than 8,800 reports to NFLIS for substances structurally related to fentanyl, a 50 percent reduction."⁵¹⁹

In February 2020, Congress passed legislation that extended DEA's temporary class scheduling of fentanyl and fentanyl analogues until May 6, 2021.⁵²⁰ If that scheduling is allowed to lapse, drug traffickers would once again be able to create and traffic new fentanyl analogues with relative impunity. Fentanyl-related analogues should be permanently scheduled to prevent a re-emergence of fentanyl analogues by bad actors exploiting loopholes in U.S. and international law.

8.3.4 The federal government should develop a national automatic license plate reader clearinghouse for all data from automatic license plate readers.

Automatic license plate readers (ALPR) technology can serve as force multiplier for police departments.⁵²¹ ALPR data (i.e., an aggregate data set consisting of a license plate's letters and number, location, and date and time of reading) is commonly used to detect stolen vehicles and license plates, and can help ongoing investigations.⁵²² ALPR data is especially useful in combatting smuggling and drug trafficking crimes.

Sheriff John Skinner notes that a national database for law enforcement ALPR data would bring "(1) uniform standards for the inclusion of data; (2) uniform policies for access to, maintenance of, and use or dissemination of data; (3) appropriate standards for data or cyber security such as

515 Skinner, *President's Commission on Law*, April 7, 2020.

516 Skinner, *President's Commission on Law*, April 7, 2020.

517 U.S. House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security: *Hearing on Fentanyl Analogues: Perspective on Classwide Scheduling* (January 28, 2020) (written statement of Amanda Liskamm, Director of Opioid Enforcement Efforts, U.S. Department of Justice), <https://docs.house.gov/meetings/JU/JU08/20200128/110392/HHRG-116-JU08-Wstate-LiskammA-20200128.pdf>.

518 "Statement on China's Class Scheduling of Fentanyl," White House, April 3, 2019, <https://www.whitehouse.gov/briefings-statements/statement-chinas-class-scheduling-fentanyl/>.

519 Liskamm, *U.S. House Committee on the Judiciary*, January 28, 2020, 3.

520 Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act, S. 3201, 116th Cong. P.L. 116-114 (2020), <https://www.congress.gov/bill/116th-congress/senate-bill/3201/text>.

521 Keith Gierlack et al., *License Plate Readers for Law Enforcement: Opportunities and Obstacles* (Santa Monica, CA: RAND Corporation, 2014), https://www.rand.org/pubs/research_reports/RR467.html

522 David J. Roberts and Meghann Casanova, *Automated License Plate Recognition Systems: Policy and Operational Guidance for Law Enforcement* (Washington, DC: International Association of Chiefs of Police, 2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/239604.pdf>.

CJIS compliance; (4) a single location for law enforcement quality data, thus reducing the need for deputies to check multiple vendor databases . . . and (5) a platform for officers to communicate about their interdiction operations and investigations.⁵²³

A national database would combine the benefits of uniform standards and a platform for sharing intelligence. The uniform standards would provide guidance to states on storage of data, retention, and sharing of information to be used for law enforcement purposes. ALPR data can help ongoing investigations by providing information such as where a vehicle has been, whether it was at a crime scene, and its travel patterns.⁵²⁴ ALPR data can be used to analyze crime patterns.

8.3.5 The U.S. Postal Service and private parcel delivery services should increase their ability to investigate the transportation of illegal drugs.

The most prevalent and commonly used method to transport illegal drugs domestically is the U.S. Postal Service (USPS).⁵²⁵ The USPS processes more than 470 million pieces of mail each day.⁵²⁶ Narcotics traffickers view USPS as a safe and reliable method of shipping drugs due to the sheer volume of mail, drug interdiction being a low priority for the USPS, the ability to track their shipments, and the lack of federal prosecution for shipping drugs via the U.S. mail.⁵²⁷ The USPS is understaffed, technology does not exist to effectively identify illegal drugs, and archaic USPS rules prevent local law enforcement being used as effectively as task force officers as they are in other federal law enforcement agencies.

The U.S. Postal Inspection Service's narcotics program, which investigates attempts to use the mail to traffic drugs, seized over 40,000 pounds of drugs in 2017, reflecting a continued increase in seizures since 2014.⁵²⁸ In addition to USPS, traffickers use other methods such as human couriers, commercial flights, parcel services, and commercial buses.⁵²⁹ For example, in December 2019, 11 individuals were indicted by Arizona Attorney General Mark Brnovich; they were accused of shipping illegal drugs and contraband across the country through the United Parcel Service.⁵³⁰ Postal inspectors and federal agents working in conjunction with private parcel delivery services play a vital role in case-specific drug investigations to track and interdict illegal drugs; a systemic approach should be taken to prevent the uninhibited domestic shipment of these illegal drugs.

8.4 Human Trafficking and Child Exploitation

Human trafficking is a crime of global scale that victimizes many vulnerable populations. Worldwide, millions of children and adults are coerced or forced into performing labor or sex work. Women and girls make up the majority of trafficked and exploited victims.⁵³¹ In 2016, more

523 Skinner, *President's Commission on Law*, April 7, 2020.

524 Roberts and Casanova, *Automated License Plate Recognition*.

525 Office of Inspector General, *Use of Postal Service Network to Facilitate Illicit Drug Distribution* (Washington, DC: U.S. Postal Service, 2018), <https://www.oversight.gov/sites/default/files/oig-reports/SAT-AR-18-002.pdf>.

526 "One Day in the Life of the U.S. Postal Service," U.S. Postal Service, accessed July 27, 2020, <https://facts.usps.com/one-day/>.

527 Joe Davidson, "Postal Service Preferred Shipper of Drug Dealers," *Washington Post*, October 16, 2018, <https://www.washingtonpost.com/politics/2018/10/16/postal-service-preferred-shipper-drug-dealers/>.

528 Office of Inspector General, *Use of Postal Service Network*.

529 Drug Enforcement Administration, *2019 National Drug Threat Assessment*.

530 "11 Defendants Arraigned in Drug Trafficking Ring Involving UPS Employees," Arizona Attorney General Mark Brnovich, accessed July 27, 2020, <https://www.azag.gov/press-release/11-defendants-arraigned-drug-trafficking-ring-involving-ups-employees>.

531 "Report: Majority of Trafficking Victims Are Women and Girls; One-Third Children," *United Nations Sustainable Development* (blog), December 22, 2016, <https://www.un.org/sustainabledevelopment/blog/2016/12/report-majority-of-trafficking-victims-are-women-and-girls-one-third-children/>.

than 40 million individuals were living in modern-day slavery.⁵³² Seen as low risk with high reward, “human trafficking is fueled by a demand for cheap labor, services, and for commercial sex.”⁵³³

According to the Department of Homeland Security, most victims fall prey to promises of good jobs but are instead made to work in “legitimate and illegitimate labor industries, including sweatshops, massage parlors, agricultural fields, restaurants, hotels, and domestic service.”⁵³⁴ Congress described the trafficking of human beings as “a contemporary manifestation of slavery” that “involves grave violations of human rights” and is “abhorrent to the principles upon which the United States was founded.”⁵³⁵

Traffickers keep their victims hidden, isolated, and dependent, which often diminishes any hope of escape or detection. Because of this, human trafficking is significantly underreported in the United States; therefore, it is difficult to determine an exact number of victims.⁵³⁶

The crime of human trafficking is often connected to other violent crimes like drug and illegal firearms trafficking. Thus, in targeting and apprehending human traffickers, law enforcement is often able to uncover and disrupt other criminal enterprises.

A further troubling aspect of this crime is how children can be targeted by traffickers. Traffickers use the internet and social media to target and recruit victims. Online grooming is a preparatory phase in which offenders seek to build trust and rapport with a child or a third party (such as their guardian or sibling) in order to gain access to that child for the purposes of sexual activity

Traffickers also prey upon children in the foster care system. Recent reports have consistently indicated that a large number of victims of child sex trafficking were at one time in the foster care system.⁵³⁷

The Trafficking Victims Protection Act, 22 U.S.C. § 7102, was enacted in 2000 and reauthorized in 2003, 2005, 2008, 2013 and 2018 to prevent human trafficking, protect those who were victims of trafficking, and prosecute those who participated in facilitating human trafficking.⁵³⁸ Additionally, all 50 states and the District of Columbia have human trafficking statutes.⁵³⁹ Although they vary by state, all these statutes criminalize trafficking and impose criminal penalties.

532 International Labour Organization and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva, Switzerland: International Labour Organization, 2017), 5, http://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm.

533 “Human Trafficking,” National Human Trafficking Hotline, accessed June 22, 2020, <https://humantraffickinghotline.org/type-trafficking/human-trafficking>.

534 Blue Campaign, *Human Trafficking 101* (Washington, DC: U.S. Department of Homeland Security, 2016), 1, <https://www.hsdl.org/?abstract&did=820007>.

535 Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 (2006), <https://www.govinfo.gov/content/pkg/PLAW-106publ386/html/PLAW-106publ386.htm>.

536 National Human Trafficking Resource Center, *Does Human Trafficking Exist In Your Community? Examining Reports and Reviewing Facts* (Washington, DC: Polaris Project, n.d.), https://humantraffickinghotline.org/sites/default/files/Human%20Trafficking%20in%20Your%20Community_0.pdf.

537 U.S. Department of State, *Trafficking in Persons Report* (Washington, DC: U.S. Department of State, 2019), <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

538 “Summary of the Trafficking Victims Protection Act (TVPA) and Reauthorizations FY 2017,” Alliance to End Slavery and Trafficking, January 11, 2017, <https://endslaveryandtrafficking.org/summary-trafficking-victims-protection-act-tvpa-reauthorizations-fy-2017-2/>.

539 “Human Trafficking State Laws,” National Conference of State Legislatures, accessed July 27, 2020, <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx>.

8.4.1 The Department of Justice should provide training and technical assistance for state, local, and tribal law enforcement related to the sexual exploitation and trafficking of children in order to assist the investigation and prosecution of traffickers and provide services to victims. This training should incorporate information on how traffickers are using technology.

Technology has become an effective tool for traffickers, as victims can be manipulated on social media and lured into dangerous situations.⁵⁴⁰ Training law enforcement on how traffickers are increasingly using technology to ensnare their victims will enable law enforcement to leverage their own technological capabilities to aid investigations and enhance prosecutions.

A successful example of such training is the Texas Department of Public Safety's "Interdiction for the Protection of Children" training program. The goal of this program is to augment the ability of law enforcement officers to combat child trafficking by training them to better identify victims of exploitation and factors that represent high-risk threats against children as well as registered sex offender violations. They are also taught to identify technology-facilitated crimes involving children.⁵⁴¹ Texas Governor Gregg Abbot credited the program with training more than 9,000 individuals in Texas and other jurisdictions around the world, which has helped authorities rescue hundreds of children, including 424 by Texas state troopers.⁵⁴²

8.4.2 The federal government should develop a national database on juvenile human trafficking victims.

Runaways and missing juveniles are at a higher risk than the general public of becoming victims of human trafficking.⁵⁴³ Human trafficking victims often run away multiple times, and locations where juveniles with dependency cases are housed are often a source of human trafficking recruitment. Recovered missing juveniles often do not disclose that they are engaged in prostitution or commercial sex acts.

Establishing criteria for inclusion in a national database would alert a law enforcement officer recovering a runaway or missing juvenile of the potential for other crimes; these criteria might include a juvenile who self-identifies as a victim of human trafficking, was reported by parent or guardian as a runaway or identified as a previous or potential victim, or was previously listed in a law enforcement report as a victim. This would increase the opportunity to gather and document evidence of human trafficking that may be useful in future investigations. Using a database that is housed at an organization such as the National Center for Missing and Exploited Children and is accessible to law enforcement could assist local law enforcement across the nation in providing help to victims and gathering evidence of crimes.⁵⁴⁴

| See Chapter 4: Juvenile Justice and Youth Crime.

540 Alex Whiting, "How Traffickers Use Social Media to Lure Vulnerable Teenagers into Sex Work," Reuters, November 15, 2015, <https://venturebeat.com/2015/11/15/how-traffickers-use-social-media-to-lure-vulnerable-teenagers-into-sex-work/>.

541 "Training Operations (TOD): Interdiction for the Protection of Children (IPC)," Texas Department of Public Safety, accessed June 22, 2020, <https://www.dps.texas.gov/ETR/CAP/IPC.htm>.

542 "Interdiction for the Protection of Children Program Marks Anniversary," *Bay City Tribune* (Bay City, TX), May 6, 2019, https://baycitytribune.com/community/article_c5a50d36-703c-11e9-9805-a3c985e37931.html.

543 Jordan Greenbaum and Nia Bodrick, "Global Human Trafficking and Child Victimization," *Pediatrics* 140, no. 6 (2017), <https://pediatrics.aappublications.org/content/140/6/e20173138.long>.

544 John Mina, Sheriff, Orange County Sheriff's Office, CA, email communication with Kristie Brackens, Federal Program Manager, Reduction of Crime Working Group, April 23, 2020.

8.5 Domestic Violence and Sexual Assault

In the United States, an average of 20 people experience intimate partner physical violence every minute, which equates to more than 10 million abuse victims annually.⁵⁴⁵

Domestic violence does not happen in a vacuum. Kim Garrett, chief executive officer and founder of Oklahoma City's Family Justice Center, states: "We know that 75 percent of children who witness domestic violence will grow up to repeat the same behavior. If one person in the family chooses to use violence, within four generations, 18 people will continue the cycle."⁵⁴⁶ According to the Centers for Disease Control and Prevention, "at least one in seven children have experienced child abuse and/or neglect in the past year, and this is likely an understatement."⁵⁴⁷

Individuals who experience physical violence often experience sexual violence. Intimate partner violence accounts for 15 percent of all violent crime; of those cases, 19 percent involve the use of a weapon.⁵⁴⁸ Perpetrators of violence tend to have a history of domestic and family violence. Domestic violence can also turn deadly. Seventy-two percent of all murder-suicides are perpetrated by intimate partners.⁵⁴⁹

Law enforcement agencies should take a comprehensive look at their policies, procedures, and practices to ensure they hold offenders accountable for these crimes and strengthen safety for survivors of domestic violence.

8.5.1 Local law enforcement agencies should partner with victim service providers to develop or enhance safety protocols related to obtaining or enforcing orders of protection.

The most dangerous time for a victim of intimate partner violence is when they leave their partner. A study conducted by the National Coalition Against Domestic Violence with men who had killed their wives or partners found that the threat to leave or end the relationship often precipitated the murder.⁵⁵⁰ Law enforcement should engage with victim service organizations to develop comprehensive safety plans for victims focused on their homes, employers, use of technology, and public spaces. The plan should enable victims to identify ways to protect themselves and reduce the risk of serious injury.

Orders of protection are a critical aspect of a safety plan and give the victim the option of contacting law enforcement if the perpetrator violates the order.⁵⁵¹ Law enforcement agencies should consider applying for funding from the Office on Violence Against Women under the Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and

545 "National Statistics," National Coalition Against Domestic Violence, accessed June 23, 2020, <https://ncadv.org/statistics>.

546 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 14, 2020) (statement of Kimberly Garrett, CEO and Founder, Palomar, Oklahoma City's Family Justice Center), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

547 "Violence Prevention: Fast Facts," Centers for Disease Control and Prevention, accessed August 4, 2020, <https://www.cdc.gov/violenceprevention/childabuseandneglect/fastfact.html>.

548 National Coalition Against Domestic Violence, "National Statistics."

549 National Coalition Against Domestic Violence, "National Statistics."

550 "Why Do Victims Stay?," National Coalition Against Domestic Violence, accessed June 23, 2020, <https://ncadv.org/why-do-victims-stay>.

551 Tami P. Sullivan et al., *Criminal Protective Orders as a Critical Strategy to Reduce Domestic Violence Final Summary Overview* (n.p., 2017), <https://www.ncjrs.gov/pdffiles1/nij/grants/250664.pdf>.

Stalking Grant Program (ICJR Program), formerly known as the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program). The ICJR program can help law enforcement improve its response to domestic violence crimes for both victim safety and offender accountability.⁵⁵²

8.5.2 U.S. attorney's offices should use 18 U.S.C. § 922(g)(8) and (9) to increase the prosecution of domestic violence-related firearms cases.

Intimate partner abusers who are subject to a victim protective order or who have been previously convicted of a misdemeanor crime of domestic violence are prohibited from possessing a firearm. This approach has been piloted with U.S. attorney's offices across the country.

The U.S. attorney's office in the Western District of Oklahoma launched Operation 922 in 2018 as a collaboration among the U.S. attorney's office, ATF, the U.S. Marshal Services, and local law enforcement to prioritize firearm prosecutions related to domestic violence. To date, 99 cases have been charged, resulting in 85 convictions, with an average sentence of 81 months.⁵⁵³

8.5.3 States should establish laws and procedures for safe and accountable firearms transfer pursuant to domestic violence-related convictions or issuance of protective orders.

When an abuser has access to a gun, a domestic violence victim is five times more likely to be killed.⁵⁵⁴ Laws that keep guns out of the hands of abusers save lives; however, without procedures, having federal and state prohibitions does not actually remove the firearm from the abuser. State and local procedures should be implemented for successful firearm dispossession. States that require abusers to provide proof that they actually relinquished their firearms (i.e., relinquishment laws) are linked to a 16 percent reduction in intimate partner gun homicides.⁵⁵⁵

8.5.4 The Department of Justice should increase grant funding to provide assistance to forensic labs for personnel, training, and case management software to aid in the investigation and prosecution of criminal cases.

Strong forensic evidence helps with the successful investigation and prosecution of violent crimes. Forensic science is underused and underfunded. DOJ grants—such as Coverdell, DNA Capacity Enhancement and Backlog Reduction, and Laboratory Efficiency Improvement and Capacity Enhancement grants—should be authorized and appropriated at higher levels.⁵⁵⁶ In addition, traditional grants made available to law enforcement (e.g., the JAG program) should be increased

552 Office on Violence Against Women, *OVW Fiscal Year 2019 Improving Criminal Justice Responses to Domestic Violence, Dating Violence, Sexual Assault, and Stalking Grant Program Solicitation* (Washington, DC: Office on Violence Against Women, 2018), <https://www.justice.gov/ovw/page/file/1124261/download>.

553 Garrett, *President's Commission on Law*, April 14, 2020.

554 "Domestic Violence and Firearms," Giffords Law Center to Prevent Gun Violence, accessed July 27, 2020, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/domestic-violence-firearms/>.

555 April M. Zeoli et al., "Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide," *American Journal of Epidemiology* 187, no. 11 (2018), <https://doi.org/10.1093/aje/kwy174>.

556 "FY 2020 Paul Coverdell Forensic Science Improvement Grants Program – Formula," Bureau of Justice Assistance, accessed June 23, 2020, <https://bja.ojp.gov/funding/opportunities/bja-2020-18434>.

and state administrative agencies should make more funding available to support forensic labs.⁵⁵⁷ In fiscal year 2016, forensic science services accounted for only 2.1 percent of JAG program spending, which was approximately \$3 million out of the more than \$400 million allocated to support state and local criminal justice systems annually.⁵⁵⁸

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⁵⁵⁷ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 14, 2020) (statement of Matthew Gamette, Director, Forensic Services Laboratory System, Idaho State Police), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁵⁵⁸ National Criminal Justice Association, *How States Invest Byrne JAG in Forensic Science* (Washington, DC: National Criminal Justice Association, 2016), https://370377fc-459c-47ec-b9a9-c25f410f7f94.filesusr.com/ugd/cda224_d1c24587ad1c42649cbb7339e8b4a878.pdf?index=true.

CHAPTER 9: HOMELAND SECURITY

“We continue to worry about international terrorism by groups like [al-Qa’ida] and ISIS, but now the threat from lone actors already here in the U.S. and inspired by those groups, the homegrown violent extremists, that threat is even more acute. . . . At the same time, we are particularly focused on domestic terrorism, especially racially or ethnically motivated violent extremists.”⁵⁵⁹ - Christopher A. Wray, FBI Director

Overview

It was not until the terrorist attacks of September 11, 2001, that the term “homeland security” entered the national lexicon. Since then, the threats to the general security of the American people have expanded and diversified. Today, these threats come in many different forms, including foreign terrorist organizations, radicalized lone actors, domestic violent extremists, foreign malign influence campaigns by nation-state and non-state actors, cyber and other threats to our national infrastructure, and the targeting of government institutions and national elections.

One of the key findings of the 9/11 Commission Report was that United States intelligence agencies needed to improve their ability to “connect the dots.”⁵⁶⁰ In the aftermath of 9/11, government agencies have made significant progress in instituting protocols to share rather than shield information, and information that was once compartmentalized is now collected and available across the intelligence community as well as federal, state, local, and tribal law enforcement partners. In the past 20 years, the federal law enforcement community has developed ways to make information more accessible to key stakeholders by producing information at lower classification levels to reach a wider audience. Another significant change since 2001 was the creation of the Department of Homeland Security (DHS) in 2002, which combined 22 different federal departments and agencies into a unified, integrated cabinet agency.⁵⁶¹

Examining the role of law enforcement in promoting homeland security and preventing attacks against the United States, the Commission has determined that while post-9/11 informational capabilities of law enforcement and the intelligence community have progressed substantially, there are still areas for further improvement in the developing and gathering of, and access by local law enforcement agencies to, homeland security information. Continuing federal partnerships with state, local, and tribal law enforcement agencies to combat homegrown violent extremism and domestic terrorism will help information flow to those who need it. Moreover, the Commission has also assessed the need for greater awareness, coordination, and resources to address homeland security risks posed by lax territorial borders and cyberspace.

559 Bridget Johnson, “Wray: Racial Violent Extremism Is a Top Priority for FBI ‘on the Same Footing as ISIS,’” *Homeland Security Today*, February 6, 2020, <https://www.hstoday.us/subject-matter-areas/counterterrorism/wray-racial-violent-extremism-is-a-top-priority-for-fbi-on-the-same-footing-as-isis/>.

560 National Commission on Terrorist Attacks Upon the United States, *Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: Norton, 2004), 408, <https://www.9-11commission.gov/report/>.

561 “About DHS,” U.S. Department of Homeland Security, accessed June 22, 2020, <https://www.dhs.gov/about-dhs>.

The federal government made other significant changes to address homeland security after 9/11. The Federal Bureau of Investigation (FBI) shifted its priorities to counterterrorism, counterintelligence, and cyber security.⁵⁶² The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458; 118 Stat. 3688 (2004), created the role of the director of national intelligence (DNI) to serve as the head of the intelligence community, which consists of 17 member agencies. The DNI leads the Office of the Director of National Intelligence (ODNI), a new cabinet-level agency created after 9/11, whose mission is to lead and support intelligence community integration, deliver insights, drive capabilities, and invest in the future. Notably, the biggest change in American law enforcement over the past 50 years has been recognizing the importance of collaborating across all levels of government and with the communities they serve.

In its deliberations, the Commission focused on three critical areas: identifying the nature of the threat, information sharing and partnerships, and hardening vulnerabilities. The recommendations in this chapter are designed to enhance national security; maximize unity of effort across federal, state, local, and tribal entities; and protect the homeland for future generations.

9.1 Identifying the Nature of the Threat: International and Domestic Terrorism

Nearly 20 years have passed since al-Qa'ida (AQ) attacked the United States. Terrorist organizations across the globe like AQ and the Islamic State of Iraq and ash-Sham (ISIS) continue to harbor the intent to harm Americans at home and abroad, despite having been broadly suppressed by counterterrorism operations throughout the Middle East and South Asia.

Equally concerning are their efforts to inspire homegrown violent extremists (HVEs)—mostly over the internet—to conduct terrorist attacks in the United States. This remains a concern for federal law enforcement agencies and their state and local partners who are often the first to raise the alarm when observing suspicious activity in their jurisdiction.

Lone actor violence within the United States has included attacks by violent extremists motivated by international and domestic terrorism. Homeland plotting, foreign travel, and the consumption of terrorist messaging by U.S.-based violent extremists who have been inspired by foreign terrorist organizations have evolved significantly since 9/11. Homeland plotting has largely shifted from in-person networks motivated by local radicalizers to self-starting HVEs inspired by overseas ideologues, online radicalizers, and propaganda. Lone actor domestic violent extremists (DVEs) affiliated with domestic terrorist ideologies, particularly those associated with racially or ethnically motivated ideology, have become more prevalent, and their actions have become increasingly deadly.

HVEs continue to be inspired by a mix of ideological, sociopolitical, and personal factors. Most HVE attackers are radicalized during a period of one to four years and typically mobilized to violence in less than six months, suggesting there may be more time to detect plotters during the radicalization phase than the mobilization phase. In recent years, HVE plotters and attackers have trended younger, underscoring the susceptibility of some adolescents to violent extremist ideologies that appeal to their desire for belonging, identity, or attention.⁵⁶³ While ISIS continues

⁵⁶² *U.S. House Appropriations Subcommittee on Commerce Justice, Science, and Related Agencies: Transformation of the Federal Bureau of Investigation* (September 14, 2006) (statement of Robert S. Mueller, III, Director, Federal Bureau of Investigation), <https://archives.fbi.gov/archives/news/testimony/the-fbi-transformation-since-2001>.

⁵⁶³ Matthew Alcoke, Deputy Assistant Director, Federal Bureau of Investigation, "The Evolving and Persistent Terrorism Threat to the Homeland," presented at Washington Institute for Near East Policy Counterterrorism Lecture Series, Washington, DC, November 19, 2019.

to be a key influence, it is one of several violent extremist influences that contribute to subjects' radicalization and mobilization. For example, now-deceased ideologue and AQ in the Arabian Peninsula senior leader Anwar al-Awlaki, a Yemeni-American jihadist, remains a key influence more than nine years after his death.⁵⁶⁴ Since 2014, there have been more than 200 people in the United States charged with offenses related to ISIS.⁵⁶⁵

Like HVEs, DVEs continue to be inspired by a mix of ideological, sociopolitical, and personal factors that vary widely based on individual circumstances. The FBI categorizes DVEs as racially or ethnically motivated violent extremists (RMVE), anti-government/anti-authority extremists, abortion-related extremists, or animal rights/environmental extremists.⁵⁶⁶ Drivers for most DVEs include perceptions of government or law enforcement overreach, sociopolitical conditions, and reactions to legislation or national events. These trends are primarily enabled by the internet and social media, which facilitates DVEs engaging with others without having to join organized groups. This online communication enables the sharing of literature promoting DVE beliefs, including manifestos and ideologically driven websites that contribute to DVE radicalization. More recently, DVEs are radicalizing based on personalized beliefs that do not correspond with a specific larger DVE threat, but rather a combination of views.⁵⁶⁷ In 2019, DVE attacks in the United States resulted in the death of 32 individuals, making 2019 the deadliest year in domestic terrorism since the 1995 bombing of the federal building in Oklahoma City that killed 168 individuals.⁵⁶⁸

In recent years, lethal domestic terrorist attacks have been primarily perpetrated by lone DVEs or by a few DVEs acting without a clear group affiliation or guidance. The current threat is driven by the spread and consumption of ideological content—often First Amendment-protected speech—which is shared across online platforms by DVEs to promote potentially radicalizing speech and post manifestos outlining grievances. Racial or ethnic minority groups, religious groups, law enforcement, and government personnel and facilities are often the primary targets and the law enforcement community continues to be challenged by the individualized nature of the radicalization and mobilization processes and the difficulty of distinguishing between violent rhetoric and actual terrorist intent.

As threats to the United States continue to evolve, advances in technology have made it easier for adversaries to communicate and share information via social media and mobile devices.⁵⁶⁹ Unfortunately, law enforcement is hindered in its ability to leverage those tools for investigative purposes.⁵⁷⁰

While combating terrorism and violent extremism is often associated with the federal law enforcement agencies that lead the investigations, it is also a local and state problem. Local law enforcement are often the first responders, as seen in the 9/11 attacks or the Boston Marathon bombing. Many of these recommendations transcend all levels of government and both international and domestic terrorism threats.

564 Scott Shane, "The Enduring Influence of Anwar al-Awlaki in the Age of the Islamic State," *CTC Sentinel* 9, no. 7 (2016), <https://www.ctc.usma.edu/the-enduring-influence-of-anwar-al-awlaki-in-the-age-of-the-islamic-state/>.

565 Seamus Hughes, Deputy Director, Program on Extremism, George Washington University, in discussion with Homeland Security Working Group, virtual meeting, April 6, 2020.

566 (U//LES) Federal Bureau Investigation, "Counterterrorism 2020: Domestic Terrorism Threat Overview" (PowerPoint presentation, Washington, DC, April 2020).

567 (U//LES) Federal Bureau Investigation, "Counterterrorism 2020."

568 Debra Anderson, Unit Chief, Domestic Terrorism Analysis Unit, Federal Bureau of Investigation, in discussion with Homeland Security Working Group, virtual meeting, April 6, 2020.

569 Debra Anderson, Unit Chief, Domestic Terrorism Analysis Unit, Federal Bureau of Investigation, and Seamus Hughes, Deputy Director, Program on Extremism, George Washington University, in discussion with Homeland Security Working Group, virtual meeting, April 6, 2020.

570 David Bowdich, Deputy Director, Federal Bureau of Investigation, in discussion with Homeland Security Working Group, virtual meeting, May 7, 2020.

9.1.1 Congress should enact legislation that guarantees law enforcement agencies equal and lawful access to publicly posted data.

| See Chapter 11: Technology.

Over the past few years, social media companies have added language to their terms of service that prohibits law enforcement from using application programming interfaces (API) to develop tools to obtain information that is otherwise available to the public on their services. These companies have also added language that prohibits third parties from providing information obtained through the use of APIs to law enforcement agencies. At the same time, these companies allow third parties to use their APIs to collect such information for other reasons, such as monetizing the data and marketing goods and services.

Actions by social media companies in this environment reflect a growing trend. Social media companies, rather than elected officials, determine what information and technology law enforcement and public safety officials can use. In essence, decisions that have traditionally been made by elected officials are now being made by corporate chiefs. Law enforcement operating under the rule of law and abiding by the proper constraints and authorizations set forth by the Constitution should have access to this data.

The proposed legislation would prevent social media companies from excluding government agencies or their agents from assembling, reviewing, and exploiting publicly posted data if they allow other entities (e.g., marketers) to access and analyze the data. With this access, law enforcement would be better able to detect and prevent terrorism, radicalization, and other criminal acts of violence before they occur and without compromising privacy interests.

9.1.2 State and local authorities should replicate the federal uniform prison release guidelines so state parole officers can better monitor inmates who have a connection to terrorism. These guidelines should include notifying the local Joint Terrorism Task Force and governors so they can alert their respective criminal justice authorities.

Local, state, tribal, and federal law enforcement officials should strengthen the monitoring of released inmates who have a connection to terrorism.

Often, subjects of federal terrorism investigations are convicted of non-terrorism-related charges while others become radicalized in prison. Some domestic and international terrorist groups view detention and corrections populations as potential recruits. Unaffiliated extremist actors pose a similar threat, but they are often more difficult to detect as they may have self-radicalized and maintain no apparent terrorist affiliations. Some extremists attempt to influence inmates to join or support their cause while incarcerated or once they are released from custody through other extremist inmates, contractors, volunteers, or compromised staff.⁵⁷¹ Once released, these former inmates may pose as great a threat to the United States as those charged with providing material support to a designated foreign terrorist organization.⁵⁷²

⁵⁷¹ (U//FOUO) Federal Bureau of Investigation, *Identifying and Mitigating Extremist Activities in Corrections* (Washington, DC: Federal Bureau of Investigation, 2020), 1.

⁵⁷² Richard Donoghue, United States Attorney, Eastern District of NY, email communication with Amy Schapiro, Federal Program Manager, Homeland Security Working Group, June 11, 2020.

The FBI and the Federal Bureau of Prisons jointly developed standard operating procedures to guide federal, state, local, and tribal authorities on how to monitor both inmates charged with federal or state non-terrorism crimes who have a connection to international or domestic terrorism and inmates charged with federal terrorism charges. State and local authorities should notify the local Joint Terrorism Task Force (JTTF) and governors when offenders are released. The governors should then notify their criminal justice authorities and other key stakeholders so they are aware of newly released former inmates with potential terrorism ties.

9.1.3 State, local, and tribal law enforcement should voluntarily track and share their domestic terrorism incidents with the Federal Bureau of Investigation.

With no formal tracking requirements in place to gather data about domestic terrorism incidents from state, local, and tribal law enforcement, the collection of domestic terrorism incidents should be added to information received from the more than 18,000 law enforcement agencies who voluntarily participate in the FBI's Uniform Crime Reporting (UCR) program. The data should be submitted through a state UCR program or directly to the federal UCR program, and it should be included in the National Incident-Based Reporting System beginning in 2021.

| See Chapter 12: Data and Reporting.

9.2 Information-Sharing and Partnerships

As noted above, in the aftermath of the September 11 attacks, law enforcement agencies have recognized the importance of a collaborative framework for gathering and sharing information. These strengthened partnerships have led to more transparency and an increase in information sharing through such platforms as the FBI Law Enforcement Enterprise Portal and the DHS Homeland Security Information Network.

The federal government cannot connect the dots without the help of state, local, and tribal communities, and vice versa. The National Network of Fusion Centers (the Network) comprises 80 fusion centers across all states and territories that are staffed and operated by state and local governments, with support from federal partners.⁵⁷³ They facilitate two-way intelligence and information flow among the federal government; state, local, and tribal agencies; and private sector partners. Fusion centers conduct analysis and facilitate information sharing. In doing so, they help law enforcement, fire, public health, homeland security, emergency management, and critical infrastructure partners in the private sector prevent, protect against, and respond to crime and terrorism. The Network plays a critical role in enhancing the nation's ability to support public safety and counterterrorism missions. They also assist in federal investigations.

Many private sector entities have partnered with federal agencies to share critical data related to travel and global supply chains.⁵⁷⁴ DHS established the Public–Private Analytic Exchange Program, which enables U.S. government analysts and private sector partners to gain a greater understanding of how their disparate, yet complementary, roles can operate in tandem to ensure

⁵⁷³ "National Network of Fusion Centers Fact Sheet," U.S. Department of Homeland Security, accessed June 23, 2020, <https://www.dhs.gov/national-network-fusion-centers-fact-sheet>; Rachel A. Seitz, Enterprise Performance and Evaluation, U.S. Department of Homeland Security, email communication with Amy Schapiro, Federal Program Manager, Homeland Security Working Group, May 8, 2020; and Alberto Martinez, Deputy Director, Orange County Intelligence Assessment Center, CA, in discussion with Homeland Security Working Group, virtual meeting, April 13, 2020.

⁵⁷⁴ Roland Suliveras, Executive Director, National Targeting Center-Cargo, U.S. Customs and Border Protection, in discussion with Homeland Security Working Group, virtual meeting, April 27, 2020.

success. Participants work to create unclassified joint analytic deliverables of interest to both the private sector and the federal government.

Law enforcement agencies at all levels of government have established strong partnerships with each other and other key stakeholders in the private sector, the community, and abroad. Still, more can be accomplished to connect the dots through partnerships and information sharing.

9.2.1 Congress should authorize and appropriate annual funding for the Department of Justice and the Department of Homeland Security to enable federal law enforcement agencies to establish full-time positions at the National Network of Fusion Centers.

Anecdotal evidence shows that information sharing works best when federal personnel are co-located at a fusion center. According to DHS's Office of Intelligence and Analysis, in 2019 the FBI had approximately 90 personnel in 38 fusion centers, and DHS had 95 personnel embedded in fusion centers.⁵⁷⁵ However, the number of personnel is considerably smaller among other federal law enforcement agencies. The Bureau of Alcohol, Tobacco, Firearms and Explosives has 12 employees working in fusion centers, and Immigration and Custom Enforcement (ICE) has nine employees in fusion centers. The Drug Enforcement Administration, the Transportation Security Agency, U.S. Customs and Border Protection, and the Federal Law Enforcement Training Center all have either one or two representatives.⁵⁷⁶

Without specific appropriated funding, federal law enforcement agencies have not been able to dedicate the needed personnel to enhance fusion centers, which risks a return to the pre-9/11 intelligence failures.

9.2.2 Congress should authorize and appropriate funding for a dedicated Department of Homeland Security fusion center grant program that provides funds directly to states and local jurisdictions comprising the National Network of Fusion Centers.

There is no certainty from one year to the next that a particular fusion center will receive funding that is adequate to build and sustain analytical, information sharing, and liaison capabilities to fulfill their missions and support local, state, and federal priorities. This uncertain support does not match the essential nature of the work that fusion centers perform. In addition, the current grant process pits law enforcement against emergency management and other state stakeholders for funding intended for terrorism and violence prevention. As a result, consistent funding of critical prevention capabilities is not ensured. A dedicated fusion center grant stream would ensure that all primary and recognized fusion centers can plan, build, and maintain capabilities that are essential to their missions.

9.2.3 The Department of Homeland Security and the Federal Bureau of Investigation should provide intelligence training to state and local authorities that focuses on integrating criminal intelligence with national intelligence to better protect the nation.

The training proposed by this Commission ensures that local leaders are briefed and understand the criminal and intelligence threat pictures. By providing a comprehensive understanding of the

⁵⁷⁵ Seitz, email communication to Amy Schapiro, May 8, 2020.

⁵⁷⁶ Seitz, email communication to Amy Schapiro, May 8, 2020. Data for personnel assigned from federal agencies are derived from a U.S. Department of Homeland Security Office of Intelligence and Analysis Federal Cost Inventory (annual data call). Data received are based on whether they receive responses from those components or agencies. These data are based on responses to the 2018 Federal Cost Inventory.

information and intelligence landscape through training, state and local authorities will be better positioned to understand potential threats that can have an impact on their decision-making. This training should also provide an understanding of the capabilities of their local fusion centers.

9.2.4 The Intelligence Community should develop a unified strategy to increase awareness of foreign malign influence threats that have an impact on state and local jurisdictions and the private sector.

Today's complex counterintelligence threat requires a whole-of-society approach. Nation-state actors attempt to exploit all that makes America great—the economy, advanced technology, ease of access to information, and the rule of law. This threatens national and economic security. Additionally, the law enforcement community is actively targeted by foreign adversaries seeking to compromise sensitive law enforcement information and databases and to influence law enforcement partners for malign purposes. The federal government should share information and intelligence more widely with a particular focus on non-terrorist threats posed to homeland security, such as those advanced by well-financed, highly organized, and sophisticated foreign intelligence adversaries and their proxies. They use social media and other platforms to drive division and misinformation, and the federal government should leverage the post-9/11 terrorism-related information-sharing structures and processes to strengthen information sharing. Additionally, federal agencies should implement similarly constructed internal task forces bridging agency responsibilities, reducing duplication and better incorporating information-sharing efforts that mitigate today's counterintelligence threat.

9.2.5 The Department of Homeland Security should survey state, local, and tribal law enforcement; fire departments; and other emergency medical services information systems that may be used to improve reporting and analysis of threats of mass casualty attacks and threats to school safety.

By surveying agencies to gather more knowledge about their information systems, the federal government can better leverage those systems to improve the reporting and analysis of mass casualty threats or school shootings. Special focus should be placed on information systems that can inform behavioral threat assessment processes and assist in the threat management process. The federal government can also advance both the threat picture and the national suspicious activity reporting initiative by adapting existing processes, systems, and protocol.

9.3 Hardening Vulnerabilities

“A secure border will lead to a more secure nation.”⁵⁷⁷ - Mark Napier, former sheriff of Pima County, Arizona

When discussing how best to strengthen the nation, the Commission identified three vulnerabilities that threaten national security: border security, soft targets, and cybersecurity.

⁵⁷⁷ Mark Napier, Sheriff (former), Pima County Sheriff's Department, AZ, in discussion with Homeland Security Working Group, virtual meeting, April 20, 2020.

The complex issues that border security entails have plagued the country for years. While much attention has been given to fortifying the Southwest Border, Mark Napier, former sheriff of Pima County, Arizona, framed the issue in a larger context. He views border security as needing a three-tiered approach, addressing public safety, national security, and human rights.⁵⁷⁸ Strong border security gives law enforcement and national security officials the capability to evaluate, identify, and prevent incursions by foreign terrorist actors who seek to enter the United States with designs to injure the country. While acknowledging the vast majority of attention is focused on national security, drug smuggling, gangs, sex trafficking, human smuggling, and illegal aliens, border security must be addressed as a humanitarian issue, as well.

In addition to efforts to secure the Southwest Border, another area of concern is the safety and security of the public while attending large and crowded gathering places, such as sports venues, nightclubs, concerts, and movies. Attacks on such places have occurred in the United States, from the Pulse Night Club massacre in Orlando and the Boston Marathon bombing to mass shootings at religious institutions of various denominations in Oak Creek, Wisconsin; Charleston, South Carolina; and Pittsburgh, Pennsylvania.

These types of locations are grouped under the term “soft targets” and crowded places—locations or environments that are easily accessible, attract large numbers of people on a predictable or semi-predictable basis, and may be vulnerable to attacks using simple tactics and readily available weapons.⁵⁷⁹

In a conversation with the Homeland Security Working Group, Jeff Miller, vice president of security for the Kansas City Chiefs football team, discussed the multiple risks seen at such venues, ranging from active shooters to critical infrastructure failures. Once these vulnerabilities and their potential consequences are brought to the attention of decision-makers who preside over large venues, they often dedicate the needed funds for hardening their premises.⁵⁸⁰ While Mr. Miller spoke in detail about safely securing sports stadiums, he, along with Intelligence Bureau Chief Thomas Galati of the New York City Police Department, pointed out the similarity of security and safety issues for other large, non-sports gatherings (e.g., parades) and the attendant vulnerability issues connected to them.⁵⁸¹

Another vulnerability the Commission looked at was the need for heightened cybersecurity. As adversaries try to attack the security of the nation, they often attempt to infiltrate and harm cyber infrastructure, which can have damaging effects on our critical infrastructure, democracy, and safety. FBI Director Wray states,

Virtually every national security threat and crime problem the FBI faces is cyber-based or -facilitated. We face threats from state-sponsored hackers, hackers for hire, organized cyber syndicates, and terrorists. On a daily basis, these actors seek to steal our state secrets, our trade secrets, our technology, and the most intimate data about our citizens—things of incredible value to all of us and of great importance to the conduct of our government business and our national security. They seek to hold our critical infrastructure at risk, to harm our economy, and to constrain our free speech.⁵⁸²

578 Napier, in discussion with Homeland Security, April 20, 2020.

579 U.S. Department of Homeland Security, *Notice of Funding Opportunity Fiscal Year 2020 Homeland Security Grant Program* (Washington, DC: U.S. Department of Homeland Security, 2020), 3, https://www.fema.gov/media-library-data/1583442273016-07cbcf9445f9fda3cdc5bf8439ec72c9/FY_2020_HSGP_NOFO_FINAL_508ML4.pdf.

580 Jeff Miller, Vice-President of Security, Kansas City Chiefs, in discussion with Homeland Security Working Group, virtual meeting, April 27, 2020.

581 Jeff Miller, Vice President of Security, Kansas City Chiefs, and Thomas Galati, Chief Intelligence Bureau, New York City Police Department, in discussion with the Homeland Security Working Group, virtual meeting, April 27, 2020.

582 *House Judiciary Committee, Hearing on Oversight of the Federal Bureau of Investigation* (February 5, 2020) (statement of Christopher Wray, Director, Federal Bureau of Investigation).

BORDER SECURITY

9.3.1 Congress should provide additional funding to federal agencies to construct and maintain a comprehensive border security system. This funding should support immigration enforcement detention capacity and space, technological infrastructure, and combined durable physical and technology systems that help secure national borders.

A secure border requires a layered approach that involves multiple stakeholders at federal, state, and local levels; technology; and durable combined physical and technology systems.

To properly manage and secure the border, there must be sufficient immigration enforcement detention capacity to effect the apprehension, detention, and subsequent removal of individuals who enter the United States illegally. These combined tools should provide adequate controls to manage and mitigate illegal migration flows, which should therefore improve national security and the safety of the American people.

9.3.2 Congress should enact legislation that raises the penalty for illegally entering the United States from a misdemeanor to a felony. This legislation should also clearly state that being in the United States without legal authorization is a continuing offense, and that the statute of limitations does not begin from the time the alien illegally entered the United States.

At present, illegally entering the United States without any aggravating factors is punishable only as a misdemeanor (8 U.S.C. § 1325), which applies to asylum seekers but not if they come through a port of entry. This does not sufficiently deter those who are determined to enter the United States illegally, nor does it provide sufficient punishment for those who do. Further, when aliens are found in the United States more than a year after their illegal entry, criminal prosecution may be impossible if courts determine that the one-year statute of limitations began upon the alien's illegal entry.

9.3.3 Congress should enact legislation to codify the authority of state and local law enforcement agencies to briefly maintain custody of prisoners and inmates for whom there is reason to believe they are aliens who could be removable from the United States. These inmates should be delivered to Immigration and Customs Enforcement's custody to face immigration removal procedures after serving their state sentence.

State and local law enforcement partners who are willing to briefly detain alien prisoners and inmates so that ICE can take custody of them face legal jeopardy in some jurisdictions. Implementing this recommendation would lessen the litigation risks that are associated with cooperating with ICE and help secure the nation, as criminal aliens and terrorists who are removable from the United States will be deported according to established immigration laws and procedures.

9.3.4 Congress should enact legislation that provides an authorization and an increased appropriation for the Department of Homeland Security's Operation Stonegarden grant program, which provides funding for border operations and other resources geared for law enforcement agencies along the national border.

| See Chapter 10: Grant Programs.

As the issues that plague the border intensify, particularly along the Southwest Border, law enforcement agencies along the nation's border need increased funding and resources to support operations. Dedicating the appropriated funding for Operation Stonegarden would enable a whole-of-community, counter-network approach to defeat transnational criminal organizations and provide front-line anti-terrorism defense of the nation.

9.3.5 Congress should authorize and appropriate funds to the Department of Justice to establish a grant program tailored to the Southwest Border. This program should address the public safety, national security, and humanitarian issues that are prevalent in border communities. This funding should go directly to local law enforcement agencies and not through the state authorities for dissemination.

| See Chapter 10: Grant Programs.

Local law enforcement agencies along the Southwest Border are confronted with challenges unique to their jurisdictions. While their duties focus on protecting and serving the public, there are not many other agencies that confront the same volume of humanitarian issues, which include human smuggling, human trafficking, sex abuse, transnational criminal organizations, or drug smuggling.

In addition, sheriffs on the Southwest Border house illegal aliens who have been charged with state crimes. In Arizona, this leads to approximately \$30 million every year in unanticipated costs for housing, feeding, and providing medical care to illegal aliens.⁵⁸³ Through the Bureau of Justice Assistance's State Criminal Alien Assistance Program, in partnership with ICE, local agencies are reimbursed for incarcerating undocumented criminal aliens with at least one felony or two misdemeanor convictions for violations of state or local law and who are incarcerated for at least four consecutive days during the reporting period.⁵⁸⁴ Yet, border sheriffs say this is not enough because the aid provided is equivalent to roughly five cents on the dollar for their expenditures, which does not begin to cover their incurred expenses.⁵⁸⁵

While grants are currently available to agencies along the Southwest Border, most funding is disbursed through the state and funneled down to local law enforcement. Administering grants directly to these local law enforcement agencies on the Southwest Border will reduce administrative costs and help streamline the grant-making process. It will also provide needed funds to address the mounting humanitarian, public safety, and national security issues that law enforcement on the Southwest Border encounter daily.

⁵⁸³ Leon Wilmot, Sheriff, Yuma County Sheriff's Office, AZ, in discussion with Homeland Security Working Group, virtual meeting, April 20, 2020.

⁵⁸⁴ "State Criminal Alien Assistance Program Overview," Bureau of Justice Assistance, accessed June 24, 2020, <https://bja.ojp.gov/program/state-criminal-alien-assistance-program-scaap/overview>.

⁵⁸⁵ Mark Dannels, Sheriff, Cochise County Sheriff's Office, AZ, Mark Napier, Sheriff (former), Pima County Sheriff's Department, AZ, and Leon Wilmot, Sheriff, Yuma County Sheriff's Office, AZ, in discussion with Homeland Security Working Group, virtual meeting, April 20, 2020.

The need for grant funding was highlighted during a series of roundtables and focus groups that the Department of Justice's Office of Community Oriented Policing Services hosted with border sheriffs. They found that

sheriffs need funding to secure full-time personnel, both commissioned and support staff. Many grants such as the DHS's Operation Stonegarden only provide resources for equipment or overtime funds—which are important, but without the personnel to use those resources, the net benefit of that funding becomes moot. Increased personnel must include not only permanent deputies but also the support staff to alleviate their workload by helping in activities such as operation coordination and maintaining grant funding. In addition, northern border sheriffs need increased personnel to patrol the larger counties.⁵⁸⁶

In addition, "border sheriffs also require more resources in the form of improved equipment, technology, and vehicles to better patrol remote border areas, assist in opening lines of communication in dead zones, improve surveillance along the border, and equip officers with the things they need to more effectively do their jobs. Along the northern border, equipment is needed to patrol inaccessible areas such as waterways or snow embankments: boats, snowmobiles, ATVs, improved cameras, and updated radio systems that switch to 800 MHz."⁵⁸⁷ It is because of this vast need that a new grant program is necessary for law enforcement border agencies.

9.3.6 The legislative and executive branches should institutionalize a formal mechanism to ensure that border sheriffs and other key local stakeholders help formulate policy decisions that have an impact on the Southwest Border and Northern Border.

Border sheriffs and other key officials and stakeholders who are involved in formulating their own policy decisions that have an impact on the Southwest Border know their territory and its inhabitants well. They have insight into population flow and have learned to incorporate their collective knowledge to arrive at the most efficacious and humane policy decisions. Their input would be invaluable in any policy decision making that involves federal officials.

Border sheriffs have advocated for a better system to coordinate with federal partners and for an effective, balanced voice for border law enforcement at the table of policy discussion. Sheriffs have also expressed their frustration with the lack of coordination between state immigration laws and federal enforcement guidelines, which in many cases are in direct conflict. Furthermore, policymakers setting those laws and guidelines have focused heavily on the Southern Border, neglecting issues facing Northern Border law enforcement.⁵⁸⁸ With border sheriffs at the table, policies can be more effectively developed and implemented.

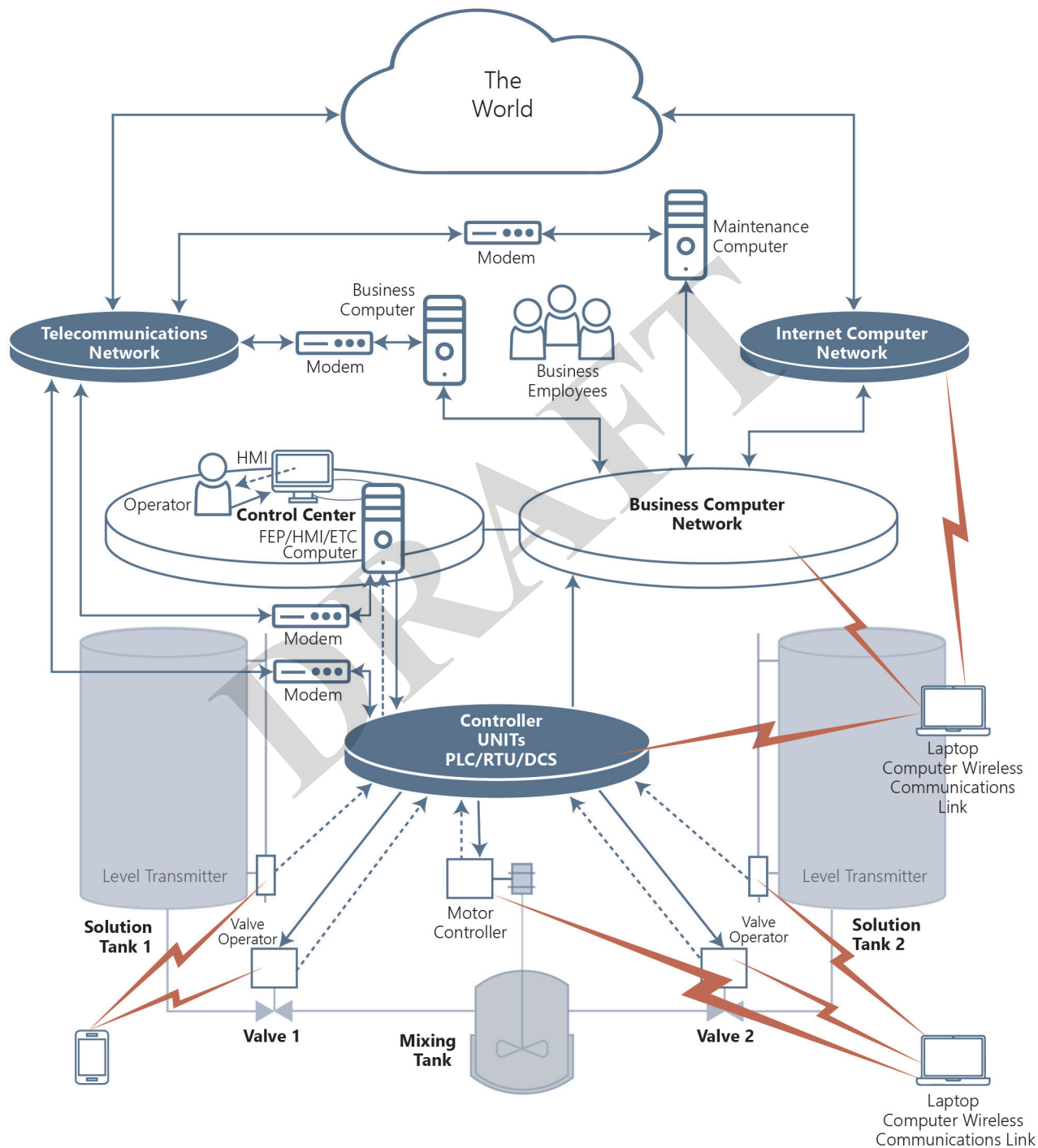
⁵⁸⁶ Kristi Barksdale and Tully Yount, *Unique Needs and Challenges of Border Law Enforcement and Promising Practices for Establishing a Criminal Interdiction Unit* (Washington, DC: Office of Community Oriented Policing Services, 2020), 4, <https://cops.usdoj.gov/RIC/Publications/cops-p425-pub.pdf>.

⁵⁸⁷ Barksdale and Yount, *Unique Needs and Challenges of Border*, 4.

⁵⁸⁸ Barksdale and Yount, *Unique Needs and Challenges of Border*.

CYBERSECURITY AND SOFT TARGETS

Figure 9.1: Understanding Control System Cyber Vulnerabilities



Source: U.S. Computer Emergency Readiness Team

9.3.7 The Federal Bureau of Investigation and Department of Homeland Security's Cybersecurity and Infrastructure Agency should inform state, local, and tribal government technological procurement offices regarding companies and components known to carry cybersecurity risks.

Foreign adversaries may engage in cyber espionage, which includes obtaining cyber information accessible to companies that are operating in their country. It can be difficult for state, local, and tribal governments to identify companies or technology with ties to these countries due to the number of subsidiaries; the lack of visibility on components and their manufacturers; and the tendency for many commercial, off-the-shelf products to arrive pre-loaded with software. Resources or guidance for procurement officers on how to identify potential vulnerabilities can enable state, local, and tribal governments to make better technological purchasing decisions, which will protect the nation's cyber infrastructure.⁵⁸⁹

DRAFT

589 Richard L. Swearingen, Commissioner, and Shane Desguin, Special Agent in Charge, Florida Department of Law Enforcement, public comment to President's Commission on Law Enforcement and the Administration of Justice, April 30, 2020.

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Part IV

INNOVATIONS

Policing in the Digital Age

The digital world has afforded criminals the ability to conceal their crimes, including through data encryption that is impervious to search and seizure by law enforcement. The lack of lawful access to encrypted information that is controlled by technology companies is one of the greatest obstacles to law enforcement's efforts to combat crime. The rule of law cannot exist in a space—digital or otherwise—that deliberately insulates criminals from law enforcement investigation. While technological advancements present challenges for law enforcement, technology also poses unique and important opportunities for crime fighting. New methods of electronic surveillance and digital investigation hold considerable promise.

In addition to addressing lawful access, this section addresses the need for law enforcement to adopt innovative technologies to combat crime, including unmanned aerial systems, acoustic gunshot detection technologies, and facial recognition software. It also calls for greater flexibility in federal grant funding, and for more effective national law enforcement data collection.

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CHAPTER 10: GRANT PROGRAMS

Overview

Federal grant funding plays a crucial role in supporting state, local, and tribal law enforcement agencies. Of the \$700 billion in federal grants awarded each year, about \$550 billion is given to state and local governments.⁵⁹⁰ Federal grants provide critical resources for law enforcement agencies to obtain modernized equipment and innovative technology to meet these contemporary needs. Such funds also can pay for the recruiting, hiring, and training of law enforcement officers. These grants, moreover, do not just directly fund the operations of police departments and sheriff's offices. They also finance all aspects of the criminal justice system: victim services, juvenile justice and delinquency prevention, correctional facilities, and national security infrastructure. Federal grant money is therefore the lifeblood of any federal/state/local law enforcement partnership. The allocation of federal funds must be done using consistent standards and procedures and with a sound understanding of where these funds are most needed.

In studying the use of federal grants to support American law enforcement, the Commission has determined that the distinct federal agencies responsible for issuing such grants should standardize and simplify the administrative process to apply for and receive grant money, and that additional resources should be devoted to empowering and educating grant recipients to make the best use of the money awarded.

Currently, more than 1,800 federal grant programs are administered by 34 different agencies.⁵⁹¹ The collection of federal grants across the U.S. government varies depending on the mission of the agency, type of grant program, and the targeted audience.

Several federal grant-making agencies support state, local, and tribal law enforcement, including agencies from the Department of Justice (DOJ), the Department of Homeland Security (DHS), and the United States Department of Agriculture (USDA). These federal grant-making agencies include

- Department of Justice
 - The Office of Justice Programs (OJP) provides federal grants to help develop the national capacity to prevent and reduce crime, enhance public safety, strengthen law enforcement, improve officer safety, expand services for victims of crime, and enforce victims' rights. OJP has six program offices: the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking.

⁵⁹⁰ *The President's Management Agenda* (Washington, DC: Office of Management and Budget, 2018), 36, <https://www.whitehouse.gov/wp-content/uploads/2018/03/Presidents-Management-Agenda.pdf>; and *U.S. House Committee on Oversight and Government Reform, Subcommittee on Intergovernmental Affairs: Hearing on Federal Grant Management* (July 25, 2018) (statement of Natalie Keegan, Analyst, American Federalism and Emergency Management Policy, Congressional Research Service), <https://docs.house.gov/meetings/GO/G004/20180725/108606/HHRG-115-GO04-Wstate-KeeganN-20180725.pdf>.

⁵⁹¹ Matt Rumsey and Priya Mhatre, "Transforming Federal Grant Reporting: Current Challenges, Future Vision," *The Data Foundation*, June 2018, <https://www.datafoundation.org/transforming-federal-grant-reporting-paper-2018>; and Keegan, U.S. House Committee on Oversight, July 25, 2018.

- The Office of Community Oriented Policing Services (COPS Office) assists state, local, and tribal law enforcement agencies in their efforts to prevent crime, enforce laws, and represent the rights and interests of the general public.
- The Office on Violence Against Women provides federal grants to help develop the national capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, intimate partner violence, sexual assault, and stalking.
- Department of Homeland Security
 - The State Homeland Security Program assists state, local, and tribal efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - The Urban Area Security Initiative assists high-threat, high-density urban areas' efforts to build, sustain, and deliver the capabilities necessary to prevent, prepare for, protect against, and respond to acts of terrorism.
 - Operation Stonegarden (OPSG) supports enhanced cooperation and coordination among Customs and Border Protection, United States Border Patrol, and federal, state, local, and tribal law enforcement agencies to improve overall border security. OPSG provides funding to support joint efforts to secure the United States' borders along routes of ingress or egress to and from international borders, to include travel corridors in states bordering Mexico and Canada and states and territories with international water borders. State, local, and tribal law enforcement agencies use their inherent law enforcement authorities to support the border security mission and do not receive any additional authority as a result of participation in OPSG.
 - The Tribal Homeland Security Grant Program focuses on enhancing the ability of state, local, and tribal governments and nonprofits to prevent, protect against, respond to, and recover from terrorist attacks.
- Department of Agriculture
 - The USDA Rural Development Program helps improve the economy and quality of life in rural America. Public safety services—such as fire departments, police stations, prisons, police vehicles, fire trucks, public works vehicles, or equipment—are funded through the Community Facilities Direct Loan and Grant Program.

Each of these agencies has its own policies and requirements to administer its grant programs, which leads to inconsistent processes that create obstacles for the state, local, and tribal law enforcement agencies applying for federal funding.

10.1 The Federal Grant-Making Process and Application and Grant Management Systems

Law enforcement agencies that seek federal grant funds often discover the lack of standardization in the administration of grants across the federal grant-making agencies. State, local, and tribal law enforcement agencies often confront duplicative, onerous, and conflicting grant management requirements that burden or confuse the grant applicant. These difficult, burdensome, and confusing procedures attending the administration of grants can discourage and deter state, local, and tribal law enforcement agencies from applying for federal funds at all. Therefore, it is critical to streamline, standardize, and simplify the grants management processes to ensure that federal funds facilitate the programs and services as intended by Congress.

Attorney General William P. Barr has stated that while “the department’s grant funding provides crucial support to state and local law enforcement . . . some jurisdictions are foregoing grant opportunities because of onerous application and compliance requirements.”⁵⁹² Accordingly, Attorney General Barr directed OJP and the COPS Office to implement a series of changes to streamline the grant-making process. Many of the challenges that state and local law enforcement officials presented to the Commission about the administration of federal grants coincide with those identified through studies, hearings, policy (e.g., Uniform Administrative Guidance), and research. This further bolsters support for necessary reform in the grant-making process.

The Commission identified many challenges with the current state of federal grants. Some of the challenges include applicants needing to access multiple grant management systems that require multiple usernames and passwords, application processes that are repetitive and arduous, an increase in grant special conditions, and onerous programmatic reporting requirements.

Over the last decade, a number of groups have identified the need for transparency and accountability regarding the effectiveness of federally funded programs. For example, the President’s Management Agenda’s Cross-Agency Priority Goal, Results Oriented Accountability for Grants, placed a focus on four strategies: (1) standardizing processes and data, (2) building a shared information technology infrastructure, (3) managing risk, and (4) achieving program goals and objectives. Each of these areas aligns with the Commission’s recommendations.⁵⁹³

The ways to address these challenges were specifically expressed by the 2018 U.S. Government Accountability Office report, *Grants Management: Observations on Challenges and Opportunities for Reform*, which identified five key areas to improve the grant-management process:

- streamline processes
- maintain transparency
- collaborate and consult with grant participants
- reduce duplication, overlap, and fragmentation
- standardize internal controls and oversight⁵⁹⁴

10.1.1 The Department of Justice grant-making components should develop a common, standardized data- and information-sharing capability to support the grants management lifecycle for both internal and external users.

A centralized grants management system at the department level would alleviate the problem of applicants navigating multiple systems, standardize the application process across grant-making agencies, and reduce the burden on all stakeholders. The need for a streamlined system also applies to grant implementation and monitoring of post-award activities. In many cases, grantees spend considerable time and resources to complete progress reports from various grant-making agencies at the same time. Not only would the improved system make it easier for recipients to focus their resources on the implementation of the funded programs and their results, the grant-

592 William P. Barr, United States Attorney General, “Remarks as Prepared for Delivery,” presented at the Major County Sheriffs of America Winter Conference, Washington, DC, February 11, 2020, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-major-county-sheriffs-america-winter>.

593 “Results Oriented Accountability for Grants,” Office of Management and Budget, accessed June 3, 2020, https://www.performance.gov/CAP/action_plans/dec_2019_Results-Oriented_Accountability_for_Grants.pdf.

594 *U.S. House Committee on Oversight and Government Reform, Subcommittee on Intergovernmental Affairs: Hearing on Federal Grant Management* (July 25, 2018) (written statement of Michelle Sager, Director, Strategic Issues, U.S. Government Accountability Office), <https://www.gao.gov/assets/700/693398.pdf>.

making agencies would also mitigate the costs associated with the grants management process by streamlining the approach to identify and eliminate duplications and overlap prior to award.

The Commission and grant management experts identified a number of characteristics to consider building into a centralized grants-management system that would make it easier and more efficient for state, local, and tribal agencies to apply for and manage federal grants:

- electronic notification of funding opportunities with identifiable program objectives and deadlines
- automated application forms with question prompts and multiple-choice options
- an intuitive user interface with step-by-step instructions and helpful hints
- the ability to capture grant application reviewer comments and make them available to successful or unsuccessful applicants to guide future applications
- a mobile app version that offers a convenient method for agencies to apply for grant funding and manage active grants, in addition to other potential opportunities

Rural and tribal law enforcement agencies would greatly benefit from a simpler, more streamlined system, as their staffing limitations often do not allow for the time required to complete the application process. As noted by Chief Keith Kauffman of the Redondo Beach Police Department in California, "a well-designed system would level the playing field for all."⁵⁹⁵

10.1.2 The Department of Justice grant-making components should develop a common, standardized set of what data fields are to be collected, subjected to analytics, and reported.

Standardizing the data will allow grant-making agencies to better collaborate, help reduce the time spent by grant recipients during the application and implementation phases, and maintain consistency and quality in data standards when submitting progress reports. The Commission heard from many state and local grant administrators about the challenges they encountered while submitting multiple progress reports for different cross-agency programs. Grant administrators also identified that the use of common grants management terms was inconsistent and that progress report formatting varied.

Over the last six years, the federal government has focused on improving the efficiency of reporting requirements for government, businesses, and nonprofits. Implementing a common language is the first step to realizing the benefits of data standardization. Currently, the standard data elements include more than 400 common grants management terms and definitions that will require further refinement. The next step would be to integrate these standards for consistent data collection into the system recommended in 10.1.1, thereby creating a single venue for data related to federal funding for law enforcement.

⁵⁹⁵ Keith Kauffman, Chief of Police, Redondo Beach Police Department, CA, in discussion with Grant Programs Working Group, virtual meeting, April 9, 2020.

10.1.3 The Department of Justice grant-making components should adhere to plain language requirements that clearly convey how grantees should meet the program goals and objectives and to reflect the overall performance of the grantee.

Grant-making agencies should employ a process to establishing that the funded programs derive the desired outcomes and ensure that federal funds are used as intended. Grant-making agencies should provide clear guidance in the applications on how to measure performance.

Each federal grant-making agency should shift its grants management system from one that is reliant on compliance to one that is more balanced and includes measurable program and project goals and data analysis. This effort supports the President's Management Agenda.

10.2 Use of Federal Funds

Law enforcement agencies should maximize the use and value of federal grants to ensure that communities receive the full benefit from these funds. In addition to streamlining the application process, solutions to help law enforcement agencies maximize the impact of federal grants across different communities are critical. Such solutions should focus on allowing the grant-making agencies to fashion grants to ensure that state and local governments have sufficient flexibility to use federal funds in a manner that addresses their specific criminal justice needs. Grant applicants and recipients should also have access to training on application preparation, implementation, and management. Technical assistance on sustainability of federal funds should also be provided.

As noted, applicants expend considerable resources to apply for grants using the current application processes and grant management systems. These issues range from inflexible grant programs and a lack of clear communication to inform grantees how to appropriately use the funding. Additionally, many grantees lack the necessary knowledge to ensure their programs effectively use the federal funding and meet the administrative and programmatic requirements.

10.2.1 The Department of Justice should reduce the bureaucracy involved in grant program application and administration, to allow state, local, and tribal governments to efficiently and effectively address their criminal justice needs. The Department should eliminate or reduce unnecessary state administrative pass through processes from its grant program administration.

State and local agencies are the ones on the front lines of criminal justice. DOJ's grants should therefore enable these agencies to address the emerging crime issues in their localities. DOJ can do this by reducing the amount of administrative steps in the grant process in order to make funds available in a timely and responsive manner for needs in the field. DOJ should also provide funds directly to the grant recipients rather than having funds pass through state administrators. Programs administered through state agencies lead to additional delays in the funding reaching

the law enforcement recipients, and they may result in fewer dollars reaching the field due to carve-outs. DOJ should also work to reduce the length of grant applications, the number of data fields and amount of narrative requested in applications, and the reporting requirements on grants, in order to ease the administrative burden on agencies of applying for and using federal funds. Doing so would encourage more agencies to apply for DOJ’s grant funding and allow recipient agencies to maximize their time and personnel resources in utilizing these funds.

Additionally, while there are legitimate reasons for DOJ to install special conditions on the issuance of grants, such as the conditions added to ensure grant recipients’ compliance with immigration authorities, in general, when imposing additional special conditions, an agency should weigh the cost of these conditions to complicating and disjointing the overall federal grant-making process. An example of the increase in special conditions (i.e., modifications, contracts, or memorandums of understanding with other jurisdictions; evaluation; award-monitoring activities; and extensions) over the last five years is illustrated in table 10.1.

Table 10.1

Federal Award	Number of 2015 Special Conditions	Number of 2019 Special Conditions
Edward Byrne Memorial Justice Assistance Grant (JAG)	47	72
Victims of Crime Act (VOCA) Administrators	30	41
The Residential Substance Abuse Treatment for State Prisoners Program	29	46
National Criminal History Improvement Program	39	51
The Paul Coverdell Forensic Science Improvement Grants Program (the Coverdell program)	33	47
Sexual Assault Services Formula Grant Program	44	51
Student, Teachers, and Officers Preventing School Violence Act	52	56

Source: Jennifer Brinkman, *President’s Commission on Law Enforcement and the Administration of Justice: Hearings on Grant Programs* (April 30, 2020)

10.2.2 Congress should periodically assess and, if necessary, adjust the statutory formula of grant programs when they are reauthorized to ensure that they still meet their intended need and that they are equitably distributed across the nation.

Congress authorizes and appropriates certain grant funding via formula, ensuring each state receives a portion of the available money. To establish these formulas, Congress relies upon specific factors and calculations to determine the proper allocation to each state. However, the conditions and circumstances present when the formulas were first set may have changed with the passage of time and may now be inaccurate. To ensure equitable distribution of formula grants, Congress should regularly review the validity of the elements used in the formula and make adjustments as warranted when reauthorizing them.

10.2.3 The Department of Justice should establish a comprehensive training program to inform state, local, and tribal law enforcement agencies about grant application requirements, grant application preparation, reporting responsibilities, monitoring, and other competencies.

Grants training would greatly reduce the mismanagement that can occur from a lack of agency understanding on how to properly administer the funds. Many local agencies, most notably those in rural and tribal jurisdictions, do not have dedicated grant writers or staff with expertise in grant management. This puts them at a disadvantage when it comes to locating available grants and understanding the application process.

| **See Chapter 13: Rural and Tribal Law Enforcement.**

Although a new grants management system will be easier to understand and simpler to navigate, first-time applicants and award recipients may still experience a learning curve. Accordingly, grant-making agencies should offer first-time applicants and award recipients the opportunity to participate in training on financial and programmatic management and reporting requirements. This training would familiarize applicants with the entire grant management process. Grant-making agencies should consider all training platforms, including webinars, desktop training, individualized assistance, and on-site or regional training.

Grant-making agencies should refer to the Office for Victims of Crime Tribal Financial Management Center (OVC TFMC) as a good training model. The OVC TFMC serves more than 225 grantees by providing training, technical assistance, and resources to support American Indian and Alaska Native communities.

10.2.4 Department of Justice grant-making components should provide assistance to grant recipients on how to sustain federally funded programs and items after the grant period is finished.

One of the biggest challenges for the grant recipient to overcome is the decline of programs after grant funds are exhausted. Therefore, federal agencies should consider requiring grant recipients to provide a sustainability plan to ensure continuity of the program. This sustainability plan should start with the initial application and continue through progress reports and periodic check-ins

between the awarding agency and award recipient. Additionally, the grant-making agency should provide the necessary resources (e.g., webinars, training, or technical assistance) to underscore the importance of building off the federal support. This sustainability plan should be integrated in the information technology solution recommended in 10.1.1 and the overall training program recommended in 10.2.2.

Sustainability is a dynamic process; therefore, strategies will change over the course of the grant period and will depend on the nature of the program. This sustainability plan should be evidenced-based to determine what outcomes are possible and reasonable. It should also identify what mechanisms will continue to exist to manage the most effective components after grant funds are exhausted.

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CHAPTER 11: TECHNOLOGY

Overview

Advances in technologies have created opportunities and efficiencies in many aspects of our daily life. Such advances have spawned new forms of connectivity and commerce, bringing people around the world together in ways not imagined or technologically possible just a decade ago. However, these technologies have opened a new world for exploitation by criminals, terrorists, and spies.

Attorney General William P. Barr addressed these issues at the Lawful Access Summit in Washington, DC, in October 2019:

The digital world that has proven such a boon in many ways has also empowered criminals. Like everybody else, criminals of all stripes increasingly rely on wireless communications, hand-held devices, and the internet. In today's world, evidence of crime is increasingly digital evidence. As we work to secure our data and communications from hackers, we must recognize that our citizens face a far broader array of threats. Hackers are a danger, but so are violent criminals, terrorists, drug traffickers, human traffickers, fraudsters, and sexual predators. While we should not hesitate to deploy encryption to protect ourselves from cybercriminals, this should not be done in a way that eviscerates society's ability to defend itself against other types of criminal threats. In other words, making our virtual world more secure should not come at the expense of making us more vulnerable in the real world.⁵⁹⁶

To stay ahead of criminals and threats to the American public, law enforcement is working to leverage technology in response to the criminal exploitation of technology and to enhance their crime reduction efforts more generally. Emerging technologies present a great opportunity to increase law enforcement's capacity to carry out their mission to uphold the rule of law. However, prior to adopting new technologies, law enforcement agencies should examine the potential risks and costs. Furthermore, because modern law enforcement agencies work in a highly complex, interconnected environment, the technology that law enforcement agencies use and the sensitive data they access require strong cybersecurity risk frameworks. Agencies must diligently employ and audit their mitigation strategies to ensure effective implementation and actual risk reduction.

To assess the potential implementation of a new technology, the Commission recommends that law enforcement agencies develop and use an analytical framework. Such a framework offers a starting point for law enforcement executives to identify the most critical concerns and the specific considerations related to the technology or advancement. The concept of a "framework" means a carefully considered, methodical, and repeatable approach that law enforcement agencies may use to consider the adoption of a new technology. This tool would guide law enforcement executives through certain decision-making processes to assess the risks, benefits, and other predictable considerations of the technology.

⁵⁹⁶ William P. Barr, U.S. Attorney General, "Remarks as Prepared for Delivery," presented at the Lawful Access Summit, Washington, DC, October 4, 2019, <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-lawful-access-summit>.

This chapter discusses the salient law enforcement concerns posed by contemporary technology. It also highlights several potential new technologies for law enforcement agencies to consider for implementation and includes recommendations on how agencies should assess adopting these technologies. However, this chapter does not discuss in detail all of the current technological tools available to law enforcement. Certain technologies—like the National Integrated Ballistics Information Network (NIBIN), Crime Gun Intelligence Centers (CGICs), and automatic license plate readers (ALPRs)—are discussed in the Reduction of Crime chapter of this report.

| See Chapter 8: Reduction of Crime.

11.1 Lawful Access

“The impact and magnitude of the lawful access crisis in the United States has grown to a point where the public safety trade-off to the citizens of this country can and should no longer be made privately and independently in the corporate boardrooms of tech companies. It must, instead, be returned to the halls of the people’s democratically elected and publicly accountable representatives.”⁵⁹⁷
- Darrin Jones, Executive Assistant Director for Science and Technology,
Federal Bureau of Investigation

A growing number of U.S. tech companies have begun to transition from managed strong encryption models to user-only access and end-to-end encryption models, which by design thwart court-authorized lawful access to evidence.⁵⁹⁸ These products and services may help criminals or terrorists hide or protect dangerous illegal conduct. Because of warrant-proof encryption, agencies often cannot obtain the electronic evidence and intelligence necessary to investigate and prosecute threats to public safety and national security, even with a valid warrant or court order. This creates a lawless space that criminals, terrorists, spies, and other bad actors can exploit.

As more and more companies transition to these user-only access and end-to-end encryption models, the lawful access of otherwise accessible, court-authorized information becomes restricted. While most publicized instances of this relate to the Federal Bureau of Investigation (FBI) and terrorism, it must not be overlooked that state and local law enforcement agencies also encounter these types of encryption challenges daily. The impact of user-only access and end-to-end encrypted data increases the number of unsolvable crimes and denies justice for victims. It also denies law enforcement the ability to quickly identify, exclude, and exonerate innocent persons while preserving valuable time conducting these investigations. In addition, it threatens

⁵⁹⁷ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 15, 2020) (written statement of Darrin Jones, Executive Assistant Director, Science and Technology, Federal Bureau of Investigation), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁵⁹⁸ Darrin Jones, Executive Assistant Director, Science and Technology, Federal Bureau of Investigation, email communication with Joe Heaps, Federal Program Manager, Technology Working Group, June 10, 2020. On April 1, 2020, Zoom, a major online video-conferencing provider made popular by the COVID-19 pandemic, issued a public statement describing how they use server-to-server encryption to maintain security for customers but also stated, “Zoom has never built a mechanism to decrypt live meetings for lawful intercept purposes, nor do we have means to insert our employees or others into meetings without being reflected in the participant list”; Oded Gal, “The Facts Around Zoom and Encryption for Meetings/Webinars,” Zoom (blog), April 1, 2020, <https://blog.zoom.us/wordpress/2020/04/01/facts-around-zoom-encryption-for-meetings-webinars/>. On May 7, 2020, Zoom announced their intent to deploy end-to-end encryption. At that time, Zoom added, “Zoom has not and will not build a mechanism to decrypt live meetings for lawful intercept purposes”; and Eric S. Yuan, “Zoom Acquires Keybase and Announces Goal of Developing the Most Broadly Used Enterprise End-to-End Encryption Offering,” Zoom (blog), May 7, 2020, <https://blog.zoom.us/wordpress/2020/05/07/zoom-acquires-keybase-and-announces-goal-of-developing-the-most-broadly-used-enterprise-end-to-end-encryption-offering/>.

to dramatically affect the nation's dual-sovereign federal system of law enforcement. When police and sheriffs cannot gain lawful access to critical criminal evidence that has been encrypted, they will have to turn for assistance to larger federal agencies whose own resources are already taxed.

In March 2019, Facebook announced its intention to encrypt Facebook Messenger.⁵⁹⁹ Facebook provides more reports to the National Center for Missing and Exploited Children (NCMEC) than any other tech company, with more than 15 million CyberTipline reports a year.⁶⁰⁰ While the commission recognizes and applauds Facebook's substantial efforts to combat these crimes against children, it is concerning that Facebook may alter their systems in such a way as to all but cease providing this vital, actionable intelligence to NCMEC.⁶⁰¹

"To date, NCMEC has received over 71 million CyberTipline reports, and the volume of content reported to the CyberTipline continues to rise each year. In 2018, NCMEC received over 18 million reports containing 45 million suspected child sexual exploitation images, videos, and related content. In 2019, NCMEC received slightly fewer reports—just under 17 million—but these reports contained over 69 million images, videos, and related content. Today the CyberTipline is a key tool in helping electronic service providers; members of the public; federal, state, and local law enforcement; and prosecutors combat online child sexual exploitation."⁶⁰² - John Clark, President and CEO, The National Center for Missing and Exploited Children

Historically, law enforcement has typically relied upon the tech industry to help identify and transfer specific information to officials, as directed by a court-ordered search warrant. This practice is usually the most efficient means of execution and preserves the privacy of others who are not the subject of the search warrant by ensuring that there is seldom any need or justification for law enforcement to physically or electronically enter a business system to search for the information. In addition, this practice levels the enforcement playing field by giving access to state and local law enforcement agencies that are less likely than federal agencies to have the technological expertise to execute the order without such assistance.

For many years, Apple and Google routinely granted law enforcement lawful access to their operating systems when they received a court-ordered search warrant. That changed in 2015 when Apple rolled out an operating system designed to make the content of its smart phones inaccessible by anyone except the user. Soon, other providers followed suit. Companies that have chosen to adopt end-to-end user encryption have effectively upended more than 200 years of jurisprudence by placing evidence beyond the reach of a court-ordered search warrant. The criminal justice system has been weakened, and law enforcement's ability to protect and promote the public's safety has been handicapped. In order to ensure that law enforcement can access all the relevant information it needs in the course of their work investigating crimes, the issue of lawful access must be resolved. The following recommendations offer solutions towards this end.

599 Mark Zuckerberg, "A Privacy-Focused Vision for Social Networking," Facebook, March 6, 2019, <https://www.facebook.com/notes/mark-zuckerberg/a-privacy-focused-vision-for-social-networking/10156700570096634/>.

600 Priti Patel et al. to Mark Zuckerberg, Chief Executive Officer, Facebook, October 4, 2019, U.S. Department of Justice, <https://www.justice.gov/opa/press-release/file/1207081/download>.

601 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Juvenile Justice* (May 4, 2020) (written statement of John Clark, President and Chief Executive Officer, National Center for Missing and Exploited Children), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

602 Clark, *President's Commission on Law*, May 4, 2020.

11.1.1 Congress should require providers of communications services and electronic data storage manufacturers to implement strong, managed encryption for stored data and data in motion while ensuring lawful access to evidence pursuant to court orders.

The Communications Assistance for Law Enforcement Act has not kept pace with the realities of today's modern internet and the public's near abandonment of the traditional telephone network.⁶⁰³ In today's reality of always available ways to communicate, app providers have not merely replaced a portion of the local telephone exchange; they have effectively become the local telephone exchange. Yet, several app providers bear no social or legal responsibility to compensate for or curb the harms caused by criminal elements that routinely use their services and products with an impunity facilitated by their designs.

Despite years of candid discussions initiated by law enforcement with a number of these providers and manufacturers, the companies have made little progress to resolve lawful access issues voluntarily. Instead, during that period, the problem has worsened and threatens to become the norm. It has become evident that a legislative solution is therefore necessary.

Additionally and just as significantly, victims' rights are a major aspect of the lawful access issue. Today, victims bear much of the cost associated with online crime. Technology companies must accept more responsibility, either by doing more to prevent online crime or by paying more of the costs associated with their inaction. While tools like artificial intelligence (AI) offer some promise to help detect and prevent some online crime, a lack of evidence may still leave law enforcement unable to act, which leaves victims unable to achieve justice.

The Commission considered but rejected the idea that lawful access equates to back-door access. Almost all mobile device manufacturers, operating system vendors, and app providers maintain their own "upgrade" back doors, which enables providers to routinely change functions and settings of a device or service. Law enforcement does not seek such direct access, nor does it wish to hold any encryption "keys." Instead, law enforcement seeks to have tech companies develop and manage for themselves the capability to respond to a lawful court order. Having tech companies themselves remain in control of this process is actually privacy enhancing, ensuring law enforcement is afforded only specific, limited access to data as defined in each case by a specific warrant.

Major financial institutions both in this country and abroad engage in billions of dollars of transactions daily, and the security of these transactions is maintained and managed through strong encryption, yet these institutions also maintain the ability to access such information when lawfully justified. The Commission concurs with the December 2019 resolution of the International Association of Chiefs of Police, which calls for worldwide legislation that compels companies to develop for themselves and implement appropriate lawful access capabilities for their products and services.⁶⁰⁴

Civil liability immunity statutes that were adopted during the infancy of many tech companies may unintentionally encourage such companies to pursue and market user-only access and end-to-

⁶⁰³ Communications Assistance for Law Enforcement Act, 47 U.S.C. §1001 (2006), <https://www.law.cornell.edu/uscode/text/47/1001>; and "Communications Assistance for Law Enforcement Act," Federal Communications Commission, last modified March 24, 2020, <https://www.fcc.gov/public-safety-and-homeland-security/policy-and-licensing-division/general/communications-assistance>.

⁶⁰⁴ International Association of Chiefs of Police, *IACP 2019 Resolutions Adopted (Alexandria, VA: International Association of Chiefs of Police, 2019)*, https://www.theiacp.org/sites/default/files/Adopted%202019%20Resolutions__Final.pdf. The paragraph refers to Resolution 21 of the International Association of Chiefs of Police December 2019 Resolutions.

end encryption models. Absent any risk of financial liability, the routine cost–benefit analysis—which most companies use to determine whether to dedicate resources to harm-mitigation strategies—may not influence some of these technology companies into a willingness to facilitate lawful access.

As long as tech companies are immune from liability, the Commission assumes that these companies perceive any development or maintenance of lawful access capabilities to be a drain on profits, which allows the tech companies to hide their financial motivations under the guise of a desire to enhance users' privacy. Ultimately, this behavior enables plausible corporate ignorance and allows criminals to use these systems for illegal purposes. If corporations are to continue to benefit from civil immunity, Congress should mandate that these companies develop and maintain a lawful access solution capable of producing clear text data in response to court-ordered search warrants.

11.1.2 Congress should implement regulations and laws that require internet service providers and companies that provide commercial services to retain certain records and set record retention periods.

The Stored Communications Act of 1986 requires data to be stored for up to 180 days upon request by the government. Providers must also disclose private information in emergency cases where individuals or groups may be in danger. In addition, a “court order is required for access to digital information. An administrative subpoena may be issued to gain access to specific data such as usernames, addresses, telephone numbers, and call transcripts.”⁶⁰⁵

Recently, the FBI investigated a gang task force case where it was revealed that the primary suspect of a homicide case used FaceTime to orchestrate the crime. Because Apple uses end-to-end encryption, it allows criminals to coordinate their crimes through this avenue. If law enforcement is given lawful access, they can then intercept the plans of criminals and gain evidence to prosecute those who break the law.

11.1.3 The FBI should establish a Lawful Access Technology Resource Center. The FBI should restructure the National Domestic Communications Assistance Center's Executive Advisory Board to allow law enforcement executives from federal, state, local, and tribal law enforcement agencies to address specific and sensitive law enforcement matters, including the impact and development of emerging technologies on law enforcement operations.

The pace of both the evolution and iteration of technologies can potentially both assist and challenge law enforcement. However, few local law enforcement agencies have the resources to keep abreast of this evolution on an ongoing basis. These agencies need an enduring, shared, collaborative structure that can serve as a hub for technical knowledge management and the exchange of solutions and knowledge among law enforcement agencies.

Established by the FBI, the National Domestic Communications Assistance Center (NDCAC) opened in 2013 to help federal, state, local, and tribal law enforcement keep abreast of the communications revolution.⁶⁰⁶ The NDCAC is a core FBI-sponsored technology group composed

605 “How Data Retention Legislation Impacts VPN Providers for the Better,” *Finjan Mobile* (blog), August 1, 2017, <https://www.finjanmobile.com/how-data-retention-legislation-impacts-vpn-providers-for-the-better/>.

606 “About,” National Domestic Communications Assistance Center, accessed June 30, 2020, <https://ndcac.fbi.gov/about>.

of engineering personnel, contractors, and technically trained law enforcement officers. The NDCAC also has access to and collaborates with engineers and technical staff of the FBI's Operational Technology Division, which conducts court-ordered wiretaps and the forensic search of stored electronic information. However, as currently structured, the NDCAC focuses almost exclusively on issues involving real-time lawful interception and the recovery of stored communications. If restructured, it could be leveraged to help law enforcement agencies collaborate to address challenges with lawful access.

The NDCAC's current mission and resources are inadequate to fully confront, track, assess, and generate recommendations to address the rapidly evolving challenges of modern technologies on a larger scale. By restructuring the NDCAC, law enforcement executives from federal, state, local, and tribal law enforcement agencies would be able to use it to help them address a broader range of sensitive law enforcement technology matters, like lawful access.

Additionally, the NDCAC should serve as a clearinghouse for information and resources regarding the lawful recovery of stored digital evidence in consumer technologies and other technologies that have an impact on law enforcement.

The NDCAC should expand its secure online knowledge repository to include a broader set of technologies and technological issues that are important to the law enforcement community. The online portal should include timely and specific analytical frameworks for agencies to use for emerging or morphing technologies. All registered law enforcement personnel should be able to access the online repository, and the NDCAC should include all important information on its portal. This restructuring would also allow the NDCAC to provide broad, inexpensive, and easily accessible training to federal, state, local, and tribal law enforcement agencies in applicable forensic or digital analytical recovery techniques and other technologies that have an impact on law enforcement.

Training is one of the most crucial ways to address the challenges of today's technologies. Law enforcement officers and prosecutors must be trained to understand the impact of and to properly leverage new and evolving technologies.

The NDCAC should expand both the scope and volume of its training to include a broader range of technologies that have an impact on law enforcement.

11.2 Implementing New Technologies

From the adoption of multi-shot pistols in the 1830s to the creation of soft body armor in 1972 to the emergence of crime mapping computer programs in the 1990s, technology has always been interwoven into how policing is conducted. However, today there is a vast array of possible innovative technologies and advancements that law enforcement could leverage in their work. Sifting through which of these could actually be useful to their agency can be burdensome, and even once a technology is decided on the acquisition and implementation of it adds further layers of complexity—not to mention significant costs in the face of budgetary constraints. Deployment of new technologies can also raise other issues for consideration, including public acceptance and constitutional and legal concerns. Despite these challenges, technology can bring enormous benefits to law enforcement agencies by making their work more efficient or less dangerous, better capturing and analyzing evidence, getting faster leads for investigations, intercepting crimes, identifying and catching criminals, and many more. These recommendations offer some

possible technologies for law enforcement to consider implementing that have been shown to be successful in enhancing law enforcement's work of combatting crime.

11.2.1 Law enforcement should consider the use of unmanned aircraft systems as a tool for fighting crime.

Law enforcement and public safety agencies across the country recognize that drones can be a tool in fighting crime and that their use can protect and save officers' lives. For example, one evening in August 2017, an officer from the Wilmington (Delaware) Police Department was working with an agent from Delaware Probation and Parole when gunshots were fired in their direction. Subsequently, the incident drew a significant law enforcement response, including officers and tactical teams from surrounding jurisdictions.⁶⁰⁷

The search for the gunman led officers to an alley where they heard sounds; it was fenced in and largely obscured from view. Given the lack of visibility, a tactical team breaching the alleyway would have put officers at risk if the suspect had been present. The team deployed a drone equipped with an on-board thermal imaging camera, which was able to show that the movement came from a dog in the alley, rather than an armed gunman. The use of a drone in that situation kept officers from further harm and possibly being surprised by the dog and potentially discharging a weapon. Simultaneously, the drone provided the situational awareness needed, without a single person being at risk.⁶⁰⁸

Law enforcement agencies though should thoroughly research and consider the full range of policy, legal, constitutional, and ethical implications when adopting unmanned aircraft systems (UAS) technology. Agencies should also consider the impact of privacy and civil liberties and should engage with members of the community and other law enforcement agencies, as appropriate, that are associated with adopting this new technology.

In addition to assessing how the use of the new technology may affect external parties, law enforcement agencies should also consider the impact on its own personnel and agency resources. It is possible that the technology will have other benefits, such as helping officers interact with the public, assisting the agency in using its resources better, improving response times, or helping to de-escalate events. The Chula Vista Police Department in California also uses drones to respond to 911 calls, with the UAS response time being less than three minutes.⁶⁰⁹

11.2.2 Law enforcement agencies should consider implementing acoustic gunshot detection technologies to combat firearm crime and violence.

An example of an emerging technology which may have unanticipated benefits is acoustic gunshot detection technology, which has provided law enforcement agencies, particularly those in urban settings, with a significant tool to combat firearm crime and violence. In addition to the investigative and evidentiary gains that can result from the implementation of this technology, another outcome is that police learn of nearly every firearm discharge. A 2016 Brookings Institute study reported that more than 80 percent of gunfire in the two cities studied went unreported to

607 Robert Tracy, Chief, Wilmington Police Department, DE, email communication with Josephine Debrah, Report Writer, and Joe Heaps, Federal Program Manager, Technology Working Group, April 1, 2020.

608 Tracy, email communication with Josephine Debrah, April 1, 2020.

609 "HigherGround," HigherGround, accessed June 1, 2020, <https://www.higherground.com/>; "UAS Drone Program," Chula Vista Police Department, accessed June 1, 2020, <https://www.chulavistaca.gov/departments/police-department/programs/uas-drone-program>; and Vern Sallee, Patrol Operations Division Captain, Chula Vista Police Department, CA, email communication with Joe Heaps, Federal Program Manager, Technology Working Group, June 9, 2020.

police.⁶¹⁰ As a result, police lack a full awareness of shots-fired incidents, which may include failed shootings that may be attempted again, and the community may assume that police are notified but do not care enough to respond.

Acoustic gunshot detection technology helps to remedy these issues and, when coupled with cutting-edge investigative techniques like National Integrated Ballistic Information Network (NIBIN) tracing and analysis, can have a significant effect on gun crime. The Wilmington Police Department has a partnership with the Bureau of Alcohol, Tobacco, Firearms and Explosives and an embedded Crime Gun Intelligence Center with rapid collection, tracing, and analysis of recovered shell casings and firearms. Acoustic gunshot detection technology uses sensors to detect gunfire and allows analysts to pinpoint the location and immediately provide that information to police. This technology has allowed officers to decrease their response time to complaints and incidents.⁶¹¹

11.2.3 The Department of Justice should provide funding to expand real time crime centers (RTCCs) throughout the nation and develop technology tools that provide RTCCs with the ability to identify and disseminate crime intelligence, analyze crime patterns, and develop strategies for reducing crime.

Too often, local law enforcement agencies operate as silos, rarely sharing critical data from agency to agency. However, regional real-time crime centers (RTCCs) offer a cost-efficient option, better equipping local police to fight violent crime. A RTCC is a centralized location where dedicated personnel are housed and equipped with a range of technology tools, access to data, and analytic capabilities.⁶¹² In the past 15 years, RTCCs have grown in number and evolved in sophistication to provide a broad range of assistance to law enforcement agencies, such as surveilling public spaces via video-feed, identifying suspicious behavior in real time, and disrupting criminal networks. Commonly, RTCC technology includes video screens that display feeds from cameras throughout the jurisdiction, gunfire detection systems, and automated license plate readers (ALPR). Continual monitoring are core features of virtually all RTCCs, leading to improved decision-making and more effective operations.⁶¹³

In recent years, RTCCs have expanded to smaller cities. In Alabama, the average size of the law enforcement agency is 10 officers or fewer, and these smaller departments do not have access to cutting-edge technology to fight crime. Chief Bill Partridge of the Oxford (Alabama) Police Department explained how the East Metro Area Crime Center (EMACC) uses and shares advanced technology with its 28 regional partners throughout north-central Alabama, including pole cameras, camera trailers, ALPR, crime-tracing software, phone and computer forensics, and facial recognition software. Launched in May 2019, the center uses a large video wall to monitor cameras, while on-site acoustic gunshot detection and shell casing analysis can also reduce crimes. Child abuse is also investigated through the center's cybercrimes unit.⁶¹⁴

610 Jillian Carr and Jennifer L. Doleac, "The Geography, Incidence, and Underreporting of Gun Violence: New Evidence Using Shotspotter Data," Brookings, April 27, 2016, <https://www.brookings.edu/research/the-geography-incidence-and-underreporting-of-gun-violence-new-evidence-using-shotspotter-data/>.

611 Robert Tracy, Chief of Police, Wilmington Police Department, DE, email communication with Joe Heaps, Federal Program Manager, Technology Working Group, May 15, 2020.

612 "The Mission of a Real Time Crime Center," Analysis Toolkit, 2017, <https://it.ojp.gov/CAT/Resource/215>.

613 John S. Hollywood et al., *Real-Time Crime Centers in Chicago: Evaluation of the Chicago Police Department's Strategic Decision Support Centers* (Santa Monica, CA: RAND Corporation, 2019), https://www.rand.org/pubs/research_reports/RR3242.html.

614 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Reduction of Crime* (April 16, 2020) (written statement of Bill Partridge, Chief of Police, Oxford Police Department, AL), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

“[By bringing] these smaller departments together . . . we’ve seen dramatic decreases in crime, especially violent crime, across the region.”⁶¹⁵ - Chief Bill Partridge, Oxford Police Department, Alabama

| See Chapter 8: Reduction of Crime.

While much of the attention paid to RTCCs focuses on data and advanced analytical tools, trained crime and intelligence analysts add important human intelligence. They use their skills to leverage core technologies, including geographic information system technology for mapping crime and assessing hotspots, software to perform link analysis or social network analysis, and statistical algorithms for assessing offender dangerousness and likelihood to offend based on past criminal history.

As technology has advanced, RTCCs have become more proficient in using unstructured data for intelligence and analysis purposes, including advanced digital media tools. Some RTCCs use sophisticated artificial intelligence solutions that automatically detect patterns of suspicious activity on video feeds, freeing the analyst from having to watch a wall full of video screens.

As documented by the Rand Corporation, adding RTCCs helps law enforcement agencies improve decision making and awareness of their communities and helps them carry out more effective, efficient operations that lead to crime reduction.⁶¹⁶ Funding from the Department of Justice (DOJ) may accelerate the spread of RTCCs and increase the ability of local and state law enforcement agencies to leverage analytic and data-sharing benefits. It may also help ensure that current RTCCs are sustainable and able to adapt as technologies and data analysis approaches evolve.

To support RTCCs, the DOJ could develop tools such as hardware, analytics software, and intelligence platforms. Since the Justice System Improvement Act of 1979 was enacted, the DOJ has developed standards for such technologies and helped ensure that law enforcement agencies have access to them. In addition, the DOJ administers grant programs to help bring new equipment to market by funding research and development of innovative technologies.

11.2.4 Law enforcement agencies should thoroughly consider the full range of potential legal, constitutional, and civil liberties and privacy implications associated with generating, acquiring, or using a new technology or data set.

Within the last few years, the volume of third-party data available for resale to public and private entities has grown exponentially.⁶¹⁷ Certain commercially available data may hold great value for federal, state, and local law enforcement. However, data being shared publicly or by and between commercial entities may take on additional sensitivities when obtained or accessed by law enforcement. Commercial entities may restrict law enforcement access to or use of commercial data. Also, legal restrictions may apply when the data are obtained or used by law enforcement for investigative purposes. In addition to considering commercial restrictions on use, privacy and civil liberties concerns are frequently implicated by how data are stored and managed. As such, law enforcement agencies will need to consider data use safeguards, auditing, and strong data protection regimes.⁶¹⁸

615 Partridge, *President’s Commission on Law*, April 16, 2020.

616 Hollywood et al., *Real-Time Crime Centers*.

617 Max Freedman, “How Businesses are Collecting Data,” *Business News Daily*, June 17, 2020, <https://www.businessnewsdaily.com/10625-businesses-collecting-data.html>.

618 *Carpenter v. U.S.*, 138 S. Ct. 2206 (2018).

11.3 Facial Recognition Technology

“Evolving technology such as facial recognition software will play a critical, and growing, role in investigating and preventing crimes. Law enforcement agencies, however, must ensure that the use of this investigative tool is tempered by the respect for constitutional, privacy, and civil rights of free citizens. Requiring that officers be trained on appropriate use, the tool’s limitations, and promoting transparency, will properly balance these interests.”⁶¹⁹ - BJay Pak, United States Attorney for the Northern District of Georgia

Facial recognition technology (FRT) refers to digitally matching images of faces to find a matching image.⁶²⁰ The technology to compare two images using a computer algorithm has been in development for nearly 40 years.⁶²¹ It works by creating a digital “faceprint” of a subject and seeks to match the print to a known image of a person.⁶²²

11.3.1 Federal and state governments should further investigate the use of facial recognition technology to help prevent and investigate criminal activities.

FRT is an efficient and effective investigative tool used to prevent and detect criminal activity. As former New York Police Commissioner James O’Neill notes, “Facial recognition technology can provide a uniquely powerful tool in our most challenging investigations such as when a stranger suddenly commits a violent act on the street.”⁶²³

This technology has expedited how persons of interest are identified by helping to identify those present at the incident while also excluding and exonerating others by confirming the alibis of those who were not there. The ability to efficiently generate investigative leads allows law enforcement to leverage their limited resources. In addition, the use of FRT can confirm any eyewitness identification of the perpetrator, which increases the credibility of such testimony and raises the confidence level of any resulting conviction.

At the same time, to minimize any potential misuse and to allay these concerns, law enforcement agencies that currently use or are contemplating the use of FRT on a more regular basis should adopt governing policies on FRT.

619 BJay Pak, U.S. Attorney, Northern District, Georgia, email communication with Joe Heaps, Federal Program Manager, Technology Working Group, April 30, 2020.

620 Andrew Guthrie Ferguson, “Facial Recognition and the Fourth Amendment,” Abstract, *Minnesota Law Review* 105 (updated 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3473423.

621 Alessandro Acquisti, Ralph Gross, and Fred Stutzman, “Face Recognition and Privacy in the Age of Augmented Reality,” *Journal of Privacy and Confidentiality* 6, no. 2 (2014), <https://www.heinz.cmu.edu/~acquisti/papers/AcquistiGrossStutzman-JPC-2014.pdf>.

622 Kevin Bonsor and Ryan Johnson, “How Facial Recognition Systems Work,” How Stuff Works, accessed August 13, 2020, <https://electronics.howstuffworks.com/gadgets/high-tech-gadgets/facial-recognition.htm>.

623 James O’Neill, “How Facial Recognition Makes You Safer,” *New York Times*, June 9, 2019, <https://www.nytimes.com/2019/06/09/opinion/facial-recognition-police-new-york-city.html>.

CHAPTER 12: DATA AND REPORTING

“Cops on the street need data; sometimes their safety depends on it. And what they need is data that are easy to digest, accurate, and timely.”⁶²⁴ - Chief William Brooks, Norwood Police Department, Massachusetts

Overview

Effective policing requires comprehensive and credible data to identify criminal threats and determine where to best deploy limited resources. Law enforcement agencies cannot reach policy decisions or allocate manpower based on whim, anecdotes, or the individualized discretion of law enforcement officials. Rather, law enforcement must make a centralized and scientific determination of the state of crime in their jurisdiction, and that understanding can only occur through comprehensive and reliable data.

Foremost, data can tell law enforcement the scale of a criminal problem and, no less importantly, the efficacy of operations to combat it. It can be difficult to even identify the existence of a criminal problem without data. Law enforcement cannot ascertain, for example, the magnitude of human trafficking without data of its frequency, location, and other patterns. In the fight against violent crime, moreover, the Commission has determined that law enforcement should no longer simply rely on “street intelligence,” but should use sophisticated crime data analysis, such as hotspot mapping and crime gun intelligence, to target the most violent criminal actors and their organizations.

On the macro-policy level, law enforcement officials employ data to distribute resources, including federal grant money, with a proper understanding of criminal activity relative to type, degree, and location. But the mere acquisition of data is, by itself, insufficient. The information must be shared, analyzed, and used effectively. A mosaic of federal, state, local, and tribal law enforcement agencies collect data and need sound methods of reporting and sharing data for collective analysis and use. As noted elsewhere in this report, this is particularly vital in the realm of homeland security, where there is a pronounced need for law enforcement to share information and data in reliable and effective ways.

Law enforcement has formally collected crime data since the establishment of the Uniform Crime Reporting (UCR) program in 1929.⁶²⁵ The need to share vital information about crime trends has not changed much since 1929, but the demand, timing, and types of data have changed. In the twenty-first century, our nation has become a vast consumer of data in nearly all aspects of life and professional sectors. Law enforcement has shifted from taking a reactive stance (i.e., moving from call to call) to a proactive position, such as using data to help reduce crime in their communities.

⁶²⁴ William Brooks, Chief of Police, Norwood Police Department, MA, email communication with Shelley S. Hyland, Federal Program Manager, Data and Reporting Working Group, April 30, 2020.

⁶²⁵ Committee on Uniform Crime Records, *Uniform Crime Reporting: A Complete Manual for Police* (New York: International Association of Chiefs of Police, 1929).

The use of law enforcement data has evolved from the early days of capturing basic crime counts to rigorous research practice through evidence-based policing (EBP). Data collection is no longer just aggregate counts; it now includes incident-based data, which provide detailed and granular information that fosters better crime reduction strategies. In addition to the analytical flexibility that incident-level data provides, standardized incident-level data provide a platform for law enforcement and other criminal justice professionals to maintain both transparency with and accountability to the communities they serve.

The federal government relies on federal, state, county, tribal, and local law enforcement agencies to enter data accurately. Law enforcement agencies striving to implement EBP strategies will be thwarted if the data analyzed are incomplete, inaccurate, or otherwise unreliable. Even when data have been accurately collected, people may misunderstand or misinterpret them if the context or baseline is unclear in reporting. The same data can be used to both defend and refute the same hypothesis. As such, all government agencies should continue to diligently collect and report data that are reliable and objective.

12.1 Federal Data

The United States Government is the largest collector and custodian of data, and it analyzes this information to discern national crime trends and accordingly prioritize federal law enforcement efforts or allocate grant money to state and local jurisdictions. The Executive Branch of the United States government includes thirteen principal statistical agencies whose primary responsibility is to collect essential statistical information for public use. Since 1979, the Bureau of Justice Statistics (BJS) has served as the principal statistical agency for the Department of Justice (DOJ).

The federal government does not have a central system to collect criminal justice data. The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) coordinates the decentralized federal statistical system. Within DOJ, a number of agencies engage in statistical data collection (figure 12.1). The methodology, size, and scope of these data collections vary widely. BJS oversees 53 percent of federal criminal justice data collections within DOJ, followed by the Federal Bureau of Investigation (FBI; 15 percent), Office of Juvenile Justice and Delinquency Prevention (OJJDP; 10 percent), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF; 6 percent).⁶²⁶ Eleven other DOJ agencies oversee the remaining 16 percent of federal criminal justice data collections (see Supplement 12.1: List of Federal Data Collections).

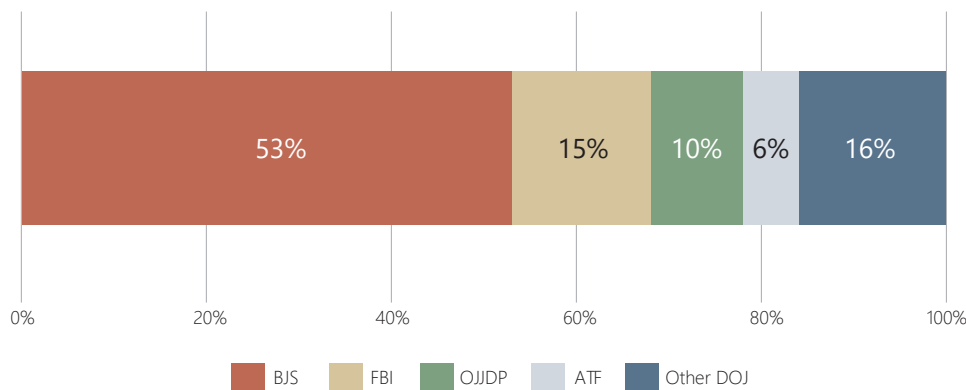
The most prominent federal data collections that measure crime are the FBI's Uniform Crime Reporting (UCR) program and BJS's National Crime Victimization Survey (NCVS). The UCR focuses on collecting data regarding crimes reported to police, whereas the NCVS is the main data source that captures crimes not reported to police.

The FBI's UCR program has existed since 1930, when the Summary Reporting System (SRS) was created. In 1988, the FBI then created the National Incident-Based Reporting System (NIBRS) to move from the aggregate crime counts of the SRS to detailed incident-level crime information.⁶²⁷

⁶²⁶ For this chapter, "federal criminal justice data collections" and "justice-related data collections" are used interchangeably and include only statistical data collections where the primary objective is to collect new or existing data in order to provide statistical results. These collections are covered under the Paperwork Reduction Act. It does not include performance measurement data collected through grants, cooperative agreements, and other funding mechanisms.

⁶²⁷ Paul Wormeli, "Criminal Justice Statistics: An Evolution," *Criminology and Public Policy* 17, no. 2 (2018).

Figure 12.1. Department of Justice Federal Data Collections by Overseeing Agency



Source: Supplement 12.1: List of Federal Data Collections.

Effective January 1, 2021, the FBI will retire the SRS and will transition exclusively to the NIBRS data collection.⁶²⁸ The NCVS is a residential survey of victims and captures both reported and unreported crime. NCVS estimates have largely only been available at the national level. However, BJS is currently undergoing an extensive redesign of the survey to produce subnational estimates.

While BJS collects the majority of criminal justice data, a number of other federal agencies also capture justice-related data. More than 30 federal agencies collect criminal justice data through over 100 data collections (see Supplement 12.1: List of Federal Data Collections). One benefit of multiple agencies collecting data is that agencies with established access to certain types of subjects are better equipped to collect data from these agencies or persons. For example, the FBI has been collecting crime data from law enforcement agencies for 90 years with a well-established infrastructure to capture these data. It would take millions of dollars and years for another government agency to set up a similar framework to accomplish the same task. Additionally, the Centers for Disease Control and Prevention (CDC) is the primary collector of data on injury and death, with an established series of data collections in hospitals. These collections provide access to data on injury and death involving law enforcement officers that may not be tracked through law enforcement agencies.

However, there are a number of issues with this current structure of decentralized data collection, one primary issue being that it is difficult to identify the potential duplication of data collected. In addition, with decentralization there is a lack of communication among federal agencies about the programs they implement. OIRA oversees and reviews all information collected from the public, but it relies on federal agencies themselves to identify potential sources of duplication. Additionally, decentralization makes it difficult to identify gaps in the data being collected. A lack of clarity in what is being gathered across agencies and data collections makes it increasingly difficult to identify the knowledge gaps. There has never been a systematic review of all criminal justice collections by the federal government.⁶²⁹

The following recommendation offers a way to address the issues caused by the decentralization of federal criminal justice data.

628 "National Incident-Based Reporting System (NIBRS)," Federal Bureau of Investigation, accessed July 21, 2020, <https://www.fbi.gov/services/cjis/ucr/nibrs>.

629 National Academies of Sciences, Engineering, and Medicine, *Modernizing Crime Statistics: Report 1: Defining and Classifying Crime* (Washington, DC: The National Academies Press, 2017), <https://doi.org/10.17226/23492>; National Academies of Sciences, Engineering, and Medicine, *Modernizing Crime Statistics: Report 2: New Systems for Measuring Crime* (Washington, DC: The National Academies Press, 2018), <https://doi.org/10.17226/25035>; and National Research Council, *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics* (Washington, DC: The National Academies Press, 2009), <https://doi.org/10.17226/12671>.

12.1.1 The president should direct the Office of Management and Budget to conduct a one-time review of criminal justice data collections across the government to identify duplication of data collection.

As previously discussed, the collection of criminal justice statistics is highly decentralized in the federal government. With more than 30 agencies collecting data pertaining to criminal justice issues, certain topics, such as victimization, have data that are collected through multiple studies by multiple organizations.⁶³⁰ For example, BJS collects information on victims of intimate partner violence through the NCVS regardless of whether the violence was reported to law enforcement.⁶³¹ Information on victims of intimate partner violence can also be obtained from the CDC's National Intimate Partner and Sexual Violence Survey.⁶³² To ensure the federal collection of criminal justice data does not unduly burden nonfederal entities, the government must be able to identify duplications of data collection efforts. An evaluation and report by OMB would identify overlap in efforts and help guide resource distributions going forward. OMB should consider DOJ as the agency to advise and oversee federal justice-related data collections going forward to reduce duplication.

12.2 Data Collection and Reporting Methods

The 1967 President's Commission on Law Enforcement and Administration of Justice (Johnson Commission) noted that the greatest obstacle to the work of that commission was the lack of data.⁶³³ The Johnson Commission recommended the development of improved systems to collect data that would inform all aspects of the criminal justice system.

Since the Johnson Commission report, the federal government has made great strides to improve data collection and reporting. The creation of BJS a decade after the Johnson Commission report greatly expanded justice-related data collection and statistical reporting for DOJ. In addition, the FBI has adopted methods to improve and continually enhance its capabilities for data collection and publications.

Federal data collection and reporting would not be possible without the cooperation of states, counties, and local and tribal agencies. These criminal justice agencies collect a myriad of data, and the most important aspect of that data collection may be data sharing and reporting. There is little need to collect data if it will not be used. Law enforcement agencies collect data daily and use these data internally to help inform operations, policies, and procedures. The benefits of sharing and reporting data outweigh the negatives. Agencies may be rightly concerned about privacy issues, but data can be shared and reported so that sensitive information is not released. Sharing data with other agencies assists with investigations. Additionally, reporting data to the public can help build police–community relations and increase transparency and public trust. Researchers can also use these data to build EBP practices.⁶³⁴

630 See Supplement 12.1: List of Federal Data Collections.

631 Shannon Catalano, *Intimate Partner Violence: Attributes Of Victimization, 1993–2011* (Washington, DC: Bureau of Justice Statistics, 2013), <https://www.bjs.gov/content/pub/pdf/ipvav9311.pdf>.

632 S.G. Smith et al., *National Intimate Partner and Sexual Violence Survey (NISVS): 2015 Data Brief – Updated Release* (Atlanta, GA: Centers for Disease Control and Prevention, 2018), <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>.

633 U.S. President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, DC: U.S. Government Printing Office, 1967), <https://www.ncjrs.gov/pdffiles1/nij/42.pdf>.

634 "5 Things You Need to Know About Open Data in Policing," National Police Foundation, accessed June 3, 2020, <https://www.policefoundation.org/5-things-you-need-to-know-about-open-data-in-policing/>.

Data collection and sharing among all criminal justice agencies are essential for day-to-day operations. Data reporting at all levels of government is necessary for maintaining transparency, informing policy, and understanding the current state of the criminal justice system. Two primary issues occur with data collection and reporting: mandatory reporting and standardization. These issues have an impact on all levels of government and its ability to provide reliable justice-related statistics.

Although the federal government cannot mandate participation, most respondents comply with data requests. BJS survey collections typically have a response rate of between 80 percent and 90 percent.⁶³⁵ Additionally, 91 percent of law enforcement agencies report to the FBI's UCR program.⁶³⁶ Crime reporting to the FBI is successful because the FBI has been collecting these data from agencies for 90 years; as of 2018, 43 states have legislation mandating local agencies to report crime data to the states.⁶³⁷ While crime reporting to the UCR is high, 51 percent of law enforcement agencies report via NIBRS, which has been in existence since 1988.⁶³⁸ NIBRS requires a significant system conversion from submitting monthly crime counts to providing detailed incident-level case data. The resulting slow adoption rate led to the development of BJS's National Crime Information Exchange (NCS-X) program in 2012, which provides funding to 400 law enforcement agencies and states to convert to NIBRS in order to achieve national representation.⁶³⁹ In addition to NCS-X, the FBI offers data integration support and provides technical assistance on NIBRS data specifications and reporting requirements. Since the implementation of these additional programs, agencies that report to NIBRS increased 46 percent (from 6,835 agencies in 2012 to 10,011 agencies in 2020).⁶⁴⁰ The FBI's goal is to have all 18,000 law enforcement agencies in the United States reporting crime to NIBRS by 2021. Based on state-reported agency commitments, the FBI forecasts that 75 percent of law enforcement agencies will be submitting to NIBRS by January 1, 2021, which will account for 83 percent of the population.⁶⁴¹

The second issue that plagues data collection and reporting across all levels of government is the lack of standardization in the data being collected. This is largely due to the decentralized records management systems (RMS) kept by criminal justice agencies. Officers can query their own agency systems and separate federal and state systems, but often cannot access the RMS of neighboring departments. In cases where access is granted to the systems, they are not integrated, which means that separate queries must be run in each system. These software issues make it difficult for criminal justice agencies to share data with each other and nearly impossible to share data in real-time.

635 National Research Council, *Ensuring the Quality*, 81.

636 Trudy Ford, Section Chief, Criminal Justice Information Services, Federal Bureau of Investigation, email communication with Data and Reporting Working Group, February 28, 2020.

637 National Academies of Sciences, Engineering, and Medicine, *Modernizing Crime Statistics: Report 2*, 63.

638 Amy Blasher, Unit Chief, Criminal Justice Information Services, Federal Bureau of Investigation, email communication with Data and Reporting Working Group, May 7, 2020.

639 Kevin J. Strom and Erica L. Smith, "The Future of Crime Data: The Case for the National Incident-Based Reporting System (NIBRS) as a Primary Data Source for Policy Evaluation and Crime Analysis," *Criminology & Public Policy* 16, no. 4 (2017).

640 Amy Blasher, Unit Chief, Criminal Justice Information Services, Federal Bureau of Investigation, email communication with Data and Reporting Working Group, May 13, 2020.

641 Trudy Ford, Section Chief, Criminal Justice Information Services, Federal Bureau of Investigation, email communication with Shelley S. Hyland, Federal Program Manager, Data and Reporting Working Group, July 15, 2020.

12.2.1 States should enact legislation that requires criminal justice agencies to collect standardized criminal justice data for reporting to the state and federal governments.

Because RMS systems are decentralized and vary widely across law enforcement agencies, data fields should be standardized for collation at the state level. States and agencies that have converted to NIBRS will have standardized crime data that will be collated at the state and federal levels. However, law enforcement agencies also need to collect other key criminal justice data, such as those on use of force.

States should therefore enact legislation that, at a minimum, requires all law enforcement agencies within the state to report to the FBI's NIBRS and National Use-of-Force Data Collection. The legislation should also include the collection of key data elements on a person from courts and corrections that covers their interaction with the criminal justice system from arrest to release. The legislation should include funding appropriations for the collection and reporting of these data.

While most state and local agencies report their crime data based on the FBI's SRS of the UCR program or NIBRS specifications, such reporting is not required because the federal government cannot mandate it under federal law. However, states can mandate that local agencies report to the state. States should mandate NIBRS reporting so these data can be shared with the federal government and participating agencies for a comprehensive look at crime in the nation.

The lack of required reporting in all 50 states creates data voids that limit the full and accurate view of crime in America. The same holds true for use-of-force reporting. The FBI's National Use-of-Force Data Collection was developed to fill this void, but agencies are not required to submit their use-of-force statistics. As of April 2020, 40 percent of agencies were reporting to the National Use-of-Force Data Collection.⁶⁴² To provide accurate statistics on law enforcement use of force, states should mandate that all law enforcement agencies report to the FBI's National Use-of-Force Data Collection.⁶⁴³ Agencies benefit from reporting use of force as it increases transparency, which can build community trust.

Federal law should also mandate the inclusion of federal crime data with data from state, local, and tribal law enforcement agencies in order to provide a comprehensive view of crime in the United States while affording greater transparency and accountability. Congress enacted the Uniform Federal Crime Reporting Act of 1988 to ensure federal participation in crime data collections.⁶⁴⁴ However, few federal agencies comply because of the lack of enforcement or a clear implementation strategy. Currently, only 6 of 114 eligible federal agencies (5 percent) submit NIBRS data.⁶⁴⁵

Data from law enforcement agencies are important to analyze crime, but data from county jails and the courts are equally important to understand the origins of crime, crime trends, and the effectiveness of the criminal justice system. Standardizing the collection of electronic criminal

642 Amy Blasher, Unit Chief, Criminal Justice Information Services, Federal Bureau of Investigation, email communication with Data and Reporting Working Group, April 22, 2020.

643 This recommendation is also supported by the National Association for the Advancement of Colored People Legal Defense and Educational Fund, Inc., American Civil Liberties Union, and the Justice Roundtable. These agencies provided public comments for consideration to the Commission.

644 Uniform Federal Crime Reporting Act of 1988, 34 U.S.C. § 41303 (1989), <https://uscode.house.gov/view.xhtml?path=/prelim@title34/subtitle4/chapter413&edition=prelim>.

645 Blasher, email to Data and Reporting, May 13, 2020.

history, court disposition, and corrections data will enable criminal justice practitioners to study the full impact of crime within our society.

State legislation should require all law enforcement agencies to report to NIBRS and the National Use-of-Force Data Collection; enable the collection of key data elements from courts and corrections on a person from arrest to release; ensure the existence of a clear compliance strategy; and provide appropriations to ensure the collection and reporting of these data.

12.3 Evidence-Based Policing

In 1998, Lawrence Sherman coined the term evidence-based policing (EBP) with the basic principle that “police practices should be based on scientific evidence about what works best.”⁶⁴⁶ EBP intends to make policing as effective and efficient as possible.⁶⁴⁷ EBP helps determine what works, what does not, and how to increase professionalism through valid, thorough, and scientific evaluation. Over the past three decades, American law enforcement has slowly moved in the direction of EBP.

EBP is an approach used to identify effective solutions to many of the problems faced by police departments, sheriff’s offices, and other law enforcement agencies. It is not one-size-fits-all; instead, it is adaptable to the types of issues routinely handled by law enforcement. EBP can be implemented regardless of agency size or type. While EBP emphasizes the use of scientific evidence, three other types of evidence should also be considered in order to develop policy and put it into practice: organizational evidence (data pertaining to the agency), professional evidence (pooled officer experience), and stakeholder evidence (groups that are likely to be affected by the research).⁶⁴⁸ EBP does not diminish experience or professional judgment; it enhances those valuable qualities with outcomes that can be measured and reinforced with data and analysis. Conversely, and perhaps most importantly, EBP can be used to identify ineffective programs and strategies that may actually increase harm.⁶⁴⁹

There remains a reluctance to incorporate EBP in law enforcement practices today. Change is difficult for a variety of reasons, including a cultural shift that threatens the status quo or the intuitive skill set of the experienced law enforcement officer. A common misconception is that EBP ignores or replaces experience; on the contrary, EBP works best when conducted by those who have both law enforcement and research experience,⁶⁵⁰ or when law enforcement agencies partner with academic researchers.⁶⁵¹ EBP requires that police officers at every level possess a fundamental knowledge of research and evaluation. These two components form the foundation of determining what is evidence based.

There is a solid body of evaluation and research in law enforcement, but police departments and sheriff’s offices have been slow to adopt the translation of this research into practice for a number of reasons.⁶⁵² One of these may be confusion over what EBP is, because it overlaps with other popular practices: EBP complements intelligence-led policing and problem-oriented policing

646 Lawrence Sherman, *Evidence-Based Policing* (Washington, DC: Police Foundation, 1998), 2, <https://www.policefoundation.org/publication/evidence-based-policing/>.

647 Gary Cordner, *Evidence-Based Policing in 45 Small Bytes* (Washington, DC: National Institute of Justice, 2020), <https://www.ncjrs.gov/pdffiles1/nij/254326.pdf>.

648 Jerry H. Ratcliffe, *Reducing Crime: A Companion for Police Leaders* (New York: Routledge, 2019).

649 Jerry H. Ratcliffe, Professor, Temple University, “Evidence-based Policing” (PowerPoint presentation, Data and Reporting Working Group, virtual meeting, April 23, 2020).

650 Ratcliffe, *Reducing Crime*.

651 Cynthia Lum, *Translating Police Research into Practice* (Washington, DC: Police Foundation, 2009), https://www.policefoundation.org/wp-content/uploads/2015/06/Ideas_Lum_0.pdf.

652 Cynthia Lum et al., “Receptivity to Research in Policing,” *Justice Research and Policy* 14, no. 1 (2012).

by providing an evidentiary foundation on which these two strategies are based.⁶⁵³ Additionally, rigorous research projects are costly and time consuming, and outcomes can be difficult to understand. Strained budgets can also negatively affect an agency's ability to staff analysts. In addition, law enforcement agencies may be resistant to collaborating with the outside research partners that are often necessary to help with evaluations. These academic researchers publish results in journals that are not accessible and easily digestible to practitioners, which contributes to the resistance.

However, the primary reason for the slow uptake is the limited number of law enforcement practices that have been systematically evaluated. Agencies are more apt to pick what is most commonly being done. The benefits of EBP include research knowledge and an increase in academic–practitioner partnerships, technological advancements, improved police–citizen relations, and decreased crime.⁶⁵⁴

Understanding what works and why it works may provide an avenue for increased interest and acceptance of EBP. A growing body of public safety practitioners, or graduate-level law enforcement officers who conduct research in collaboration with academic partners or on their own, appears to be gaining in popularity, as seen with the National Institute of Justice's Law Enforcement Advancing Data and Science Scholars program.⁶⁵⁵ It is important to build capacity at the executive level of policing in the basic understanding of research design, bias, and other statistical principles. It is just as essential to imprint EBP at the beginning of the youngest staff members' careers. Familiarity and exposure to EBP through education could be one potential catalyst to overcoming resistance. Legitimizing EBP through education legitimizes policing—much like medical providers—as professionals who target, test, and track policy and strategy for effectiveness and harm.

12.3.1 Evidence-based policing should be incorporated into training curricula, as well as everyday practices, policies, and procedures, by law enforcement academies, state Peace Officer Training and Standards, and law enforcement agencies.

As the U.K. College of Policing describes, “in an evidence-based policing approach, police officers and staff create, review, and use the best available evidence to inform and challenge policies, practices, and decisions.”⁶⁵⁶ EPB supplements and enhances experience with evidence to challenge assumptions and improve process and policy strategically to achieve better outcomes. As noted by Sherman (2020), “everything police agencies decide, from recruitment to assignments to discipline and dismissal, can be supported by better evidence.”⁶⁵⁷ Protocols, policies, and strategies backed by science and research in areas like collecting, analyzing, and managing physical evidence and eyewitness identification can help investigators avoid arrests of innocent people, which could result in wrongful convictions.⁶⁵⁸ Additionally, evidence-based practices that

653 Ratcliffe, *Reducing Crime*.

654 Lum, *Translating Police Research*.

655 “NIJ’s Law Enforcement Advancing Data and Science Scholars Program for Law Enforcement Officers,” National Institute of Justice, March 4, 2020, <https://nij.ojp.gov/funding/nij-and-iacps-law-enforcement-advancing-data-and-science-leads-scholarships-law-enforcement>.

656 “What Is Evidence-Based Policing?” U.K. College of Policing, accessed June 24, 2020, <https://whatworks.college.police.uk/About/Pages/What-is-EBP.aspx>.

657 Lawrence Sherman, “Evidence-Based Policing and Fatal Police Shootings: Promise, Problems, and Prospects,” *The ANNALS of the American Academy of Political and Social Science* 687, no. 1 (2020): 13.

658 National Research Council, *Identifying the Culprit: Assessing Eyewitness Identification* (Washington, DC: The National Academies Press, 2014), <https://doi.org/10.17226/18891>.

use psychological testing during the hiring and selection phases have long been established.⁶⁵⁹ Social science cannot solve all of policing's problems, but data and analysis, which are the core of EBP, can provide the most logical and rational approach for police agencies moving forward. The state Peace Officer Standards and Training can assist in implementing practical and immediately operational national standards for evidence-based policing in basic academy and in-service trainings. Law enforcement agencies should ensure that civilian analysts have training and experience in EBP topics such as basic statistics and research design. This training should be continually reinforced throughout officers' careers through in-service training and promotional testing.

12.3.2 Congress should provide funding to create a College of Policing to provide and set standards for evidence-based policing education and training for law enforcement officers.

Law enforcement agencies should invest in the education of police personnel, both sworn and professional staff, to provide the essential level of expertise or proficiency in the components of EBP to those expected to use it. Additionally, any investment in the education of police staff will enhance the efficacy with which they fulfill their duties. Modeled after the U.K. College of Policing, the U.S. College of Policing should have three primary functions: developing research and providing infrastructure for improving EBP, setting education standards for law enforcement officers, and drawing on EBP to help set standards in law enforcement for agencies and officers.

The U.S. College of Policing should employ a national curriculum within a university setting to offer either (1) an executive master's degree in the discipline of policing with an emphasis on EBP or (2) a certification program in the discipline of policing that provides a series of classes appropriate for basic EBP knowledge and application.⁶⁶⁰ The executive master's degree should provide police staff at the executive level a part-time, combined online and residential program of study that concludes with a capstone or research thesis final and results in a master's degree. The certification program—designed for line-level staff such as officers, detectives, sergeants, and analysts—should provide a professional certification at the conclusion of the course and possibly credits for an undergraduate degree.

Funding should be provided in the form of grants, ideally administered through the Office of Community Oriented Policing Services (COPS Office) or the Bureau of Justice Assistance (BJA), in conjunction with one or more accredited universities and subject matter experts. Dedicated annual funding should be used to offer a combination of tuition assistance, scholarships, and small grants that could be coordinated in partnership with the COPS Office, BJA, and the National Institute of Justice to ensure equity in participation for small, medium, and large agencies. Curriculum development and standards should be created through a coordinated effort among the COPS Office, BJA, the International Association of Chiefs of Police, the Federal Law Enforcement Training Center, the FBI National Academy, the National Police Foundation, the Police Executive Research Forum, the International Association of Directors of Law Enforcement Standards and Training, and other leadership and academic programs.

659 Cary Mitchell, "Preemployment Psychological Screening of Police Officer Applicants: Basic Considerations and Recent Advances," in *Police Psychology and Its Growing Impact on Modern Law Enforcement*, ed. Cary Mitchell and Edrick Dorian (Hershey, PA: IGI Global, 2017); Jonathan Lough and Michael Ryan, "Psychological Profiling of Australian Police Officers: A Longitudinal Examination of Post-Selection Performance," *International Journal of Police Science and Management* 8, no. 2 (2005); and Geoffrey Alpert, "Hiring and Promoting Police Officers in Small Departments: The Role of Psychological Testing," *Criminal Law Bulletin* 27, no. 3 (1991).

660 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Social Problems Impacting Public Safety* (June 19, 2020) (written statement of Gary Cordner, Academic Director, Baltimore Police Department Academy, MD), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

Supplement 12.1: List of Federal Data Collections

Department of Justice Components

Agency	Data Collections	Crime	Law Enforcement	Courts	Corrections	Expenditures
Bureau of Justice Statistics	Annual Parole Survey				●	
Bureau of Justice Statistics	Annual Probation Survey				●	
Bureau of Justice Statistics	Annual Survey of Jails				●	
Bureau of Justice Statistics	Arrest Related Deaths (Federal)		●			
Bureau of Justice Statistics	Census of Federal Law Enforcement Officers		●			
Bureau of Justice Statistics	Census of Jails				●	
Bureau of Justice Statistics	Census of Jail Inmates				●	
Bureau of Justice Statistics	Census of Medical Examiners and Coroner Offices		●			
Bureau of Justice Statistics	Census of of Law Enforcement Training Academies		●			
Bureau of Justice Statistics	Census of Problem Solving Courts			●		
Bureau of Justice Statistics	Census of Public Defenders Offices			●		
Bureau of Justice Statistics	Census of Publicly Funded Forensic Crime Laboratories		●			
Bureau of Justice Statistics	Census of State and Federal Adult Correctional Facilities				●	
Bureau of Justice Statistics	Census of State and Local Law Enforcement Agencies		●			
Bureau of Justice Statistics	Census of State Court Organization			●		
Bureau of Justice Statistics	Census of Tribal Law Enforcement Agencies		●			
Bureau of Justice Statistics	Civil Justice Survey of State Courts			●		
Bureau of Justice Statistics	Criminal Cases in State Courts			●		
Bureau of Justice Statistics	Federal Justice Statistics Program				●	
Bureau of Justice Statistics	Firearm Inquiry Statistics Program		●			

Agency	Data Collections	Crime	Law Enforcement	Courts	Corrections	Expenditures
Bureau of Justice Statistics	Justice Expenditures and Employment Extracts Series					•
Bureau of Justice Statistics	Juveniles in Criminal Court			•		
Bureau of Justice Statistics	Law Enforcement Management and Administrative Statistics (LEMAS)		•			
Bureau of Justice Statistics	LEMAS Body-Worn Camera Supplement		•			
Bureau of Justice Statistics	Mortality in Correctional Institutions				•	
Bureau of Justice Statistics	National Census of Victim Service Providers		•			
Bureau of Justice Statistics	National Computer Security Survey	•				
Bureau of Justice Statistics	National Corrections Reporting Program				•	
Bureau of Justice Statistics	National Crime Victimization Survey	•				
Bureau of Justice Statistics	National Crime Victimization Survey-Companion Survey	•				
Bureau of Justice Statistics	National Judicial Reporting Program			•		
Bureau of Justice Statistics	National Prison Rape Statistics Program				•	
Bureau of Justice Statistics	National Prisoner Statistics Program				•	
Bureau of Justice Statistics	National Prisoner Statistics Program Report of Inmates under Sentence of Death				•	
Bureau of Justice Statistics	National Survey of Indigent Defense Systems			•		
Bureau of Justice Statistics	National Survey of Prosecutors			•		
Bureau of Justice Statistics	National Survey of Victim Service Providers	•				
Bureau of Justice Statistics	Police Public Contact Survey		•			
Bureau of Justice Statistics	Recidivism of State Prisoners	•				

Agency	Data Collections	Crime	Law Enforcement	Courts	Corrections	Expenditures
Bureau of Justice Statistics	State Court Processing Statistics			●		
Bureau of Justice Statistics	Survey of Campus Law Enforcement Agencies		●			
Bureau of Justice Statistics	Survey of Inmates in Local Jails				●	
Bureau of Justice Statistics	Survey of Jails in Indian Country				●	
Bureau of Justice Statistics	Survey of Law Enforcement Personnel in Schools		●			
Bureau of Justice Statistics	Survey of Inmates in Local Jails				●	
Bureau of Justice Statistics	Survey of Jails in Indian Country				●	
Bureau of Justice Statistics	Survey of Law Enforcement Personnel in Schools		●			
Bureau of Justice Statistics	Survey of Prison Inmates				●	
Bureau of Justice Statistics	Survey of Public Defenders			●		
Bureau of Justice Statistics	Survey of State Attorney's General Offices			●		
Federal Bureau of Investigation	Computerized Criminal History (within Next Generation Identification)	●				
Federal Bureau of Investigation	Internet Crime Complaint Center (IC3)	●				
Federal Bureau of Investigation	National Data Exchange (N-DEX)		●			
Federal Bureau of Investigation	National Crime Information Center	●				
Federal Bureau of Investigation	National Instant Criminal Background Check System	●				
Federal Bureau of Investigation	National Use-of-Force Data Collection		●			
Federal Bureau of Investigation	UCR Hate Crime Statistics	●				
Federal Bureau of Investigation	UCR Law Enforcement Officers Killed and Assaulted "Long Form"	●				
Federal Bureau of Investigation	UCR National Incident-Based Reporting System (NIBRS)	●				

Agency	Data Collections	Crime	Law Enforcement	Courts	Corrections	Expenditures
Federal Bureau of Investigation	UCR Police Employee Data Collection		●			
Federal Bureau of Investigation	UCR Police Public Interaction Data Collection		●			
Federal Bureau of Investigation	UCR Summary Reporting System (SRS)	●				
Federal Bureau of Investigation	UCR SRS Supplementary Homicide Reports	●				
Antitrust Division	Workload Statistics			●		
Bureau of Alcohol, Tobacco, Firearms and Explosives	Annual Firearms Manufacturers and Export Report	●				
Bureau of Alcohol, Tobacco, Firearms and Explosives	Bomb Arson Tracking System	●				
Bureau of Alcohol, Tobacco, Firearms and Explosives	Federal Firearms Licensee Statistics Theft/Loss Reports	●				
Bureau of Alcohol, Tobacco, Firearms and Explosives	Firearms Commerce Report in the U.S.	●				
Bureau of Alcohol, Tobacco, Firearms and Explosives	Firearms Trace Data	●				
Bureau of Justice Assistance	Arrest Related Deaths (State and Local)		●			
Civil Division	False Claims Act statistics	●				
Drug Enforcement Administration	National Clandestine Laboratory Register Data	●				
Environment and Natural Resources Division	Litigation Accomplishments			●		
Executive Office for Immigration Review	Statistics Yearbook			●		
Federal Bureau of Prisons	Inmate & Population Statistics				●	
Federal Bureau of Prisons	Staff Statistics				●	
Justice Management Division	Asset Forfeiture Program		●			
National Security Division	Annual Foreign Intelligence Surveillance Act Report		●			
Office of Juvenile Justice and Delinquency Prevention	Census of Juveniles in Residential Placement				●	

Agency	Data Collections	Crime	Law Enforcement	Courts	Corrections	Expenditures
Office of Juvenile Justice and Delinquency Prevention	Census of Juveniles on Probation				●	
Office of Juvenile Justice and Delinquency Prevention	Juvenile Residential Facility Census				●	
Office of Juvenile Justice and Delinquency Prevention	National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children	●				
Office of Juvenile Justice and Delinquency Prevention	National Juvenile Court Data Archive			●		
Office of Juvenile Justice and Delinquency Prevention	National Juvenile Online Victimization Study	●				
Office of Juvenile Justice and Delinquency Prevention	National Survey of Children's Exposure to Violence	●				
Office of Juvenile Justice and Delinquency Prevention	National Youth Gang Survey	●				
Office of Juvenile Justice and Delinquency Prevention	Survey of Youth in Residential Placement				●	
U.S. Attorneys	Annual Statistical Reports			●		
U.S. Marshals Service	Fugitive Apprehension	●				
U.S. Marshals Service	Prisoner Transport and Operations				●	
U.S. Trustees Program	Bankruptcy Data & Statistics	●				

Non-Department of Justice Components

Agency	Data Collections	Crime	Law Enforcement	Courts	Corrections	Expenditures
Administration for Children and Families	National Child Abuse and Neglect Data System	●				
Administrative Office of U.S. Courts	Federal Court Management Statistics			●		
Administrative Office of U.S. Courts	Federal Judicial Caseload Statistics			●		
Administrative Office of U.S. Courts	Federal Judicial Center's Integrated Database			●		
Administrative Office of U.S. Courts	PACER federal court case database			●		
Bureau of Labor Statistics	Injuries, Illnesses and Fatalities		●			
Bureau of Labor Statistics	National Compensation Survey		●			
Bureau of Labor Statistics	National Longitudinal Survey of Youth	●				
Bureau of Labor Statistics	Occupational Employment Statistics Survey		●			
Centers for Disease Control and Prevention	Behavioral Risk Factor Surveillance System	●				
Centers for Disease Control and Prevention	National Electronic Injury Surveillance System	●				
Centers for Disease Control and Prevention	National Institute of Occupational Safety and Health Surveillance Statistics		●			
Centers for Disease Control and Prevention	National Intimate Partner and Sexual Violence Survey	●				
Centers for Disease Control and Prevention	National Violent Death Reporting System	●				
Centers for Disease Control and Prevention	Youth Risk Behavior Survey	●				
Federal Trade Commission	Consumer Sentinel Network	●				
National Center for Education Statistics	School Crime Supplement	●				
National Center for Education Statistics	School Survey of Crime and Safety	●				

Agency	Data Collections	Crime	Law Enforcement	Courts	Corrections	Expenditures
National Center for Health Statistics	National Vital Statistics System	●				
National Highway Traffic Safety Administration	Fatality Analysis Reporting System		●			
Office of Immigration Statistics	Yearbook of Immigration Statistics		●			
Office of Public Education	Campus Safety and Security	●				
Substance Abuse and Mental Health Services Administration	Drug Abuse Warning Network	●				
Substance Abuse and Mental Health Services Administration	National Survey on Drug Use and Health	●				
U.S Customs and Border Patrol	Border Security Report & Enforcement Statistics		●			
U.S Customs and Border Patrol	Use of Force		●			
U.S. Census Bureau	Annual Survey of Public Employment and Payroll					●
U.S. Census Bureau	Annual Survey of State and Local Government Finances					●
U.S. Immigrations and Customs Enforcement	Enforcement and Removal Operations		●			
U.S. Postal Inspection Service	Investigative Statistics	●				
U.S. Sentencing Commission	Sourcebook of Federal Sentencing Statistics			●		

Note: Some of these collections may fall across multiple categories. For analysis purposes, the most applicable category is selected. Because there is not one centralized webpage for federal criminal justice data collections, the commission reviewed a number of government websites in order to develop this list. There is a possibility applicable data collections were missed.

Part V

LAW ENFORCEMENT RESOURCES

Caring for Those Who Care for Us

A career in law enforcement is as challenging as ever. In the course of their daily duties, law enforcement officers confront dangerous and traumatic situations in which they must act with composure and professionalism. Distrust and disrespect for law enforcement has undermined officer morale and resulted in violence that threatens officers' physical safety and mental well-being. As a result, law enforcement officers are in need of programs and resources that safeguard them while on duty and address their physical and mental health needs beyond their work lives. The rule of law and public safety also depends on law enforcement officers who have the skill and training to take on the important and challenging job of protecting communities from crime. Rural and tribal agencies face these and many other challenges and require support and resources tailored to their uniqueness.

This section examines the physical and mental health needs of law enforcement, and the resources, programs, and policy changes required to meet those needs. It presents resources for hiring, training, and retaining officers who are qualified and capable of assuming the challenging role of policing American communities, as well as issues that are unique to rural and tribal law enforcement.

DRAFT

CHAPTER 13: RURAL AND TRIBAL LAW ENFORCEMENT

Overview

Most rural⁶⁶¹ and tribal law enforcement officers live, raise their families, worship, and send their children to school in the same communities they serve. As in any jurisdiction, the commitment to serve the public and provide safety is etched into the oath these officers take on their first day.

Success in law enforcement is built on a foundation of community trust. The prerequisites for that trust are sufficient staffing, training, and resources. When officers are stretched too thin responding to calls for assistance, they cannot build community relationships, attend training to improve and develop their capacity to protect and serve, and decompress from the unceasing stress of their duties. Only a properly staffed force with appropriate training and equipment can build those relationships and ensure optimal encounters with the public. For example, a police officer adequately trained in crisis intervention can better de-escalate a situation with a person suffering from meth-related psychosis.

In studying the issues confronting rural and tribal law enforcement, the Commission found that rural and tribal officers face many of the same crimes and public safety threats as larger agencies and communities, but often without the funding or resources needed to address them. While law enforcement departments nationwide all face significant challenges in their work, agencies in rural and tribal communities are particularly burdened by a lack of resources, insufficient staffing, outdated equipment and technology, important training requirements to fulfill, and urgent needs within their detention facilities.

Simultaneously, the task of public safety has become increasingly difficult with violent crime on the rise in many rural and tribal areas, and officers regularly encountering individuals with mental health needs and addictions.⁶⁶² Methamphetamine is a particular challenge for rural and tribal law enforcement today. The overall crime problem in rural communities is largely driven by meth, according to South Dakota United States Attorney Ronald Parsons, Jr. In testifying before the Commission, Mr. Parsons noted that many aggravated assaults, domestic violence, sexual abuse, child abuse, robberies, burglaries, fraud and other crimes of violence all stem from underlying abuse of meth.⁶⁶³

It is important that all communities, no matter where they are, enjoy safety and security ensured by capable law enforcement. Recommendations within this chapter seek to provide sustainable solutions to ensure rural and tribal law enforcement agencies have the support and resources they need to address the public safety issues in their communities.

661 The Commission refers to rural areas as those outside urban areas of 50,000 or more residents. Rural areas compose 97 percent of the United States' land area and are home to 60 million people; see "One in Five Americans Live in Rural Areas," U.S. Census Bureau, August 9, 2017, www.census.gov/library/stories/2017/08/rural-america.html.

662 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Rural and Tribal Justice* (May 27, 2020) (written statement of Kurt Alme, United States Attorney, District of Montana), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>; and *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Rural and Tribal Justice* (May 19, 2020) (statement of Ronald Parsons, United States Attorney, District of South Dakota), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

663 Parsons, *President's Commission on Law*, May 19, 2020.

13.1 Rural Law Enforcement

Rural law enforcement agencies are confronted by budget challenges and geographic isolation that contribute to further issues of staff recruitment, retention, and training. Constrained budgets leave relatively limited money available for hiring or training officers.

| See Chapter 15: Law Enforcement Recruitment and Training.

In many cases, the level of salary, benefits, and working conditions at rural law enforcement agencies trails those found in larger nearby agencies that can offer more competitive salaries and benefits. Training officers is another challenge in rural areas, which can impact officer retention and public safety. Rural agencies can also struggle with securing access to quality training opportunities for their officers. Training facilities and equipment are not always available, so travel is necessary to obtain training. Even then, small departments often cannot afford to be down an officer to allow for those opportunities. The Department of Justice (DOJ) and other federal agencies sponsor training programs and initiatives. However, an assessment should be conducted to ensure that these training resources meet the unique needs of rural and tribal law enforcement, and they fill the gaps with what is available to them. Lastly, deficient resources also means rural law enforcement lack adequate detention facilities.

13.1.1 States should develop a “pay the backfill” reimbursement program so personnel in nearby agencies can cover for officers in rural and tribal jurisdictions to attend job-critical trainings.

Rural and tribal law enforcement agencies have limited manpower and thus routinely struggle with providing training to officers given the difficulty of backfilling an officer's position. When an officer attends training, a colleague must fill their shift to have appropriate coverage, which may lead to overtime costs. This particularly affects communities that only have one or two officers on duty at any one time.

The State of Colorado promotes a backfill program that covers an agency's expenses for paying a police officer from another agency to fill a vacancy while personnel attend a training course.⁶⁶⁴ Erik Bourgerie, the director of the Colorado Peace Officer Standards and Training, explains that the “pay the backfill” program has allowed agencies with 10 or fewer officers to meet their state-mandated critical skills training requirements while still providing law enforcement coverage for their communities.⁶⁶⁵

13.1.2 The Department of Justice should develop partnerships (through memoranda of understanding) between Federal Bureau of Investigation labs and state forensic labs—particularly in rural areas—to reduce wait times for results on evidence tested.

In South Dakota, in years past, getting certain results from the Federal Bureau of Investigation's (FBI) forensic lab could take 9 to 12 months, according to United States Attorney Ronald Parsons.

664 “A Very Small Agency Backfill Program,” Colorado Peace Officer Standards and Training Board, accessed June 4, 2020, <https://www.colorado.gov/pacific/post/very-small-agency-backfill-program>.

665 *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Recruitment, Training, and Retention* (May 13, 2020) (statement of Erik Bourgerie, Director, Colorado Peace Officer Standards and Training), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

However, the FBI developed a partnership with the state's certified crime lab to conduct forensic analysis on ballistics, DNA, and serological evidence, which has cut the wait time for results down to typically 30 to 45 days. "This is an incredible, collaborative triumph achieved on behalf of the victims of crime in our part of the country," Mr. Parsons noted.⁶⁶⁶

In August 2020, Attorney General William P. Barr met with law enforcement representatives in Wyoming who were also the recipients of \$1 million in grant funding to support crime lab professionals, analyze controlled substances, and increase data entry for DNA evidence from sex offenders. According to Attorney General Barr, "The important investments in building lab capacity and expanding forensic capabilities announced today will help squelch the flow of illegal drugs, prevent sex offenders from doing additional harm, and keep violent criminals off the streets of Wyoming's communities."⁶⁶⁷

13.1.3 Rural and tribal school districts should consider enabling capable, trained, and specially selected school personnel to prevent, recognize, and respond to crime and violence on campus. School administrators working with law enforcement should develop, review, and routinely practice emergency plans that outline procedures for faculty and staff during a critical incident on campus.

School campuses are not immune from crime and violence, making the need for school-based law enforcement essential. Rural communities have unique challenges when responding to school-based crime, including adequate personnel on duty to meet the threat, the proximity of responding officers traveling across wide geographic areas, and proper training to work in a school environment. For years, security in urban schools has been the priority. However, non-urban areas are also susceptible to violence in school, and these areas must be prepared to protect students and faculty on campus. To do this, school administrators and law enforcement executives should work together to tailor a solution that meets their unique needs.

To address the increasing risk of school-based violence, school executives in rural areas should work with law enforcement and emergency management agencies to develop and implement a comprehensive emergency plan that uses an "all-hazards" approach, "which takes into account a wide range of possible threats and hazards [and] includes those that might take place in the community that might impact the school."⁶⁶⁸ These plans should consider a range of threats, including weather-related hazards, and pandemics. Most importantly, they should account for the dangers associated with active shooters and other potential violent offenders. These plans should also consider the unique characteristics of the school, its surrounding areas, and its staff. Because rural schools are not typically equipped to conduct threat assessments and response training, they should use the resources provided by DOJ and the Department of Education to devise plans that are specific to each campus and their school's needs.

TECHNOLOGY WITHIN RURAL AND TRIBAL AREAS

Technological advances in recent years have changed the nature of policing so significantly that many methods and tools from just a decade ago have become antiquated and incompatible with

⁶⁶⁶ Parsons, *President's Commission on Law*, May 19, 2020.

⁶⁶⁷ Office of Public Affairs, "Department of Justice Awards Over \$1 Million in Forensic Grants to Aid Wyoming Investigators," U.S. Department of Justice, August 13, 2020, <https://www.justice.gov/opa/pr/departement-justice-awards-over-1-million-forensic-grants-aid-wyoming-investigators>.

⁶⁶⁸ Readiness and Emergency Management for Schools Technical Assistance Center, *Building Blocks to School Safety: A Toolkit for Schools and Districts for Developing High-Quality Emergency Operations Plans* (Silver Spring, MD: U.S. Department of Education, 2018), 2, https://rems.ed.gov/docs/BuildingBlocksToSchoolSafety_ToolkitForEOPs.pdf.

current technology. In general, the current data suggest that, due to the lack of resources and training, rural law enforcement agencies have been unable to access and use many of these new technologies.

| See Chapter 11: Technology.

13.1.4 The Department of Justice should prioritize funding for rural and tribal law enforcement agencies to develop computer-aided dispatch, records management systems, and in-car computer systems that leverage their compatibility with national, state, regional, tribal, and local information sharing systems. Additionally, funding should be disbursed for FirstNet Authority to provide secure and reliable data access to in-car systems.

Computer-aided dispatch (CAD) is considered a standard in modern-day policing and should be networked with in-vehicle computers and given the ability to connect to national databases. As CAD is an essential tool for policing, state and local governments should ensure that their agencies meet those standards through necessary funding and coordination. These systems should also contain a records management system (RMS) and in-vehicle computer systems, where feasible.

These CAD, RMS, and in-car computer systems may take different forms in different jurisdictions. Some may be a statewide system that agencies can access, or it may be a number of linked regional systems that provide the same capabilities. By encouraging a holistic systems approach to CAD and RMS, regional and state-wide solutions can be developed, implemented, and supported regardless of the agency size or vendor.

Although CAD provides state-of-the-art capabilities for most departments across the country, not all law enforcement agencies share equally in its benefits. Some agencies do not have CAD as a standard tool, and others do not have the same level of technology or access to necessary databases and complementary systems.

FirstNet is a national broadband network dedicated to public safety. Given FirstNet's ability to connect distant and remote jurisdictions with the information that will help them stay informed during routine patrol, planned events, and emergency situations, states should work to ensure that all agencies have the opportunity to join the system. FirstNet uses digital broadcasting to equip first responders with advanced and uninterrupted communications capability across the country, including in remote jurisdictions where communications systems are often deficient due to environmental conditions and a lack of modern technology.

13.1.5 Congress should review existing and ensure public safety grant programs through the Department of Justice are equitably allocated to rural and tribal law enforcement agencies. The federal agencies should also examine the feasibility, costs, and benefits of expanding the performance periods and lowering the match requirements for grants awarded to rural and tribal law enforcement agencies.

One of the biggest challenges for law enforcement executives in rural areas is managing the agency's budget and finding new ways to meet a growing number of public and officer safety needs with limited resources. To address these challenges, many agencies seek grants. Grant

programs can be highly competitive and are often based on factors that make it difficult for a rural or tribal agency to be successful. The DOJ and other federal agencies should review existing grant programs to ensure that rural and tribal law enforcement agencies have equal opportunities to receive funding. Once funding is received, administrative requirements can present unique complications for rural and tribal agencies. For example, many struggle to absorb the costs necessary to sustain funded activities or officers once the grant period ends, and they also struggle to meet financial match requirements. Extending the grant performance period and lowering the local match requirements would reduce some of the financial burden associated with accepting law enforcement grants.

13.2 Tribal Law Enforcement

In much of Indian Country, tribal law enforcement and tribal justice systems hold criminals accountable, support victims and survivors, and confront precursors to crime, such as alcohol and other substance abuses. These efforts are often in partnership with and supported by federal agencies and have found legal support through the passage of legislation.⁶⁶⁹

The safety, security, and prosperity of any community depends on the rule of law and its ability to ensure residents live free from the fear of crime, and tribal governments are no different. Like other governments, Indian tribes carry out law enforcement, firefighting, trauma response, and other activities that promote the public safety of those who reside in their communities. As violence sees no boundaries, tribal governments sometimes cross-deputize their law enforcement officers with state, local, or county neighbors.⁶⁷⁰

Tribal agencies range in size from only two or three officers to more than 200. The communities they serve are as small as the Augustine Band of Cahuilla Indians (a federally recognized Cahuilla band based in Coachella, California, consisting of only 12 members) and as large as the Navajo Nation (with a population of more than 300,000 and a land area larger than the State of Connecticut).⁶⁷¹ The public safety challenges in Indian Country are not uniform and vary widely among districts and tribes based upon unique conditions, a complex set of legal jurisdictional issues, geographic challenges, differences in tribal cultures, and the number of tribes and reservations within a particular area.

Tribal law enforcement agencies should be at parity with their non-tribal counterparts in pay, benefits, equipment, training, and technical assistance. Although historic steps have been made in the past couple of years, law enforcement agencies within Indian Country would still benefit from additional resources more comparable to those of similarly situated agencies outside of Indian Country.⁶⁷² Resource limitations place direct constraints on the ability of law enforcement and justice agencies to protect the safety of Indian Country residents and to prevent crime and victimization. Increased monetary resources—and the translation of these resources into manpower, training, facilities, equipment, program development, research and evaluation, and community outreach—would have a critical impact within Indian Country.

669 See Tribal Law and Order Act, 25 U.S.C. 2801 (2010), and Violence Against Women Reauthorization Act of 2013, S. 47, 113th Cong., P.L. 113-4 (2013).

670 U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (Washington, DC: U.S. Commission on Civil Rights, 2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

671 The Navajo Epidemiology Center, *The Navajo Population Profile 2010 U.S. Census* (Window Rock, AZ: The Navajo Nation, 2013), <https://www.nec.navajo-nsn.gov/Portals/0/Reports/NN2010PopulationProfile.pdf>.

672 International Association of Chiefs of Police, *Improving Safety in Indian Country, Recommendations from the IACP 2001 Summit* (Alexandria, VA: International Association of Chiefs of Police, 2001), <http://www.tribal-institute.org/download/ACF1262.pdf>.

13.2.1 Congress should allocate sufficient, predictable, and dedicated funding for the Department of Justice's Tribal Access Program.

The DOJ launched the Tribal Access Program for National Crime Information in August 2015.⁶⁷³ The program was developed to meet the requirement of the Tribal Law and Order Act, 25 U.S.C. 2801 (2010), that tribal law enforcement officials who meet applicable federal or state requirements be permitted access to national crime information databases.⁶⁷⁴ In recent years, the program has been supported by DOJ's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, the Office of Community Oriented Policing Services, and the Office for Victims of Crime. Tribes must have either a sex offender registry program under the Adam Walsh Child Protection and Safety Act, 42 U.S.C. § 16911 et seq. (2006); a law enforcement agency with arrest powers; or an eligible agency which serves victims of crime, such as a civil court that issues orders of protection. If a tribe does not have any one of those three agencies, then they are not eligible for the program.

Attorney General Barr praised the value of this access while announcing an expansion in December 2019 saying, "[The Tribal Access Program] provides law enforcement and tribal governments real-time access to data that can help locate a missing person, identify a dangerous fugitive, or prevent a domestic abuser from obtaining a gun, among many other important functions."⁶⁷⁵

Without congressional funding, tribes would not have access to this important data. Also, without sufficient and predictable funding through congressional appropriations, the program is in annual jeopardy of being forced to both turn away new applicant tribes and shut down services to the tribes currently in the program.⁶⁷⁶

13.2.2 Federal agencies should award competitive Indian Country criminal justice grants as permanent, recurring base funding for tribal law enforcement and justice services.

Federal base funding for tribal justice systems should be made available on equal terms to all federally recognized tribes and should continue from year to year. This approach would help tribes take maximum advantage of federal funding, ensure funds are fairly distributed, and help close the public safety gap that afflicts tribal communities.

According to *A Roadmap for Making Native America Safer*, "DOJ's involvement has been of great benefit to Tribes. In some cases, it has developed programs explicitly for tribal applicants; in others, it has opened funding streams formerly available only to state and municipal governments to tribal governments. Tribes have taken advantage of these funds to, among other key investments, enhance their criminal codes, develop victim support programs, practice community-oriented policing, design problem-solving courts (tribal drug courts), and create intertribal judicial bodies."⁶⁷⁷

673 "Tribal Access Program (TAP)," U.S. Department of Justice, accessed June 8, 2020, <https://www.justice.gov/tribal/tribal-access-program-tap>.

674 Tribal Law and Order Act, 25 U.S.C. 2801 (2010); and Indian Arts and Crafts Amendments Act of 2010, H.R. 725, 111th Cong., P.L. 111-211 (2010), <https://www.justice.gov/sites/default/files/usao-az/legacy/2010/10/14/Tribal%20Law%20%20Order%20Act%202010.pdf>.

675 "Thirty Tribes to be Given Access to National Crime Information Databases," News 3 Las Vegas, December 17, 2019, <https://news3lv.com/news/local/thirty-tribes-to-be-given-access-to-national-crime-information-databases>.

676 News 3 Las Vegas, "Thirty Tribes to be Given Access."

677 Indian Law and Order Commission, *A Roadmap for Making Native America Safer* (Washington, DC: Indian Law and Order Commission, 2013), 85, https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf.

Despite these benefits, the DOJ's funding approach has some limitations:

- Small tribes and tribes with fewer resources lack the capacity to pursue grants, write competitive applications, or administer awards. These tribes generally have fewer resources to address their criminal justice needs.
- To construct a strong criminal justice system, a tribe must repeatedly apply for and be awarded many single-issue grants with different deadlines and reporting requirements, which is a significant management challenge.
- Many tribes are uncomfortable with the idea that for one tribal government to “win” grant funds, other tribes must “lose.”

13.2.3 The Department of Justice should designate specific Drug Enforcement Administration agents to work in Indian Country. These designated agents should work together with officers from the Bureau of Indian Affairs, the Federal Bureau of Investigation, and local and tribal law enforcement to reduce the supply of drugs that are fueling violent crime on tribal land.

The widespread availability and abuse of drugs, coupled with drug trafficking organizations operating in Indian Country, contribute to high rates of crime on reservations. According to the Substance Abuse and Mental Health Services Administration, American Indian and Alaskan Native adults use methamphetamine at three to four times the rate of the overall U.S population.⁶⁷⁸ A 2006 report by the National Congress of American Indians noted that Native American communities have the highest meth use rates, and that meth causes dramatic increases in violent crime, suicide and child neglect.⁶⁷⁹ Opioid abuse is also a serious problem in Indian Country.⁶⁸⁰

Tribal communities, therefore, need comprehensive action plans to reduce the supply of drugs through enhanced drug enforcement. Different organizational structures can be used to improve drug enforcement in Indian Country, but the effectiveness of those structures is limited by an overall shortage of federal and tribal law enforcement, including drug enforcement officers and agents. For all of Indian Country, the Bureau of Indian Affairs (BIA) Division of Drug Enforcement only has 48 agent positions, not all of which are always filled, and the Drug Enforcement Administration (DEA) has no agents specifically designated for Indian Country.⁶⁸¹ To make these organizational structures work, Indian Country needs adequate BIA, tribal, FBI, and DEA staffing. DOJ can help provide needed support to these structures by designating DEA agents to Indian Country.

13.2.4 Congress should amend relevant statutes to make the transportation, coercion, or enticement of an American Indian or Alaska Native into human trafficking a federal crime.

These amendments will protect American Indian/Alaska Native women living in Indian Country from being trafficked to surrounding cities. Being transported, coerced, or enticed across state

678 Substance Abuse and Mental Health Services Administration, *2018 National Survey on Drug Use and Health: American Indian and Alaskan Natives (AI/ANs)* (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2020), <https://www.samhsa.gov/data/report/2018-nsduh-american-indians-and-alaska-natives>.

679 National Congress of American Indians, *Methamphetamine in Indian Country: An American Problem Uniquely Affecting Indian Country* (Washington, DC: National Congress of American Indians, 2006), https://www.justice.gov/archive/tribal/docs/fv_tjs/session_1/session1_presentations/Meth_Overview.pdf.

680 Alme, *President's Commission on Law*, May 27, 2020.

681 Alme, *President's Commission on Law*, May 27, 2020.

lines for human trafficking is a federal crime. These amendments would make it a federal crime for this to occur across reservation boundaries.

13.2.5 The Department of Justice should provide grant-based incentives for local, state, and tribal agencies to enter into cross-deputization agreements to assist participating agencies in providing seamless law enforcement services in Indian Country.

Jurisdictional issues arise on tribal lands and where state and tribal lands meet. Cross-deputization of law enforcement officers is one solution to that problem. This not only reduces jurisdictional complexities for all law enforcement officers, it also increases the law enforcement coverage across the usually vast expanses of Indian Country.

Despite the many benefits of cross-deputizing tribal law enforcement officers, several barriers keep tribal jurisdictions and state and local jurisdictions from entering into cross-deputization agreements with each other. These include the cost and burden of tribal law enforcement being certified as law enforcement under state law, liability concerns for the agencies and the officers, and the complexity of the issues.

According to the Indian Law and Order Commission, "The federal government can facilitate the necessary training for cross-deputization arrangements without imposing preemptive standards or policies. Public safety is best accomplished at the local level, and providing the resources for training is a simple and straightforward step in the right direction."⁶⁸²

13.3 Law Enforcement Needs of Alaska

Of the 574 federally recognized tribal nations, 229 are located in Alaska. Each Alaska Native tribal nation is distinctly unique from tribal nations located in the lower 48 states. This is because Alaska Native tribal nations have no treaties with the U.S. government, as treaty-making ended in 1871 after the 1867 Alaska Purchase Treaty with Russia.⁶⁸³

Two legal features are important to highlight. First, and unique to Alaska, is the near-total absence of recognized Indian Country. In *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), the U.S. Supreme Court held that millions of acres of land owned by Native villages pursuant to the Alaska Native Claims Settlement Act of 1971, 43 USC 1601-1624 (1979), no longer qualify as Indian Country.⁶⁸⁴ That ruling limited the authority of Alaska Native villages to exercise criminal jurisdiction over their lands, which in turn placed an even greater responsibility on the state's highly centralized law enforcement and criminal justice systems.⁶⁸⁵

Second, Alaska is one of only six mandatory Pub. L. No. 280 states.⁶⁸⁶ This means that, under Pub. L. No. 280 (see 18 U.S.C. 1162), the State of Alaska—rather than the United States—has jurisdiction

⁶⁸² Indian Law and Order Commission, *A Roadmap for Making*, 105.

⁶⁸³ Martha Hirschfield, "The Alaska Native Claims Settlement Act: Tribal Sovereignty and the Corporate Form," *Yale Law Journal* 101, no. 6 (1992): 1331, <https://digitalcommons.law.yale.edu/yfj/vol101/iss6/4/>.

⁶⁸⁴ *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), <https://supreme.justia.com/cases/federal/us/522/520/>; and Alaska Native Claims Settlement, 43 USC § 1611 (2019), <https://uscode.house.gov/view.xhtml?path=/prelim@title43/chapter33&edition=prelim>.

⁶⁸⁵ U.S. Department of Justice, *Tribal Consultation on Public Safety in Alaska Native Villages* (Washington, DC: U.S. Department of Justice, 2017), <https://www.justice.gov/tribal/page/file/930406/download>.

⁶⁸⁶ "Frequently Asked Questions about Public Law 83-280," U.S. Attorney's Office, District of Minnesota, updated May 1, 2015, <https://www.justice.gov/usao-mn/Public-Law%2083-280>.

to prosecute certain crimes committed by or against Native Americans. Therefore, Congress has assigned state law enforcement and state courts—rather than their federal counterparts—the key role in arresting, investigating, prosecuting, and punishing offenders and therefore protecting public safety in Alaska Native villages. The state is also responsible for providing the bulk of funding and other resources in support of public safety efforts. Bryan Schroder, United States Attorney for the District of Alaska, states, “While the troopers work very hard to respond, these extreme situations sometimes leave a village, and most tragically a victim, trying to cope with the situation on their own.”⁶⁸⁷

Over the years, efforts have been made to improve public safety within Alaska,⁶⁸⁸ however, to meet the comprehensive law enforcement needs of Alaska, appropriate resources (e.g., adequate funding) are needed to

- hire sufficient law enforcement officers and provide them with standard equipment and coordination necessary to do their jobs safely and effectively
- create and sustain public safety infrastructure appropriate to each community’s size and need, such as housing, communications, technology, transportation, holding facilities, offices, and equipment
- increase training and cultural competencies for first responders and law enforcement officers

13.3.1 Congress should allocate permanent base funding to meet the public safety needs of Alaska. This funding should address the inadequate law enforcement staffing.

Referring to her region in western Alaska, Vivian Korthuis, chief executive officer of the Association of Village Council Presidents, states: “the response to any kind of disaster, or crises, for example, a fire, a death, a drowning, murders [will be minimal because] there are only three officers to respond to any of this.”⁶⁸⁹

Attorney General Barr answered that call for help by declaring a law enforcement emergency in rural Alaska under the Emergency Federal Law Enforcement Assistance Program: “With this emergency declaration, I am directing resources where they are needed most and needed immediately, to support the local law enforcement response in Alaska Native communities, whose people are dealing with extremely high rates of violence. . . . Lives depend on it, and we are committed to seeing a change in this unacceptable, daily reality for Alaska Native people.”⁶⁹⁰

According to the Alaska Department of Public Safety (DPS) Recruitment and Retention Plan, the state suffers from high levels of attrition and vacancy rates among law enforcement agencies. The lack of a full staff has had a negative impact on morale, “reduced in-service training, and increased overtime costs for routine shift coverage. Further, gaps in the agency’s ability to deliver public safety services include reduced ability to respond to routine calls for service (including not responding to some calls that are deemed lower priority), slower response times, reduced travel

687 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rural and Tribal Justice* (May 21, 2020) (written statement of Bryan Schroder, U.S. Attorney, District of Alaska), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

688 Indian Law and Order Commission, *A Roadmap for Making*.

689 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Rural and Tribal Justice* (May 27, 2020) (written statement of Vivian Korthuis, Chief Executive Officer, Association of Village Council Presidents), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

690 Office of Public Affairs, “Attorney General William Barr Announces Emergency Funding to Address Public Safety Crisis in Rural Alaska,” U.S. Department of Justice, June 28, 2019, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-emergency-funding-address-public-safety-crisis>.

for proactive law enforcement, and a lack of equipment (e.g., aircraft and boats) to effectively respond to calls for service in rural Alaska.⁶⁹¹

In addition to increased attrition, recruiting efforts have not yielded adequate numbers to backfill vacancies. DPS has currently authorized 300 Alaska state trooper and 89 Alaska wildlife trooper positions.⁶⁹² Over the last 10 years, the number of positions has fluctuated based on constitutional mandates, legislative actions, and authorized budgets.

13.3.2 Congress should provide funding to develop and maintain infrastructure for rural law enforcement services in Alaska through a federal agency.

In the summer of 2018, the Association of Village Council Presidents undertook a comprehensive assessment of public safety buildings in the region.⁶⁹³ Of the 48 communities, 38 had public safety facilities: four of those facilities required major renovation or replacement, and 24 facilities required some level of renovation. Nine communities had no public safety facilities at all, and 26 of the communities had no dedicated public safety housing.⁶⁹⁴ In their application for the \$6 million in Emergency Federal Law Enforcement Assistance grant made available to the State of Alaska by Attorney General Barr, the Alaska DPS expressed its intent to sub-grant those funds to Alaska communities to address problems with public safety infrastructure. The state has awarded those sub-grants to assist 31 rural communities.

Part of the grant package provided to Alaska after the Attorney General's visit in 2019 was \$7 million to the Denali Commission to establish a micro grant program for rural Alaska.⁶⁹⁵ The Denali Commission is "an independent federal agency designed to provide critical utilities, infrastructure, and economic support throughout Alaska. With the creation of the Denali Commission, Congress acknowledged the need for increased inter-agency cooperation and focus on Alaska's remote communities."⁶⁹⁶

The United States Attorney's office has worked with the Denali Commission, the Alaska National Guard, and the U.S. Department of Defense to identify unused National Guard Armories that can be converted to public safety use in rural communities. The federal government should take an active role to ensure adequate law enforcement in Alaska Native villages, including more extensive funding of infrastructure needs (e.g., housing).

Bryan Schroder, United States Attorney for the District of Alaska, explains, "The visit by the Attorney General highlighted the need for a cooperative effort between the federal government, Alaska Native tribes and organizations, and the State of Alaska. While the Attorney General provided support that is being used to fill in significant funding gaps, we must come up with new ideas to provide the public safety that rural Alaskans deserve, like all citizens of our state."⁶⁹⁷

691 "Recruitment and Retention Plan Overview: 2018-2023," Alaska Department of Public Safety, November 14, 2017, <https://dps.alaska.gov/getmedia/ca76d118-d1ca-43c4-85be-49600a4fb8d0/Recruitment-Retention-Plan-Overview-2018-2023>.

692 Schroder, *President's Commission on Law*, May 21, 2020.

693 Association of Village Council Presidents, *Public Safety Facilities Assessment* (Bethel, AK: Association of Village Council Presidents, 2018), <http://pcva.247ikonic.com/wp-content/uploads/2019/01/AVCP-Public-Safety-Facility-Assessment--Summer-2018.pdf>.

694 Association of Village Council Presidents, *Public Safety Facilities Assessment*.

695 "Denali Commission Partnering with U.S. Department of Justice," Denali Commission, accessed June 8, 2020, <https://www.denali.gov/denali-commission-partnering-with-u-s-department-of-justice/>.

696 "Denali Commission Story," Denali Commission, accessed June 8, 2020, <https://www.denali.gov/>.

697 Schroder, *President's Commission on Law*, May 21, 2020.

CHAPTER 14: LAW ENFORCEMENT HEALTH AND WELLNESS

Overview

Law enforcement officers face more threats to their own health and wellness than ever before. On a daily basis, their profession presents difficult and dangerous situations that can injure their physical and mental health. The daily job stress, the regular encounters of traumatic incidents, and accumulated memories can lead to post-traumatic stress disorder (PTSD). The burdens on law enforcement to remedy an increasing range of social problems, the proliferation of ever more dangerous criminal threats, and, in some corners of society, a failure to appreciate and respect the work of American police officers and deputy sheriffs have all correlatively strained officer health and morale.

“Nothing is more important than the well-being—physically, mentally, and emotionally—of our men and women [in law enforcement]. They are the backbone of our department(s).”⁶⁹⁸ - Commissioner William Gross, Boston Police Department

Maintaining both physical and mental health helps law enforcement officers sustain long and difficult careers rife with these stressors that take their toll. Some studies have indicated, moreover, that law enforcement officers suffer a significantly lower life expectancy than the general public. It is imperative to recognize that the extraordinary duties of law enforcement officers carry greater risks to their health and wellness than most professions, and that proper attention to and care for these issues is essential to sustaining officers and recruiting capable citizens to take on the important duties of law enforcement. In examining the issues confronting officer health and wellness, the Commission recommends laws and policies that establish programs for officer physical fitness and health, devote more resources and protections to the mental health conditions of police officers and deputy sheriffs, and safeguard officers from both intentional (e.g., ambush killings) and accidental (e.g., traffic and firearms) harms.

14.1 Physical Health

Law enforcement is an extremely challenging and dangerous career. Officers routinely encounter high-stress situations, crime, human suffering, and death. Many elements of law enforcement work deteriorate an officer’s physical fitness level, including shift work, poor sleeping patterns, operational and organizational stress, and improper nutrition. This contributes to increased likelihood of heart disease, as well as substance abuse and overall poor health of the officer. Exhaustion and poor dietary habits can also lead to poor decision-making, which is a critical skill for law enforcement officers.

⁶⁹⁸ *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Health and Wellness* (February 27, 2020) (written statement of William Gross, Commissioner, Boston Police Department, MA), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

The International Association of Chiefs of Police (IACP), through a cooperative agreement with the Bureau of Justice Assistance (BJA), conducted a multi-department assessment of line-of-duty injuries. Eighteen different agencies tracked all reported injuries over the course of one year.

The report found that 1,295 injuries resulted in 5,938 days missed, with an average of 4.5 days missed per incident and an average rehabilitation period of 3.5 days. The study found that officers who engaged in fitness training regimens were less likely to suffer an injury reportable to the Occupational Safety and Health Administration and defined as severe.⁶⁹⁹

HEART DISEASE

Law enforcement is a high-stress occupation that often leaves officers with an increasing prevalence and incidence of cardiovascular disease.⁷⁰⁰ This prevalence is directly related to a number of standard risk factors, including high blood pressure, cigarette smoking, obesity, and a sedentary lifestyle.⁷⁰¹ Moreover, officers encounter occupation-specific risk factors, such as sudden physical exertion, psychological stress, and shift work.⁷⁰² This leads to an increased risk of a coronary event. One study reported that officers age 40 or older had a higher risk of a coronary event within 10 years than the same segment of the broader population.⁷⁰³ Despite well-known health issues facing law enforcement officers, exercise participation levels among officers remain low. A survey of Canadian police officers, for example, observed that only 17 percent of police officers engaged in regular physical activity a minimum of three times weekly.⁷⁰⁴

Jon Sheinberg, a board-certified cardiologist and police lieutenant for the Cedar Park Police Department in Texas, recently noted in a podcast with the Office of Community Oriented Policing Services (COPS Office), "Law enforcement has a very unique stress pattern. It's a pattern which is what we call 98, 97 percent boredom and . . . 2–3 percent of sheer terror. So, you have a situation in which the stress patterns are rapidly changing, and you add that to a population that experiences shift work, a population that is sedentary, a population that eats a diet of convenience."⁷⁰⁵

SUBSTANCE USE

Stress in law enforcement shows up everywhere: physical health (increased risk of heart disease), mental health, and substance use. Officers may encounter any number of crises in the course of their job duties, including domestic violence calls, fights, shootings, homicides, child abuse, and fatal car accidents. In any given day, officers may be required to make multiple instant life and death decisions that are nearly always analyzed and critiqued well after the fact.

Adding to this circumstance are difficult schedules with rotating or overtime shifts that leave officers sleep-deprived, which may negatively affect reaction times. While the attitude toward mitigating stress in law enforcement agencies is slowly changing, many officers will not seek

699 International Association of Chiefs of Police and Bureau of Justice Assistance, *Reducing Officer Injuries, Final Report: A Summary of Data Findings and Recommendations from a Multi-Agency Injury Tracking Study* (Alexandria, VA: International Association of Chiefs of Police, 2012), <https://www.theiacp.org/resources/document/reducing-officer-injuries-final-report>.

700 Franklin Zimmerman, "Cardiovascular Disease and Risk Factors in Law Enforcement Personnel: A Comprehensive Review," *Cardiology in Review* 20, no. 4 (2012).

701 Zimmerman, "Cardiovascular Disease."

702 Zimmerman, "Cardiovascular Disease."

703 Colleen Copple et al., *Law Enforcement Mental Health and Wellness Programs: Eleven Case Studies* (Washington, DC: Office of Community Oriented Policing Services, 2019), 24, <https://cops.usdoj.gov/RIC/Publications/cops-p371-pub.pdf>.

704 Jason Williams and Vincent Ramsey, "The Need for Law Enforcement Wellness Interventions: A Critical Review," *The Sport Journal*, September 5, 2017, <http://thesportjournal.org/article/the-need-for-law-enforcement-wellness-interventions/>.

705 Office of Community Oriented Policing Services, "Mitigating the Risk of Heart Disease in Law Enforcement," *The Beat* (podcast), December 2019, https://cops.usdoj.gov/html/podcasts/the_beat/12-2019/Transcript_Sheinberg.pdf.

treatment because they believe it will cost them future promotions.⁷⁰⁶ Instead, officers may opt to self-medicate through drug or alcohol use. Through his research, Dr. John Violanti, a 23-year veteran of the New York State Police and professor in the Department of Social and Preventive Medicine at the University at Buffalo, found that alcohol abuse among law enforcement officers in the United States is double that of the general population.⁷⁰⁷

SLEEP AND FATIGUE

Shift work interferes with normal sleep patterns. When officers work at different or unnatural times of day, they often suffer from sleep loss.⁷⁰⁸ That kind of fatigue can degrade performance, reduce an officer's productivity, and put the officer's safety at risk. Dr. Violanti found that police officers were much more likely than the general public to have higher than recommended cholesterol levels, higher than average pulse rates and diastolic blood pressure, and a higher prevalence of sleep disorders.⁷⁰⁹

Levels of sleep and fatigue are basic issues of survival for the human body. If these are not balanced, an already risky job becomes even more dangerous for law enforcement officers. According to an article in *Nature*, "Researchers have shown that being awake for 19 hours produces impairments that are comparable to having a blood alcohol concentration (BAC) of .05 percent. Being awake for 24 hours is comparable to having a BAC of roughly .10 percent."⁷¹⁰ Put differently, just five hours less sleep basically doubles the impact.⁷¹¹ It should be noted that it is a crime to operate a motor vehicle with a BAC of .08 percent or above. Experts suggest 6.5 hours as the minimum amount of sleep necessary to prevent sleep deprivation; however, "53 percent of law enforcement officers average less. . . . More than 90 percent of officers report being routinely fatigued, and 85 percent reported driving while drowsy."⁷¹² Sleep is critical for law enforcement officer safety and wellness.

DIET AND NUTRITION

When there are no set times or places for officers to eat, maintaining a well-balanced diet becomes difficult. Nutritionists note that eating healthy on duty provides officers with stable energy levels throughout a shift and enables them to move faster in foot pursuits. A study that examines the relationship between officers' diets and injury found that heavier officers are more often injured than those who are not.⁷¹³ Eating a well-balanced diet directly supports officer health and contributes to performance and fitness. Proper fitness is critical for officers to ensure excessive force is not used to compensate for their inability to use appropriate physical restraining methods.⁷¹⁴ Fitness and wellness are just as important as any other required training, as they help lessen the potential for use of excessive force in addition to the costly lawsuits that result from it.⁷¹⁵

706 Lewis Z. Schlosser and Gerard P. McAleer, "Opioid Use Disorders Among Police and Public Safety Personnel: What Law Enforcement Leaders Need to Know," *Police Chief Magazine*, March 14, 2018, <https://www.policechiefmagazine.org/opioid-use-among-police-personnel/>.

707 John M. Violanti, "Alcohol Abuse in Policing: Prevention Strategies," *FBI Law Enforcement Bulletin* 68, no. 1 (1999), <https://www.thefreelibrary.com/Alcohol+abuse+in+policing%3a+prevention+strategies.-a054036506>.

708 Bryan Vila and Charles Samuels, "Sleep Deprivation: What Does It Mean for Public Safety Officers," *NIJ Journal*, no. 262 (2009), <https://www.ncjrs.gov/pdffiles1/nij/225762.pdf>.

709 University at Buffalo, "Impact of Stress on Police Officers' Physical and Mental Health," *ScienceDaily*, September 29, 2008, <https://www.sciencedaily.com/releases/2008/09/080926105029.htm>.

710 Drew Dawson and Kathryn Reid, "Fatigue, Alcohol and Performance Impairment," *Nature* 388 (1997): 235, <https://www.nature.com/articles/40775.pdf>.

711 Vila and Samuels, "Sleep Deprivation."

712 National Law Enforcement and Corrections Technology Center, "No Rest for the Weary," National Institute of Justice, Winter 2008, <https://nij.ojp.gov/library/publications/no-rest-weary>.

713 James E. Guffey et al., "Police Officer Fitness, Diet, Lifestyle and Its Relationship to Duty Performance and Injury," *Journal of Legal Issues and Cases in Business*, no. 3 (2015), <https://www.aabri.com/manuscripts/131469.pdf>.

714 Guffey et al., "Police Officer Fitness."

715 Guffey et al., "Police Officer Fitness."

Specifically, officers should be aware of the link between stress and food. A study by British researchers showed that people with high levels of stress were more likely than people with low stress levels to snack in response to daily hassles in their regular lives.⁷¹⁶

LAW ENFORCEMENT STRESS AND TRAUMA

Stress and trauma also have a negative impact on the health and well-being of law enforcement officers as they are exposed to traumatic incidents and extreme stress over the course of their career, which can average 30 to 35 years.⁷¹⁷ Some of this stress can also be attributed to high workloads that officers carry. A uniformed police psychologist with the New York City Police Department estimated that police officers might be exposed to at least 900 potentially traumatic incidents over the course of their careers.⁷¹⁸

14.1.1 Law enforcement agencies should establish a department-wide health and fitness program with both financial and nonfinancial incentives.

Beyond standard fitness education, agencies should conduct regular education on stress management, sleep, hygiene, nutrition, substance use prevention, and positive lifestyle choices. An incentive-based voluntary program would cultivate more positive attitudes about the implementation than a mandatory approach. Both financial and nonfinancial incentives (e.g., health insurance discounts, monetary fitness bonuses, and on-duty fitness time) can be used to promote a program. Additionally, agencies should work with athletic trainers or training facilities within the community as partners in a health and fitness program to minimize costs to staff.

14.2 Mental Wellness

Staying physically healthy is not enough for an officer's wellness. It is important that these officers also receive psychological support to enable them to continue to perform their duties.⁷¹⁹ Law enforcement executives should promote the continued development of minds and bodies to make them stronger and more resilient. Policies and programs that support health and wellness are essential in building a balanced and thriving agency. While many law enforcement agencies already recognize the need for health and wellness programs, the majority of departments focus on only the physical readiness of the employee. In recent years, more agencies have realized mental wellness should complement the physical component, but they often lack the resources and the critical guidance to start or improve a program that cares for their officers' mental health and wellness.

The Commission's recommendations aim to help law enforcement agencies better care for the mental health of their officers. The Department of Justice should lead the development of a national strategy to remove the stigma of seeking mental health assistance and provide law enforcement officers with comprehensive mental health support that complements the physical health strategies already in place in many agencies.

⁷¹⁶ "How Stress Can Make Us Overeat," *Healthbeat*, September 2019, <https://www.health.harvard.edu/healthbeat/how-stress-can-make-us-overeat>.

⁷¹⁷ Konstantinos Papazoglou and Brooke McQuerrey Tuttle, "Fighting Police Trauma: Practical Approaches to Addressing Psychological Needs of Officers," *SAGE Open* 8, no. 3 (2018), <https://doi.org/10.1177/2158244018794794>.

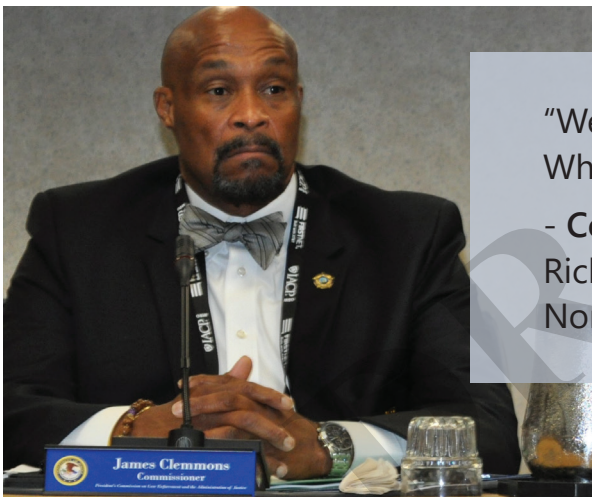
⁷¹⁸ Daniel Rudofossi, *A Cop Doc's Guide to Public-Safety Complex Trauma Syndrome: Using Five Police Personality Styles* (Amityville, NY: Baywood Publishing Company, 2009), <http://site.ebrary.com/id/10615011>.

⁷¹⁹ Frazier, text communication with Matthew Varisco, May 1, 2020.

According to Attorney General William P. Barr, “nearly one in four officers experience thoughts of suicide at some point in their lives. At least 228 officers took their own lives in 2019—a 44 percent increase from the previous year. Not only is that higher than the number of line-of-duty deaths, it reflects a steady increase in officer suicides over the past several years.”⁷²⁰ Additionally, the risk of suicide among law enforcement officers is 54 percent higher than the general population.⁷²¹

Approximately 100,000 active police officers in the United States suffer from PTSD, and many also live with the comorbidities of depression, anxiety, and suicidal ideation.⁷²²

In recent years, agencies have realized that mental wellness should complement the physical component. Agencies, however, often lack the resources and the critical guidance to start or improve a program that accounts for their officers’ mental health and wellness. Mental Health First Aid programs are important tools that teach the signs of mental illness and substance use issues and the skills to respond.⁷²³



“We take care of others.
Who takes care of us?”⁷²⁴

- **Commissioner James Clemmons, Jr.,**
Richmond County Sheriff’s Office,
North Carolina

Unfortunately, law enforcement culture continues to stigmatize self-care, including seeking professional mental health services. Law enforcement officers fear losing everything they have worked for if they admit they struggle with their emotional wellbeing. These issues are fueled by cultural expectations, often held by both the military and law enforcement professions (e.g., pride, toughness, and peer pressure) and a perceived lack of support from the command staff. Officers are not always aware of the available mental health program services and resources. In addition, they are hesitant to use available services even when they know leadership approves of their use. The necessity of those services is clear. Data show that 23 percent of male officers reported more

720 William P. Barr, United States Attorney General, “Remarks as Prepared for Delivery,” presented at the International Association of Chiefs of Police Officer Safety and Wellness Symposium, Miami, FL, February 20, 2020, <https://www.justice.gov/opa/video/attorney-general-barr-speaks-iacp-officer-safety-and-wellness-symposium>.

721 Police Executive Research Forum, *An Occupational Risk: What Every Police Agency Should Do To Prevent Suicide Among Its Officers* (Washington, DC: Police Executive Research Forum, 2019), <https://www.policeforum.org/assets/PreventOfficerSuicide.pdf>.

722 “Workers’ Compensation for PTSD: Which States Offer Benefits?,” Gerber and Holder Law, December 2019, <https://www.gerberholderlaw.com/workers-comp-ptsd-by-state/>.

723 “Mental Health First Aid,” National Council for Behavioral Health, accessed July 31, 2020, <https://www.mentalhealthfirstaid.org/>.

724 James Clemmons, Jr., Sheriff, Richmond County Sheriff’s Office, NC, in discussion with Law Enforcement Health and Wellness Working Group, meeting, February 26, 2020.

suicidal thoughts than the general population (13.5 percent), as do a comparable 25 percent of female officers.⁷²⁵ It is critical for all law enforcement officers to seek the care they need.

In addition, first responders, police officers, and deputy sheriffs may experience the following risk factors for suicide:

- occupational hazards and exposures
- access to firearms or other lethal weapons
- erratic work schedules resulting in sleep disturbances and disrupted family life
- personal and professional stigma related to accessing mental health services⁷²⁶

POST-TRAUMATIC STRESS DISORDER

PTSD is an often-unrecognized psychological injury that can be just as debilitating as any physical injury. Undiagnosed or unaddressed PTSD negatively affects performance and quality of life, and in some cases may ultimately lead to suicide. One of the most effective mitigation factors is early and aggressive intervention using peer or professional counseling.

There are many signs that an officer is experiencing trauma, ranging from misperceptions of normal actions by others to disengagement. Intense mental trauma is not always based off a single incident, but often accumulates over a career. One in five officers is subject to PTSD, which can lead to deteriorated heart health, hormonal imbalances, and depression or thoughts of suicide.⁷²⁷ While there is no central repository for statistics on officer suicides, the number of officers who die by suicide each year exceeds the number who are killed feloniously and accidentally.⁷²⁸

CRISIS LINES

Telephone crisis services or hotlines have been effective in preventing suicide, both during the immediacy of the call and in the following weeks. In 2019, the Federal Communication Commission designated 988 as the National Suicide Prevention Hotline.⁷²⁹ This three-digit number, like 911, will help increase awareness, normalize calling for help, and aid those experiencing a mental health crisis.

| See Chapter 3: Alleviating the Impact of Social Problems on Public Safety.

Similar to law enforcement, firefighting is a physically and emotionally demanding profession. The fire service has established the Fire/EMS Helpline, which offers free 24-hour assistance with issues such as stress, depression, addiction, and PTSD.⁷³⁰ Based on the similarities between

725 Lois Baker, "Researchers Investigate Impact of Stress on Police Officers' Physical and Mental Health," University of Buffalo, September 25, 2008, <http://www.buffalo.edu/news/releases/2008/09/9660.html>.

726 Ian H. Stanley, Melanie A. Hom, and Thomas E. Joiner, "A Systematic Review of Suicidal Thoughts and Behaviors among Police Officers, Firefighters, EMTs, and Paramedics," *Clinical Psychology Review* 44 (2016), <https://doi.org/10.1016/j.cpr.2015.12.002>.

727 "Ruderman White Paper on Mental Health and Suicide of First Responders," Ruderman Family Foundation, April 2018, https://rudermanfoundation.org/white_papers/police-officers-and-firefighters-are-more-likely-to-die-by-suicide-than-in-line-of-duty.

728 Police Executive Research Forum, *An Occupational Risk*.

729 Federal Communications Commission, "FCC Proposes Designating 988 as National Suicide Prevention and Mental Health Hotline," December 12, 2019, <https://docs.fcc.gov/public/attachments/DOC-361337A1.pdf>.

730 "Share the Load Program," National Volunteer Fire Council, accessed June 29, 2020, <https://www.nvfc.org/programs/share-the-load-program/>.

law enforcement and the fire service, a designated national crisis line would benefit the law enforcement community.

Located on the Rutgers University Behavioral Health Management Campus, Cop2Cop (C2C) is part of the Rutgers Behavioral Health Management System.⁷³¹ C2C a successful state-legislated peer crisis response hotline. C2C offers peer support, clinical assessments, provider networks, crisis intervention, and other critical mental health services to law enforcement families 24/7 in New Jersey.⁷³²

FAMILY STRESSORS

The toll that the law enforcement profession takes on companions and loved ones can also be exacting. According to the IACP, “Spouses, partners, children, and companions of law enforcement officers play a significant role in [the] officer’s health and wellness and serve as an essential support system for their loved ones.”⁷³³ Line officers have identified that programs aimed at financial literacy, improving interpersonal relationships, and support services and benefits are critically important to their well-being and professional success. In response, the COPS Office has provided funding to the Fraternal Order of Police to develop a standardized and nationally available training curriculum in law enforcement peer support, Power in Peers.⁷³⁴

“Law enforcement officers are society’s problem solvers each and every day they come to work, and often times when they are off duty as well. Just as citizens expect assistance and service from law enforcement officers, our officers must also expect the same level of service and resources when they reach out for help. It is our hope that our law enforcement culture comes to ‘normalize’ requesting help from our members in need and in doing so, we can protect those whose life’s calling has been to protect others.”⁷³⁵ - Colonel Patrick Callahan, New Jersey State Police

RESILIENCY

Resilience refers to a person’s ability to recover from stressful situations.⁷³⁶ Creating a culture of resiliency helps organizations maintain an effective workforce. Resiliency is key to the health of our law enforcement officers and the longevity of their careers. While there are ways to identify and hire candidates who are resilient by examining their background to determine how they have faced challenges in the past and might in the future, resiliency can also be developed.⁷³⁷

731 Copple et al., *Law Enforcement Mental Health*.

732 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Health and Wellness* (February 27, 2020) (written statement of Cherie Castellano, Peer Support Program Director, Rutgers National Call Center and Cop 2 Cop Program), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

733 “Employee and Family Wellness Guide,” International Association of Chiefs of Police, February 1, 2018, <https://www.theiacp.org/resources/document/employee-and-family-wellness-guide>.

734 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Health and Wellness* (February 27, 2020) (written statement of Sherri Martin, National Director of Wellness Services, Fraternal Order of Police), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

735 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Health and Wellness* (February 27, 2020) (written statement of Patrick Callahan, Colonel, New Jersey State Police), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

736 Heather Craig, “Resilience in the Workplace: How to Be More Resilient at Work,” *Positive Psychology* (blog), January 16, 2019, <https://positivepsychology.com/resilience-in-the-workplace/>.

737 Andrew Shatté and Jan Bruce, *The Science Behind Resilience* (n.p.: New Life Solutions, Inc., 2015), <https://www.mequilibrium.com/wp-content/uploads/2016/01/The-Science-Behind-Resilience-12-22.pdf>.

The VALOR Initiative for resilience training is a joint effort of BJA, the IACP, and the University of Pennsylvania's Positive Psychology Center.⁷³⁸ The program has trained more than 50,000 law enforcement officers around the country on three areas for individual growth in resiliency: thinking positively and actively in stressful situations, managing energy day-to-day and long-term, and improving relationships at work and home.

Wellness opportunities that can build resiliency

- on-site or departmental confidential psychological services
- employee assistance programs
- 24-hour hotline for public safety employees
- peer support and addiction recovery programs
- embedded unit chaplain programs
- family support programs
- organizational consultant programs
- critical incident response management and response debriefing services
- suicide prevention hotlines
- training in how to enhance resiliency building skills based upon scientific research and evidence

MESSAGING AND EDUCATION

Law enforcement leaders should clearly communicate the programs and resources available to officers on mental health and suicide prevention. If leadership shows that it values mental health and wellness, officers are more encouraged to seek help. Additionally, current policies should improve transparency and clarify policies that relate to confidentiality and access to service. These messages will inform, allow, and support staff to help themselves and each other.

SERVICE PROVIDERS

While some service providers are highly effective, others deliver services that do not meet the needs of law enforcement agencies. Agencies seeking to build effective resiliency programs can look to examples such as the Indianapolis Metropolitan Police Department's (IMPd) Office of Professional Development and Wellness. They have established a comprehensive program that includes

- mentoring for new officers
- training on resiliency skills in the basic academy and throughout officers' career
- a critical incident stress debriefing team
- counseling services from culturally competent vetted resources
- mental health and resiliency services

⁷³⁸ "BJA's VALOR Officer Safety And Wellness Program Trains Over 50,000 Officers," Bureau of Justice Assistance, November 20, 2018, <https://bja.ojp.gov/feature/bjas-valor-officer-safety-and-wellness-program-trains-over-50000-officers>.

- suicide prevention
- physical health care
- financial health counseling
- a military transition support system
- family support
- therapy canines
- close partnership with chaplains⁷³⁹

Upon request, the IMPD will share their wellness resources with other law enforcement agencies throughout the country. The IMPD has also helped organizations, such as the Metropolitan Nashville Police Department in Tennessee, create cultures of resiliency within their own departments. As a testament to their department, Office of Professional Development and Wellness members have been intimately involved in assisting dozens of agencies implement successful wellness programs.⁷⁴⁰

RECRUITMENT AND TRAINING DEFICITS

Improvements to recruiting and training (both academy and continuing education) will improve staff health, wellness, and resiliency. Agencies that receive guidance and direction to make and offer such improvements will have a positive impact on staff, families, and the community.

| See Chapter 15: Law Enforcement Recruitment and Training.

14.2.1 Law enforcement agencies should require mental health training, both in academy training and recurring in service training, for their personnel.

Providing mental health training to new recruits not only reinforces it as a priority of the agency, but it helps to establish a foundation for wellness. Training topics should help law enforcement officers respond to calls for services and successfully maintain their career. Training should include

- the major categories of mental illness
- the signs and symptoms of a mental health crisis
- methods to de-escalate those experiencing a mental health crisis
- state and any locally relevant laws regarding the ability of an officer to forcibly detain a subject who is in a mental health crisis
- how to refer and methods of referring individuals for mental health services

Similarly, training topics related to a successful career as a first responder should include

- executive support for those who access mental health services
- how to manage the signs and symptoms of cumulative stress
- signs and symptoms of PTSD⁷⁴¹
- how compassion fatigue is related to law enforcement encounters

739 Nicole Juday, Officer, Indianapolis Police Department, IN, email communications and discussions with Law Enforcement Health and Wellness Working Group, February 27-May 13, 2020.

740 Juday, email communications and discussions with Law Enforcement, February 27-May 13, 2020.

741 Copple et al., *Law Enforcement Mental Health*.

- depression and suicide prevention
- how the position affects home life
- resiliency skills

14.2.2 Law enforcement agencies should ensure that mental health resources and services are accessible and confidential.

Resources that are easily accessible are more likely to be used. Agencies increase awareness and potential implementation when they use internal webpages, apps, and searchable tags to clearly message wellness services. In addition, staff may be more willing to locate resources if they do not have to engage an agency representative. Staff will also be more likely to use the services if they can be guaranteed confidentiality when they seek mental health services connected to a work-related experience while on duty without being required to share the details directly to their supervisor.

14.2.3 Law enforcement agencies should establish policies that mandate an annual mental health check for all sworn law enforcement officers and relevant civilian staff. Similarly, mandatory mental health checks should be required after a critical incident or traumatic incident.

This recommendation has been widely discussed within the field of law enforcement; however, it has yet to be implemented across all law enforcement agencies. Law enforcement officers and other criminal justice personnel (e.g., prosecutors, civilian investigators, forensic examiners, dispatchers, evidence collection specialists, and victim witness staff) are regularly exposed to traumatic situations that negatively affect their resiliency. A mental health check is a narrowly defined nondiagnostic meeting that is conducted on agency time with a designated agency wellness representative (i.e., peer support officer) or mental health clinician. This type of mental health check should be used to inform law enforcement officers and other relevant criminal justice professionals about available wellness resources. The mental health check should also educate the officer about signs of and risk factors associated with psychological distress or impairment.

An annual mental health check is not a fitness-for-duty evaluation; it should remain mutually exclusive and separate. A person who has conducted the fitness-for-duty evaluation of a specific employee should not conduct annual mental health checks for the agency of that employee.⁷⁴² Additionally, there should be clearly defined policies related to what the annual mental health check involves and the responsibilities of those who conduct them.

14.2.4 States should provide funding for peer support training and set certification standards for peer support members and training.

Law enforcement agencies widely use peer-led critical incident stress debriefing after traumatic incidents; however, peer support training is not standard. As noted by Corey Nooner, Master Sergeant of the Oklahoma City Police Department, "Deployment of trained peer support is an

⁷⁴² Tom Coghlan, Owner, Blue Line Psychological Services, email communication with Corey Nooner, Master Sergeant, Oklahoma City Police Department, OK, April 6, 2020.

unmatched resource for law enforcement.⁷⁴³ Standardizing this training through a curriculum and certification process will help peer support members understand their responsibilities and limitations.

14.2.5 Congress should enact legislation that protects the authority or commission that an officer has when they request assistance for mental health issues.

Based on self-reports of law enforcement personnel, staff do not seek mental health services because they fear losing their jobs and their ability to provide for themselves and their families. Legislation that protects law enforcement officers who ask for mental health assistance will provide more security and improve the use of mental health services. The legislation should ensure that a law enforcement officer's request for assistance will not be used as the sole basis for the removal of the officer's authority. This legislation would not eliminate the consequences of conviction for a criminal act and would not apply to those who are a danger to self and others.

14.2.6 Congress should strengthen Health Insurance Portability and Accountability Act provisions regarding medical records and treatment notes of first responders.

Law enforcement officers have encountered situations where treatment notes have been provided to agency representatives because the agency is paying for the treatment of the officer. A provision is needed in the Health Insurance Portability and Accountability Act that clarifies that treatment notes are confidential regardless of who pays for the treatment.

14.2.7 The Department of Homeland Security should develop a wellness unit within the Incident Command System.

| See Chapter 9: Homeland Security.

The Department of Homeland Security developed a standardized approach to incident management known as the National Incident Management System (NIMS). The Incident Command System (ICS), which is a subpart of NIMS, provides a standard response and operation procedures for critical incidents.⁷⁴⁴

Currently, ICS does not specifically include a wellness function to address the needs of the personnel involved in the incident. Including a specific wellness unit within the ICS will ensure that scene commanders seek out the wellness resources available and provide a location for them to be accessed. This addition ensures that the wellness of responders is a priority to be addressed at significant incidents.⁷⁴⁵ It also ensure that wellness is considered regardless of who is responding, which could include multiple agencies from across the region or county.

⁷⁴³ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Health and Wellness* (February 27, 2020) (written statement by Corey Nooner, Master Sergeant, Oklahoma City Police Department, OK), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁷⁴⁴ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Health and Wellness* (February 27, 2020) (written statement of Doug Fuchs, Chief of Police (Retired), Redding Police Department, CT), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁷⁴⁵ Fuchs, *President's Commission on Law*, February 27, 2020.

14.2.8 Congress should establish and fund a national law enforcement crisis hotline.

Currently, there is no national hotline to specifically assist public safety officers in crisis. The national crisis support lines that are available to the public are perceived to be not well equipped to effectively respond to those performing public safety duties. If an officer finally calls a hotline and gets the “wrong” person on the other end of the line, then they will likely never call again. Additionally, if an individual perceives that the hotline is not equipped to assist law enforcement, an individual in crisis may not attempt to access the service. To increase public safety officers’ willingness to call a dedicated national hotline, it should be well marketed, have specifically skilled mental health professionals, and be able to direct the caller to locally specific resources. Confidentiality and text messaging capabilities are also critical components of a national hotline, particularly for those who are emotional with limited speaking ability.

14.2.9 Congress should amend the definition of “injury” in the Federal Employees’ Compensation Act to include post-traumatic stress disorder and other mental health issues incurred by employees in the performance of law enforcement public safety duties.

Research shows that a police officer will experience more traumatic events in six months than the average person will experience in a lifetime.⁷⁴⁶ Similarly, federal employees performing law enforcement and other public safety duties are also exposed to danger and trauma, yet PTSD is not a covered injury in the Federal Employees’ Compensation Act or Office of Workers’ Compensation Program coverage. The federal government and its workers’ compensation programs should ensure that the Federal Employees’ Compensation Act rules clearly account for PTSD or other similar diagnoses and provide proper guidance to federal employees and agencies to address mental health needs.⁷⁴⁷

14.3 Law Enforcement Safety

The murder of a law enforcement officer in the line of duty is an assault on the entire community. There is no greater affront to the rule of law than deliberate attacks against police officers and deputy sheriffs entrusted with enforcing the law. Law enforcement is an inherently dangerous profession as officers confront violent criminals and address public safety threats, putting their own lives and safety at risk. In addition to willful violence directed against law enforcement, they also confront threats to their safety incidental to the job such as traffic and firearm accidents, as well as exposure to controlled substances.

The National Law Enforcement Officers Memorial Fund reports that law enforcement line-of-duty deaths increased by 12 percent from 2017 to 2018.⁷⁴⁸ A total of 145 federal, state, and local law enforcement officers died in the line-of-duty in 2018, up from 129 officers in 2017. In 2018, firearms-

⁷⁴⁶ Tara Hartley et al., “PTSD Symptoms Among Police Officers: Associations with Frequency, Recency, and Types of Traumatic Events,” Abstract, *International Journal of Emergency Mental Health* 15, no.4 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4734407/>.

⁷⁴⁷ U.S. House Committee on the Judiciary: Oversight Hearing on Policing Practicing (September 19, 2019) (written statement of Patrick Yoes, National President, Fraternal Order of Police), <https://fop.net/CmsDocument/Doc/Yoes%20testimony%2019%20Sept.pdf>.

⁷⁴⁸ “National Officer Safety Initiatives,” Bureau of Justice Assistance, accessed July 8, 2020, <https://bja.ojp.gov/program/national-officer-safety-initiatives/overview>.

related fatalities were the leading cause of officer deaths, with 53 officers shot and killed (up 15 percent from 2017); 50 officers were killed in traffic-related incidents (up 9 percent from 2017); 42 officers died from other causes (up 14 percent from 2017).⁷⁴⁹



“Too often, the badge and the shield have become targets and too many officers are paying the ultimate price for nothing more than the uniform they wear.”⁷⁵⁰

- Patrick Yoes, President,
Fraternal Order of Police

An officer not wearing their ballistic vest is 14 times more likely to suffer a fatal injury than an officer who is wearing body armor.⁷⁵¹ In 2019, 293 officers were shot in the line of duty, 50 of whom were killed. Thirty officers were shot in an ambush attack, and seven of those officers were killed.⁷⁵² Enacting federal legislation that would make the targeting of a law enforcement officer with violence in certain, limited circumstances a federal crime would help protect law enforcement.⁷⁵³ This will not make every attack against an officer a federal crime, but it would give federal prosecutors a tool to fight back against targeted attacks.

The events of 9/11, increasing active shooter incidents, and targeted attacks on police officers have changed the world of law enforcement. Often law enforcement may be the only resource to provide initial life-saving medical care to victims of these types of mass casualty situations.

Typically, motor vehicle-related incidents are the leading cause of death for law enforcement officers. From 2005 to 2017, 30 percent of 1,512 officers who died in the line of duty died as a result of vehicle-related crashes, while 9 percent were struck by a vehicle.⁷⁵⁴

Wearing seatbelts prevents injuries and vehicular deaths. In a major study conducted by National Highway Traffic Safety Administration, for those cases where seatbelt status was known, only slightly more officers wore seatbelts than did not.⁷⁵⁵ Additionally, distraction-free driving should be a standard for each officer to follow on duty.

749 Bureau of Justice Assistance, “National Officer Safety Initiatives.”

750 *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Health and Wellness* (February 27, 2020) (written statement of Patrick Yoes, President, Fraternal Order of Police), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

751 Dan Tompkins, “Body Armor Safety Initiative: To Protect and Serve . . . Better,” *NIJ Journal*, no. 254 (2006), <https://nij.ojp.gov/library/publications/body-armor-safety-initiative-protect-and-serve-better>.

752 Yoes, *President’s Commission on Law*, February 27, 2020.

753 Yoes, *President’s Commission on Law*, February 27, 2020.

754 “Causes of Law Enforcement Deaths,” National Law Enforcement Officers Memorial Fund, accessed May 22, 2020, <https://nleomf.org/facts-figures/causes-of-law-enforcement-deaths>.

755 Eun Young Noh, “Characteristics of Law Enforcement Officers’ Fatalities in Motor Crashes,” National Highway Traffic Safety Administration, January 2011, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811411>.

Officers also confront health risks due to their exposure to potent controlled substances. Fentanyl is a powerful synthetic drug similar to, yet much more potent than morphine and heroin, and it can be deadly depending on the amount and time of exposure. As evidenced during the COVID-19 pandemic, law enforcement agencies are also exposed to significant health risks, as their interactions with the community are not limited in times of a health crisis. Protection and preparation against pandemics and exposure to illicit narcotics (e.g., fentanyl) are a concern for law enforcement officers.

14.3.1 The Department of Justice should further implement a national, comprehensive database for law enforcement officer injuries and treatment. The data should be analyzed and released in a timely manner.

While there has been considerable progress in revising the Law Enforcement Officers Killed and Assaulted data set, it is still lacking specific medical information that would be required to study this topic appropriately. For law enforcement to make meaningful improvements based on the science of law enforcement injuries, there must be further solutions to capture comprehensive law enforcement injury-based data.⁷⁵⁶ Finally, to make training and procedural improvements that save lives and prevent injuries, incidents and data need to be analyzed and assessed at the national level as quickly as possible without compromising the quality and validity of data.

14.3.2 The Department of Justice should expand the National Blue Alert Network to all 50 states.

The National Blue Alert network is a program run by the Department of Justice that gives law enforcement, the media, and the public an expanded early warning of threats against law enforcement officers, helps apprehend suspects who have killed or seriously injured an officer, and provides critical information when an officer is missing in the line of duty. Like AMBER Alerts, which are designed to speed actionable information about missing children to the public, Blue Alerts provide details about possible assailants, including physical descriptions, vehicle information, and other identifying characteristics. According to the COPS Office, 36 states currently participate in the National Blue Alert Network.⁷⁵⁷ Expanding this program to all 50 states would further protect the lives of law enforcement officers.

14.3.3 Congress should pass legislation that would create a new federal offense for those who deliberately target law enforcement officers with the intent to kill.

The legislation should impose serious and specific penalties for the killing of law enforcement officers, judges, and other public safety officers in the line of duty. The legislation should also make the murder of a law enforcement officer who is employed by an agency that receives federal funds a capital offense. The bill should impose substantive limits on federal courts' review of habeas corpus petitions that challenge a state court conviction for killing a law enforcement officer, judge, or other public safety officer.

⁷⁵⁶ *President's Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Health and Wellness* (February 27, 2020) (written statement of Dr. Alexander Eastman, Chief Medical Officer, Dallas Police Department, TX), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

⁷⁵⁷ Shanetta Cutlar, Senior Counsel, and Vince E. Davenport, Supervisory Senior Policy Analyst, Office of Community Oriented Policing Services, email communication with Matthew Varisco, Federal Program Manager, Law Enforcement Health and Wellness Working Group, April 13, 2020.

14.3.4 A National Law Enforcement Safety Board should be established that investigates line-of-duty deaths. This board should effectively promote a higher level of safety in law enforcement.

Law enforcement agencies are required to report felonious and accidental killings and assaults upon law enforcement officers in the line of duty as part of the FBI's Uniform Crime Reporting Law Enforcement Officers Killed and Assaulted program data. Additionally, other organizations review and report statistics for line-of-duty death incidents; however, there is no single entity that conducts thorough, accurate, and independent investigations and produces timely, well-considered recommendations to enhance law enforcement safety. A National Law Enforcement Safety Board, similar to the National Transportation Safety Board, would improve officer safety.

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CHAPTER 15: LAW ENFORCEMENT RECRUITMENT AND TRAINING

Overview

While law enforcement is a noble profession, it is a demanding one that requires enlisting the most committed, skilled, and virtuous public servants who are qualified and equipped to perform civic duties of extraordinary difficulty and importance. If the rule of law depends on the trust that laws will be enforced with fairness and vigor, then it also depends on the confidence that law enforcement officers are up to the job of keeping communities safe in a variety of social environments and against an array of criminal threats.

Across the country, however, law enforcement agencies continue to confront challenges in recruiting, retaining, and training officers. Increased demands on law enforcement are making the job more challenging and creating barriers to establishing and maintaining a well-trained workforce. The proliferation of criminal threats and social duties confronting the police has correlatively strained officer health and morale to the detriment of law enforcement resources and personnel. Agencies have to be able to recruit effectively from their communities and to attract and hire qualified individuals who will be able to excel in the work of law enforcement. In addition to recruiting qualified individuals, agencies also need to retain experienced and trained officers to maintain a high level of effectiveness and prevent them from losing valuable time and resources they invested into developing officers. The quality and nature of the training staff receive through the duration of their law enforcement career also affects officer retention and has a direct impact on the effectiveness of a law enforcement agency.

This chapter offers recommendations to help law enforcement executives recruit qualified applicants, provide sufficient and ongoing training for officers, and retain officers within their agencies.

15.1 Recruitment

One of the most important challenges facing the law enforcement field today is sustaining staffing levels. As attrition increases and officers pursue careers elsewhere, the demand for qualified officers exceeds the supply of people who enter the law enforcement profession at the local, state, and federal levels. Many law enforcement agencies struggle with recruiting qualified candidates. One of the challenges, for example, is that while the economy grows and other industries flourish, there is increased competition for recruitment.⁷⁵⁸ Changes to certain recruitment strategies could help alleviate some of those challenges. Additionally, agencies should explore ways to strengthen benefits and pay to attract the highest quality candidates.

Finding the right people to fill open positions generally requires a sound recruitment strategy, even for small agencies. In response to the dynamic set of conditions that affect the labor pool, law enforcement agencies should develop a comprehensive recruitment program based on a

⁷⁵⁸ Andy Ouriel, "Beards, Tattoos Help to Humanize Police Officers," *Sandusky Register* (Sandusky, OH), December 18, 2019, <https://sanduskyregister.com/news/21417/beards-tattoos-help-to-humanize-police-officers/>.

written recruitment strategy. Rather than “selecting out” officers based on undesirable background or characteristics, agencies should “select in” officers based on desirable traits.

Diverse workforces can be more effective, creative, and resilient than homogenous workforces, and teams with broader perspectives result in better decision-making and problem-solving practices.⁷⁵⁹ Recruiting a diverse pool of candidates includes qualified individuals from different races, genders, ethnicities, and cultural backgrounds.

Effective recruitment practices can help engender trust, develop good relations with their communities, and ensure that the officers they hire can best serve those communities. Recruitment efforts should start in the community, and law enforcement agencies should consider developing youth programs to attract younger generations. This could include Explorer programs, internships through local schools, cadet academies, university partnerships, and youth mentorship programs that foster special relationships between young adults and departments.⁷⁶⁰ Not only do these programs develop enthusiasm for a law enforcement career, they can also build relationships between law enforcement agencies and the communities they serve.⁷⁶¹

There are fiscal considerations with regards to recruitment policies and practices. The cost of sound recruiting and screening processes may burden an agency with a smaller budget; however, this expense should be viewed as a critical, long-term investment. The initial “upfront” costs can save money in the long run by increasing retention. When a single employee chooses to leave an agency, costs associated with recruiting, hiring, training, and equipment increase. In addition, immediate budget shortfalls may occur through unexpected overtime costs to maintain minimal shift coverage.

In addition to ensuring adequate pay and benefits for recruitment, agencies must also consider paths for professional development, which often motivates recruits and younger law enforcement officers.⁷⁶²

Law enforcement agencies should also consider leveraging technology when developing recruitment strategies. This will ensure reaching a broader population of potential applicants.

15.1.1 The federal government should establish a comprehensive educational benefit for individuals who commit to a law enforcement career.

A well-educated and well-trained law enforcement officer benefits not only the officer personally, but it also benefits the wider criminal justice system. To recruit and retain the most talented and qualified individuals into law enforcement, the Commission recommends that the federal government establish a suite of three educational benefits for individuals who commit to a law enforcement career.

First, the government should create a federal undergraduate law enforcement scholarship program, akin to a Reserve Officer Training Corps (ROTC) scholarship, that provides tuition benefits enabling individuals committing to a law enforcement career to obtain a college degree.

⁷⁵⁹ Kevin P. Morison, *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success* (Washington, DC: Office of Community Oriented Policing Services, 2017) plainCitation: “Kevin P. Morison, “Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success,” Article, *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success* (Washington, DC: Office of Community Oriented Policing Services, January 1, 2017, <https://cops.usdoj.gov/RIC/Publications/cops-w0831-pub.pdf>.

⁷⁶⁰ Morison, *Hiring for the 21st Century*.

⁷⁶¹ Morison, *Hiring for the 21st Century*.

⁷⁶² Police Executive Research Forum, *The Workforce Crisis and What Police Agencies Are Doing About It* (Washington, DC: Police Executive Research Forum, 2019), <https://www.policeforum.org/assets/WorkforceCrisis.pdf>.

Establishing a scholarship program for law enforcement, like ROTC, would help recruit more talented and qualified young individuals into the law enforcement field on a broad national level.

Additionally, the government should establish a loan forgiveness program specifically for law enforcement to offer loan forgiveness options for individuals who have already completed undergraduate degrees and carry student loan debt when they enter law enforcement. The model for this proposal can be found in the Department of Education's Public Service Loan Forgiveness (PSLF) program. For PSLF, law enforcement officers have to make 120 on-time loan payments while working for a qualifying organization before they can have their debt forgiven, so only 1.1 percent of people received student loan forgiveness for law enforcement as of June 2019.⁷⁶³ In addition, life and career changes affect eligibility, and people may not have paid off their student loans by the time they qualify for PSLF. The federal government should consider modifying PSLF's requirements for law enforcement or establishing a specific loan forgiveness program for law enforcement so officers can qualify starting on the first day of their job for loan forgiveness options.

Finally, the government should reestablish an education assistance program for law enforcement officers. This could be a hybrid that combines scholarship and loan forgiveness options to enable law enforcement officers to pursue undergraduate or advanced degrees, help enhance their career, and perform their law enforcement obligations more effectively.

15.1.2 Law enforcement agencies should consider their internally identified priorities along with the priorities of the community and collaboratively work with stakeholders to conduct a thorough assessment of what critical characteristics and traits qualify an individual as a candidate for employment with their agency. This should include examining their policies concerning tattoos, grooming standards, and past drug use.

The 1967 U.S. President's Commission on Law Enforcement and Administration of Justice (i.e., Johnson Commission) recommended that all police candidates be tested to determine "moral character" and "emotional fitness."⁷⁶⁴ The Johnson Commission noted that these tests should identify and measure personality characteristics. Personality assessments remain the most popular choice for pre-employment psychological evaluations.⁷⁶⁵ These assessments of candidate traits serve one of two functions: either "screening in" desirable characteristics or "screening out" undesirable qualities.⁷⁶⁶ Research demonstrates the relationship between personality assessments and police performance.⁷⁶⁷

However, the dominance of personality screening has overlooked the importance of assessing other important "soft skills" in policing.⁷⁶⁸ Dr. Anne Li, Kringen, Associate Professor of Criminal Justice and Assistant Dean of the Henry C. Lee College of Criminal Justice and Forensic Sciences, states, "Certain skills that are likely necessary to effectively work in law enforcement, such as

763 Elyssa Kirkham, "The Ultimate Guide to Student Loan Forgiveness for Law Enforcement," *Lending Tree*, November 28, 2019, <https://studentloanhero.com/featured/student-loan-forgiveness-law-enforcement-guide/#police>.

764 U.S. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, DC: U.S. Government Printing Office, 1967), 110, <https://www.ncjrs.gov/pdffiles1/nij/42.pdf>.

765 Peter Weiss and Robin Inwald, "A Brief History of Personality Assessment in Police Psychology," in *Personality Assessment in Police Psychology: A 21st Century Perspective*, ed. Peter Weiss (n.p.: Charles C. Thomas Press, 2010).

766 Paul Detrick and John Chibnall, "NEO PI-R Personality Characteristics of High-Performing Entry-Level Police Officers," *Psychological Services* 3, no. 4 (2006).

767 Michael Aamodt, *Research in Law Enforcement Selection* (Boca Raton, FL: Brown Walker, 2004).

768 Michael Pittaro, "The Importance of Soft Skills for Criminal Justice Professionals," *In Public Safety*, September 21, 2018, <https://inpublicsafety.com/2018/09/the-importance-of-soft-skills-for-criminal-justice-professionals/>.

communication and dispute resolution, are generally not part of pre-employment testing. This speaks to the greater issue that the attributes tested for in current hiring processes do not align well with those needed to effectively practice law enforcement.⁷⁶⁹ Law enforcement agencies should conduct a thorough assessment of what critical characteristics and traits qualify an individual as a candidate for employment with their agency. In doing so, agencies should consider the internally identified priorities, along with the priorities of the community. A 2016 joint forum with the Office of Community Oriented Policing Services (COPS Office) and Police Executive Research Forum highlighted a number of skills that agencies should consider when identifying critical characteristics and traits pre-employment does not currently screen for (see text box).

The COPS Office's forum highlighted traits for an ideal recruit:

- analytical
- a skilled communicator
- streetwise and possessing common sense
- a problem solver
- a change maker
- adaptable
- culturally competent
- a strong advocate for human rights
- well-educated
- compassionate
- a visionary⁷⁷⁰

Law enforcement agencies should also examine their policies related to facial hair, nail polish, women's hair, tattoos, and general appearance. Policies that are overly restrictive or prohibitive reduce the size of the potential applicant pool.⁷⁷¹

15.1.3 Law enforcement agencies should develop a comprehensive marketing strategy for recruitment.

The marketing strategy could include branding, such as using the agency's mission to create a clear understanding of the career for which the candidate is applying; advertising the strengths and benefits of the agency to entice recruits; creating an introduction video from agency leadership that welcomes potential recruits and invites them to learn more about opportunities in the agency; and using testimonials from officers, sergeants, lieutenants, and other positions to describe the equipment, training, and culture. Local labor and representative organizations, along with other community stakeholders or individuals who have had positive experiences with the agency, can complement these efforts by demonstrating that new recruits will have a voice at the agency.

⁷⁶⁹ Anne Li Kringsen, Associate Professor and Assistant Dean, Henry C. Lee College of Criminal Justice and Forensic Sciences, public comment to President's Commission on Law Enforcement and the Administration of Justice, April 30, 2020.

⁷⁷⁰ James E. Copple, *Law Enforcement Recruitment in the 21st Century* (Washington, DC: Police Executive Research Forum, 2017), 5, <https://cops.usdoj.gov/RIC/Publications/cops-w0830-pub.pdf>.

⁷⁷¹ Jeremy M. Wilson et al., *Police Recruitment and Retention for the New Millennium: The State of Knowledge* (Santa Monica, CA: RAND Corporation, 2010), <https://www.rand.org/pubs/monographs/MG959.html>.

15.1.4 Law enforcement agencies should assure the validity of, and periodically audit, all testing instruments.

Law enforcement agencies should conduct a validation study whenever jobs and job requirements change significantly. They should consult with either police-testing specialists, college- or university-based psychologists, or private professional industrial psychologists regarding test validation.

- Agencies should invest in face-to-face interviews that include scenario-based questions.
- Agencies should have candidates go on ride-alongs with officers and involve them in community engagement activities.
- States and individual agencies should adopt research- and evidenced-based physical fitness standards.
- Agencies should embrace physical fitness as a priority throughout officers' careers.
- Agencies should check candidates' social media accounts for any indicators or warning signs of explicit bias.
- Agencies should advise candidates about the role of the local labor or representative organization and how the organization engages with agency leadership.⁷⁷²

See Chapter 14: Law Enforcement Health and Wellness and Chapter 1: Respect for the Rule of Law and Law Enforcement.

Law enforcement agencies should ensure that they assess each applicant in a valid, reliable, fair, and legally defensible manner.

15.1.5 Law enforcement agencies should consider offering recruitment and retention incentives.

Recruitment incentives help applicants offset the cost of entering the law enforcement field. A recent study showed that the most common recruitment incentive involved paying a recruit's salary while they attended the academy, followed by offering free training at the academy, college tuition reimbursement, health and fitness opportunities, and a stipend for fluency in a language other than English. The study also found that offering childcare assistance to a new recruit would better meet the needs of working families.⁷⁷³

⁷⁷² Morison, *Hiring for the 21st Century*.

⁷⁷³ Police Executive Research Forum, *The Workforce Crisis*.

In the Dunwoody Police Department in Georgia, a new hire receives a \$4,000 hiring bonus: \$2,000 at their one-year anniversary and \$2,000 at their two-year anniversary. Additionally, an employee receives a \$1,000 bonus for each referral who is hired. The department also offers a monthly housing stipend of \$700 for employees who live in the city of Dunwoody.⁷⁷⁴

15.1.6 Law enforcement agencies should reduce the time it takes to apply for and receive an offer from an agency.

With a wide range of applications processes (from six weeks to nine months or longer), law enforcement agencies are losing candidates to other job offers. To curb this recruiting issue, agencies should consider how they can reduce the hiring timeframe without sacrificing the quality of the testing, screening, and selection processes. These include reducing inefficiencies within the background screening processes, considering the timing of conditional offers, and providing detailed preparatory instructions to candidates.

15.2 Retention

Some turnover in an organization can be a positive to allow the organization and individuals to advance, facilitate change, become more diverse, and reduce poor performance. However, continual voluntary turnover can be detrimental to law enforcement agencies. Reducing agency attrition saves money through lowering recruiting and hiring costs and leads to a more experienced, effective, and efficient organization. Improving retention can also help alleviate the ongoing need to recruit.

A number of issues leads to attrition in law enforcement including changing career expectations and job duties, the work environment, competitive salaries, benefit packages, and the focus on employee well-being. People also leave the field because of more attractive external opportunities, which often happens when an officer serves on a task force, works closely with a contract company, or becomes an expert in a product or skill set and then is offered a higher paid, lower stress job.

| See Chapter 14: Law Enforcement Health and Wellness.

Agencies can adopt various initiatives to improve retention or to minimize the detrimental effects of attrition, including planning and analyzing employees' needs, reducing the financial impact of attrition, enhancing compensation and nontraditional incentives, engaging employees in ways to improve the agency, and improving organizational effectiveness through open communication and fair and transparent practices.⁷⁷⁵ Additionally, agencies should analyze who is likely to leave, when, and why.

⁷⁷⁴ Fidel Espinoza, Lieutenant, Dunwoody Police Department, GA, in discussion with Recruitment and Training Working Group, virtual meeting, April 1, 2020.

⁷⁷⁵ Wilson et al., *Police Recruitment and Retention*.

15.2.1 Law enforcement agencies should increase staff engagement in the agency, allowing for both top-down and bottom-up input into policies, procedures, and operations.

Allowing everyone to have a voice in agency policies, procedures, and activities fosters a synergy of ideas and broader discussions. It also demonstrates that respect can be fostered at all levels of the agency. Employees who feel they have a voice in their agency are often more satisfied with their job than those who do not feel they have that voice.⁷⁷⁶ Agencies should leverage their relationship with the local labor or representative organization and make it clear to those members that their roles in their organization are respected and their voices are heard on workplace issues.

15.2.2 Law enforcement agencies should develop formal procedures for exit interviews to identify reasons for leaving.

Exit interviews can help identify where an agency's retention efforts fall short.⁷⁷⁷ Exit interviews are cost effective (i.e., easy to conduct and take little time with minimal investment), obtain honest information delivered without fear of retaliation, and provide insight into the actual work environment. Such insights may include comments on leadership style and ways to improve the agency, and increased future retention once negative practices are corrected.⁷⁷⁸

In addition to exit interviews, another possible strategy is for agencies to develop and conduct "stay" interviews to help identify reasons why employees are committed to the agency. Similar to job satisfaction surveys, stay interviews identify what employees value about their agencies and provide leadership the opportunity to view the agency from the line officers' points of view. They also help leadership ensure that employees value the core elements of the agency's mission and vision.

15.2.3 Law enforcement agencies should examine their salary and benefit packages and incentive programs to ensure that they are competitive in the field.

A recent study by the National Institute on Retirement Security shows that retirement and health benefits are closely tied to job satisfaction.⁷⁷⁹ According to the National Association of Police Organizations, "Cities that have downgraded their pension plans or switched to defined contribution plans have seen qualified, trained officers leave for other jurisdictions who provide defined benefit plans. They also find it harder to recruit new officers to replace those who have left."⁷⁸⁰ Agencies should consult both informally and formally with their local labor or representative organization for their perspective through the labor management process.

776 Kristie Rogers, "Do Your Employees Feel Respected?," *Harvard Business Review*, July 1, 2018, <https://hbr.org/2018/07/do-your-employees-feel-respected>.

777 Everett Spain and Boris Groysberg, "Making Exit Interviews Count," *Harvard Business Review*, April 1, 2016, <https://hbr.org/2016/04/making-exit-interviews-count>.

778 Kevin Mason, "Four Benefits of Conducting Exit Interviews," Genesis HR Solutions, July 27, 2015, <https://genesishrsolutions.com/people/blog/four-benefits-of-conducting-exit-interviews/>.

779 "Amid Worker Shortages, New Research Examines State and Local Employee Views on Their Jobs, Pay and Benefits," National Institute on Retirement Security, November 11, 2019, <https://www.nirsonline.org/2019/11/amid-worker-shortages-new-research-examines-state-local-employee-views-on-their-jobs-pay-and-benefits/>.

780 National Association of Police Organizations, public comment to President's Commission on Law Enforcement and the Administration of Justice, March 10, 2020.

According to a 2019 report from the Bureau of Justice Statistics, about half of local law enforcement agencies in the United States have fewer than 10 officers, and a significant number of law enforcement agencies—approximately 70 percent—are smaller agencies that serve communities of fewer than 10,000 citizens.⁷⁸¹ When an officer departs from a smaller agency, it can sometimes take about two years to recruit and properly train a replacement. These challenges make it difficult for agency leaders to maintain appropriate staffing levels and generate job satisfaction and positive morale.

Law enforcement agencies should also consider extending traditional and nontraditional benefits to the families of their officers. Law enforcement agencies create a holistic approach to valuing employees when they include their families.

15.3 Training

The quality, regularity, and consistency of training opportunities prominently influence the effectiveness of everyday police work. Some—but not all—agencies require training in de-escalation, infuse officer wellness components into training, and ensure adult learning principles complement tactical skills. Some also allow officers to “try out” the profession or shadow another officer for up to a year and begin policing without prior attendance at an academy.

Irrespective of the specific training required, many officers support and desire ongoing professional development throughout their careers to advance in the field and stay relevant in their knowledge, skills, and abilities. Some agencies may lose qualified officers because of the lack of consistency in training. This loss equates to an increase in recruitment costs and an organizational budget loss stemming from the money spent to recruit, hire, and train those officers leaving the agency. It is especially challenging for rural agencies to provide the trainings needed for their officers to fulfill required training hours and to help their officers advance their skills.

15.3.1 The Department of Justice should collaboratively work with stakeholders to develop national minimum standards for annual online and in-person continuing education requirements. These should include the most significant areas and critical topics required, as well as the minimum training hours required for each.

While this is currently a matter for each state to determine, a national minimum standard for annual continuing education would provide a baseline for law enforcement nationwide. Agencies may require additional areas and topics of study and additional hours beyond the minimum standard; however, all law enforcement would be required to meet the minimum standard, ensuring that law enforcement across the nation has the same threshold to maintain their professional knowledge, skills, and abilities.

National standards allow for a common process to develop law enforcement training, help manage quality control through a series of requirements and checkpoints, and establish clear expectations and outcomes. National standards ensure that courses are current, relevant, and applicable, and that they have comprehensive instructors and facilitator guides, methodologies, and tools. National standards also help prepare law enforcement courses for accreditation through national law enforcement training accreditation programs. Finally, establishing a national

⁷⁸¹ Shelley S. Hyland and Elizabeth Davis, *Local Police Departments*, 2016: Personnel (Washington, DC: Bureau of Justice Statistics, 2019), 5, <https://www.bjs.gov/content/pub/pdf/lpd16p.pdf>.

model for academy training based on best practices that determines the ideal number of instructional hours on specific areas and critical topics would guide academy instruction and delivery.

15.3.2 The Department of Justice should consider establishing a national law enforcement training center.

Establishing a national training center for law enforcement where agencies could send their officers to receive standardized trainings from a national curriculum (see recommendation above on national training standards) could help advance law enforcement officers nationwide, especially from smaller and rural agencies who may not have access to more advanced training in their areas.⁷⁸² This center could also focus on providing e-learning and distance training courses that are accredited through state training commissions, which would allow small, rural, and tribal agencies that may have fewer resources to receive certified training on critical topics.

15.3.3 The Department of Justice should develop and regularly update a comprehensive, standardized, and immersive training programs for law enforcement officers on stops, questioning, searches, and seizures.

The Fourth, Fifth, and Sixth Amendments to the U.S. Constitution are central to the criminal justice process and to the everyday activities of law enforcement officers. However, profound misunderstanding among the public, media, and law enforcement regarding the stopping, questioning, searching, and temporary detention of a possible criminal suspect has led many to believe that “stop, question, and frisk” is illegal or unconstitutional; it is not. The Department of Justice should develop a standardized immersive training program available to new recruits and for in-service training based on current laws and new legal precedents. This training should be taught from the perspective of a law enforcement officer using role play to depict real-life situations in the field that allow officers to comment on various critical decision points during an encounter. Scenario-based simulation that emphasizes how to apply appropriate and legal approaches ranging from routine traffic stops to encounters with armed suspects can enhance public and officer safety.

15.4 Use-of-Force Training and Policies

The most solemn responsibility a law enforcement officer has is to protect their own life or the life of another. In the course of carrying out this responsibility, the use of force may be required. While the use of force may take many forms, the most serious is the use of deadly force. This Commission and law enforcement officers across the country believe in the sanctity of human life; therefore, the use of lethal force to save themselves or another life must be a last resort.

In order to ensure officers appropriately fulfill this responsibility, proper and rigorous training is required. Improperly discharging this duty has significant consequences for public trust in law enforcement and for the rule of law. National events that transpired during the work of this Commission have only reaffirmed the importance that law enforcement officers receive appropriate training to use force. To ensure the appropriate use of force and to ensure all law

⁷⁸² *President’s Commission on Law Enforcement and the Administration of Justice: Hearing on Law Enforcement Recruitment, Training, and Retention* (May 13, 2020) (statement of Bill Brueggemann, Sheriff, Cass County Sheriff’s Office, NE), <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice/hearings>.

enforcement agencies comply, President Trump issued the Executive Order 13,929 on Safe Policing for Safe Communities.⁷⁸³ The executive order directs the Attorney General, among other tasks, specifically to

certify independent credentialing bodies that meet standards to be set by the Attorney General . . . should address certain topics in their reviews, such as policies and training regarding use of force and de-escalation techniques. . . . The Attorney General's standards for certification shall require independent credentialing bodies to, at a minimum, confirm that the state or local law enforcement agency's use-of-force policies adhere to all applicable federal, state, and local laws; and the state or local law enforcement agency's use-of-force policies prohibit the use of chokeholds—a physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation—except in those situations where the use of deadly force is allowed by law.⁷⁸⁴

The executive order also calls upon state and local law enforcement agencies to “constantly assess and improve their practices and policies to ensure transparent, safe, and accountable delivery of law enforcement services to their communities. Independent credentialing bodies can accelerate these assessments, enhance citizen confidence in law enforcement practices, and allow for the identification and correction of internal deficiencies before those deficiencies result in injury to the public or to law enforcement officers.”⁷⁸⁵

While Executive Order No. 13,929 has yet to be implemented by the Attorney General, the Commission has reviewed the issue of police use of force and recommends certain measures to better train law enforcement. As stated at the beginning of this section, the Commission believes the sanctity of life is the foundation upon which all use-of-force training programs along with an agency's operational and administrative policies rests. This is especially important in how the agency addresses use of force.

Use-of-force policies outline conditions and situations where an agency can authorize or justify uses of force. Training supports these policies and effectuates the legal framework created by statute and prevailing court decisions by preparing officers to use force through approved tactics and weapons. Excessive, inappropriate, or unauthorized uses of force can unnecessarily injure an individual and damage the relationship between law enforcement and their communities. Now more than ever, police conduct is under close scrutiny in modern society.

Agencies should devote training time to practice use-of-force techniques and develop weapons proficiency while they balance the safety of their officers and community expectations of law enforcement conduct. This balance is difficult to achieve, as training competes with regular daily duties and limited resources. Too often, this results in agencies having to sacrifice training time and opportunities that reinforce the sanctity of life.

Many law enforcement agencies have adjusted their operating principles to elevate the sanctity of life while still addressing officer safety. More agencies have recognized the need to include training on de-escalation and defusing techniques, how to respond to mental health issues, and critical decision-making. These training opportunities give officers the confidence to consider their options when responding to a suspect's actions. Officers who may have once considered how much force was authorized in a given situation should now analyze if alternatives to force are reasonable and appropriate.

783 “Executive Order on Safe Policing for Safe Communities,” The White House, June 16, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/>.

784 The White House, “Executive Order on Safe Policing.”

785 The White House, “Executive Order on Safe Policing.”

Agencies should regularly examine their training and policies to ensure that they provide support to their officers with guidance that is justifiable, is legally defensible, and demonstrates the agency's commitment to the sanctity of life and compliance with applicable standards.

Use-of-force training requires significant resources to establish and maintain the best practices of applying force. Between numerous state-mandated training topics, weapons qualifications, and required recertification of first aid and lifesaving skills, agencies are confronted with a lack of resources to provide crucial professional training development opportunities. Many agencies rotate topics on a yearly basis to cover critical skills and update operational procedures and processes to meet state or local retraining or re-certification requirements. Local and state budget decisions have a direct impact on the quality and quantity of training development offered for all sizes of law enforcement agencies. All too often, the budget allocations leave agencies without the appropriate resources to meet the needs of training law enforcement professionals. However, agencies should ensure that, at minimum, their annual training program includes skills in de-escalation and defusing techniques.

15.4.1 Law enforcement agencies should include use-of-force models in their policies.

Use-of-force models describe an escalating series of actions that an officer may take to resolve a situation. A use-of-force model usually has many levels, and officers are instructed to respond with a level of force appropriate to the situation. An officer may move from one part of the force model to another as the need arises, possibly in a matter of seconds. Law enforcement should give preference to use-of-force models that include a focus on critical decision-making and allow officers to choose a level of force that is based on legal principles and provides a referential model of resistance to better guide lawful use of force. The model should also allow the officer to immediately resort to deadly force when objectively reasonable.

15.4.2 Law enforcement agencies should establish a use-of-force review panel that meets annually to conduct a thorough review of their use-of-force policies.

As a matter of practical necessity, agencies employ high-risk tactics in their operations. Shots fired at or from moving vehicles, warning shots, and dynamic room entries all elevate the risks of injury or death to officers, suspects, or bystanders.

Agencies should establish a review panel that includes representatives from the agency's command staff, training officers, general counsel, and prosecutor. Some agencies may also choose to include members of the community, stakeholder groups, or other law enforcement agencies. The panel should review best practices and model policy examples, recent court decisions, changes in laws, training deficiencies or failures, and other considerations that have an impact on use-of-force policies.

Agencies should consider meeting regularly (e.g., quarterly or as appropriate for the agency) with representatives from the local prosecutor's office to review law enforcement use of force. The meetings may be used to review specific cases or to conduct policy reviews. These regular meetings should improve relationships among criminal justice personnel and provide a better understanding of law enforcement actions. Prosecutors can also be invited to view or participate in scenario-based trainings to create a deeper understanding of peace officer decision making under stress.

DRAFT

CONCLUSION AND CALL TO ACTION

The work of this Commission was completed during a historic time for the criminal justice system, the law enforcement profession, and the nation as a whole. The public safety challenges presented by the COVID-19 pandemic coincided with protests related to high-profile use of force incidents by law enforcement, including the shocking killing of George Floyd. These challenges presented an extreme environment in which the Commissioners and working group members conducted their work. They engaged in numerous meetings, subject matter interviews, and hearing panels, and they participated in report and recommendation deliberations. They accomplished these tasks while also facing considerable demands in their home jurisdictions. Their dedication ensured that this historic charge was met with guidance that would have a lasting impact on law enforcement and justice professionals to “safeguard the public and maintain a positive relationship with their communities.”⁷⁸⁶

Commissioners and working group members spent hundreds of hours conducting an exhaustive review of the most critical issues affecting the United States criminal justice system, including law enforcement and the communities they serve. This report serves as a roadmap for improving criminal justice and law enforcement operations and services. It recommends ways to support the people in law enforcement who honorably serve their communities by properly attending to their health and wellness and training needs, which in turn will better help them respond to victims and more effectively address criminal offenders. The recommendations within this report include ideas that can be immediately adopted by law enforcement and government officials, as well as proposals that will require financial investments, planning, and a commitment among stakeholders outside of the law enforcement profession.

Where possible, Commissioners strived to identify those who should implement a particular recommendation. Law enforcement leaders, managers, front-line officers, and deputies have an important role to play in the adoption of most recommendations, such as making officer health and wellness a priority and thoughtfully embracing and maximizing cutting-edge technologies. Law enforcement is directed to action in many of the Commission’s recommendations. However, they do not singularly possess the key to unlocking sound solutions to the myriad of public safety challenges facing our nation.

Federal agencies also serve an integral role in the criminal justice system. They direct existing and new funding, set policy and direction, and provide other support. Examples of this are reflected throughout the report and in the recommendations directed to one or more federal entities. These types of examples also include providing tailored resources to rural and tribal law enforcement. In some cases, new or augmented legislation or Congressional action will be required, including ways to improve homeland security and preserve lawful access, which is necessary to obtain electronic evidence for the investigation and prosecution of threats to public safety. Accordingly, some recommendations are directed to Congress.

State and local elected officials have an opportunity to maximize the important role they play in strengthening and preserving justice, and they can serve as a bridge to improving offender reentry programs and building behavioral health, addiction, and homeless service systems

⁷⁸⁶ William P. Barr, “Implementation Memorandum for Heads of Department Components,” (official memorandum, Washington, DC: U.S. Department of Justice, 2020), 1, <https://www.justice.gov/ag/page/file/1236906/download>.

for individuals who require these services, which will alleviate the burden these social problems place on the justice system. States and localities are therefore also subject to many of the recommendations.

Finally, communities and individuals play a vital role in the co-production of public safety through law enforcement partnerships with important segments of society, such as the business and faith communities, and by helping to promote respect for the law enforcement profession.

It has been a half century since President Lyndon B. Johnson authorized a Commission to study law enforcement and the administration of justice. President Donald J. Trump's Commission is similarly historic in its sweeping topical scope and in the number of subject matter experts who were engaged in the conduct of "a modern fresh evaluation of the salient issues affecting American law enforcement and the communities they protect."⁷⁸⁷ The work of the Commission will not be remembered for the thousands of hours spent in interviews, hearings, and working group meetings or at remote field visits to inform and draft this report. It will neither be judged by the amount of recommendations nor the number of witnesses that informed them. Instead, the Commission will be measured by the extent to which it results in appreciable improvements to law enforcement and the administration of justice like the Johnson Commission accomplished more than 50 years earlier.

To implement this work, we strongly encourage all stakeholders—state, local, and tribal law enforcement, elected and appointed officials at all levels of government, professional associations and criminal justice advocacy organizations, and the community at large—to look for specific recommendations that can be embraced in concept and implemented in practice, and then to take action. These recommendations will require implementation planning to bring clarity to what lies ahead, who must accept accountability for each action, and the key steps necessary to bring them to fruition. The Commission worked tirelessly to deliver this final report; however, the work to fully realize the potential of the President's Commission for Law Enforcement and the Administration of Justice has just begun.

⁷⁸⁷ Barr, "Implementation Memorandum," 1.

APPENDIX A: LIST OF RECOMMENDATIONS

Chapter 1: Respect for the Rule of Law and Law Enforcement

1.1 Respect for Law Enforcement and the Rule of Law by the Executive Branch

- 1.1.1 Prosecutorial authorities who adopt non-enforcement policies should publish such policies in the interests of transparency.
- 1.1.2 State officials should provide oversight of prosecutors who have blanket policies not to prosecute certain categories of crimes.
- 1.1.3 The doctrine of qualified immunity for law enforcement officers should not be weakened.

1.2 Building Relationships

- 1.2.1 Law enforcement agencies should continue to prioritize community outreach and developing and maintaining strong, positive relationships with various segments of the community, while providing a knowledge of and appreciation for the daily responsibilities of law enforcement.

1.3 Promoting Transparency and Accountability When Officers Use Force

- 1.3.1 Law enforcement agencies should have well-documented and publicly available protocols for conducting administrative investigations of alleged officer misconduct and any uses of force.
- 1.3.2 Law enforcement agencies should publicly disseminate and educate the community on all use-of-force policies and procedures, including protocols for criminal and administrative investigations.
- 1.3.3 States should enact legislation that requires law enforcement agencies to have an independent, external agency that has met minimum training and accreditation standards conduct the criminal investigation of use-of-force incidents that result in death or serious bodily injury.

1.4 Public Outreach

- 1.4.1 Law enforcement agencies should prioritize community outreach and developing and maintaining strong, positive relationships with various segments of the community, while providing knowledge of and appreciation for the daily responsibilities of law enforcement.
- 1.4.2 New prosecutors should be trained on the work of law enforcement officers.
- 1.4.3 Law enforcement agencies should develop and maintain a strong social media presence and a comprehensive public outreach plan to consistently deliver accurate and timely messaging to the public.

- 1.4.4 Law enforcement agencies should ensure that their social media technology and strategies are current and constantly updated to remain responsive to their community.

Chapter 2: Victim Services

2.1 Trauma-Informed Approach to and Protection for Crime Victims

- 2.1.1 Local and state law enforcement agencies should enhance their in-house victim assistance programs to improve services to crime victims and increase public safety.
- 2.1.2 The Peace Officers Standards and Training agency in each state should require the state's basic academy curriculum and continuing education courses include training on trauma-informed care, victim services, state's victims' rights laws, and the role of crime victim compensation.
- 2.1.3 All states should ensure that their Victims Bill of Rights provides the same protection to victims of juvenile crime and adult crime. Victims of crime, regardless of the age of the offender, should have the same rights available to them.

2.2 Victims of Domestic and Intimate Partner Violence

- 2.2.1 State and local governments should adopt family justice center collaborative models.

2.3 Age-Based Victims

- 2.3.1 Local governments should implement ongoing elder abuse training opportunities for first responders, prosecutors, judges, and advocates.
- 2.3.2 Congress should increase funding to support children's advocacy centers and system-based victim advocates trained to work with young victims.
- 2.3.3 Law enforcement agencies should engage with their Internet Crimes Against Children Task Force to further protect youth from exploitation.
- 2.3.4 Congress should increase funding to support local coordinated community response teams.

Chapter 3: Alleviating the Impact of Social Problems on Public Safety

3.1 Rebuilding Behavioral Health Treatment Services in the Community

- 3.1.1 State and local governments should implement or enhance co-located, comprehensive, one-stop-shop systems of care to screen, assess, and treat people with mental illness and substance use disorders that meets the demand of the community, including criminal defendants.
- 3.1.2 State and local governments should develop multi-service centers to provide triage and connections to longer-term care for people with mental health disorders, with substance use disorders, and who are homeless.
- 3.1.3 Congress should eliminate Medicaid's institutions for mental disease exclusion and Medicaid's inmate exclusion policy.

- 3.1.4 Local governments should develop solutions to collaborate on data collection and data-informed collaborations to optimize accountability and target resources to assess and understand the problem, and plan and implement collective evidence-based community-supported strategies, when possible.
- 3.1.5 Congress should fund the Department of Health and Human Services to increase the awareness capacity, quality, uniformity, and coverage of 211 and 988 services nationwide to reduce the burden of call response in situations involving the police.

3.2 Law Enforcement's Role and Responsibilities to Address Social Problems

- 3.2.1 States should develop policies and baseline training for local call takers for all N11 codes (e.g., 911, 211, 411, or 311). These policies should include procedures to effectively triage calls for individuals experiencing mental illness, substance use disorders, and homelessness during a crisis or a non-crisis situation.
- 3.2.2 Law enforcement agencies should have policies and procedures specifying officer response protocols for calls for service that involve individuals with a mental health disorder or substance use disorder or those who are homeless, including the integration of behavioral health professionals and other community services providers.
- 3.2.3 Law enforcement agencies should develop a training program for contact with individuals with a mental health disorder or substance use disorder or those who are homeless.

3.3 Improving State Court Responses to Social Problems

- 3.3.1 States should expand their use of treatment courts, provide oversight to ensure adherence to the model, and provide funding for treatment and service specialists.
- 3.3.2 States should adopt programs to reduce the bottleneck of the process for competency restoration to stand trial.
- 3.3.3 The Department of Justice should examine how local laws and policies that decriminalize or reduce sanctions for drug use or activities related to homelessness impact law enforcement and public safety.

3.4 Prioritizing Treatment in Corrections

- 3.4.1 Jails should screen every individual booked into the facility for substance use disorder and mental health disorder. Jails should follow up with a full assessment for anyone who screens positive.
- 3.4.2 Correctional facilities should provide evidence-based treatment for inmates with behavioral health disorders while they also address the inmates' criminal behaviors and trends.

Chapter 4: Juvenile Justice and Youth Crime

4.1 The Role of Law Enforcement and Detention/Corrections Staff

- 4.1.1 Criminal justice professionals who interact with juvenile offenders should receive specialized training.

4.2 The Need for Accountability

- 4.2.1 Congress should reinstitute funding for the Juvenile Accountability Block Grants Program.
- 4.2.2 Law enforcement agencies should implement the Office of Juvenile Justice and Delinquency Prevention's Comprehensive Gang Model.
- 4.2.3 States should delay the automatic expungement of juvenile arrest and court records until adulthood. Instead, states should implement limited access relief, which allows criminal justice system stakeholders access to offender history while maintaining confidentiality.

4.3 Risk and Needs Assessment

- 4.3.1 States should study, test, and implement a standardized assessment tool at both the state and local levels to determine risk and needs for juveniles entering a juvenile justice system.

4.4 Enhancing Engagement in Support of Prevention and Early Intervention

- 4.4.1 Law enforcement and their local school system should create and implement a memorandum of understanding so that school resource officers and school personnel train, learn, and respond collectively on issues confronting their individual school populations.
- 4.4.2 Counties that are responsible for the prosecution of juvenile delinquency should form a youth service commission as part of their juvenile justice continuum.
- 4.4.3 Law enforcement agencies, community partners, and the private sector should partner to create agency-wide mentoring initiatives that engage youth and promote law enforcement–youth interactions.
- 4.4.4 Law enforcement and juvenile justice-serving agencies should include child internet safety education as a primary prevention tool.

4.5 Training and Professionalizing the Juvenile Justice System

- 4.5.1 States should provide tailored training to prosecutors, law enforcement executives, and court personnel on the importance of juvenile justice, the impact juvenile justice has on community safety, and the unique role each has to play in addressing juvenile offending and effective adjudication.

Chapter 5: Reentry Programs and Initiatives

5.1 Risk and Needs Assessment Tools

- 5.1.1 Jails and prisons should implement and standardize risk and needs assessment tools modeling the First Step Act to inform programming and positive reentry outcomes. These tools should be administered upon entry to correctional facilities and on a regular, recurring basis during and after incarceration, if released onto community supervision.

5.2 Reentry Programming for Jails and Prisons

- 5.2.1 Jails and prisons should allocate resources to recidivism reduction programs.

- 5.2.2 Jails and prisons should develop incentives to increase participation in recidivism reduction programs, and they should also develop technology solutions to facilitate these programs. These could include tele-health and tele-therapy programs, as well as technologies that could support educational and job-related skill-building.
- 5.2.3 Jails and prisons should develop unique reentry and reintegration program offerings for specific populations, including veterans, parents, and women.

5.3 Transition Planning and Release

- 5.3.1 State legislatures, in collaboration with criminal justice leaders, should review, identify, and eliminate legislation and regulations that pose barriers to successful reentry.
- 5.3.2 States or counties should establish reentry councils—in collaboration with service agencies, nonprofit organizations, and private businesses—to enhance the development, coordination, and success of jail and prison reentry initiatives.
- 5.3.3 The Departments of Justice, Housing and Urban Development, and Agriculture should develop housing strategies for people who were formerly incarcerated that increase positive reentry outcomes of jail and prison reentry initiatives.

5.4 Community Reintegration and Supervision

- 5.4.1 Community supervision agencies should adopt the case management model and initiate plans that are consistent with the plans developed by jails and prisons, tailored appropriately, and include engagement strategies to reduce recidivism.

Chapter 6: Criminal Justice System Partners

6.1 Law Enforcement

- 6.1.1 Local prosecutor's offices, where practical, should arrange for 24/7 access to prosecutors who can provide law enforcement officers real-time assistance to address issues relating to search and seizure and serving warrants. In rural areas, regional partnerships could be a practical solution to overcome personnel shortages and geographic limitations.
- 6.1.2 States should consider permitting discretionary summonses by law enforcement officers.

6.2 Prosecution and Defense

- 6.2.1 States should establish procedures that foster transparency, victim input, and judicial oversight over guilty plea resolutions to ensure plea agreements serve justice.
- 6.2.2 United States Attorneys' offices should develop regular systems of collaboration with state prosecutors for serious crimes that are eligible for prosecution in either the state or federal jurisdiction.
- 6.2.3 States should develop specific and special protocols for investigating and prosecuting law enforcement use-of-force incidents that result in death or serious bodily injury.

6.3 Courts

- 6.3.1 The Department of Justice should examine the feasibility of establishing voluntary certification programs for treatment court judges. If found feasible, the Department should support the development of judicial certification standards.
- 6.3.2 The Department of Justice should evaluate the effectiveness of all types of treatment courts, including mental health, veterans, and homelessness courts.
- 6.3.3 The Department of Justice should support the development of treatment court models or protocols for populations with co-occurring problems.
- 6.3.4 The Department of Justice should provide funding to examine the cost, efficiency, and effectiveness of various forms of indigent defense. This research should consider factors that vary at the local level, such as population density or volume of criminal caseload.
- 6.3.5 The Department of Justice should provide funding to states and localities to determine if jurisdictions that have adopted a holistic defense approach have realized improved outcomes and efficiencies.
- 6.3.6 Criminal justice agencies should develop the capacity to engage in videoconferencing for selected court proceedings, including arraignments. Criminal justice agencies should purchase video technology and update the infrastructure necessary to support virtual courtrooms.
- 6.3.7 State and local jurisdictions should amend laws or administrative rules to allow videoconferencing.

6.4 Detention and Corrections

- 6.4.1 Any jurisdiction planning to eliminate its system of cash bail should first establish a comprehensive pretrial release program that addresses public safety concerns—particularly for victims and witnesses—and potential flight risk. Such programs should use a validated risk assessment tool that sets realistic conditions of release reflecting the seriousness of the charged offense(s) and should ensure that meaningful and effective sanctions for violations of pretrial release are defined and enforced.
- 6.4.2 The Department of Justice should define the minimum constitutional standards for cash bail systems based on U.S. Supreme Court and federal circuit court precedent. This definition should specify the due process and equal protection requirements.
- 6.4.3 The Department of Justice should commit funding to research the nature and length of detention of defendants who are held in jails to accurately assess the seriousness of their charges, assess how much danger they pose to the community, and determine how often new offenses are committed by defendants who are out on bail.
- 6.4.4 Congress should enact federal legislation that would permit state prison systems to use cell phone jamming equipment in correctional facilities.

6.5 Criminal Justice Coordinating Councils

- 6.5.1 Local and state governments should develop or contribute to statewide or regional criminal justice coordinating councils.

Chapter 7: Business and Community Development

7.1 Law Enforcement and Industry Collaborative to Reduce Crime

- 7.1.1 Law enforcement agencies should partner with public and private entities to gain access to public-facing, privately owned cameras to serve as a deterrent to crime and to assist criminal investigations.
- 7.1.2 The Department of Justice should establish a National Public Safety Officers Council that is composed of representatives from the business community and federal, state, local, and tribal law enforcement. This council should meet twice per year to address current and emerging public safety threats and needs and hold an annual summit with the White House.
- 7.1.3 State and local governments should build collaborative relationships with higher education institutions to identify and offer college classes and degrees that better prepare future and current law enforcement officers.
- 7.1.4 Local governments should create collaborations with area employers to provide summer employment and paid internship opportunities for youth, with a focus on disadvantaged youth.
- 7.1.5 Local governments should collaborate with area employers to provide employment opportunities for individuals who are transitioning out of incarceration or secured detention.

Chapter 8: Reduction of Crime

8.1 Gangs and Criminal Organizations

- 8.1.1 Law enforcement agencies should fund crime analysts to identify violent crime trends among individuals and groups.
- 8.1.2 Local law enforcement should coordinate joint strategies with other state and federal law enforcement agencies to combat gang violence, to include forming and participating in regionalized gang task forces.
- 8.1.3 Local law enforcement, in collaboration with federal law enforcement, should implement targeted enforcement and patrols in designated and confined geographical areas to gather, collect, and share intelligence on known gang members for arrest and prosecution.
- 8.1.4 Federal, state, local, and tribal governments should increase funding for community-oriented crime reduction programs focused on both adult and youth populations.

8.2 Illegal Possession, Use, and Trafficking of Firearms

- 8.2.1 Federal and local law enforcement agencies should partner to increase investigations and prosecutions of individuals who illegally possess, use, and traffic firearms.

- 8.2.2 Law enforcement agencies should collect and quickly process ballistics evidence in all shootings and gun recoveries, regardless of whether there is an immediately identifiable offender or victim.
- 8.2.3 Congress should provide additional funding to the Department of Justice to increase the number of National Integrated Ballistic Information Network (NIBIN) sites, and the Department of Justice should provide additional grant funding to the Local Law Enforcement Crime Gun Intelligence Centers Integration Initiative.
- 8.2.4 Congress should continue to fund the NIBIN National Correlation and Training Center.
- 8.2.5 Congress should enact a federal firearms trafficking statute that strengthens penalties for fraudulent and illegal firearm transfers.
- 8.2.6 The Department of Justice should increase the sworn complement of Bureau of Alcohol, Tobacco, Firearms and Explosives special agents.
- 8.2.7 Congress should provide additional funding and guidance to help state agencies improve the accuracy of reporting of mental health records and protection orders to the National Instant Check System (NICS).
- 8.2.8 The Federal Bureau of Investigation should include nonfatal shootings as a separate category in the National Incident-Based Reporting System (NIBRS).

8.3 Drug Trafficking

- 8.3.1 Local law enforcement should actively participate in a regional high-intensity drug trafficking area or task forces led by the Drug Enforcement Administration.
- 8.3.2 Sheriffs should partner with local and state law enforcement to implement flexible cooperative criminal highway interdiction efforts in contiguous counties that cover major national or state highways designated as drug transportation corridors.
- 8.3.3 Congress should permanently schedule the entire class of fentanyl and related analogues.
- 8.3.4 The federal government should develop a national automatic license plate reader clearinghouse for all data from automatic license plate readers.
- 8.3.5 The U.S. Postal Service and private parcel delivery services should increase their ability to investigate the transportation of illegal drugs.

8.4 Human Trafficking and Child Exploitation

- 8.4.1 The Department of Justice should provide training and technical assistance for state, local, and tribal law enforcement related to the sexual exploitation and trafficking of children in order to assist the investigation and prosecution of traffickers and provide services to victims. This training should incorporate information on how traffickers are using technology.
- 8.4.2 The federal government should develop a national database on juvenile human trafficking victims.

8.5 Domestic Violence and Sexual Assault

- 8.5.1 Local law enforcement agencies should partner with victim service providers to develop or enhance safety protocols related to obtaining or enforcing orders of protection.
- 8.5.2 U.S. attorney's offices should use 18 U.S.C. § 922(g)(8) and (9) to increase the prosecution of domestic violence-related firearms cases.
- 8.5.3 States should establish laws and procedures for safe and accountable firearms transfer pursuant to domestic violence-related convictions or issuance of protective orders.
- 8.5.4 The Department of Justice should increase grant funding to provide assistance to forensic labs for personnel, training, and case management software to aid in the investigation and prosecution of criminal cases.

Chapter 9: Homeland Security

9.1 Identifying the Nature of the Threat: International and Domestic Terrorism

- 9.1.1 Congress should enact legislation that guarantees law enforcement agencies equal and lawful access to publicly posted data.
- 9.1.2 State and local authorities should replicate the federal uniform prison release guidelines so state parole officers can better monitor inmates who have a connection to terrorism. These guidelines should include notifying the local Joint Terrorism Task Force and governors so they can alert their respective criminal justice authorities.
- 9.1.3 State, local, and tribal law enforcement should voluntarily track and share their domestic terrorism incidents with the Federal Bureau of Investigation.

9.2 Information-Sharing and Partnerships

- 9.2.1 Congress should authorize and appropriate annual funding for the Department of Justice and the Department of Homeland Security to enable federal law enforcement agencies to establish full-time positions at the National Network of Fusion Centers.
- 9.2.2 Congress should authorize and appropriate funding for a dedicated Department of Homeland Security Fusion Center Grant Program that provides funds directly to states and local jurisdictions comprising the National Network of Fusion Centers.
- 9.2.3 The Department of Homeland Security and the Federal Bureau of Investigation should provide intelligence training to state and local authorities that focuses on integrating criminal intelligence with national intelligence to better protect the nation.
- 9.2.4 The Intelligence Community should develop a unified strategy to increase awareness of foreign malign influence threats that have an impact on state and local jurisdictions and the private sector.
- 9.2.5 The Department of Homeland Security should survey state, local, and tribal law enforcement; fire departments; and other emergency medical services information systems that may be used to improve reporting and analysis of threats of mass casualty attacks and threats to school safety.

9.3 Hardening Vulnerabilities

- 9.3.1 Congress should provide additional funding to federal agencies to construct and maintain a comprehensive border security system. This funding should support immigration enforcement detention capacity and space, technological infrastructure, and combined durable physical and technology systems that help secure national borders.
- 9.3.2 Congress should enact legislation that raises the penalty for illegally entering the United States from a misdemeanor to a felony. This legislation should also clearly state that being in the United States without legal authorization is a continuing offense, and that the statute of limitations does not begin from the time the alien illegally entered the United States.
- 9.3.3 Congress should enact legislation to codify the authority of state and local law enforcement agencies to briefly maintain custody of prisoners and inmates for whom there is reason to believe they are aliens who could be removable from the United States. These inmates should be delivered to Immigration and Customs Enforcement's custody to face immigration removal procedures after serving their state sentence.
- 9.3.4 Congress should enact legislation that provides an authorization and an increased appropriation for the Department of Homeland Security's Operation Stonegarden Grant Program, which provides funding for border operations and other resources geared for law enforcement agencies along the national border.
- 9.3.5 Congress should authorize and appropriate funds to the Department of Justice to establish a grant program tailored to the Southwest Border. This program should address the public safety, national security, and humanitarian issues that are prevalent in border communities. This funding should go directly to local law enforcement agencies and not through the state authorities for dissemination.
- 9.3.6 The legislative and executive branches should institutionalize a formal mechanism to ensure that border sheriffs and other key local stakeholders help formulate policy decisions that have an impact on the Southwest Border and Northern Border.
- 9.3.7 The Federal Bureau of Investigation and Department of Homeland Security's Cybersecurity and Infrastructure Agency should inform state, local, and tribal government technological procurement offices regarding companies and components known to carry cybersecurity risks.

Chapter 10: Grant Programs

10.1 The Federal Grant-Making Process and Application and Grant Management Systems

- 10.1.1 The Department of Justice grant-making components should develop a common, standardized data- and information-sharing capability to support the grants management lifecycle for both internal and external users.
- 10.1.2 The Department of Justice grant-making components should develop a common, standardized set of what data fields are to be collected, subjected to analytics, and reported.

- 10.1.3 The Department of Justice grant-making components should adhere to plain language requirements that clearly convey how grantees should meet the program goals and objectives and to reflect the overall performance of the grantee.

10.2 Use of Federal Funds

- 10.2.1 The Department of Justice should reduce the bureaucracy involved in grant program application and administration, to allow state, local, and tribal governments to efficiently and effectively address their criminal justice needs. The Department should eliminate or reduce unnecessary state administrative pass through processes from its grant program administration.
- 10.2.2 Congress should periodically assess and, if necessary, adjust the statutory formula of grant programs when they are reauthorized to ensure that they still meet their intended need and that they are equitably distributed across the nation.
- 10.2.3 The Department of Justice should establish a comprehensive training program to inform state, local, and tribal law enforcement agencies about grant application requirements, grant application preparation, reporting responsibilities, monitoring, and other competencies.
- 10.2.4 Department of Justice grant-making components should provide assistance to grant recipients on how to sustain federally funded programs and items after the grant period is finished.

Chapter 11: Technology

11.1 Lawful Access

- 11.1.1 Congress should require providers of communications services and electronic data storage manufacturers to implement strong, managed encryption for stored data and data in motion while ensuring lawful access to evidence pursuant to court orders.
- 11.1.2 Congress should implement regulations and laws that require internet service providers and companies that provide commercial services to retain certain records and set record retention periods.
- 11.1.3 The FBI should establish a Lawful Access Technology Resource Center. The FBI should restructure the National Domestic Communications Assistance Center's Executive Advisory Board to allow law enforcement executives from federal, state, local, and tribal law enforcement agencies to address specific and sensitive law enforcement matters, including the impact and development of emerging technologies on law enforcement operations.

11.2 Implementing New Technologies

- 11.2.1 Law enforcement should consider the use of unmanned aircraft systems as a tool for fighting crime.
- 11.2.2 Law enforcement agencies should consider implementing acoustic gunshot detection technologies to combat firearm crime and violence.

11.2.3 The Department of Justice should provide funding to expand real time crime centers (RTCCs) throughout the nation and develop technology tools that provide RTCCs with the ability to identify and disseminate crime intelligence, analyze crime patterns, and develop strategies for reducing crime.

11.2.4 Law enforcement agencies should thoroughly consider the full range of potential legal, constitutional, and civil liberties and privacy implications associated with generating, acquiring, or using a new technology or data set.

11.3 Facial Recognition Technology

11.3.1 Federal and state governments should further investigate the use of facial recognition technology to help prevent and investigate criminal activities.

Chapter 12: Data and Reporting

12.1 Federal Data

12.1.1 The president should direct the Office of Management and Budget to conduct a one-time review of criminal justice data collections across the government to identify duplication of data collection.

12.2 Data Collection and Reporting Methods

12.2.1 States should enact legislation that requires criminal justice agencies to collect standardized criminal justice data for reporting to the state and federal governments.

12.3 Evidence-Based Policing

12.3.1 Evidence-based policing should be incorporated into training curricula, as well as everyday practices, policies, and procedures, by law enforcement academies, state Peace Officer Training and Standards, and law enforcement agencies.

12.3.2 Congress should provide funding to create a College of Policing to provide and set standards for evidence-based policing education and training for law enforcement officers.

Chapter 13: Rural and Tribal Law Enforcement

13.1 Rural Law Enforcement

13.1.1 States should develop a “pay the backfill” reimbursement program so personnel in nearby agencies can cover for officers in rural and tribal jurisdictions to attend job-critical trainings.

13.1.2 The Department of Justice should develop partnerships (through memoranda of understanding) between Federal Bureau of Investigation labs and state forensic labs—particularly in rural areas—to reduce wait times for results on evidence tested.

13.1.3 Rural and tribal school districts should consider enabling capable, trained, and specially selected school personnel to prevent, recognize, and respond to crime and violence

on campus. School administrators working with law enforcement should develop, review, and routinely practice emergency plans that outline procedures for faculty and staff during a critical incident on campus.

- 13.1.4 The Department of Justice should prioritize funding for rural and tribal law enforcement agencies to develop computer-aided dispatch, records management systems, and in-car computer systems that leverage their compatibility with national, state, regional, tribal, and local information sharing systems. Additionally, funding should be disbursed for FirstNet Authority to provide secure and reliable data access to in-car systems.
- 13.1.5 Congress should review and ensure existing public safety grant programs through the Department of Justice are equitably allocated to rural and tribal law enforcement agencies. The federal agencies should also examine the feasibility, costs, and benefits of expanding the performance periods and lowering the match requirements for grants awarded to rural and tribal law enforcement agencies.

13.2 Tribal Law Enforcement

- 13.2.1 Congress should allocate sufficient, predictable, and dedicated funding for the Department of Justice's Tribal Access Program.
- 13.2.2 Federal agencies should award competitive Indian Country criminal justice grants as permanent, recurring base funding for tribal law enforcement and justice services.
- 13.2.3 The Department of Justice should designate specific Drug Enforcement Administration agents to work in Indian Country. These designated agents should work together with officers from the Bureau of Indian Affairs, the Federal Bureau of Investigation, and local and tribal law enforcement to reduce the supply of drugs that are fueling violent crime on tribal land.
- 13.2.4 Congress should amend relevant statutes to make the transportation, coercion, or enticement of an American Indian or Alaska Native into human trafficking a federal crime.
- 13.2.5 The Department of Justice should provide grant-based incentives for local, state, and tribal agencies to enter into cross-deputization agreements to assist participating agencies in providing seamless law enforcement services in Indian Country.

13.3 Law Enforcement Needs of Alaska

- 13.3.1 Congress should allocate permanent base funding to meet the public safety needs of Alaska. This funding should address the inadequate law enforcement staffing.
- 13.3.2 Congress should provide funding to develop and maintain infrastructure for rural law enforcement services in Alaska through a federal agency.

Chapter 14: Law Enforcement Health and Wellness

14.1 Physical Health

- 14.1.1 Law enforcement agencies should establish a department-wide health and fitness program with both financial and nonfinancial incentives.

14.2 Mental Wellness

- 14.2.1 Law enforcement agencies should require mental health training, both in academy training and recurring in service training, for their personnel.
- 14.2.2 Law enforcement agencies should ensure that mental health resources and services are accessible and confidential.
- 14.2.3 Law enforcement agencies should establish policies that mandate an annual mental health check for all sworn law enforcement officers and relevant civilian staff. Similarly, mandatory mental health checks should be required after a critical incident or traumatic incident.
- 14.2.4 States should provide funding for peer support training and set certification standards for peer support members and training.
- 14.2.5 Congress should enact legislation that protects the authority or commission that an officer has when they request assistance for mental health issues.
- 14.2.6 Congress should strengthen Health Insurance Portability and Accountability Act provisions regarding medical records and treatment notes of first responders.
- 14.2.7 The Department of Homeland Security should develop a wellness unit within the Incident Command System.
- 14.2.8 Congress should establish and fund a national law enforcement crisis hotline.
- 14.2.9 Congress should amend the definition of "injury" in the Federal Employees' Compensation Act to include post-traumatic stress disorder and other mental health issues incurred by employees in the performance of law enforcement public safety duties.

14.3 Law Enforcement Safety

- 14.3.1 The Department of Justice should further implement a national, comprehensive database for law enforcement officer injuries and treatment. The data should be analyzed and released in a timely manner.
- 14.3.2 The Department of Justice should expand the National Blue Alert Network to all 50 states.
- 14.3.3 Congress should pass legislation that would create a new federal offense for those who deliberately target law enforcement officers with the intent to kill.
- 14.3.4 A National Law Enforcement Safety Board should be established that investigates line-of-duty deaths. This board should effectively promote a higher level of safety in law enforcement.

Chapter 15: Law Enforcement Recruitment and Training

15.1 Recruitment

- 15.1.1 The federal government should establish a comprehensive educational benefit for individuals who commit to a law enforcement career.

- 15.1.2 Law enforcement agencies should consider their internally identified priorities along with the priorities of the community and collaboratively work with stakeholders to conduct a thorough assessment of what critical characteristics and traits qualify an individual as a candidate for employment with their agency. This should include examining their policies concerning tattoos, grooming standards, and past drug use.
- 15.1.3 Law enforcement agencies should develop a comprehensive marketing strategy for recruitment.
- 15.1.4 Law enforcement agencies should assure the validity of, and periodically audit, all testing instruments.
- 15.1.5 Law enforcement agencies should consider offering recruitment and retention incentives.
- 15.1.6 Law enforcement agencies should reduce the time it takes to apply for and receive an offer from an agency.

15.2 Retention

- 15.2.1 Law enforcement agencies should increase staff engagement in the agency, allowing for both top-down and bottom-up input into policies, procedures, and operations.
- 15.2.2 Law enforcement agencies should develop formal procedures for exit interviews to identify reasons for leaving.
- 15.2.3 Law enforcement agencies should examine their salary and benefit packages and incentive programs to ensure that they are competitive in the field.

15.3 Training

- 15.3.1 The Department of Justice should collaboratively work with stakeholders to develop national minimum standards for annual online and in-person continuing education requirements. These should include the most significant areas and critical topics required, as well as the minimum training hours required for each.
- 15.3.2 The Department of Justice should consider establishing a national law enforcement training center.
- 15.3.3 The Department of Justice should develop and regularly update a comprehensive, standardized, and immersive training programs for law enforcement officers on stops, questioning, searches, and seizures.

15.4 Use-of-Force Training and Policies

- 15.4.1 Law enforcement agencies should include use-of-force models in their policies.
- 15.4.2 Law enforcement agencies should establish a use-of-force review panel that meets annually to conduct a thorough review of their use-of-force policies.

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APPENDIX B: COMMISSIONERS AND EXECUTIVE APPOINTMENTS

CHAIR PHIL KEITH

DIRECTOR, OFFICE OF COMMUNITY
ORIENTED POLICING SERVICES



Phil E. Keith was appointed in April of 2018 by the president and attorney general to serve as the sixth director of the U.S. Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS Office). As director, his priorities are assisting the attorney general in carrying out DOJ initiatives, reducing the burden on grantees, and serving as a sounding board for state, local, tribal, and territorial law enforcement agencies.

He has 50 years of experience in the fields of criminal justice, public safety, and business administration. He has held numerous high-level policy-making positions in law enforcement, public safety, and emergency management preparedness. These policy-making positions include the Senior Advisory Council for DHS, vice president and president of the FOP Volunteer Lodge #2, commissioner for the Commission on Law Enforcement Accreditation, commissioner for the Tennessee Peace Officers Standards and Training Commission, U.S. Conference of Mayors Advisory Task Force on the Crime Control Act of 1993, National Community Policing Resource Board for the COPS Office (1996), DOJ Intelligence Coordinating Council, National AMBER Advisory Committee for DOJ/OJP, and the Tennessee Municipal Technical Advisory Service.

He has 34 years in active law enforcement service, with nearly 17 years as chief of police for the Knoxville, Tennessee, Police Department (KPD). Under his leadership, the KPD became nationally accredited by the Commission on Accreditation for Law Enforcement Agencies, and he further initiated the accreditation of the KPD Training Academy and Communications District, making Knoxville the first community to receive accreditation in all three disciplines. During his active law enforcement tenure, he demonstrated his leadership in the development and implementation of a number of national initiatives, including the Integrated Criminal Apprehension Program, Missing and Exploited Children, Internet Crimes Against Children, the DOJ Law Enforcement Ethics Task Force, the President's Initiative on Family Justice Centers, the Domestic Violence and Violence Against Women Initiative, the First OJJDP Symposium on Human Trafficking, the National School Safety Initiative, and the Organized Crime Initiative.

Mr. Keith served as the principal project director for the Major Cities Chiefs Association and has influenced law enforcement and public safety policy development and implementation throughout the United States. His experience in operational studies and activities includes conducting more than 15 trauma-based victims' roundtables for the DOJ and conducting numerous patrol staffing studies in large and small agencies, including Los Angeles, Charlotte, Del Ray Beach, and many others. He served as the principal author for the Bureau of Justice Assistance Law Enforcement Leadership Initiative and published numerous other articles and technical reports. Mr. Keith has also performed more than 150 organizational assessments for law enforcement agencies and conducted the first national survey of best practices and staffing for the U.S. Fire Administration.

Throughout his career, he has been recognized for contributions and leadership, including being recognized as Officer of the Year for the KPD, Law Enforcement Educator of the Year by the Southeastern Criminal Justice Educators Association, and Law Enforcement Planner of the Year by the International Law Enforcement Planners Association (which award was subsequently renamed in his honor); for Excellence in Public Service by the American Society for Public Administration and by the Frederick Douglass Family Foundation as the first recipient of the Human Rights Award for national leadership in combatting modern-day slavery; and receiving the John and Revé Walsh Award from the governor of Florida and the Law Enforcement Leadership Award from the National Center for Missing and Exploited Children.

Mr. Keith earned his undergraduate degree in criminal justice and business administration from East Tennessee State University and an M.S. degree in education from the University of Tennessee. He is also a graduate of the FBI National Academy (110th session) and the FBI National Executive Institute (thirteenth session).

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VICE CHAIR AND COMMISSIONER KATHARINE SULLIVAN

PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL,
OFFICE OF JUSTICE PROGRAMS



Katharine “Katie” Sullivan was appointed by Attorney General William Barr as principal deputy assistant attorney general of the Office of Justice Programs in June 2019. She leads the Department of Justice’s (DOJ) principal funding, research, and statistical component, overseeing more than \$5 billion in grants and other resources to support state, local, and tribal criminal and juvenile justice activities and victim services.

Ms. Sullivan previously served on the White House Domestic Policy Council and as acting director of the DOJ Office on Violence Against Women, where she directed grants, training, and other activities that reduce and respond to domestic violence, dating violence, sexual assault, and stalking.

Before joining the DOJ, Ms. Sullivan served as a Colorado state trial court judge in the state’s Fifth Judicial District, where she presided over misdemeanor, felony, and civil matters including domestic violence cases, sexual assault sentencings, and cases involving drugs and alcohol. She heard 45,000 cases during her 11 years on the bench and also implemented and presided over a drug court and a driving under the influence (DUI) court.

Prior to becoming a judge, Ms. Sullivan served as a deputy district attorney in Colorado, prosecuting both felony and misdemeanor cases. She worked closely with law enforcement and participated in a community-based collaborative domestic violence task force.

Earlier in her career, Ms. Sullivan spent time in private practice, serving as a member of Colorado’s Victim Compensation Board, where she trained law enforcement officials across the nation on risk and liability in jails and prisons. She also served on the State Judicial Ethics Board.



DAVID BOWDICH

DEPUTY DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

David Bowdich has been deputy director of the Federal Bureau of Investigation (FBI) since March 2018. In this role, he oversees all FBI domestic and international investigative and intelligence activities.

In April 2016, Mr. Bowdich assumed the position of associate deputy director of the FBI, where he oversaw the management of all FBI personnel, budget, administration, and infrastructure. Prior to this appointment, he served as

assistant director in charge of the FBI's Los Angeles Field Office from December 2014 to April 2016.

From September 2012 to December 2014, Mr. Bowdich served as the special agent in charge of the Counterterrorism Division in the Los Angeles Field Office. In that role, he led the Joint Terrorism Task Force, which was responsible for all international and domestic terrorism investigations in the Los Angeles region, surrounding counties, and the extraterritorial region of Southeast Asia. Additionally, Mr. Bowdich was responsible for all crisis management and response assets, which included the SWAT Team, Evidence Response Team, Hazardous Evidence Response Team, Underwater Search and Evidence Response Team, Rapid Deployment Team, Crisis Management Team, and special agent bomb technicians.

Mr. Bowdich began his career as an FBI special agent in 1995 in the San Diego Field Office, where he investigated violent crimes and gangs and served as a SWAT Team operator and sniper. In 2003, Mr. Bowdich was promoted to FBI Headquarters in Washington, DC, where he served in the Criminal Investigative Division for one year and the Director's Office for one year. Mr. Bowdich returned to San Diego and supervised a multiagency gang task force for almost four years before being promoted in place to serve as the assistant special agent in charge over all non-white-collar crime criminal violations, the Imperial County Resident Agency, the SWAT Team, and the Evidence Response Team.

JAMES CLEMMONS

SHERIFF, RICHMOND COUNTY, NORTH CAROLINA



Sheriff James "Clem" Clemmons, Jr., currently serves as the sheriff of Richmond County, North Carolina.

His career in law enforcement began when he was hired as a patrol deputy at the Richmond County Sheriff's Office in 1989. In 1991, he was promoted to sergeant and assigned to the Detective Division. Sheriff Clemmons was promoted to lieutenant in 1997 and promoted again in 1998 to captain. He served as a captain in the Sheriff's Office until 2002. On July 7, 2002, Sheriff Clemmons was promoted to the rank of major. He has the distinction of being the first person of color to attain the rank of major in the Richmond County Sheriff's Office. In November of 2010, he was elected sheriff of Richmond County. He is the first person of color to be elected as sheriff in the history of Richmond County and the third sheriff elected in 60 years. He is the chief law enforcement executive in Richmond County.

During his 35-year law enforcement career, Sheriff Clemmons has served in many capacities with the Richmond County Sheriff's Office. He has served as the Commander of the Richmond County Sheriff's Office SRT (Special Response Team) and the Community Police Coordinator for the Town of Dobbins Heights. He has managed the operations of the Civil Division, Patrol Division, jail, and courts.



CHRIS EVANS

CHIEF OF OPERATIONS, DRUG ENFORCEMENT
ADMINISTRATION

D. Christopher "Chris" Evans was permanently appointed in September 2019 as the Drug Enforcement Administration's (DEA) chief of operations and assistant administrator for the operations division. As chief of operations, he commands DEA's global drug enforcement efforts in 240 domestic offices in 23 divisions throughout the United States and 93 foreign offices in 69 countries, as well as DEA's special operations division. In this role, Mr. Evans also serves as the principal

advisor to the DEA Administrator and Deputy Administrator on all matters pertaining to the daily worldwide operations of DEA.

Previously, he served as the first special agent in charge of the Louisville field division. Established on January 1, 2018, under Mr. Evans' leadership, the division serves Kentucky, Tennessee, and West Virginia, strengthening DEA's presence in the Central Appalachia region. In June 2017, Mr. Evans was selected for the position of associate special agent in charge of DEA's Detroit field division, where his area of responsibility encompassed the states of Michigan, Ohio, and Kentucky.

Mr. Evans is a graduate of Rutgers University with a B.A. degree in urban studies and a master's degree in political science. He also received a certificate in senior executive leadership from Georgetown University and has completed the DEA senior executive service leadership program at the University of Notre Dame.

Mr. Evans began his law enforcement career with the Drug Enforcement Administration in 1992 at the Washington field division and then transferred to the Los Angeles field division, where he was later promoted to a supervisory special agent (group supervisor). In this role, he led international investigations targeting crime syndicates conducting worldwide money laundering schemes and international drug operations.

In 2006, Mr. Evans was reassigned to DEA headquarters in Arlington, Virginia, where he was assigned to the operations division, Mexico and Central America section. During this assignment, he represented DEA on the Department of Justice's Committee on International Gangs. Mr. Evans was promoted during his tour at DEA headquarters, and he served a year as the executive assistant to the chief of operations, followed by two years served as the executive assistant to the DEA administrator.

Mr. Evans returned to the Los Angeles field division when he was appointed the assistant special agent in charge in 2010. During his tenure, Mr. Evans also led the establishment of the Los Angeles organized crime drug enforcement task force strike force and served as the first strike force commander.

FREDERICK FRAZIER

CITY COUNCILMAN AT LARGE, MCKINNEY, TEXAS



Frederick Frazier currently serves as an officer in the Dallas Police Department, as well as a city council member for the city of McKinney, Texas. Elected as an at large member in 2019, Council Member Frazier is a 24-year veteran of the Dallas Police Department and spent more than 15 years with the U.S. Marshals Service. He is currently first vice president of the Dallas Police Association and works closely with area law enforcement officials to provide guidance on labor and law enforcement issues.

Council Member Frazier is actively engaged with local, regional, and state politicians through established relationships built while participating in the past four legislative sessions. Council Member Frazier is an alumni of the Leadership McKinney Class of 2012. He is focused on giving back to the community and is a long-time volunteer with Assist The Officer Foundation in its day-to-day operations, fundraising, marketing, and networking to increase public awareness of the organization. He was instrumental in implementing a confidential counseling program specifically designed to assist officers and their families at no cost to them.

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ROBERT GUALTIERI

SHERIFF, PINELLAS COUNTY, FLORIDA

Sheriff Bob Gualtieri began his law enforcement and public service career as a detention deputy working in the Pinellas County Jail in 1982. After attending the police academy, he joined the Dunedin Police Department as a patrol officer and later rejoined the Pinellas County Sheriff's Office as a law enforcement deputy. Over the next 15 years, Sheriff Gualtieri served in many different components of the agency, including several years conducting domestic and international drug trafficking investigations as part of a DEA task force.

Sheriff Gualtieri earned his bachelor's degree from Eckerd College in St. Petersburg and his law degree from Stetson University College of Law. After graduating from Stetson and being admitted to the Florida Bar, Sheriff Gualtieri entered private practice in Tampa, specializing in labor and employment defense. Sheriff Gualtieri is admitted to practice law in all Florida courts, before the U.S. Supreme Court, and before the U.S. Court of Appeals for the Eleventh Circuit and the U.S. District Courts in the Northern, Middle, and Southern Districts of Florida.

Sheriff Gualtieri returned to the Pinellas County Sheriff's Office in 2006 as its general counsel and was appointed chief deputy (second in command) in 2008. Sheriff Gualtieri served in the dual role of general counsel and chief deputy until the governor appointed him sheriff in 2011. He was elected and re-elected sheriff in 2012 and 2016, respectively.

Sheriff Gualtieri is president of the Florida Sheriffs Association (FSA) and serves on the board of directors of the Major County Sheriffs of America (MCSA). He is also an executive fellow for the National Police Foundation and a member of the National Sheriff's Association (NSA), the International Association of Chiefs of Police, and the Police Executive Research Forum.

On a national level, Sheriff Gualtieri has represented the NSA and MCSA while working with U.S. Immigration and Customs Enforcement (ICE) to develop a lawful process that prevents the release of criminal illegal aliens back into the community from our jails.

Following the school shooting at Marjory Stoneman Douglas High School (MSDHS) in February 2018, Governor Rick Scott appointed Sheriff Gualtieri to serve as the chair of the MSDHS Public Safety Commission. The commission issued a 500-page report in January 2019, and Sheriff Gualtieri continues to advocate for more effective school safety measures in Florida and across the country.

For his efforts to enhance school safety and work with ICE to prevent the release of criminal illegal aliens back into our communities, the NSA named Sheriff Gualtieri its 2019 Sheriff of the Year among 3,100 sheriffs nationwide.

During Sheriff Gualtieri's years as sheriff, he has established multiple new initiatives in Pinellas County, many of which are being replicated by other jurisdictions: Pinellas Safe Harbor, an emergency homeless shelter and jail-diversion program that provides services to the homeless and keeps them out of the criminal justice system; the Adult Pre-Arrest Diversion program, which keeps minor crime first-time offenders out of jail; a Mental Health Unit that diverts people to the mental health system and away from the criminal justice system; Operation H.O.M.E. (Habitual Offender Monitoring Enforcement), a countywide effort to reduce teen crime; and a School Guardian Unit to ensure safer K-12 campuses in Pinellas County.

GINA HAWKINS

CHIEF OF POLICE, FAYETTEVILLE, NORTH CAROLINA



Chief Gina V. Hawkins is the chief for the City of Fayetteville, North Carolina, Police Department and has more than 31 years of exceptional law enforcement experience. Chief Hawkins holds a B.S. degree in criminal justice from Georgia State University and an M.S. in management from John Hopkins University. She started her career in 1988 with the City of Atlanta Police Department. While at the City of Atlanta Police Department, Chief Hawkins worked in the Patrol, Crime Analysis, Investigations, and Internal Affairs divisions. She retired as an assistant zone commander from the Atlanta Police Department in 2006 and went on to assist the new police department in the city of Sandy Springs, Georgia—formed on July 1, 2006—as a commander. Chief Hawkins was instrumental in establishing an efficient, forward-thinking police department, and commanded units including Patrol, Internal Affairs, and Administrative Services. In 2013, Chief Hawkins joined the Clayton County Police Department as a deputy chief of police, where she presided at different times over both the Operational Command and the Support Service Command of the department. This provided her the experience of commanding every aspect of the Clayton County Police Department.

Chief Hawkins is a graduate of the FBI National Associates Academy, 252nd session, and was chosen to be a delegate in the prestigious twenty-third Georgia International Law Enforcement Exchange (GILEE), where she travelled to Israel with other law enforcement executives to study and evaluate the Israeli Police Force. Chief Hawkins is also a 2010 graduate of the Senior Management Institute for Police (SMIP) presented by the Police Executive Research Forum (PERF).

Chief Hawkins received the *We Are Clayton Magazine* 2016 Living Legend Award and was awarded a place on Georgia's 100 Most Powerful and Influential Award by Women Looking Ahead News in 2014. Chief Hawkins was awarded the North Carolina Dogwood Award by Attorney General Joshua H. Stein for pursuing community solutions to North Carolina's most pressing safety issues. Chief Hawkins is a member of the International Association of Chiefs of Police, the North Carolina Association of Chiefs of Police, the North Carolina Police Executive Association (NCPEA), the National Organization of Black Law Enforcement Executives (NOBLE), the National Association of Women Law Enforcement Executives (NAWLEE), and the Hispanic American Police Command Officers Association (HAPCOA).



REGINA LOMBARDO

ACTING DIRECTOR, BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES

Regina Lombardo is the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) first female acting director. Previously, she served as the acting deputy director, with Head of Agency responsibilities. Ms. Lombardo's duties included day-to-day operations for the entirety of ATF, which is charged with enforcing laws and regulations related to firearms, explosives, arson, and alcohol and tobacco trafficking.

A member of the Senior Executive Service and an experienced law enforcement professional, Ms. Lombardo began her law enforcement career in 1992 as a special agent in the ATF Miami Field Division. Rising through the ranks at ATF, she served in many management positions, including assistant director of the Office of Human Resources and Professional Development; deputy assistant director of field operations' Central Region; special agent in charge of the Tampa Field Division; assistant special agent in charge of the New York Field Division; Chief, ATF's Leadership Institute; group supervisor for the High Intensity Drug Trafficking Area Task Force in Miami, Florida; and Assistant ATF Country Attaché in Toronto, Canada.

Ms. Lombardo holds a bachelor's degree from the University of South Florida and is a member of several organizations, including Women in Federal Law Enforcement, the National Association of Women Law Enforcement Executives, the Florida Sheriffs Association, the International Association of Chiefs of Police, and the Major Cities Chiefs Association.

ERICA H. MACDONALD

UNITED STATES ATTORNEY, DISTRICT OF MINNESOTA



Erica MacDonald was sworn in as the U.S. attorney for the District of Minnesota on June 11, 2018. U.S. Attorney MacDonald was nominated by President Donald Trump on April 10, 2018, and confirmed by the U.S. Senate on May 24, 2018. As U.S. attorney, Ms. MacDonald is the top-ranking federal law enforcement official in the District of Minnesota. The office is responsible for prosecuting federal crimes in the district, including crimes related to terrorism, firearms, narcotics, child exploitation, human trafficking, financial fraud, healthcare fraud, and public corruption. The office is also responsible for representing the United States in affirmative and defensive civil cases, as well as assisting communities throughout Minnesota in appropriate community-building efforts designed to enhance public safety.

In September of 2019, U.S. Attorney MacDonald was appointed by Attorney General William Barr to be a member of the Attorney General's Advisory Committee (AGAC). Created in 1973, the AGAC is a group of 15 U.S. attorneys advising the attorney general on matters of policy and substantive issues affecting the Department of Justice. U.S. Attorney MacDonald also serves as the co-chair of the AGAC's Child Exploitation and Human Trafficking Working Group.

In January of 2020, Attorney General William Barr appointed U.S. Attorney MacDonald to the Presidential Commission on Law Enforcement and the Administration of Justice. On October 28, 2019, President Donald J. Trump signed Executive Order No. 13896, authorizing and designating the attorney general to create such a commission that would explore modern issues affecting law enforcement that most impact the ability of American policing to reduce crime.

Before taking office, U.S. Attorney MacDonald was a judge in Dakota County since 2009. Prior to her judgeship, from 2000–2009, U.S. Attorney MacDonald served as an assistant U.S. attorney for the Northern District of Illinois and for the District of Minnesota. She began her legal career in 1997 as a judicial clerk to Judge James Henry Alesia of the U.S. District Court in Chicago. She then joined the firm of Kirkland and Ellis in 1999.



ASHLEY MOODY

ATTORNEY GENERAL, STATE OF FLORIDA

Ashley Moody currently serves as the attorney general of Florida. Attorney General Moody was born and raised in Plant City, Florida. She attended the University of Florida, where she earned her bachelor's and master's degrees in accounting and law. She later attended Stetson University College of Law, earning a master's of law in international law.

Attorney General Moody began her legal career with the law firm of Holland & Knight, where she practiced commercial litigation. In her spare time, she volunteered assisting domestic violence victims seeking protection in court.

She subsequently joined the United States Attorney's Office prosecuting drug, firearm, and fraud offenses. While a federal prosecutor, Attorney General Moody was commended by the Drug Enforcement Administration (DEA) for prosecutorial excellence and outstanding initiative in drug law enforcement. She was also recognized by the Florida Department of Law Enforcement for her lead of "Operation Round-Up," a targeted prosecution of violent and repeat offenders.

In 2006, at the age of 31, Attorney General Moody became the youngest judge in Florida when she was elected circuit court judge of the Thirteenth Judicial Circuit in Hillsborough County. As a judge, she founded the Attorney Ad Litem program, recruiting volunteer attorneys to stand in the place of parents who did not appear in court with their children. She also developed a mentoring program for at-risk children within the juvenile delinquency system.

Attorney General Moody served as an adjunct professor at Stetson University College of Law and on the judicial faculty for Florida's New Judges College, Advanced Judicial Studies, and the Circuit Judges Conference. She was a frequent lecturer on crime and justice as well as best practices for Florida attorneys. In 2015, Attorney General Moody was recognized by the National Legal Services Corporation for her significant contributions to pro bono legal service and was awarded the Florida Supreme Court's Distinguished Judicial Service Award.

On January 8, 2019, Attorney General Moody became Florida's 38th attorney general. Since taking office as attorney general, she has been recognized as a national leader, having been appointed to the Executive Committee of the National Association of Attorneys General and to the Board of Directors for the Rule of Law Defense Fund. Attorney General Moody is the Chair of Florida's Statewide Council on Human Trafficking and was recently appointed by the governor as chair of Florida's Statewide Task Force on Opioid Abuse.

NANCY PARR

COMMONWEALTH'S ATTORNEY, CHESAPEAKE, VIRGINIA



Nancy G. Parr currently serves as the commonwealth's attorney for Chesapeake, Virginia. She graduated from the University of Virginia with High Distinction and from T.C. Williams School of Law at the University of Richmond. Ms. Parr has been practicing law since 1983. She was a prosecutor in Suffolk for 10 years and has worked in Chesapeake since 1994. For six of those years, she also served as a special assistant United States attorney in the Eastern District of Virginia. Also, she was an instructor at the National Advocacy Center from 2001 through 2010.

On March 1, 2005, Ms. Parr was sworn in as the commonwealth's attorney for the City of Chesapeake to complete her predecessor's term. She was first elected in November 2005. Since that date, she has implemented new programs and has promoted community outreach in addition to carrying out the traditional role of a prosecutor's office. Her programs include Girls' Empowerment Conferences, Boys' Leadership Conferences, "Traveling the Road to Success" multi-week programs, and "Playing on the Right Team" basketball tournaments.

In addition to her work obligations, Ms. Parr is a member of many boards and organizations and volunteers her time to raise funds for charitable organizations. Some of these include the National District Attorneys Association (president-elect, 2019-2020; vice president, 2017-2020; and director, 2016), the Virginia Association of Commonwealth's Attorneys (president, 2014-2015), the Commonwealth's Attorney Service Council (chairman, 2014-2015), the State Crime Commission (2012-2014), the Governor's Task Force on Prescription Drug and Heroin Abuse, the Secure Commonwealth Panel Subcommittee, the Virginia State Bar Council (First Judicial Circuit representative), chairman on the Board of Governors for the Criminal Law Section of the Virginia State Bar, the State Child Fatality Review Team, the Domestic Violence Advisory Committee, the Boys and Girls Clubs of Southeast Virginia Chesapeake Division, the Women's Club of South Norfolk, and the Steering Committee for the CHIP Duck Race. Since 2015, she has been a Child Life Volunteer at the Children's Hospital of the King's Daughters.

Ms. Parr was recognized by Virginia Lawyers Weekly as a 2018 Leader in the Law; inducted as a Virginia Law Foundation Fellow in 2017; awarded the 2016 Robert F. Horan, Jr. Outstanding Commonwealth's Attorney Award, the 2014 John Hanna Youth Traffic Safety Award, and the Alpha Phi Alpha Fraternity, Inc., Eastern Region Certificate of Appreciation in 2012; named Grand Marshall for the 2011 South Norfolk Fourth of July Parade; selected as 2008 Woman of the Year for the Women's Division of the Chamber of Commerce Chesapeake; and the recipient of the Martin Luther King Leadership Award in 2007.



CRAIG PRICE

SECRETARY OF PUBLIC SAFETY, SOUTH DAKOTA

Craig Price is the cabinet secretary of the South Dakota Department of Public Safety. Secretary Price has oversight of several state agencies, including the Highway Patrol, the Office Emergency Management, Homeland Security, the State Fusion Center, the Office of Highway Safety, and Victim Services, to name a few. Secretary Price is a career law enforcement officer for the State of South Dakota, where in addition to his leadership positions, he has served as a

state trooper and a special agent. Prior to being appointed cabinet secretary by Governor Kristi Noem, Secretary Price served as the thirteenth superintendent of the South Dakota Highway Patrol, a position he held for more than eight years.

As the superintendent, Secretary Price was the key author of two strategic plans in partnership with the University of South Dakota. Under his leadership, the Highway Patrol achieved many of the key tasks and goals identified in those plans. The Highway Patrol implemented more than 60 positive changes to its organization during Secretary Price's tenure as superintendent. Those changes were made at the recommendation of Highway Patrol employees (line-level officers, civilian employees, and senior command), the citizens of South Dakota, and external stakeholders of the Highway Patrol, including police chiefs and sheriffs. In 2016, the Highway Patrol was recognized by the Department of Justice for its work in advancing policing.

Secretary Price graduated with a bachelor's degree from South Dakota State University in 1996 and the FBI National Academy in 2008. Secretary Price is a licensed polygraph examiner, and he has held several key positions on various boards, commissions, and national and international organizations throughout his law enforcement career. Most notably, Secretary Price served as an attorney general appointee on the South Dakota Law Enforcement Training Commission from 2011 to 2019. Secretary Price currently serves on the executive board of the International Association of Chiefs of Police, where he represents all state and provincial law enforcement agencies.

GORDON RAMSAY

CHIEF OF POLICE, WICHITA, KANSAS



Gordon Ramsay currently serves as the chief of police for Wichita, Kansas. Chief Ramsay was appointed as the Wichita police chief in January 2016. Prior to that, he had worked his way up the ranks of the Duluth, Minnesota, police department and served as police chief from 2006 to 2016. Chief Ramsay got an early start in policing at the age of 20 and has been committed to the community policing philosophy since the beginning of his career.

Since becoming the Wichita police chief, he has focused on partnering with the community to lower crime and increase satisfaction with police. Working with community members and elected officials, he established a successful citizen review board and initiated liaisons with various communities focused on building trust. Overall, part one crime decreased in both 2018 and 2019 under his leadership.

Chief Ramsay worked with the city council, the mayor, and the city manager to add 70 police officers, build four new police stations, and purchase and implement a new records management system.

Under Chief Ramsay's leadership, federal grants have quadrupled in dollar amount and are helping reduce gun violence and fund important crime reduction initiatives. The city's first Crime Gun Intelligence Center was created in 2019 under the direction and guidance of the chief.

Chief Ramsay has his bachelor's degree in criminology and sociology and a master's degree in management and is actively involved with the Major Cities Chiefs Association and the Kansas Chiefs of Police Association. He previously served as the general chair of the Mid-Sized Agency Section (2012-2013) of the IACP and president of the Minnesota Chiefs of Police Association (2014-2015) and is currently an advisory board member of the Council of State Governments-Justice Center and on the board of the Wichita area YMCAs and the Boys and Girls Clubs of South Central Kansas. He is a graduate of the FBI National Academy, 222nd session.



DAVID B. RAUSCH

DIRECTOR, TENNESSEE BUREAU OF INVESTIGATION

Director David B. Rausch was born in Louisville, Kentucky. He earned his B.A. in political science in 1986 and his M.S. in justice Administration in 2001, both from the University of Louisville. He was enlisted and served in the U.S. Army Military Police Corps from 1986 to 1990, where he attained the rank of sergeant. He served for 25 years in the Knoxville Police Department, from 1993 to 2018, his last seven years as chief of police. He also served on the department's Special

Operations Squad (SWAT Team) for 10 years, from 1997 to 2007. He was appointed as the ninth director of the Tennessee Bureau of Investigation by Governor Bill Haslam in June 2018.

He is a graduate of several prestigious law enforcement and leadership training programs, including the 105th administrative officers course of the Southern Police Institute, the 218th session of the FBI National Academy, the FBI Tennessee Law Enforcement Executive Development Seminar, the Police Executive Research Forum 40th Senior Management Institute for Police, the FBI Leadership in Counter Terrorism Course Atlantic session, the FBI thirty-sixth National Executive Institute, the United States Secret Service Executive Protection Seminar, the United States Army War College Commandant's National Security Program, the twenty-seventh Georgia International Law Enforcement Exchange Delegation to Israel, Leadership Knoxville, Leadership Nashville, and Leadership Tennessee.

Director Rausch has served in leadership roles for numerous community and professional service organizations, including the International Association of Chiefs of Police, the Appalachia High Intensity Drug Trafficking Areas, the Tennessee Association of Chiefs of Police, the Association of State Criminal Investigative Agencies, Leadership Knoxville, the Knoxville Change Center, the Trinity Health Foundation, the Volunteer Ministry Center Knoxville, the Knoxville Metro Drug Coalition, the Mental Health Association of East Tennessee, the Boys and Girls Clubs of the Tennessee Valley, and the University of Tennessee Law Enforcement Innovation Center.

He is an instructor in various law enforcement topics. He has taught sworn and non-sworn personnel throughout the United States. He worked with the U.S. Department of State on training commanders from the Jamaican Constabulary Forces in Kingston, Jamaica, on Tactical Responses to Terrorism. He is an adjunct faculty member of Bethel University for the College of Professional Studies Online Criminal Justice Program.

Director Rausch has served as an advisor to legislators on the local, state, and federal level, including the governor of Tennessee, Congress members, senators, and executive staff members to the past two presidential administrations. He has helped draft, support, pass, and defeat significant legislation at all levels of government that impact the safety of communities. He has testified in front of Congress on preparing for and preventing domestic terrorism.

JOHN SAMANIEGO

SHERIFF, SHELBY COUNTY, ALABAMA



Sheriff John Samaniego currently serves as the sheriff of Shelby County, Alabama.

With more than 40 years in law enforcement, John Samaniego was elected sheriff of Shelby County, Alabama, in 2014 and was reelected in 2018. Prior to being elected sheriff, he served 12 years as the county's chief deputy. Earlier in his law enforcement career, Sheriff Samaniego served as the commander of the West Alabama Narcotics Task Force, prior to serving as the Assistant Chief of Police of the Tuscaloosa, Alabama, Police Department.

He is a graduate of the FBI National Academy, the DEA's Drug Unit Commanders Academy, the U.S. Secret Service Executive Protection School, the FBI National Executive Institute, and the National Sheriff's Institute. Sheriff Samaniego holds a law degree from the Birmingham School of Law and a B.S. degree in Social Work with a Criminal Justice concentration from the University of Alabama.

Sheriff John Samaniego has organized and chaired multiple committees on the local, state, and national level that focus on victim services and advocating for law enforcement.

DRAFT



JAMES SMALLWOOD

SERGEANT, METROPOLITAN NASHVILLE, TENNESSEE,
POLICE DEPARTMENT

Sergeant James Smallwood is the current president of the Nashville Fraternal Order of Police, Andrew Jackson Lodge #5, which actively represents nearly 2,000 members on issues related to the law enforcement profession. He has served in this role since July of 2016. As president, he has worked to negotiate for better pay, benefits, and working conditions for the officers who work for the Metropolitan Nashville Police Department; implemented new policies and procedures to

advance the efficiency of the organization; and managed multiple not-for-profit entities successfully. Sergeant Smallwood also serves as the chairman of the marketing committee and is a sitting member of the strategic planning committee for the National Fraternal Order of Police, an organization that represents 350,000 members nationwide.

Sergeant Smallwood has also served as the President of the Andrew Jackson Police Youth Camp, a not-for-profit charitable organization whose mission is to build positive relationships with the police officers of Nashville and the communities they serve by breaking down cultural barriers through various community programs. For more than 50 years, the youth camp has conducted a six-week program for at-risk or low-income children, as well as the annual holiday Shop With a Cop program. Sergeant Smallwood recently oversaw the expansion of this organization's reach by establishing the Caring Police Respond program, where officers who identify a member in their community who is facing adversity, with no means to overcome it, can request financial aid to help them overcome whatever situation they may be facing.

Sergeant Smallwood has also served with the Metropolitan Nashville Police Department for 10 years. Starting in 2010, he served as a patrol officer for three years before advancing to the department's flex unit, a unit whose sole focus was to proactively combat crime by engaging the criminal element, locating and seizing illegal narcotics and weapons, and apprehending individuals who were involved in criminal activity. Sergeant Smallwood served with the flex unit for approximately one year before advancing to the department's criminal investigations unit, where he served as a detective for approximately one year. He then moved to the department's strategic development division, a unit responsible for development of departmental policy, compliance with the standards set forth by the Commission on Accreditation for Law Enforcement Agencies (CALEA), and various other tasks as assigned by the chief of police. Sergeant Smallwood served in this role for one year before being promoted to the rank of sergeant. Upon his promotion, he returned to the department's patrol division, where he served as a district sergeant in the east precinct.

DONALD WASHINGTON

DIRECTOR, UNITED STATES MARSHALS SERVICE



Donald W. Washington was nominated by President Donald J. Trump to lead the U.S. Marshals Service (USMS) on Oct 2, 2018. The United States Senate confirmed his nomination on March 14, 2019, and Director Washington was sworn in as the 11th director of the USMS on March 29, 2019. As the leader of America's oldest federal law enforcement agency, Director Washington directs a force of more than 5,000 operational and administrative employees spanning 94 districts, 218 sub-offices, and 4 foreign field offices. Additionally, as the USMS holds a central position in the federal justice system, Director Washington is responsible for all operations involving federal judicial security, fugitive apprehension, witness security, asset forfeiture, and prisoner operations.

Director Washington began his career as an engineer at Conoco, Inc. After completing law school, he served in both corporate and private practice, litigating issues from employment discrimination to tort, criminal, commercial, and business issues. In 2001, President George W. Bush appointed him U.S. Attorney for Western Louisiana, a 42-parish federal jurisdiction that includes Lafayette, Shreveport, Alexandria, Monroe, and Lake Charles. Director Washington served on several U.S. Attorney General's Advisory Committees, as well as subcommittees on anti-terrorism, civil rights, controlled substances, and Native American issues. Director Washington also served as the chairman of the Southeastern U.S. Organized Crime Drug Enforcement Task Force. In 2010, he returned to private practice in Lafayette, Louisiana.

Director Washington hails from Sulphur Springs, Texas, and graduated from the United States Military Academy at West Point, New York, in 1977. He served in the United States Army as an air defense artillery officer, both on active duty and in the U.S. Army Reserve. In 1989, he received his J.D. degree from South Texas College of Law, Houston, Texas.

DEAN M. KUETER, JR.

EXECUTIVE DIRECTOR, PRESIDENT'S COMMISSION
ON LAW ENFORCEMENT AND THE ADMINISTRATION
OF JUSTICE

Dean M. Kueter, Jr. has served at the U.S. Department of Justice for 10 years. Before his appointment as Executive Director of the President's Commission on Law Enforcement and the Administration of Justice, he was asked to help stand up the State and Local Law Enforcement Coordination Section and implement Attorney General William Barr's vision to further strengthen the relationship with state and local law enforcement.

Before joining the State and Local Law Enforcement Coordination Section, Dean was Chief of Intergovernmental Affairs at the Bureau of Alcohol, Tobacco and Firearms and Explosives (ATF). He also has served as ATF's Chief of Legislative Affairs. Prior to joining ATF, Dean held two senior positions at the Office of Community Oriented Policing Services (COPS). He was chief of staff and before that, he was the assistant director for external affairs.

Prior to his Executive Branch service, Dean was a senior staffer at Lafayette Group, a boutique public safety consulting firm, where he was the Major Cities Chiefs Association (MCC) Washington representative. Before joining Lafayette Group, Dean spent nearly 10 years as the Director of Government Affairs at the National Sheriffs' Association (NSA) where he represented the interests of our nation's more than 3,000 elected sheriffs.

Dean has Capitol Hill, campaign, and election experience. He spent 12 years as a Republican Chief Election Judge in Montgomery County, Maryland. He worked in the office of Representative Peter Blute (R-MA) where he was responsible for law enforcement and public safety issues. Early in his career, he worked on three congressional campaigns and one ballot referendum.

Dean is a graduate of Boston College where he studied political science and philosophy.

APPENDIX C: WORKING GROUP MEMBERS

Business and Community Development

Steve Anderson, Co-Chair	Chief	Nashville Police Department, TN
Richard Snyder, Co-Chair	Officer/President	Indianapolis Metropolitan Police Department, IN / Indianapolis Fraternal Order of Police
John Anderson	United States Attorney for the District of New Mexico	U.S. Department of Justice
Melissa Hyatt	Chief	Baltimore County Police Department, MD
Dennis Lemma	Sheriff	Seminole County, FL
Catrina Thompson	Chief	Winston-Salem Police Department, NC

Criminal Justice System Partners

William O'Brien, Co-Chair	Judge	Circuit Court of Cook County, IL
Jay Town, Co-Chair	United States Attorney for the Northern District of Alabama	U.S. Department of Justice
Bo Burk	Public Defender	Memphis, TN
Joe Gamaldi	Officer/President	Houston Police Department / Houston Police Officers Union
Brian Redd	Chief Special Agent	Utah Department of Public Safety
Kevin Schneider	Sheriff	Polk County, IA

Data and Reporting

William Brooks, Chair	Chief	Norwood Police Department, MA
Scott Brady	United States Attorney for the Western District of Pennsylvania	U.S. Department of Justice
James Craig	Chief	Detroit Police Department, MI
Christian Dorton	Officer	Houston Police Department, TX
Sean Duggan	Chief	Chandler Police Department, AZ

President's Commission on Law Enforcement and the Administration of Justice

Trudy Ford	Criminal Justice Information Services Section Chief, Federal Bureau of Investigation	U.S. Department of Justice
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Kevin Hall	Assistant Chief	Tucson Police Department, AZ
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Grant Programs

Andy Louderback, Co-Chair	Sheriff	Jackson County, TX
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Paul Williams, Co-Chair	Chief	Springfield Police Department, MO
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Lou Dekmar	Chief	LaGrange Police Department, GA
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Wayne Jerman	Chief	Cedar Rapids Police Department, IA
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Keith Kauffman	Chief	Redondo Beach Police Department, CA
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Karhlton Moore	Executive Director	Ohio Office of Criminal Justice Services
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Gerald Serrano	Officer	Santa Ana Police Department, CA
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Nicholas Trutanich	United States Attorney for the District of Nevada	U.S. Department of Justice
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Homeland Security

Mike Chapman, Co-Chair	Sheriff	Loudoun County, VA
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Jill Sanborn, Co-Chair	Assistant Director, Federal Bureau of Investigation	U.S. Department of Justice
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Rich Donoghue	United States Attorney for the Eastern District of New York	U.S. Department of Justice
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Ted Jackson	Sheriff	Fulton County, GA
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Ray Villanueva	Special Agent in Charge, Immigration and Customs Enforcement	U.S. Department of Homeland Security
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Leon Wilmot	Sheriff	Yuma County, AZ
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Juvenile Justice and Youth Crime

William Anderson, Co-Chair	Chief of Police	St. Cloud, MN
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Stefanie Salavantis, Co-Chair	District Attorney	Luzerne County, PA
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Christopher Bryant	School Resource Officer	Hoover Police Department, AL
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Timothy Irwin	Judge	Knox County, TN
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Scott Mascher	Sheriff	Yavapai County, AZ
Anthony Pierro	Juvenile Chief	Ocean County Prosecutor's Office, NJ
Tim Shea	Acting Administrator	Drug Enforcement Administration
Gregory Stuber	Senior Deputy Probation Officer	Sacramento County, CA
Juan Villegas	Mayor Pro Tem	City of Santa Ana, CA

Law Enforcement Health and Wellness

William Gross, Co-Chair	Commissioner	Boston Police Department, MA
Corey Nooner, Co-Chair	Master Sergeant	Oklahoma City Police Department, OK
Richard Biehl	Chief	Dayton Police Department, OH
Michael Bradley	LE Coordinator, U.S. Attorney's Office for the Eastern District of Missouri	U.S. Department of Justice
Patrick Callahan	Colonel	New Jersey State Police
Chris Ciuci	Deputy Chief	Berlin Police Department, CT
Brandy Donini-Melanson	Law Enforcement Coordination Program Manager, Executive Office for United States Attorneys	U.S. Department of Justice
Earnest Finley	Chief	Montgomery County Police Department, AL
Jeff Jensen	United States Attorney for the Eastern District of Missouri	U.S. Department of Justice
Wesley McDuffie	Chaplain	Tarrant County Sheriff's Office, TX

Law Enforcement Recruitment and Training

Shannon Baldwin, Co-Chair	Corporal	Prince George's County Police Department, MD
Kristen Ziman, Co-Chair	Chief	Aurora Police Department, IL
John Batiste	Colonel	Washington State Patrol, WA
Erik Bourgerie	Director	Colorado Peace Officer Standards and Training
Russell Coleman	United States Attorney for the Western District of Kentucky	U.S. Department of Justice
Billy Grogan	Chief	Dunwoody Police Department, GA
Cynthia Renaud	Chief	Santa Monica Police Department, CA

President's Commission on Law Enforcement and the Administration of Justice

Reduction of Crime

John Mina, Co-Chair	Sheriff	Orange County, FL
Hillar Moore, Co-Chair	District Attorney	East Baton Rouge District Attorney's Office, LA
Anthony Ambrose	Director	Newark Police Department, NJ
Justin Doll	Chief	Anchorage Police Department, AK
John Lausch	United States Attorney for the Northern District of Illinois	U.S. Department of Justice
John McMahon	Sheriff	San Bernardino County, CA
Matt Packard	Colonel	Colorado State Patrol
Randy Reaves	Deputy	Jacksonville County, FL
Bob Schurmeier	Director	North Carolina State Bureau of Investigation

Reentry Program and Initiatives

Peter Koutoujian, Chair	Sheriff	Middlesex County, MA
Daniel Junior	Director	Miami-Dade Corrections & Rehabilitation
Matt Schneider	United States Attorney for the Eastern District of Michigan	U.S. Department of Justice
Tim Shea	Acting Administrator	Drug Enforcement Administration
Vernon Stanforth	Sheriff	Fayette County, OH

Respect for the Rule of Law and Law Enforcement

Jonathan Blodgett, Co-Chair	District Attorney	Essex County, MA
Rob Pride, Co-Chair	Sergeant	Loveland Police Department, CO
Mike Bouchard	Sheriff	Oakland County, MI
Eric Brown	Deputy Director	Ohio HIDTA
Erin Nealy Cox	United States Attorney for the Northern District of Texas	U.S. Department of Justice
John Letteney	Chief	Apex Police Department, NC
Douglas Shoemaker	Chief	Grand Junction Police Department, CO

Rural and Tribal Law Enforcement

Bill Brueggemann, Chair	Sheriff	Cass County, NE
Shannon Buhl	Director	Cherokee Nation Marshal Service
Kurt Alme	United States Attorney for the District of Montana	U.S. Department of Justice
Tyler Brown	Sheriff	Arapahoe County, CO
Bill Denke	Chief	Sycuan Tribal Police, CA
Robert Everett	Resource Officer	Stark County Sheriff's Office, OH
Anthony Harbaugh	Sheriff	Custer County, MT
Dwight Henninger	Chief	Vail Police Department, CO
Michael Keller	Chief	Andover Police Department, MN
Bryan Lockerby	Administrator	Administrator, Montana Division of Criminal Investigation
Jason O'Neal	Assistant Director, Bureau of Indian Affairs	U.S. Department of Interior

Alleviating the Impact of Social Problems on Public Safety

Addiction

Karl Jegeris, Co-Chair	Chief	Rapid City Police Department, SD
Amy Bublak	Mayor	Turlock, CA
Will Johnson	Chief (retired)	Arlington Police Department, TX
Thomas Loving	Director	Warren County Drug Task Force, KY
Hank Stawinski	Chief (retired)	Prince Georges County Police Department, MD

Homelessness

Mike Brown, Co-Chair	Chief	Salt Lake City Police Department, UT
Brad Lemon	President	Kansas City Fraternal Order of Police
Christina Nolan	United States Attorney for the District of Vermont	U.S. Department of Justice
Paul Penzone	Sheriff	Maricopa County, AZ

Mental Illness

Manny Gonzales, Co-Chair	Sheriff	Bernalillo County, NM
Don Barnes	Sheriff	Orange County, CA

President's Commission on Law Enforcement and the Administration of Justice

Mary Ann Borgeson	County Commissioner	Douglas County, NE
John Milhiser	United States Attorney for the Central District of Illinois	U.S. Department of Justice

Technology

Darrin Jones, Co-Chair	FBI Executive Assistant Director for Science and Technology	U.S. Department of Justice
Thomas Ruocco, Co-Chair	Chief of Criminal Investigations	Texas Department of Public Safety
Al Cannon	Sheriff	Charleston County, SC
John Ortolano	Chief	Hobbs Police Department, NM
BJay Pak	United States Attorney for the Northern District of Georgia	U.S. Department of Justice
Jimmy Perdue	Chief/Director of Public Safety	North Richland Hills Police Department, TX
Robert Tracy	Chief	Wilmington Police Department, DE

Victim Services

Bob Troester, Chair	First Assistant United States Attorney, Western District of Oklahoma	U.S. Department of Justice
Darrell Basco	Deputy Chief	Pineville Police Department, LA
Don Cochran	United States Attorney for the Middle District of Tennessee	U.S. Department of Justice
Paul Jagosh	Police Officer	Boise Police Department and Idaho Fraternal Order of Police
Kirsten Pabst	Attorney	Missoula County, DA
David Porter	Chief	Dewitt Police Department, IA
Ken Walker	Chief	West University Place Police Department, TX

APPENDIX D: COMMISSION STAFF

Jessica Andrew, Federal Program Manager	Rural and Tribal Law Enforcement	U.S. Department of Justice, Office of Victims of Crime
Kristie Brackens, Federal Program Manager	Reduction of Crime	U.S. Department of Justice, Bureau of Justice Assistance
Melissa Bradley, Federal Program Manager	Law Enforcement Recruitment and Training	U.S. Department of Justice, Office of Community Oriented Policing Services
Barry Bratburd Team Lead	—	U.S. Department of Justice, National Institute of Justice
Robbye Braxton, Federal Program Manager	Reentry Programs and Initiatives	U.S. Department of Justice, National Institute of Corrections
Robert Chapman, Deputy Executive Director	—	U.S. Department of Justice, Office of Community Oriented Policing Services
Alicia Coleman	Executive Assistant	U.S. Department of Justice, Office of Community Oriented Policing Services
Sharon R. Elliott, Federal Program Manager	Victim Services	U.S. Department of Justice, Office of Violence Against Women
George J. Fachner, Team Lead	—	U.S. Department of Justice, Office of Community Oriented Policing Services
Joe Heaps, Federal Program Manager	Technology	U.S. Department of Justice, National Institute of Justice
Rebecca Holdenreid	Outreach Coordinator	U.S. Department of Justice, Office of Justice Programs
Shelley S. Hyland, Ph.D., Federal Program Manager	Data and Reporting	U.S. Department of Justice, Bureau of Justice Statistics
Shannon Long, Communications Lead	—	U.S. Department of Justice, Office of Community Oriented Policing Services
John Markovic, Federal Program Manager	Criminal Justice System Partners	U.S. Department of Justice, Bureau of Justice Assistance

President’s Commission on Law Enforcement and the Administration of Justice

Kristina Mastropasqua, Press	—	U.S. Department of Justice, Office of Public Affairs
Katherine McQuay, Federal Program Manager	Respect for the Rule of Law and Law Enforcement	U.S. Department of Justice, Office of Community Oriented Policing Services
Clare Morell	Deputy White House Liaison and Advisor to the Attorney General	U.S. Department of Justice, Office of the Attorney General
Dave Neely, Federal Program Manager	Grant Programs	U.S. Department of Justice, Office of Community Oriented Policing Services
Scott E. Pestridge, Federal Program Manager	Juvenile Justice and Youth Crime	U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention
Brittany Psychogios-Smith, Federal Program Manager	—	U.S. Department of Justice, Office of Legislative Affairs
Ruby Qazilbash, Team Lead	—	U.S. Department of Justice, Bureau of Justice Assistance
Amy Schapiro, Federal Program Manager	Homeland Security	U.S. Department of Homeland Security, Customs and Border Patrol
Theophani Stamos, Law Enforcement Liaison	—	U.S. Department of Justice, Office of Legislative Affairs
Dennis Stoika, Law Enforcement Liaison	—	U.S. Department of Justice, Office of Legislative Affairs
Jill Thomas, Managing Editor	—	U.S. Department of Justice, Bureau of Justice Statistics
Antonio Tovar, Federal Program Manager	Business and Community Development	U.S. Department of Justice, Bureau of Justice Assistance
Matthew P. Varisco, Federal Program Manager	Law Enforcement Health and Wellness	U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives
Laura Wyckoff, Federal Program Manager	Alleviating the Impact of Social Problems on Public Safety	U.S. Department of Justice, Bureau of Justice Assistance

APPENDIX E: METHODOLOGY

COMMISSION IMPLEMENTATION STRATEGY

Background

To execute the work of the Commission, leadership at the Department of Justice and Commission staff designed an implementation strategy that accounted for the number of topics (15), the scope of those topics, the prescribed timelines, and the types of activities that working groups would need to complete to ensure a thorough review. The nature of this work required the Commission to strike a balance between the needs for structured activities and flexibility across working groups. Like past commissions, task forces, and other blue ribbon panels, the Commission's work can best be described as a qualitative review of the topics by a vast array of subject matter experts, informed by their experience, expert testimony, research and best practice literature, and the challenges facing law enforcement and the administration of justice nationwide.

The working group topics were designated by Attorney General Barr in his implementation memorandum⁷⁸⁸ in response to Executive Order 13896 establishing the Commission on Law Enforcement and the Administration of Justice.⁷⁸⁹ The Attorney General's memo also designated the chair, vice chair, and 16 commissioners from local, state, and federal law enforcement and public safety agencies. The chair and the vice chair were empowered to select working group members who were to serve exclusively in a consultative capacity.⁷⁹⁰

Once fully established, each working group was composed of approximately 10 state and local officials (or their designees) and subject matter experts from federal agencies. Working group members were selected based on their expertise and ability to contribute to one of the 15 topic areas, geographical representation, and commitment to the great endeavor of the Commission: "to study issues related to law enforcement and the administration of justice and to make recommendations to the President, on actions that can be taken to prevent, reduce, and control crime, increase respect for the law, and assist victims."⁷⁹¹

Each working group had a designated chair or co-chairs who were responsible for driving the agenda of the working group, facilitating the identification of subject matter experts and relevant resources to review, and breaking down the working group topic into subareas of inquiry. Each working group also had a dedicated federal program manager who provided various support functions including research, planning, meeting facilitation, and overall project management for the effort.

788 William P. Barr, "Implementation Memorandum for Heads of Department Components," (official memorandum, Washington, DC: U.S. Department of Justice, 2020), <https://www.justice.gov/ag/page/file/1236906/download>.

789 Commission on Law Enforcement and the Administration of Justice, Executive Order 13896 (2019), <https://www.govinfo.gov/content/pkg/FR-2019-11-01/pdf/2019-24040.pdf>.

790 Barr, "Implementation Memorandum."

791 Commission on Law Enforcement and the Administration of Justice, Executive Order 13896 (2019).

COMMISSION ACTIVITIES

Figure E.1



Source: Executive Office of the President of the United States, Report of the President's Commission on Law Enforcement and the Administration of Justice

Over a period of 280 days, the Commission executed a systematic compilation of interrelated and complementary activities across the working groups that supported the Commission. Specifically, those activities included a review of the extant literature, public comment, subject matter expert briefings, working group business meetings, and full Commission hearings.⁷⁹²

Literature Review

Working groups reviewed literature from a broad spectrum of sources, including academic journals; federal, state, and local program offices; law enforcement agencies; news media; advocacy organizations; nonprofits; and think tanks.

The National Criminal Justice Reference Service (NCJRS) provided comprehensive search and retrievals for each working group based on search terms tailored by working group members, federal program managers, and research librarians. Research librarians used Boolean search terminology, which allowed for a targeted search of topics and interrelated subtopics as they related to each working group.

Additionally, working groups queried organizations and their websites relevant to their subject matter. The organizations listed below reflect those that were specifically queried for subject matter information pertinent to one or more of the working groups. Notably, reports published by other organizations were also reviewed and are cited throughout the report.

⁷⁹² The commission was also slated to participate in field visits across the country to observe and learn about the operations of federal, state, local, tribal, and territorial agencies firsthand. However, due to the COVID-19 outbreak, in-person activities were severely limited and field visits were eliminated from the commission plan. Some working groups successfully executed several virtual field visits. . For this appendix, those are captured as SME briefings.

Literature Searches	
NCJRS Abstracts	Ebsco Military and Government Collection
Criminal Justice Abstracts	Applied Social Sciences Index & Abstracts
Sage Premier	PTSDpubs
Academic Search Complete	Sociological Abstracts
APA PsycArticles	Social Services Abstracts
Ebsco International Security and Counter Terrorism Reference Center	Web of Science
Ebsco Medline Complete	Google Scholar

Select Organizations and Websites Queried		
Administration for Children and Families	Federal Law Enforcement Training Accreditation Resource Library	National Fire Chiefs Association
Alliance for Hope	Federal Law Enforcement Training Center Resource Library	National Gang Center
American Probation and Parole Association	Federal Trade Commission	National Highway Traffic Safety Administration
American Civil Liberties Union	Fraternal Order of Police	National Institute of Corrections
American Society of Evidence-Based Policing	Florida Sheriffs' Research Association	National Institute of Justice
Association of State Criminal Investigative Agencies	George Mason University Center for Evidence-Based Policing	National League of Cities
Bureau of Alcohol, Tobacco, and Firearms	George Washington University Program on Extremism	National Mentoring Resource Center
Bureau of Justice Assistance	Homeland Security Digital Archive	National Organization of Black Law Enforcement Executives
Bureau of Justice Statistics	Human Trafficking Task Force	National Police Foundation
Bureau of Labor Statistics	Immigration and Customs Enforcement	National Public Safety Partnership
Campbell Collaboration	International Association of Chiefs of Police	National Reentry Resource Center

President's Commission on Law Enforcement and the Administration of Justice

Center for Disease Control and Prevention	Internet Crimes Against Children Task Force	National Sheriff's Association
Center for Problem-Oriented Policing	Local Initiatives Support Corporation	Office of Community Oriented Policing Services
Citizen and Immigration Services Agency	MacArthur Foundation	Office of Director of National Intelligence
Collaborative Reform Initiative for Technical Assistance	Major Cities Chiefs Association	Office of Juvenile Justice and Delinquency Prevention
Congressional Research Service	Major County Sheriffs of America	Office of Postsecondary Education
Council of State Governments	National Academy of Sciences	Office of Victim Services
CrimeSolutions.gov	National Association of Police Officers	Office of Victims of Crime Training and Technical Assistance Center
Drug Enforcement Agency	National Association of School Resource Officers	Office of Violence Against Women
Family Justice Center	National Center for Education Statistics	Peace Officers Research Association of California
Federal Bureau of Investigation Training Academy Resource Library	National Center for Missing and Exploited Children	Police Executive Research Forum
Federal Commission on School Safety	National Consortium for the Study of Terrorism and Responses to Terrorism	Public Safety Clearinghouse
Federal Emergency Management Agency	National Court Appointed Special Advocate Association	ReducingCrime.com
Federal Interagency Forum on Child and Family Statistics	National Crime Prevention Council	Sage Journals
Substance Abuse and Mental Health Services Administration	U.S. Customs and Border Protection	U.S. Marshals Service
Tribal Youth Resource Centers	U.S. Department of Education	U.S. Postal Inspection Service
U.K. College of Policing	U.S. Government Accountability Office	U.S. Sentencing Commission
United States Congress	U.S. Department of Homeland Security	Vera Institute of Justice
U.S. Census Bureau	U.S. Department of Justice Office of Inspector General	Women in Federal Law Enforcement

Public Comment

To engage the public, the Commission established a public comment email address. Submissions were required to clearly identify the working group topic and be no longer than three single-spaced pages. Additionally, invited witnesses who did not provide oral testimony before the Commission were encouraged to submit written statements to the public comment email. As they were received, public comments were distributed to the appropriate working groups for review and deliberation. As needed, working groups followed up with individuals or organizations to further explore the content of their submissions.

Subject Matter Expert Briefings

Working groups held subject matter expert briefings on a regular basis. Subject matter experts were identified by working groups and invited to provide briefings and consult with working group members on matters related to the 15 topic areas. Subject matter experts represented a wide array of perspectives and types of organizations, including federal, state, local, and tribal government agencies (e.g., law enforcement agencies, prosecutors, courts, corrections, and probation); nonprofits, including think tanks, advocacy organizations, and other interest groups; professional associations; private industry; and private individuals with experience and expertise to contribute to the deliberations of the working groups.

A total of 173 subject matter experts provided briefings to Commission working groups. Some subject matter experts briefed multiple working groups, either simultaneously or separately. In addition to briefing working groups, subject matter experts were allowed to provide supplemental materials—such as reports, data, or policies—for the working groups to consider in their deliberations.

Full Commission Hearings

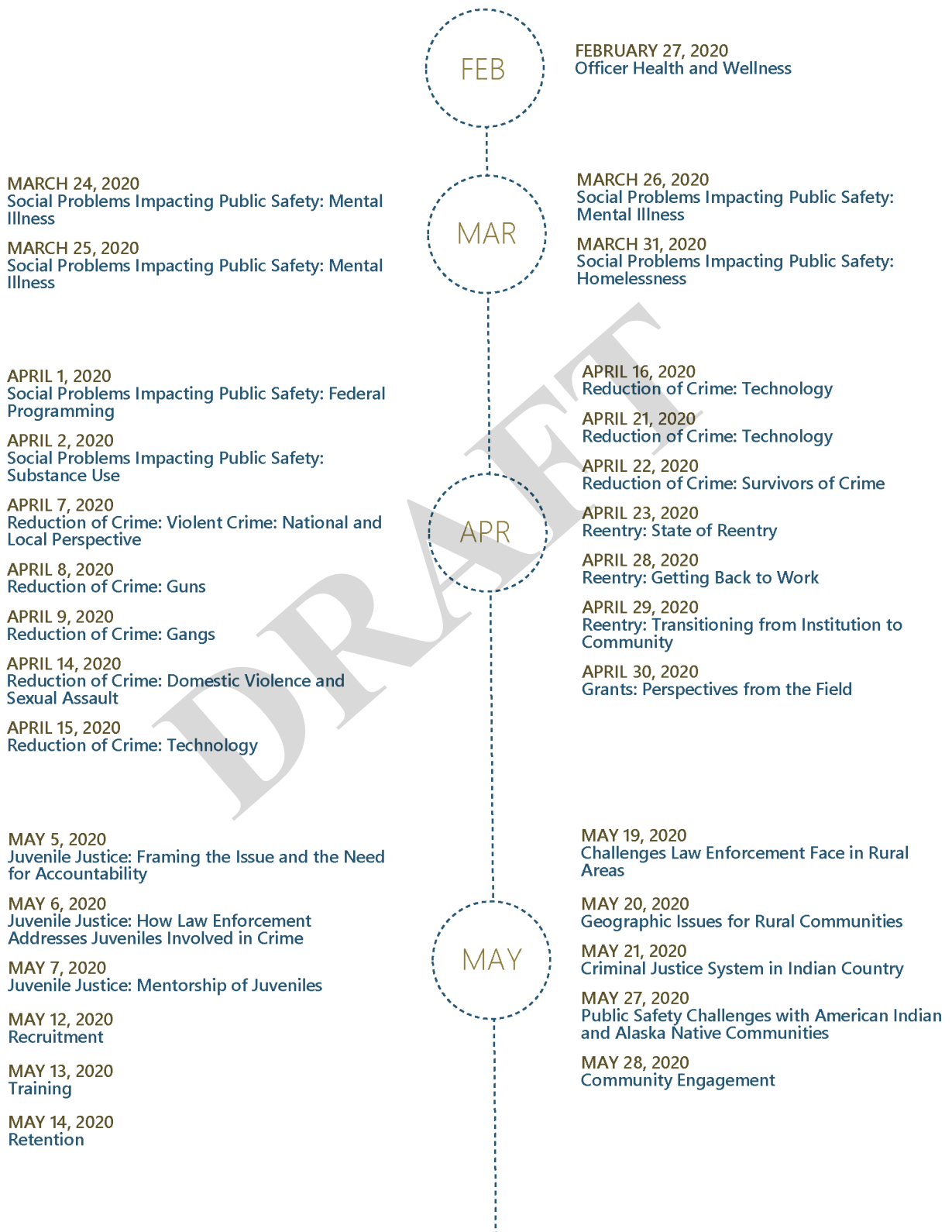
Full Commission hearings were intended to occur in person at venues across the country. However, the COVID-19 pandemic shifted Commission operations. As a result, only one hearing was held in person while an additional 14 were held via teleconference. Hearings were open for all working group members, federal staff, Department of Justice leadership, and media. Hearings were composed of one or more panels, totaling 51 separate panels over the course of the Commission, which heard testimony from 184 witnesses.

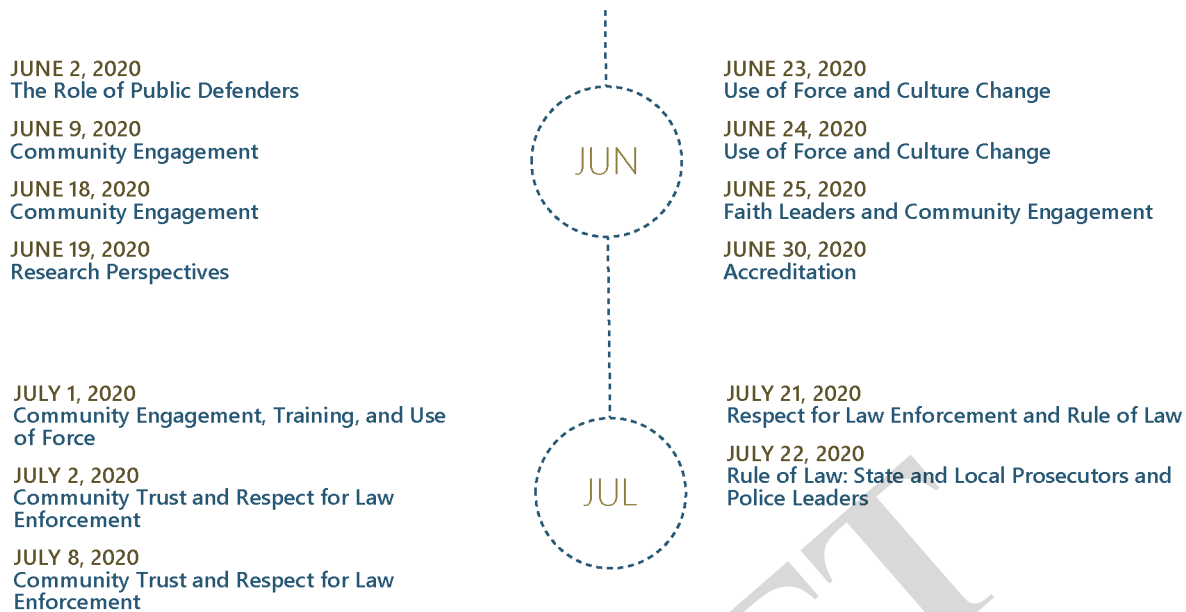
Transitioning to a Virtual Environment During the COVID-19 Global Pandemic

With the outbreak of the COVID-19 global pandemic, the Commission nimbly shifted its work to a virtual environment. Subject matter expert briefings, hearings, site visits, staff meetings, and all other activities were required to be held via video and teleconference meetings. Despite the additional challenges and pressures many working group members faced in serving their communities on the front lines, their contributions to the Commission did not relent.

Although disruptive, the shift to a virtual environment had one significant upside. Full Commission hearings were now less burdened by the constraints of time and space. The Commission no longer gathered all participants in a single location for multiple days. Instead, the hearings were spread out steadily over a longer time frame. As a consequence, the Commission heard more testimony and allowed for participants to attend to their duties in their own communities without the burden and safety risk of travel.

Figure E.2: Hearing Timeline





Source: Executive Office of the President of the United States, Report of the President's Commission on Law Enforcement and the Administration of Justice

Working Group Business Meetings

Working groups met regularly to plan and coordinate activities; identify subject matter experts; and analyze, assess, and deliberate the volumes of information being disseminated through all Commission activities. Working groups also drafted and reviewed recommendations and report content, building toward consensus on the group's recommendations for the Commission.

Recommendations Formulation

Recommendations are the core of this Commission's work. They are a blueprint for national action to improve the criminal justice system and provide greater service, better outcomes, and improved public safety for the American people. The Commission established general guidelines for the formulation of recommendations. Recommendations were required to clearly identify the entity—organization, agency, body, or stakeholder—responsible for implementing the recommendation; vaguely identified parties such as "communities" or "stakeholders" were avoided. Recommendations were also designed to state in clear and concrete terms the type of action being sought; recommendations for general improvements or enhancements of existing efforts were also avoided. As each recommendation is, in essence, a consideration, the Commission used the term "should" throughout to actively encourage positive change in law enforcement and the criminal justice system. Per Attorney General Barr, the Commission was to "recommend only practical and concrete actions that can be taken by federal, state, local, and tribal law enforcement and other government entities."⁷⁹³

⁷⁹³ Barr, "Implementation Memorandum."

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APPENDIX F: LIST OF HEARINGS AND WITNESSES

Hearing 1: Officer Safety and Wellness

February 27, 2020 – Officer Safety and Wellness Panel

William Gross, Police Commissioner, Boston (MA) Police Department

Corey Nooner, Sergeant, Oklahoma City (OK) Police Department

Patrick Yoes, National President, Fraternal Order of Police

Alexa James, Executive Director, LCSW, NAMI Chicago

Fred Farris, Chief, Goddard (KS) Police Department

Scott Coyne, M.D., Chief Surgeon / Medical Director Suffolk County (NY) Police Department

William King, Ph.D., Professor, Boise State University

Alexander Eastman, M.D. MPH, FACS, FAEMS, Senior Medical Officer, Dallas (TX) Police Department

Nicole Juday, Professional Development, Wellness and Mentoring Officer, Indianapolis (IN) Police Department

Sherri Martin, National Director of Wellness Services, Fraternal Order of Police

Karen Solomon, Co-Founder and President, Blue H.E.L.P. Inc.

Janice McCarthy, Board Member, Care of Police Suicide Survivors

Stephanie Samuels, Psychotherapist, COPLINE

Cherie Castellano, M.A., C.S.W., L.P.C., A.A.E.T.S., Program Director, Rutgers UBHC – COP 2 COP

Dianne Bernhard, Executive Director, Concerns of Police Survivors (C.O.P.S.)

Hearing 2: Social Problems Impacting Public Safety

March 24, 2020 – Mental Illness Panel I

John McMahon, Sheriff, San Bernardino County (CA)

John Snook, Chief Executive Officer and President, Treatment Advocacy Center

Sarah Shimko, Sergeant, City of Madison (WI) Police Department, Mental Health Unit

March, 25 2020 – Mental Illness Panel II

Donald (Don) Barnes, Sheriff, Orange County (CA)

Shannon Robinson, M.D., Principal, Health Management Associates

Paul Penzone, Sheriff, Maricopa County (AZ)

March 26, 2020 – Mental Illness Panel III

Keith Humphreys, Ph.D., Professor, Stanford University

March 31, 2020 – Homelessness Panel

Mike Brown, Chief, Salt Lake City (UT) Police Department

John Ashmen, President and Chief Executive Officer, Citygate Network (formerly the Association of Gospel Rescue Missions)

Brian Redd, Chief, Bureau of Investigation, Utah Department of Public Safety

April 1, 2020 – Federal Programming Panel

Christopher Patterson, Regional Administrator, U.S. Department of Housing and Urban Development

Matthew Miller, Ph.D., Acting Director for Suicide Prevention, Department of Veterans Affairs

Robert Marbut, Jr., Ph.D., Executive Director, U.S. Interagency Council on Homelessness

April 2, 2020 – Substance Use Panel

Carson Fox, Chief Executive Officer, National Association of Drug Court Professionals

Michael Sena, Director, Northern California High Intensity Drug Trafficking Area

Peter Koutoujian, Sheriff, Middlesex County (MA)

Michael Stuart, United States Attorney for the Southern District of West Virginia

Sue DeLacy, Chief Deputy Probation Officer, Orange County (CA) Probation Department

Hearing 3: Crime Reduction

April 7, 2020 – Violent Crime Overview: National and Local Perspectives Panel

Amy Blasher, Chief, Crime Statistics Management Unit, Federal Bureau of Investigation

Justin Herdman, United States Attorney for the Northern District of Ohio

Jim Skinner, Sheriff, Collin County (TX)

Steve Anderson, Chief, Metropolitan Nashville (TN) Police Department

Scott Thomson, Chief (retired), Camden County (NJ) Police Department

April 8, 2020 – Guns Panel

Thomas Chittum, Assistant Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

Melissa Nelson, State Attorney, Florida Fourth Judicial District

Paul Neudigate, Assistant Chief, Cincinnati (OH) Police Department

Zachary Terwilliger, United States Attorney for the Eastern District of Virginia

April 9, 2020 – Gangs Panel

Timothy Sini, District Attorney, Suffolk County (NY)

Geraldine Hart, Commissioner, Suffolk County (NY) Police Department

Victor Gonzalez, Director of Program Services, City of Houston (TX) Mayor's Anti-Gang Initiative

Robert Mateo, Deputy Sheriff, Polk County (FL)

April 14, 2020 – Domestic Violence and Sexual Assault Panel

Matthew Gamette, Director of Forensic Services, Idaho State Police

Kim Garrett, Chief Executive Officer, Palomar, Oklahoma City (OK) Family Justice Center

Richard Hertel, Prosecutor, Ripley County (IN)

Robert Hawkins, Chief of Police, Muscogee (Creek) Nation Lighthorse Police Department

April 15, 2020 – Technology Issues Encountered by Law Enforcement Panel

Darrin Jones, Executive Assistant Director for Science and Technology, Federal Bureau of Investigation

Cyrus R. Vance, Jr., District Attorney, New York County (NY)

Charles (Chuck) Cohen, Vice President, The National White-Collar Crime Center

Bryan Stirling, Director, South Carolina Department of Corrections

Todd Craig, Office of Security Technology Chief, Federal Bureau of Prisons

April 16, 2020 – Leveraging Technology to Reduce Crime Panel

Thomas Ruocco, Chief of Criminal Law Enforcement, Texas Department of Public Safety

Bill Partridge, Chief, Oxford (AL) Police Department

Christopher Amon, Chief of Firearms Operations Division, Bureau of Alcohol, Tobacco, Firearms and Explosives

David LeValley, Assistant Chief, Detroit (MI) Police Department

April 21, 2020 – Technology Tools Panel

Colonel Edwin Roessler, Jr., Chief, Fairfax County (VA) Police Department

Damon Mosler, Assistant District Attorney, San Diego County (CA)

Richard Vorder Bruegge, Ph.D., Senior Physical Scientist, Federal Bureau of Investigation

Kevin Jinks, Senior Counsel, Department of Justice Office of Legal Policy

April 22, 2020 – Survivors of Crime Panel

Joyce Bilyeu, Director of Client Services, Sacramento (CA) Regional Family Justice Center

Adrianna Griffith, SA/DV Specialist/Lived Experience Expert, Women's Center - Youth and Family Services

Bella Hounakey, Subject Matter Expert, U.S. Advisory Council on Human Trafficking

Natasha Alexenko, Founder, Natasha's Justice Project

Hearing 4: Reentry

April 23, 2020 – State of Reentry Panel

John "Tony" Lowden, Executive Director, Federal Interagency Council on Crime Prevention and Improving Reentry

Jason Hardy, Special Agent, Federal Bureau of Investigation

John Koufos, National Director of Reentry Initiatives, Right on Crime

Grant Duwe, Ph.D., Director of Research, Minnesota Department of Corrections

April 28, 2020 – Returning to Work after Incarceration Panel

BJay Pak, United States Attorney for the Northern District of Georgia

Nate Brown, Director of Programs, Oklahoma Department of Corrections

John Wetzel, Secretary, Pennsylvania Department of Corrections

April 29, 2020 – Transitioning from Institution to Community Panel

Tim Johnson, Founder and President, Orlando (FL) Serve Foundation

Jay Sanders, Assistant Commissioner, Inmate Services, Georgia Department of Corrections

Steven Perkins, Metro Reentry Prison Warden, Georgia Department of Corrections

H. Jean Wright, II, Psy.D., Director of Behavioral Health and Justice Related Services, Philadelphia (PA) Department of Behavioral Health and Intellectual disAbility Services

Hearing 5: Grant Programs

April 30, 2020 – Grant Programs Panel

Jennifer Brinkman, Director, Tennessee Department of Finance and Administration

A.J. Louderback, Sheriff, Jackson County (TX)

Keith Kauffman, Chief of Police, Redondo Beach (CA) Police Department

Hearing 6: Juvenile Justice

May 5, 2020 – Framing the Issue and the Need for Accountability Panel

Tim Irwin, Juvenile Judge, Knox County (TN)

Brett Kyker, Chief Assistant Prosecuting Attorney, Cuyahoga County (OH)

John Clark, President and Chief Executive Officer, National Center for Missing & Exploited Children (NCMEC)

May 6, 2020 – How Law Enforcement Addresses Juveniles Involved in Crime Panel

Addison Davis, School Superintendent, Hillsborough County (FL) Public Schools

John Newman, Chief of Security and Emergency Management, Hillsborough County (FL) Public Schools

Mo Canady, Executive Director, National Association of School Resource Officers

Bill E. Waybourn, Sheriff, Tarrant County (TX)

Thomas Lemmer, Deputy Chief, Member, Chicago Lodge #7, Chicago (IL) Police Department

May 7, 2020 – Youth Mentorship Panel

Pam Iorio, President and Chief Executive Officer, Big Brothers Big Sisters of America

Steve Salem, President and Chief Executive Officer, Cal Ripken Sr. Foundation

Wintley Phipps, Founder, President, and Chief Executive Officer, U.S. Dream Academy, Inc.

Jim Clark, President and Chief Executive Officer, Boys & Girls Clubs of America

Hearing 7: Law Enforcement Recruitment, Training, and Retention

May 12, 2020 – Recruitment Panel

Charlie Scheer, Ph.D., Assistant Professor of Criminal Justice, University of Southern Mississippi

Will Johnson, Chief, Arlington (TX) Police Department

Valerie Cunningham, Deputy Chief, Indianapolis (IN) Metropolitan Police Department

Mike Yankowski, Chief, Lansing (MI) Police Department

May 13, 2020 – Training Panel

Erik Bourgerie, Director, Colorado Peace Officer Standards and Training (POST)

Ric Bradshaw, Sheriff, Palm Beach County (FL)

William "Bill" Brueggemann, Sheriff, Cass County (NE)

Grady Judd, Sheriff, Polk County (FL)

May 14, 2020 – Retention Panel

William "Bill" Johnson, Executive Director and General Council, National Association of Police Organizations, Inc. (NAPO)

Mark Napier, Sheriff, Pima County (AZ)

Michael Harrison, Commissioner, Baltimore (MD) Police Department

Sylvia Moir, Chief, Tempe (AZ) Police Department

Hearing 8: Rural and Tribal Justice

May 19, 2020 – Challenges Law Enforcement Face in Rural Areas Panel

Ronald Parsons, Jr., United States Attorney for the District of South Dakota

Michael Keller, Chief of Police, Andover (KS) Police Department

John Letteney, Chief of Police, Apex (NC) Police Department

Cheryl Laurenz-Bogue, State Attorney, Ziebach and Corson County (SD)

May 20, 2020 – Geographic Issues for Rural Communities Panel

Mark Dannels, Sheriff, Cochise County (AZ)

Bryan Schroder, United States Attorney for the District of Alaska

Danny Glick, Sheriff, Laramie (WY)

Kelly Lake, Sheriff, Carlton County (MN)

May 21, 2020 – Criminal Justice System in Indian Country Panel

Trent Shores, United States Attorney for the Northern District of Oklahoma

Matthew Rourke, Chief of Police, Saint Regis Mohawk Tribe Police Department

Richard Blake, Chief Judge, Hoopa Valley Tribal Court

Bill Denke, Chief of Police, Sycuan Tribe

May 27, 2020 – Public Safety Challenges Within American Indian and Alaska Native Communities Panel

Kurt Alme, United States Attorney for the District of Montana

Kevin Allis, Chief Executive Officer, National Congress of American Indians

Leanne Guy, Executive Director, Southwest Indigenous Women's Coalition

Vivian Korthuis, Chief Executive Officer, Association of Village Council Presidents

Charles Addington, Deputy Bureau Director of the Office of Justice Services, Bureau of Indian Affairs

Hearing 9: Community Engagement

May 28, 2020 – Community Engagement Tribal Panel

Farhio Khalif, Founder and Executive Director, Voice of East African Women in Minnesota

Susan Hutson, President, National Association for Civilian Oversight of Law Enforcement (NACOLE)

Amy Blasher, Chief, Crime Statistics Management Unit, Federal Bureau of Investigation

June 9, 2020 – Community Engagement Panel

Glen Gilzean, Jr., President and Chief Executive Officer, Central Florida Urban League

Norman Reimer, Executive Director, National Association of Criminal Defense Lawyers (NACDL)

Deena Hayes-Greene, Founder, Racial Equity Institute

June 18, 2020 – Community Engagement Panel

Scott Turner, Executive Director, U.S. Department of Housing and Urban Development

Reverend Charles Harrison, Senior Pastor, Barnes United Methodist Church

Reverend Markel Hutchins, President and Chief Executive Officer, MovementForward

June 25, 2020 – Faith Leaders and Community Engagement Panel

Jeff Ballabon, Chief Executive Officer, B2 Strategic

Rabbi Jack Moline, Executive Director, Interfaith Alliance

Imam Dr. Talib M. Shareef, President, Masjid Muhammad - The Nation's Mosque

July 1, 2020 – Community Relations, Training, and the Law Enforcement Panel

Lorie Fridell, Ph.D., Professor, Department of Criminology, University of South Florida

Daniel Slaughter, Chief, Clearwater (FL) Police Department

David Klinger, Ph.D., Professor of Criminology and Criminal Justice, University of Missouri – St. Louis

July 2, 2020 – Community Engagement and Respect for Law Enforcement Panel

Luann Pannell, Ph.D., Director, Police Training and Education, Los Angeles (CA) Police Department

Sean Sheppard, Founder and Chief Executive Officer, Game Changer

Hearing 10: The Role of Public Defense

June 2, 2020 – The Role of Public Defenders Panel

Geoffrey Burkhart, Executive Director, Texas Indigent Defense Commission

Douglas Wilson, Chief Public Defender, Aurora (CO) Public Defender's Office

Carlos Martinez, Public Defender, Miami-Dade County (FL)

Mark Stephens, Former Elected Public Defender of Knox County (TN), Law Office of Mark E. Stephens

Hearing 11: Criminal Justice Research Perspectives

June 19, 2020 – Research Perspectives Panel

Geoffrey Alpert, Ph.D., Professor, University of South Carolina

Gary Cordner, Ph.D., Academic Director, Baltimore (MD) Police Department

Sarah Guardiola, Chief Executive Officer, Skyway Leadership Institute

John MacDonald, Ph.D., Professor, University of Pennsylvania

Hearing 12: Policing Culture

June 23, 2020 – What is Reasonable Use of Force and Basic Tenets Panels

Robin Engel, Ph.D., Professor, University of Cincinnati

Michael Ranalli, Chief (retired), Glenville (NY) Police Department

Terry Sult, Chief, Hampton (VA) Police Department

Jeffrey Paul Kruthoff, Chief, Springboro (OH) Police Department

June 24, 2020 – Use of Force and Culture Change, Defining the Situation, and State of the Problem Panels

James McDonnell, Sheriff (retired), Los Angeles County (CA) Sheriff's Department

Ronal Serpas, Ph.D., Superintendent of Police (retired), New Orleans (LA) Police Department and Professor, Criminal Justice Department Loyola University - New Orleans

Robert C. White, Chief (retired), Denver (CO) Police Department

Eriks Gabliks, Director, Oregon Department of Public Safety Standards and Training

Michael Chitwood, Sheriff, Volusia County (FL) Sheriff's Department

Hearing 13: Accreditation and Standards in Law Enforcement

June 30, 2020 – Accreditation Panel

Dean Register, Director, Florida Department of Law Enforcement

Michael Adkinson, Sheriff, Walton County (FL)

Jeff Hughes, Chief, Brentwood (TN) Police Department

Tim Bourgeois, Executive Director, Michigan Commission on Law Enforcement Standards

Vince Niski, Chief, Colorado Springs (CO) Police Department

Hearing 14: Community Trust and Respect for Law Enforcement

July 8, 2020 – Community Trust and Respect for Law Enforcement Panel

Brian Marvel, President and Police Officer, Peace Officers Research Association of California (PORAC) and San Diego (CA) Police Department

Dr. Paul Lilly, Judge, Brown County (TX)

Mick McHale, President, National Association of Police Organizations (NAPO)

Christopher Cook, Lieutenant, Arlington (TX) Police Department

Hearing 15: Respect for Law Enforcement and the Rule of Law Panel Hearing

July 21, 2020 – Rule of Law and U.S. Attorney Panels

Michael Mukasey, 81st Attorney General and Judge, United States District Court, Southern District of New York

Rafael Mangual, Fellow and Deputy Director, Legal Policy, Manhattan Institute

Gail Heriot, J.D., Professor of Law, University of San Diego

Jonathan Turley, J.B. and Maurice C. Shapiro Professor of Public Interest Law, George Washington University Law School

William McSwain, United States Attorney for the Eastern District of Pennsylvania

McGregor Scott, United States Attorney for the Eastern District of California

Nicholas Trutanich, United States Attorney for the District of Nevada

July 22, 2020 – State and Local Prosecutors and Police Panels

Robert Gualtieri, Sheriff, Pinellas County (FL)

Barry Dunn, Deputy Attorney General, Kentucky Office of the Attorney General

Leslie Rutledge, Attorney General, Arkansas Office of the Attorney General

Eric Olsen, Commonwealth's Attorney, Stafford County (VA)

Jonathan Blodgett, District Attorney, Essex County (MA)

Henry Stawinski III, Chief (retired), Prince George's County (MD) Police Department

Bill Brown, Sheriff, Santa Barbara County (CA)

Lazaro "Larry" Cosme, National President, Federal Law Enforcement Officers Association

Mark Young, Lieutenant, Detroit (MI) Police Department

Art Acevedo, Chief, Houston (TX) Police Department

Edwin Meese III, 75th Attorney General, The Heritage Foundation

APPENDIX G: INDIVIDUALS AND ORGANIZATIONS SUBMITTING PUBLIC COMMENTS

American Civil Liberties Union, submitted by Kanya Bennett, Senior Legislative Counsel

American Mental Wellness Advocacy, submitted by Sharon Engdahl, Executive Director

American Society of Criminology Executive Board, submitted by Ted Gest

Amnesty International USA, submitted by Kristina Roth, Criminal Justice Program Senior Program Officer

Anti-Defamation League, submitted by George Selim, Senior Vice President for Programs

The Arc's National Center on Criminal Justice and Disability, submitted by Leigh Ann Davis, Director

Arlington County Police Department Business Safety Initiative, submitted by Dimitrios Mastoras, Master Police Officer, Arlington County, Virginia Police Department

Arnold Ventures, submitted by Walter Katz, Vice President of Criminal Justice

Richard Arrington, Owner, Crime Prevention Center for Training and Services, LLC

Lindell R. Barton

Donald R. Bell, Sheriff, Lake County, Montana

Mary Ann Bernard, Minnesota Assistant Attorney General (retired)

Marissa Bluestine, J.D. and George Cronin, Ph.D., Quattrone Center for the Fair Administration of Justice

Ralph S. Bovard, M.D., HealthPartners Department of Preventive, Occupational, and Environmental Medicine

William J. Bratton, Executive Chairman of Teneo Risk Advisory; Police Commissioner (retired), New York City Police Department; Chief, Los Angeles Police Department; and Police Commissioner, Boston Police Department

Michael Brave, Legal Advisor and Advisory Board Member, International Law Enforcement Educators and Trainers Association

Brennan Center for Justice, submitted by Lauren-Brooke Eisen, Justice Program Director, and Spencer Boyer, Washington Office Director

Ryan Burchnell, Director of Strategy and Policy, FirstNet Program at AT&T

Marc S. Buslik, District Commander (retired), Chicago Police Department

Nadia Carpenter

Center for Policing Equity, submitted by Kat Kiyoko Amano, Senior Vice President of Program Management; Chief Chris Burbank (retired), Vice President of Law Enforcement Strategy; Dr. Phillip Atiba Goff, Co-founder and CEO; and Dr. Tracie Keese, Co-founder and Senior Vice President of Justice Initiatives

Andrew Choate, Executive Assistant U.S. Attorney, District of Utah

Richard Cipro, Lieutenant Colonel, Military Police, Massachusetts Army National Guard

Jerri Clark, Founder, Mothers of the Mentally III

CNA Center for Justice Research and Innovation, submitted by James R. "Chip" Coldren, Jr., Ph.D., Director

Joshua Coleman, Sergeant, Texas Department of Public Safety Highway Patrol

Council of State Governments Justice Center, submitted by Megan Quattlebaum, Executive Director

Crisis Intervention Team (CIT) International, Inc., submitted by Ron L. Bruno, Executive Director, and Amy C. Watson, Ph.D., President of the Board of Directors

Danielle Curtiss, R.N.

Mark Dannels, Sheriff, Cochise County, Arizona

V. Harrison Dillard, Captain (retired), Civil Rights & Diversity Committee Chairperson NOBLE New Jersey Chapter

Harry Earle, Chief (retired), Gloucester Township Police Department, New Jersey

Gail Evanguelidi, National Alliance on Mental Illness - Westside Los Angeles

Fair and Just Prosecution, submitted by Miriam Krinsky, Executive Director

FBI National Academy Associates, Inc., submitted by Kevin Wingerson, President

Florida Department of Law Enforcement, submitted by Richard Swearingen, Commissioner

Foundation for Advancing Alcohol Responsibility, submitted by Darrin Grondel, Vice President

Tim Fuller, Sheriff, Franklin County, Tennessee

Pete Gagliardi, Special Agent in Charge (retired), Bureau of Alcohol, Tobacco, Firearms and Explosives

Sarko Gergerian, Sergeant, Winthrop Police Department, Massachusetts

Lynne Gibbs

Gayle Giese

Karen Guy Grajewski, M.D.

Andy Griffiths, Ph.D.

Dianne Harris, Steering Committee Member, National Shattering Silence Coalition

Healing Minds NOLA, submitted by Janet Hays, Director

Tim Heller

Shawn Hill, Lieutenant, Santa Barbara Police Department, California

Hispanic American Police Command Officers Association, submitted by Chief Teresa Ramon, National President

Margaux L. Hoover

Human Rights Campaign, submitted by Alphonso David, President

Wendy S. Hummell, Health and Wellness Coordinator, Sedgwick County Sheriff's Office, Kansas

David P. Hutchinson, Sheriff, Hennepin County, Minnesota

DJ Jaffe, Executive Director, Mental Illness Policy Org.

Herman T. Jones, Colonel, Superintendent, Kansas Highway Patrol

Justice Roundtable, submitted by Kanya Bennett, ACLU Senior Legislative Counsel

Marie Kimball

Arax Krahlung

Anne Li Kringen, Ph.D., Professor, University of New Haven

Jen Lackard, Founder and Chief Strategist, Re-Entry Link

Dianne Lam

Lambda Legal

Law Enforcement Action Partnership, submitted by Neill Franklin, Executive Director

Law Enforcement Leaders to Reduce Crime & Incarceration, submitted by Executive Director Ronal W. Serpas, Ph.D. and Senior Counsel Taryn A. Merkl

The Leadership Conference on Civil and Human Rights, submitted by Vanita Gupta, President and CEO

John LeLacheur, Chief, Beverly Police Department, Maine

Joseph K. Loughlin, Assistant Chief (retired), Portland Police Department, Maine

Steven Mabeus, Assistant Director, Office of the Director for National Intelligence

Major Cities Chiefs Association, submitted by Laura Cooper, Executive Director

Richard H. Martin, Ed.D., Professor, Mercer University

David McArdle, M.D., Founder, Tactical Chains of Survival

Linda L. Mimms, M.A.

Richard Mirgon, Owner, AllThingsFirstnet.com

Roland Mitchell, Ph.D., Dean, Louisiana State University College of Human Sciences and Education

Alison Monroe

Mark D. Napier, Sheriff, Pima County, Arizona

National Alliance on Mental Illness, submitted by Angela Kimball, National Director of Advocacy and Public Policy

National Alliance on Mental Illness – Minnesota, submitted by Sue Abderholden, Executive Director

National Association for the Advancement of Colored People Legal Defense and Education Fund, submitted by Sherrilyn Ifill, President and Director-Counsel

National Association of Police Organizations, submitted by William J. Johnson, Executive Director and General Counsel

National Council of Churches, submitted by Jim Winkler, General Secretary/President

National LGBT HIV Criminal Justice Working Group, Lambda Legal, and the National Center for Transgender Equality, submitted by Puneet Cheema, Staff Attorney, Lambda Legal

National Narcotic Officers' Association Coalition, submitted by Bob Bushman, President

National Sheriffs' Association, submitted by Jonathan F. Thompson, Executive Director and CEO

National Tactical Officers Association, submitted by K. Thor Eells, Executive Director

National White Collar Crime Center and Safe Surfin' Foundation, submitted by Robin Sundquist, Special Projects Manager

Julie Niemchick, Crime Prevention Coordinator, Grand Rapids Police Department, Michigan

John E. Otto, Special Agent and Acting Director (retired), Federal Bureau of Investigation

Paul M. Pazen, Chief, Denver Police Department, Colorado

Peace Officers Research Association of California, submitted by Brian Marvel, President

Perry Phipps, Chief, Snoqualmie Police Department, Washington

Police Executive Research Forum, submitted by Chuck Wexler, Executive Director

Jean Powers

Proactive Alliance, submitted by Dimitrios Mastoras, Master Police Officer, Arlington County Police Department, Virginia

Steve Pryce

Public Safety Broadband Technology Association, submitted by Karl Wilmes, Deputy Executive Director

Public Safety Technology Alliance, submitted by TJ Kennedy, Chief Executive Officer

Linda Quinet

Brian G. Redburn, Assistant Chief, City of Irving Police Department, Texas

Regional Information Sharing Systems Program, submitted by Donna K. Williams, National Policy Group Chair

Joseph Remy, Assistant Prosecutor, Burlington County Prosecutor's Office, New Jersey

Raymond W. Richards III, Major, National Guard, Massachusetts

Sara Roelofs

Justin Rottmann, M.S., Chief, Grantfork Police Department, Illinois

Bradley Rueter, Special Agent, Canadian National Police Service

Rachel Santos, Ph.D., Professor, Radford University

Christine Sarteschi, Ph.D., Professor of Social Work and Criminology, Chatham University

Braden Schrag, CEO, Polymath Solutions, LLC

Paul Schultz, Chief (retired), Fort Morgan Police Department, Colorado

Colleen Scott

William R. Seay, Jr.

Natalie Selby, Lieutenant and Crisis Intervention Team Instructor, City of Alexandria Police Department, Kentucky

Select Engineering Services LLC, submitted by John Bohlke, Director

SENSIS, submitted by Sharon Carothers, Managing Director

Ronald Sellon, Chief, Mansfield Police Department, Massachusetts

Robert Severance, III, M.A., Chief, Cleburne Police Department, Texas

George Sherrill, Chief (retired), Holden Police Department, Massachusetts

Jeff Shrader, Sheriff, Jefferson County, Colorado

Jaclyn Smith, Research and Evaluation Manager, ICF International, Inc.

Rhonda Snyder

Julie Taylor

Heather Turnage

Joseph J. Vince, Jr., Professor, Mount St. Mary's University

Michael Ward, Chief (retired), City of Alexandria Police Department, Kentucky

David Williams, Colonel (retired), Illinois State Police

Ben Wolfinger, Sheriff, Kootenai County, Idaho

Carolyn Wood Friedman

APPENDIX H: INDIVIDUALS AND ORGANIZATIONS SUBMITTING ORAL AND WRITTEN TESTIMONY

(Those who provided either oral or written testimony only are indicated in parentheses)

Art Acevedo, Chief, Houston Police Department, Texas

Charles Addington, Director, Bureau of Indian Affairs Office of Justice Services, U.S. Department of the Interior

Michael Adkinson, Sheriff, Walton County, Florida

Natasha Alexenko, Founder, Natasha Justice Project

Kevin Allis, Chief Executive Officer, National Congress of American Indians (oral)

Kurt Alme, United States Attorney for the District of Montana

Geoffrey Alpert, Ph.D., Professor, University of South Carolina

Christopher Amon, Chief, Firearms Operations Division, Bureau of Alcohol, Tobacco, Firearms and Explosives

Steve Anderson, Chief, Metropolitan Nashville Police Department, Tennessee

John Ashmen, President and Chief Executive Officer, Citygate Network

Jeff Ballabon, Chief Executive Officer, B2 Strategic

Donald (Don) Barnes, Sheriff, Orange County, California

Dianne Bernhard, Executive Director, Concerns of Police Survivors

Joyce Bilyeu, Director of Client Services, Sacramento Regional Family Justice Center, California

Richard Blake, Chief Judge, Hoopa Valley Tribal Court

Amy Blasher, Chief, Crime Statistics Management, Federal Bureau Investigation

Jonathan Blodgett, District Attorney, Essex County, Massachusetts

Tim Bourgeois, Executive Director, Michigan Commission on Law Enforcement Standards

Erik Bourgerie, Director, Colorado Peace Officer Standards and Training

Ric Bradshaw, Sheriff, Palm Beach County, Florida

Jennifer Brinkman, Director, Tennessee Department of Finance and Administration

Mike Brown, Chief, Salt Lake City Police Department, Utah

Bill Brown, Sheriff, Santa Barbara County, California

William "Bill" Brueggemann, Sheriff, Cass County, Nebraska

Geoffrey Burkhardt, Executive Director, Texas Indigent Defense Commission

Daniel Cameron, Kentucky Attorney General (written)

Mo Canady, Executive Director, National Association of School Resources Officers

Cherie Castellano, M.A., C.S.W., L.P.C., A.A.E.T.S., Program Director, Rutgers University Behavioral Healthcare COP 2 COP

Thomas Chittum, Assistant Director of Field Operations, Bureau of Alcohol, Tobacco, Firearms and Explosives

Michael Chitwood, Sheriff, Volusia County, Florida (oral)

John Clark, President and Chief Executive Officer, National Center for Missing & Exploited Children

Jim Clark, President and Chief Executive Officer, Boys & Girls Club of America

Charles "Chuck" Cohen, Vice President, National White Collar Crime Center

Christopher Cook, Lieutenant, Arlington Police Department, Texas

Gary Cordner, Ph.D., Academic Director, Baltimore Police Department, Maryland

Lazaro "Larry" Cosme, National President, Federal Law Enforcement Officers Association

Scott Coyne, M.D., Chief Surgeon Medical Director, Suffolk County Police Department, New York

Todd Craig, Office of Security Technology Chief, Federal Bureau of Prisons

Valerie Cunningham, Deputy Chief, Indianapolis Metropolitan Police Department, Indiana

Mark Dannels, Sheriff, Cochise County, Arizona

Addison Davis, School Superintendent, Hillsborough County Public Schools, Florida

Sue DeLacy, Chief Deputy Probation Officer, Orange County Probation Department, California

Bill Denke, Chief of Police, Sycuan Tribe

Louise Di Matteo, Judge, Arlington Circuit Court, Virginia (written)

Barry Dunn, Kentucky Deputy Attorney General (oral)

Grant Duwe, Ph.D., Director of Research, Minnesota Department of Corrections

Alexander Eastman, M.D., MPH, FACS, FAEMS, Senior Medical Officer, Dallas Police Department, Texas

Robin Engel, Ph.D., Professor, University of Cincinnati

Tyrone Enriquez, Deputy, Orange County Sheriff's Department, California (written)

Fred Farris, Chief, Goddard Police Department, Kansas

Carson Fox, Chief Executive Officer, National Association of Drug Court Professionals

Lorie Fridell, Professor, Department of Criminology, University of South Florida

Eriks Gabliks, Director, Oregon Department of Public Safety Standards and Training

Matthew Gamette, Director of Forensic Services, Idaho State Police

Kim Garrett, Chief Executive Officer, Palomar, Oklahoma City's Family Justice Center, Oklahoma

Glen Gilzean, Jr., President and Chief Executive Officer, Central Florida Urban League

Danny Glick, Sheriff, Laramie, Wyoming (oral)

Victor Gonzalez, Director of Program Services, City of Houston's Mayor's Anti-Gang Initiative

Adrianna Griffith, SA/DV Specialist/Lived Experience Expert, Women's Center – Youth and Family Services

William Gross, Police Commissioner, Boston Police Department, Massachusetts

Robert Gualtieri, Sheriff, Pinellas County, Florida

Sarah Guardiola, Chief Executive Officer, Skyway Leadership Institute

Leanne Guy, Executive Director, Southwest Indigenous Women's Coalition

Jason Hardy, Special Agent, Federal Bureau of Investigation

Gail Hariot, Professor of Law, University of San Diego, California

Michael Harrison, Commissioner, Baltimore Police Department, Maryland

Reverend Charles Harrison, Senior Pastor, Barnes United Methodist Church (oral)

Geraldine Hart, Commissioner, Suffolk County Police Department, New York

Robert Hawkins, Chief of Police, Muscogee (Creek) Nation Lighthorse Police Department (oral)

Deena Hayes-Greene, Founder, Racial Equity Institute

Justin Herdman, United States Attorney for the Northern District of Ohio

Richard Hertel, Prosecutor, Ripley County, Indiana

Bella Hounakey, Subject Matter Expert, U.S. Advisory Council on Human Trafficking

Jeff Hughes, Chief, Brentwood Police Department, Tennessee

Keith Humphreys, Ph.D., Professor, Stanford University (oral)

Reverend Markel Hutchins, President and Chief Executive Officer, MovementForward

Susan Hutson, President, National Association for Civilian Oversight of Law Enforcement

Pam Iorio, President and Chief Executive Officer, Big Brothers Big Sisters of America

Tim Irwin, Juvenile Judge, Knox County, Tennessee

Alexa James, LCSW, Executive Director, National Alliance for Mental Illness – Chicago

Kevin Jinks, Senior Counsel, Office of Legal Policy, U.S. Department of Justice

Tim Johnson, Founder and President, Orlando Serve Foundation, Florida

Will Johnson, Chief (retired), Arlington Police Department, Texas

William “Bill” Johnson, Executive Director and General Council, National Association of Police Organizations

Darrin Jones, Executive Assistant Director for Science and Technology, Federal Bureau of Investigation

Nicole Juday, Professional Development, Wellness and Mentoring Officer, Indianapolis Police Department, Indiana

Grady Judd, Sheriff, Polk County, Florida

Keith Kauffman, Chief of Police, Redondo Beach Police Department, California

Michael Keller, Chief, Andover Police Department, Kansas

Karla Kerlin, Judge, Los Angeles County Superior Court, California (written)

Farhio Khalif, Founder and Executive Director, Voice of East African Women in Minnesota

William King, Ph.D., Professor, Boise State University

David Klinger, Ph.D., Professor of Criminology and Criminal Justice, University of Missouri – St. Louis

Tamera Kohler, Chief Executive Officer, San Diego Regional Task Force on the Homeless (written)

Vivian Korthuis, Chief Executive Officer, Association of Village Council Presidents

John Koufos, National Director of Reentry Initiatives, Right on Crime

Peter Koutoujian, Sheriff, Middlesex County, Massachusetts

Jeffrey Paul Kruithoff, Chief, Springboro Police Department, Ohio

Brett Kyker, Chief Assistant Prosecuting Attorney, Cuyahoga County, Ohio

Kelly Lake, Sheriff, Carleton County Police Department, Minnesota

Cheryl Laurenz-Bogue, South Dakota States Attorney, Corson and Ziebach County

Thomas Lemmer, Deputy Chief and Member, Chicago Police Department, Chicago Lodge #7, Illinois

John Letteney, Chief, Apex Police Department, North Carolina

David LeValley, Assistant Chief, Detroit Police Department, Michigan

Paul D. Lilly, Judge, Brown County, Texas

A.J. Louderback, Sheriff, Jackson County, Texas

L.D. Louis, Assistant District Attorney, Alameda County, California (written)

John “Tony” Lowden, Executive Director, Federal Interagency Council on Crime Prevention and Improving Reentry

John MacDonald, Ph.D., Professor, University of Pennsylvania

Rafael Mangual, Fellow and Deputy Director, Legal Policy, Manhattan Institute

Robert Marbut, Jr., Ph.D., Executive Director, U.S. Interagency Council on Homelessness (oral)

Sherri Martin, National Director of Wellness Services, Fraternal Order of Police

Carlos Martinez, Miami-Dade Public Defender, Miami-Dade County, Florida

President's Commission on Law Enforcement and the Administration of Justice

Brian Marvel, President and Police Officer, Peace Officers Research Association of California (PORAC) and San Diego Police Department, California

Robert Mateo, Deputy Sheriff, Polk County, Florida

Janice McCarthy, Board Member, Care of Police Suicide Survivors

James McDonnell, Sheriff (retired), Los Angeles County, California

Michael McHale, National President, National Association of Police Organizations

John McMahan, Sheriff, San Bernardino County, California

William McSwain, United States Attorney for the Eastern District of Pennsylvania

Edwin Meese III, 75th Attorney General, The Heritage Foundation (oral)

Matthew Miller, Ph.D., Director for Suicide Prevention, Department of Veterans Affairs (oral)

Sylvia Moir, Chief, Tempe Police Department, Arizona

Rabbi Jack Moline, Executive Director, Interfaith Alliance

Damon Mosler, Assistant District Attorney, San Diego County, California

Michael Mukasey, 81st Attorney General and Judge, United States District Court, Southern District of New York

Mark Napier, Sheriff, Pima County, Arizona

Melissa Nelson, State's Attorney, Florida 4th Judicial District

Paul Neudigate, Assistant Chief, Cincinnati Police Department, Ohio

John Newman, Chief of Security and Emergency Management, Hillsborough County Public Schools, Florida

Vince Niski, Chief, Colorado Springs Police Department, Colorado

Corey Nooner, Sergeant, Oklahoma City Police Department, Oklahoma

Eric Olsen, Commonwealth's Attorney, Stafford County, Virginia

BJay Pak, United States Attorney for the Northern District of Georgia

Luann Pannell, Ph.D., Director, Police Training and Education, Los Angeles Police Department, California

Ronald Parsons, Jr., United States Attorney for the District of South Dakota

Bill Patridge, Chief, Oxford Police Department, Alabama

Christopher Patterson, Regional Administrator, U.S. Department of Housing and Urban Development

Paul Penzone, Sheriff, Maricopa County, Arizona

Steven Perkins, Metro Reentry Prison Warden, Georgia Department of Corrections

Wintley Phipps, Founder, President and Chief Executive Officer, U.S. Dream Academy, Inc.

Michael Ranalli, Chief (retired), Glenville Police Department, New York

Brian Redd, Chief, Bureau of Investigation, Utah State Department of Public Safety

Dean Register, Director, Florida Department of Law Enforcement

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Thomas Ruocco, Chief of Criminal Law Enforcement, Texas Department of Public Safety

Leslie Rutledge, Arkansas Attorney General

Steve Salem, President and Chief Executive Officer, Cal Ripken, Sr. Foundation

Stephanie Samuels, Psychotherapist, COPLINE

Jay Sanders, Assistant Commissioner for Inmate Services, Georgia Department of Corrections

Charlie Scheer, Ph.D., Assistant Professor of Criminal Justice, University of Southern Mississippi

Bryan Schroder, United States Attorney for the District of Alaska

McGregor Scott, United States Attorney for the Eastern District of California

Michael Sena, Director, Northern California High Intensity Drug Trafficking Area

Ronal Serpas, Ph.D., Superintendent (retired), New Orleans Police Department, and Professor, Criminal Justice Department, Loyola University

Imam Dr. Talib M. Shareef, Masjid Muhammad, President, The Nation's Mosque

Sean Sheppard, Founder and Chief Executive Officer, Game Changer

Sarah Shimko, Sergeant, City of Madison Police Department, Wisconsin

Trent Shores, United States Attorney for the Northern District Oklahoma

Timothy Sini, District Attorney, Suffolk County, New York

Jim Skinner, Sheriff, Collin County, Texas

Daniel Slaughter, Chief, Clearwater Police Department, Florida

John Snook, Chief Executive Officer and President, Treatment Advocacy Center

Karen Solomon, Co-Founder and President, Blue H.E.L.P. Inc.

Bruce Spangler, Chief Executive Officer, Volunteer Ministry Center (written)

Henry Stawinski III, Chief (retired), Prince George's County Police Department, Maryland

Mark Stephens, Former Elected Public Defender of Knox County, Tennessee, Law Office of Mark E. Stephens

Bryan Stirling, Director, South Carolina Department of Corrections

Michael Stuart, United States Attorney for the South District of West Virginia

Terry Sult, Chief, Hampton Police Department, Virginia (oral)

Zachary Terwilliger, United States Attorney for the Eastern District of Virginia

William Thompson, Judge, Boone County Court (written)

Scott Thomson, Chief (retired), Camden County Police Department, New Jersey

Nicholas Trutanich, United States Attorney for the District of Nevada

Jonathan Turley, J.B. & Maurice C. Shapiro Professor of Public Interest Law, George Washington University Law School

Scott Turner, Executive Director, White House Opportunity and Revitalization Council (oral)

Cyrus R. Vance Jr., District Attorney, New York County, New York

Richard Vorder Bruegge, Ph.D., Senior Physical Scientist, Federal Bureau of Investigation

Bill E. Waybourn, Sheriff, Tarrant County, Texas

John Wetzel, Secretary, Pennsylvania Department of Corrections

Robert C. White, Chief (retired), Denver Police Department, Colorado

Douglas Wilson, Chief Public Defender, Aurora Public Defender's Office, Colorado

H. Jean Wright II, Psy.D., Director of Behavioral Health and Justice Related Services, Philadelphia Department of Behavioral Health and Intellectual disAbility Services, Pennsylvania

Mike Yankowski, Chief, Lansing Police Department, Michigan

Patrick Yoes, National President, Fraternal Order of Police

Mark Young, Lieutenant, Detroit Police Department, Michigan

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.,**

Plaintiff,

v.

**WILLIAM P. BARR, in his official capacity
as Attorney General of the United States,
et al.,**

Defendants.

Civil Action No. 20-1132 (JDB)

MEMORANDUM OPINION

This Court recently granted plaintiff NAACP Legal Defense and Educational Fund’s (“LDF”) motion for summary judgment on several of its claims that defendants violated the Federal Advisory Committee Act (“FACA”) in forming and operating the Presidential Commission on Law Enforcement and the Administration of Justice (“Commission”). The Court must now determine the appropriate remedy. Upon consideration of the parties’ proposals, and for the reasons set forth below, the Court will prohibit defendants from releasing the Commission’s report unless they first comply with FACA; or alternatively, if they do not, they must include a clear statement in the report that the Commission violated FACA and attach the Court’s remedial order.

Background

The Court will assume familiarity with the basic facts and procedural history of this case, which were summarized at length in the Court’s prior opinion and order granting LDF’s motion for summary judgment. See Oct. 1, 2020 Mem. Op. (“Oct. 1 Op.”) [ECF No. 45] at 3–10; Oct. 1, 2020 Order (“Oct. 1 Order”) [ECF No. 44]. The Court held that the Commission is subject to

FACA and that defendants violated FACA by failing to (1) ensure fairly balanced membership of the Commission, (2) file a charter with the required entities, (3) appoint a designated federal officer, and (4) provide timely notice of meetings in the Federal Register. See Oct. 1 Op. at 30, 40–42.

Consequently, the Court issued a declaratory judgment, ordered the Commission to file a charter and provide timely notice of future meetings in the Federal Register, and ordered the Attorney General to select a designated federal officer for the Commission. See Oct. 1 Order. The Court also concluded that LDF is entitled to injunctive relief to ensure that the Commission has a fairly balanced membership, and thus ordered the parties to submit proposed remedial orders for the precise content of that injunction and any other appropriate relief. Id. And the Court ordered that, until the requirements of FACA are satisfied, the Commission shall halt proceedings and defendants shall not submit, publish, or rely on any Commission work product. Id. The parties have now submitted competing proposed remedial orders, which are fully briefed and ripe for consideration.

Analysis

The parties propose drastically divergent remedies. LDF proposes that the Court permanently enjoin defendants from releasing or using the Commission’s recommendations until the Commission complies with FACA—in other words, a complete “use injunction.” See Pl.’s Proposed Remedial Order (“Pl.’s Order”) [ECF No. 46-1]. This injunction, LDF explains, would require the Commission to “restart its inquiry afresh with a newly constituted membership,” release all records, and allow new Commission members to review all previous materials and communications, solicit new materials, and fully participate in drafting recommendations. See Mem. of Law in Supp. of Pl.’s Proposed Remedial Order (“Pl.’s Br.”) [ECF No. 46] at 2–3, 6; Pl.’s Order. In contrast, the government asks the Court to deny LDF’s request for a use injunction and amend the previous order

to excuse defendants from complying with FACA, leaving in place only a declaratory judgment. See Defs.’ Proposed Remedial Order (“Defs.’ Order”) [ECF No. 47-2]; Defs.’ Mem. on Remedies (“Defs.’ Br.”) [ECF No. 47] at 1–2.

I. Standing

As an initial matter, the government contends that LDF lacks standing to obtain a use injunction because such an injunction would not redress LDF’s injuries. See Defs.’ Br. at 3–5. The Court concludes that LDF at least has standing to obtain a limited use injunction requiring that, if defendants release the Commission’s recommendations without complying with FACA, the report must include a statement that the Commission violated FACA.¹

Constitutional standing requires that “the plaintiff has suffered an injury in fact fairly traceable to the actions of the defendant that is likely to be redressed by a favorable decision on the merits.” Humane Soc’y of the U.S. v. Vilsack, 797 F.3d 4, 8 (D.C. Cir. 2015); see also Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016). The Court has already determined that LDF’s injuries are redressable by mandamus and injunctive relief requiring defendants to comply with FACA and by declaratory relief. See Oct. 1 Op. at 13–20. But LDF must have “standing separately for each form of relief sought.” Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 185 (2000).

The D.C. Circuit addressed standing for use injunctions to remedy FACA violations in Natural Resources Defense Council v. Pena, 147 F.3d 1012 (D.C. Cir. 1998), where the district court had issued a use injunction wholly prohibiting the agency from using a committee’s report,

¹ Indeed, the government does not really challenge LDF’s standing to obtain a limited use injunction, instead contending that LDF lacks standing to obtain “a permanent injunction banning the use of the Commission’s work product.” See Defs.’ Br. at 4. Because the Court finds that only a limited use injunction is appropriate in this case, the Court need not decide whether LDF has standing to obtain a complete use injunction prohibiting any release or use of the current Commission’s work product.

id. at 1014. The D.C. Circuit remanded because the committee had been dissolved and plaintiff had not shown that the injunction would redress its injuries—exclusion from past meetings and denial of access to committee records. Id. at 1020–24. And the court rejected plaintiff’s argument that “the punitive consequences of the injunctive order suffice to establish that the order redresses the [agency’s] past FACA transgressions.” Id. at 1022.

Here, unlike in Pena, the Commission has not been dissolved. Thus, LDF’s injuries—denial of access to information and a representative voice on the Commission—can be redressed if defendants take the steps necessary to comply with FACA. See Oct. 1 Op. at 17–19. But if defendants do not take those steps, enjoining defendants from releasing the report without a disclaimer that the Commission violated FACA will bring LDF some relief. “The effect of this relief is, in many ways, similar to that of the declaratory relief” the Court has granted because “the disclaimer would give [LDF] ‘ammunition’ in the arena of public opinion.” Nat. Res. Def. Council v. Abraham, 223 F. Supp. 2d 162, 182–83 (D.D.C. 2002), order set aside in part on other grounds sub nom. Nat. Res. Def. Council v. Dep’t of Energy, 353 F.3d 40 (D.C. Cir. 2004); see also Oct. 1 Op. at 19–20.

Defendants’ FACA violations caused LDF’s injuries, which stem from its inability to influence the Commission’s work by scrutinizing the Commission’s activities and having access to a representative voice on the Commission. See Oct. 1 Op. at 17. Requiring a disclaimer gives LDF some input into the Commission’s work by removing the appearance of legitimacy that attaches to advisory committee recommendations. And this requirement will redress LDF’s injuries more effectively than a declaratory judgment alone by ensuring that everyone who views the report is aware that it was produced in violation of FACA, even outside of formal agency proceedings where LDF or others cite the declaratory judgment. Of course, this limited use

injunction cannot retroactively give LDF access to a representative voice during past Commission meetings. But LDF will still gain significant relief, and such “gains are undoubtedly sufficient to give [LDF] standing.” See Pub. Citizen v. Dep’t of Justice, 491 U.S. 440, 451 (1989).

II. Remedies

The Court rejects both LDF’s request for a broad use injunction wholly prohibiting any release or use of the current Commission’s report and the government’s request to order declaratory relief alone. Instead, the Court will prohibit defendants from releasing the Commission’s report unless they either comply with FACA, or instead include a disclaimer in the report stating that the Commission violated FACA in producing the report and attach the Court’s remedial order to it.

A. Compliance With FACA

If defendants want to release the Commission’s report without a disclaimer detailing their FACA violations, they must comply with FACA. As previously ordered, compliance with FACA means the Commission must file a charter and provide timely notice of future meetings in the Federal Register, and the Attorney General must select a designated federal officer for the Commission. See Oct. 1 Order. The Attorney General must also take steps necessary to ensure the membership of the Commission is fairly balanced, and that new members can meaningfully participate in the Commission’s work. See Cummock v. Gore, 180 F.3d 282, 291 (D.C. Cir. 1999) (noting that an advisory committee may be “effectively unbalanced” if some members are “precluded from meaningful participation”). The Court is wary, however, of overstepping its role by instructing the Commission on exactly who to appoint as members or precisely how the Commission should facilitate their participation. Those decisions will be left to the Attorney General and Commission leaders. LDF also requests that the Court order the Commission to

produce various documents. See Pl.’s Order at 3. Because LDF did not seek—and the Court did not enter—summary judgment on LDF’s public records claim, see Oct. 1 Op. at 10, the Court will deny this request for now.

The Court rejects defendants’ request to amend its previous order by removing the portions requiring the Commission to comply with FACA’s requirements to file a charter, provide notice of meetings, and appoint a designated federal officer. See Defs.’ Br. at 11. Defendants argue that because the Commission is only a week away from completing its report and its meetings have concluded, “no practical purpose” would be served by requiring compliance with FACA. Id. The only authority defendants invoke addresses whether certain FACA claims are mooted “when the relevant advisory committee ceases to exist.” See Defs.’ Br. at 11 (quoting Ctr. for Biological Diversity v. Tidwell, 239 F. Supp. 3d 213, 223 (D.D.C. 2017)). But here, the Commission still exists. And if defendants want to release the Commission’s report without a disclaimer, the Commission must continue to exist for as long as necessary for the Attorney General to ensure a fairly balanced membership, for new members to meaningfully participate, and for the Commission to otherwise comply with FACA. As the Court previously explained, “[t]his relief will allow LDF to scrutinize the Commission’s activities and will provide access to a representative voice on the Commission”—and thus clearly serves a practical purpose. See Oct. 1 Op. at 17–18.

The government’s only remaining argument is that the Executive Order “would not allow Defendants to reconstitute the Commission with non-government officials” or complete work after October and so the “Commission’s meetings and fact-finding are complete and will not resume with additional or different members.” See Defs.’ Reply Mem. on Remedies (“Defs.’ Reply”) [ECF No. 50] at 5; Defs.’ Resp. Mem. on Remedies (“Defs.’ Opp’n”) [ECF No. 48] at 6. But the

Executive Order does not prohibit non-government officials from being Commission members. Rather, it states that “[t]he Attorney General shall determine the composition of . . . the Commission,” that Federal Government officers or employees “designated to the Commission shall be full-time, or permanent part-time, officers or employees,” and that “[t]he Attorney General may, at his discretion, invite elected officers of State, local, and tribal governments” or their designated employees to serve in their official capacities. Exec. Order No. 13,896, 84 Fed. Reg. 58,595, § 2(b)–(d) (Oct. 28, 2019). The Executive Order never says that the Commission must consist exclusively of government officers or employees. See id. Even if it did, the Executive Order itself recognizes that it “shall be implemented consistent with applicable law,” id. § 6(b), which includes FACA. See Am. Fed’n of Gov’t Emps., AFL-CIO v. Trump, 318 F. Supp. 3d 370, 393 (D.D.C. 2018) (“[T]he President . . . acts in excess of his statutory authority if the orders that he issues conflict with a federal statute.”), rev’d on other grounds, 929 F.3d 748 (D.C. Cir. 2019).

Therefore, the Court will not amend its previous order to remove the requirement for the Commission to comply with FACA’s procedural requirements. Defendants may choose not to resume Commission meetings with new members, file a charter, or appoint a designated federal officer, and instead decide to finalize and release the report very soon. But in that case, as explained below, the report must acknowledge the Commission’s FACA violations.

B. Limited Use Injunction

In the event that defendants do not bring the Commission into compliance with FACA, any version of the Commission’s report or recommendations that is published or otherwise disseminated must include a clear statement that the Commission violated FACA, and must attach the Court’s remedial order. As LDF itself acknowledges, the President and Attorney General may make policy decisions related to law enforcement without reliance on an advisory committee. See Pl.’s Mem. of Law in Opp’n to Defs.’ Proposed Remedial Order (“Pl.’s Opp’n”) [ECF No. 49] at

7–8. But invoking advisory committee recommendations lends “political legitimacy” to those decisions. See id.; see also Ass’n of Am. Physicians & Surgeons, Inc. v. Clinton, 997 F.2d 898, 914 (D.C. Cir. 1993) (“Advisory committees are not just mechanisms for transmitting policy advice on a particular subject matter to the government. These committees also possess a kind of political legitimacy as representative bodies.”). When the executive branch “seeks to promote the policy course suggested by the committee, the executive branch draws upon the committee’s political legitimacy.” Clinton, 997 F.2d at 914. A conspicuous disclaimer on the Commission’s report will qualify that legitimacy by ensuring that everyone who views the report learns it was produced unlawfully by a non-representative body. And such a limited use injunction is not new to this District. See Abraham, 223 F. Supp. 2d at 182–83.

The Court rejects LDF’s argument that a limited use injunction is not “sufficient for LDF to challenge the Commission’s recommendations in the public forum.” Pl.’s Reply in Supp. of Pl.’s Proposed Remedial Order (“Pl.’s Reply”) [ECF No. 51] at 4. First, LDF argues that “the Commission has additional work to complete, during which a declaratory judgment or limited use injunction will not allow [LDF] to challenge its ongoing illegal operations.” Id. But the Commission is only one week’s worth of ministerial work away from finalizing its report. See Defs.’ Br. at 2. Moreover, LDF can still pursue the claims for which it has not yet sought summary judgment and can use defendants’ decision to complete the report—despite being fully aware it was produced in violation of FACA—as further ammunition to challenge the Commission’s work or any reliance on it. Second, LDF contends that a complete use injunction is required here because, without one, some of the Commission’s recommendations “can be implemented without public input”—and so LDF will have no opportunity to challenge them. Pl.’s Reply at 4. But even if there is no formal opportunity for public comment, LDF can still attack those recommendations

in the “arena of public opinion,” Abraham, 223 F. Supp. 2d at 183, and the disclaimer will still diminish their legitimacy. Finally, even if LDF were correct that a disclaimer requirement is insufficient, that would not justify a complete use injunction. As the D.C. Circuit has stated, “[w]hile denying a use injunction may leave a plaintiff without an effective remedy, that circumstance cannot determine the plaintiff’s ultimate entitlement to the relief.” Pena, 147 F.3d at 1026.

C. Complete Use Injunction

The Court will deny LDF’s request for a use injunction that completely prohibits defendants from releasing or using any report produced by the unlawfully constituted Commission. “Because of its First Amendment implications, punitive effect and likely standing complications, a use injunction should be the remedy of last resort.” Id. at 1025. In the FACA context, courts should be especially wary of use injunctions when, as here, a committee’s report is prepared for the President, because “forbid[ding] the President and his Cabinet to act upon advice that comes to them from any source, however irregular” may represent an “affront” to the “separation-of-powers principle.” Nw. Forest Res. Council v. Espy, 846 F. Supp. 1009, 1015 (D.D.C. 1994). Yet although a use injunction “should be awarded only rarely,” it might be appropriate if “denial of a use injunction would ‘render FACA a nullity.’” See Pena, 147 F.3d at 1025 (quoting Cal. Forestry Ass’n v. U.S. Forest Serv., 102 F.3d 609, 614 (D.C. Cir. 1996)). Courts “should also consider whether FACA’s principal purposes—(1) avoidance of wasteful expenditures and (2) public accountability—will be served by granting a use injunction.” Id. at 1026.

Here, a complete use injunction is unwarranted. First, as explained above, the Court’s declaratory judgment and disclaimer requirement will provide significant relief. Thus, denying LDF’s proposed injunction will not “render FACA a nullity.” See id. at 1025.

Second, a use injunction would be wasteful. The Commission’s work “has already consumed millions of dollars”—over \$4 million—which weighs heavily against a use injunction. See Cal. Forestry, 102 F.3d at 614; Defs.’ Reply at 4. And use injunctions granted where “a committee has completed its meetings and is in the process of wrapping up its affairs will likely produce waste.” See Pena, 147 F.3d at 1026. Here, the Commission needs only a week’s worth of ministerial work to finalize its report. See Defs.’ Br. at 2. Although LDF did not unduly delay bringing suit in the first place, it never sought emergency injunctive relief and only asked for a decision by the end of October, at which time it knew the Commission’s work would be nearly complete. Moreover, LDF proposed that remedies briefing occur only after a ruling on the merits. As the government persuasively argues, “[h]ad LDF wanted to halt the Commission’s work and diligently pursued its claims, it could have moved for emergency equitable relief—which, if granted, would have been immediately appealable. But LDF simply chose not to do so.” See Defs.’ Reply at 4.

LDF argues that “any waste would be minimal,” Pl.’s Opp’n at 4, because a newly constituted Commission could use the old work product and evidence. True enough. But still, LDF wants the Commission to “restart its inquiry afresh with a newly constituted membership.” See Pl.’s Br. at 2. Surely, a fresh inquiry would be costly, even if the old materials are not completely wasted. Moreover, LDF never explains how a use injunction would avoid wasteful expenditures if the Commission is disbanded instead of reconstituted.

Third, a use injunction is not necessary to serve FACA’s purpose of public accountability. The “public accountability inquiry should focus on the actual deprivation resulting from non-compliance.” Pena, 147 F.3d at 1026. In other words, “[t]he need for injunctive relief may be reduced where . . . there has been at least some attempt to ensure public accountability.” Cal. Forestry, 102 F.3d at 614. For instance, “[s]ubstantial efforts to include members of the interested

public in at least some committee meetings . . . counsel against a use injunction.” Pena, 147 F.3d at 1026. The Commission certainly has not met FACA’s transparency and fair balance requirements, as this Court has firmly concluded. But its membership has been public from the beginning, nearly all of its hearings were attended by the press, and hearing summaries and transcripts have been made available on the Commission’s public website. See Defs.’ Br. at 7. Further, the Commission solicited public comments (though its process was imperfect, see Oct. 1 Op. at 8) and invited a wide array of organization to participate in its hearings, including the American Civil Liberties Union, the Brennan Center, and the Anti-Defamation League. See Defs.’ Br. at 8.

Finally, LDF seeks to enjoin defendants not only from using the Commission’s report to make policy decisions, but from publishing it in the first place. Such a remedy raises heightened First Amendment concerns. Even the district court in Pena, which the D.C. Circuit held had understated the requirements for a use injunction, declined to enjoin the publication of the committee’s final report out of concern for “the Committee members’ First Amendment rights.” See Pena, 147 F.3d at 1016 (citing Nat. Res. Def. Council v. Curtis, No. 97-0308 (D.D.C. Mar. 5, 1997) (order granting preliminary use injunction)). To be sure, the Court does not conclude that prohibiting publication of a report is never an appropriate remedy for FACA violations. But here, serious First Amendment concerns combined with other factors counsel against enjoining publication.

Therefore, the Court declines to wholly enjoin release or use of the Commission’s report. Instead, requiring compliance with FACA or, alternatively, a limited use injunction based on inclusion of a disclaimer in the Commission’s report will adequately redress the injuries here.

Conclusion

For these reasons, the Court will prohibit defendants from releasing the Commission's report unless they comply with FACA or, alternatively, include a disclaimer in the report that the Commission violated FACA and attach the Court's remedial order. A separate remedial order has been issued on this date.

/s/

JOHN D. BATES

Senior United States District Judge

Dated: November 2, 2020

APPENDIX J: EXECUTIVE ORDER OF OCTOBER 28, 2019



58595

Federal Register

Presidential Documents

Vol. 84, No. 212

Friday, November 1, 2019

Title 3—

Executive Order 13896 of October 28, 2019

The President

Commission on Law Enforcement and the Administration of Justice

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance public safety and support the well-ordered administration of justice, it is hereby ordered as follows:

Section 1. Purpose. Crime, especially violent crime, denies people their unalienable rights to life, liberty, and the pursuit of happiness. Together as a society, we must work to prevent crime from occurring, ensure that those who perpetrate crime face justice, and assist victims in overcoming the effects of crime on their lives. My Administration is focused on reducing crime, and the social and economic problems—including family and neighborhood disintegration—that contribute to criminal behavior. In addition, the continued malign activity of transnational criminal organizations, and the widespread abuse of drugs trafficked by such groups, are challenges that confront our communities and law enforcement in their efforts to keep the American people safe.

Rigorous study of crime, including its causal factors, and current law enforcement practices is essential to assessing our current criminal justice system's merits and opportunities for improvement. Over 85 percent of United States law enforcement personnel are State, local, and tribal officials. The Department of Justice has long respected this traditional balance of law enforcement resources while supporting State, local, and tribal law enforcement efforts with Federal resources. State and local law enforcement benefit from Federal programs and partnerships in the areas of information-sharing, collaborative enforcement operations, training and technical assistance initiatives, and Federal grants. Public safety and proper policing are issues of both national and local significance that continue to require the close cooperation and coordination between the Department of Justice and State, local, and tribal law enforcement. In particular, the Department of Justice has a historically important role in helping to develop, identify, and establish best practices for law enforcement and supporting a range of programs related to the administration of justice. My Administration builds upon that important work every day.

Sec. 2. Establishment. (a) The Attorney General shall establish a Commission on Law Enforcement and the Administration of Justice (Commission), and designate an individual to chair the Commission.

(b) The Attorney General shall determine the composition of and procedures for the functioning of the Commission.

(c) Officers or employees of the Federal Government designated to the Commission shall be full-time, or permanent part-time, officers or employees

of the Federal Government. Any such designation shall not affect the civil service status or privileges of the Federal officer or employee.

(d) The Attorney General may, at his discretion, invite elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) to serve on the Commission in their official capacities.

Sec. 3. Function. (a) The Commission shall study issues related to law enforcement and the administration of justice and make recommendations to the Attorney General, who shall submit a report and recommendations to the President on actions that can be taken to prevent, reduce, and control crime, increase respect for the law, and assist victims. The Commission shall undertake, as directed by the Attorney General, a review of relevant research and expertise and make recommendations regarding important current issues facing law enforcement and the criminal justice system such as:

(i) challenges to law enforcement associated with mental illness, homelessness, substance abuse, and other social factors that influence crime and strain criminal justice resources;

(ii) the recruitment, hiring, training, and retention of law enforcement officers, including in rural and tribal communities;

(iii) the potential for public and private initiatives, including in “qualified opportunity zones” as defined in section 13823(a) of the Tax Cuts and Jobs Act of 2017, to reduce crime and improve police-community relations;

(iv) refusals by State and local prosecutors to enforce laws or prosecute categories of crimes;

(v) the physical safety, health, and wellness of law enforcement officers;

(vi) the need to promote public respect for the law and law enforcement officers;

(vii) better integration of education, employment, social services, and public health services into efforts to reduce crime and ease the burden on law enforcement, courts, and corrections systems;

(viii) the use of targeted deterrence approaches to reduce violent crime;

(ix) new and developing methodologies, technologies, and best practices for combatting criminal activity, delinquency, and public disorder;

(x) the effects of technological innovations on law enforcement and the criminal justice system, including the challenges and opportunities presented by such innovations;

(xi) the effectiveness of contemporary law enforcement training methods around critical topics, the direction of next generation training methods, and an understanding of critical training needs;

(xii) the effectiveness of Federal grant programs in establishing best practices for law enforcement and supporting the administration of justice in State, local, and tribal jurisdictions; and

(xiii) other topics related to law enforcement and the control of crime as the Attorney General deems appropriate.

(b) In carrying out its functions under subsection (a) of this section, the Commission may host listening sessions and otherwise solicit input from a diverse array of stakeholders in the area of criminal justice, including State, local, and tribal law enforcement agencies and organizations; government service providers; businesses; nonprofit entities; public health experts; victims rights’ organizations; other advocacy and interest groups; reentry experts; academia; and other public and private entities and individuals with relevant experience or expertise.

(c) In developing its recommendations under subsection (a) of this section, the Commission shall seek to recommend only practical and concrete actions that can be taken by Federal, State, local, and tribal law enforcement and other government entities to improve the administration of justice.

(d) Upon the request of the Chair, the heads of executive departments and agencies (agencies) shall, to the extent permitted by law, provide the

Commission with reasonable access to the information it needs for purposes of carrying out its functions.

(e) Upon the request of the Attorney General, the heads of agencies may detail personnel to the Commission to assist in carrying out its functions, and shall endeavor to provide such personnel and other assistance to the Commission to the extent practicable, consistent with applicable law and within existing appropriations, through appropriate interagency agreements, including agreements under the Economy Act. Consistent with applicable law and within existing appropriations, the Attorney General shall use the resources and personnel of the Department of Justice in support of the Commission and its activities.

Sec. 4. Reports. The Commission shall submit a report and recommendations to the Attorney General no later than 1 year from the date of this order. The Attorney General, following consultation with the Director of the Office of Management and Budget, shall submit a report and recommendations to the President no later than 60 days thereafter.

Sec. 5. Termination. The Commission shall terminate no later than 90 days after submitting its report and recommendations to the Attorney General, unless extended by the President.

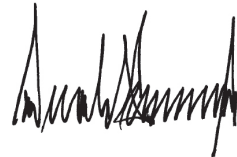
Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
October 28, 2019.

NCJ 255565