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Wednesday, June 24, 2020

Jim McDonnell

Sheriff (Ret.), Los Angeles County, CA, Sheriff's Department

Jim McDonnell has served for almost forty years in the public safety profession. He is the first person to serve in senior executive leadership positions in the three largest policing agencies in Los Angeles County: the Los Angeles County Sheriff's Department (LASD), the Los Angeles Police Department (LAPD), and the Long Beach Police Department (LBPD). During his tenure, all three agencies saw a reduction in crime and improved police-community relations.

Beginning his career with the LAPD, McDonnell served there for twenty-nine years and held every rank up to First Assistant Chief of Police. He worked a wide variety of assignments, including homicide, gangs, organized crime, vice, and patrol operations. Early in his tenure at the LAPD, McDonnell played an integral role in developing the framework for community policing that would transform the LAPD into a thought leader in community policing strategies. McDonnell continued to build upon this framework throughout his career. He retired from the LAPD in 2010 to become the Chief of the Long Beach Police Department, where he served for almost five years.

In 2014, McDonnell was elected as the thirty-second Sheriff of Los Angeles County to lead the largest sheriff's department in the United States with over 18,000 employees and manage an annual budget of over $3.3 billion dollars. McDonnell took over an agency that had been shaken by scandal and, in his four-year term, was able to restore public trust, institutionalize systems of accountability, and work collaboratively and effectively with federal, state and, local agencies to combat human trafficking and counterterrorism, among other regional challenges. McDonnell inherited the nation's largest jail system, which had come under a federal consent decree due to a pattern or practice of inadequate mental health care and excessive force in violation of inmates' civil rights. McDonnell's administration was able to restore a culture of professionalism and respect, thereby substantially changing it to one considered a model for large jail systems.

McDonnell is a respected voice on local, state, and national criminal justice issues. He has served as Vice President of the Major County Sheriffs of America; President of the California Peace Officers' Association; President of the Los Angeles County Police Chiefs' Association; a board member of the International Association of Chiefs of Police; a board member of the Peace Officers' Association of Los Angeles County; a member of the Major Cities Chiefs Association; and as a member of the California Commission on Peace Officers' Standards & Training (POST).

After earning a Bachelor of Science degree in criminal justice from St. Anselm College in Manchester, New Hampshire, McDonnell obtained a master's degree in public administration from the University of Southern California. He is also a graduate of the Federal Bureau of Investigation's National Executive Institute and has completed executive education programs at Harvard's Kennedy School of Government.

McDonnell formed McDonnell Strategies Group in early 2019 to advise clients across the nation on a diverse range of issues involving public safety and leadership development.

Testimony of James P. McDonnell,
Los Angeles County Sheriff (Ret.)
For the Hearing on "Police Culture and Use of Force"
Before the Presidential Commission on Law Enforcement and the Administration of Justice

June 24, 2020

Introduction

Chairman Keith, Vice Chair Sullivan and distinguished members of the Commission, thank you for the honor and opportunity to testify. I am very pleased that the President established the Presidential Commission on Law Enforcement and the Administration of Justice. Police Chiefs and Sheriffs have been asking for such a commission for a generation. The world has changed dramatically since President Johnson first created a commission to study law enforcement and the administration of justice. The role of the police officer in our society has likewise transformed. Police officers from the 1960s might not even recognize the work of public safety professionals today. While much has changed, especially regarding the public's expectations, our core responsibility remains the same: to protect and serve our diverse communities. To that end, we must continuously examine what we have learned, often from difficult experiences. We must also keep progressing by sharing best practices, assessing new challenges, and evaluating innovative strategies, technologies, and programs.

Police Culture and Use of Force

I was asked to speak about my experiences concerning police culture and use of force. In light of recent events, this topic is under an international spotlight and deserves immediate action. But it has long been an important issue throughout my entire career.

I recently retired from the public sector after having had the privilege of serving for almost four decades. I started out as an intern with the Boston Police Department in 1980, working on the "Neighborhood Responsive Policing Program." This was the precursor for what would become internationally known as "Community Policing." The next year I joined the Los Angeles Police Department (LAPD). I held various roles there over twenty-nine years, including First Assistant Chief of Police for seven-and-a-half years. Upon retiring from the LAPD in 2010, I served as Chief of the Long Beach Police Department (LBPD). Then in 2014, I was elected Sheriff for the County of Los Angeles (LASD).

Earlier in my career community policing seemed like a novel idea. On reflection I think it echoes an old principle that Sir Robert Peele artfully stated almost 200 years ago, that "The police are the public and the public are the police; the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence."

In many ways, I believe "Peele's Principles" are as relevant today as ever. Policing is, and will always be, a people business. We will continually evolve to make the job safer and more efficient. But one constant is that we must earn public trust through complex human interactions—often under challenging circumstances—over many years. Credibility and trust are the currency of the world in which we operate. Without that foundation, we are often seen as intruders in a community, showing up for a job then leaving, without becoming part of the community. At best, that is a transactional relationship. To succeed, we must instead restore ourselves as integral members of each community we serve.

National conversations about policing culture often frame it as a universal experience. But policing in the U.S. is primarily a local function, with almost 18,000 police agencies serving our country. Nationally we share profession-wide cultural norms. Each agency, however, has a unique operating environment and culture. For example, about half of police agencies have fewer than ten officers. And there are cultures within cultures. They exist at the department level, as well as within each division, each shift, and so on down to the smallest unit.

Many forces influence policing cultures, including law, policy, special orders, best practices, and supervisors. We can legislate, codify, train, and preach. But the most important influence is the officers who socialize our newest members. How many of us remember hearing, "forget what they told you in the academy, this is the way we do it on the street"? To transform policing culture, we must ensure these officers are passing down the values we want to see in the next generation.

Shifting from Outputs to Outcomes

The next question is, what values do we want officers and police culture to embody? By default, we tend to value what we can measure. So we champion productivity, citations, field interviews, and arrests. If you are busy, you must be doing the right thing, according to conventional wisdom. As a result, we measure—and value—outputs instead of outcomes. Did all of the activity that we encourage improve the community, reduce crime, or increase the community's quality of life and satisfaction? Or did we alienate the community by our actions?
Shifting focus to outcomes rather than outputs would better capture what our communities want. If we were a corporation making a product nobody wanted, we would not survive. Likewise, in the public safety arena we must work with our communities to identify important issues, set priorities, and create a meaningful feedback loop. This will ensure we are adjusting as needed to meet, and hopefully exceed, the public's expectations.

Incentivizing Accountability

We must also re-engineer our systems of accountability to incentivize a culture that refuses to accept any mediocrity, brutality, or disrespect for the law or the public. What we celebrate communicates our values. What we condemn does, too. And what we tolerate, though frequently unstated, speaks volumes about our expectations for behavior and performance. In policing, as in other fields, officers have been averse to interfering with their colleagues' handling of incidents. But sometimes officers must step in and take control, not only to hold each other accountable, but for everyone's safety. Training can begin to address this issue. Ultimately, however, holding

officers accountable for overlooking misconduct will send a clear message that affects cultural change.

Improving Recruiting

Another challenge is recruiting enough officers who will uphold our values and carry the profession forward. Unfortunately, the things we ought to value most in officers are the hardest to measure, such as attitude, mindset, spirit, dedication, commitment to the profession, constitutional policing, selflessness, compassion, and respect for life and for the people we serve. We know it when we see it, but it is difficult to measure.

In my departments, we needed roughly one hundred applicants to get four people who were qualified to start the academy. And only three out of four would graduate. That translates to roughly a 97 percent washout rate. Even then, problem recruits slip through the cracks.

The retention of chronically problematic employees has been a concern for generations. Too often, collective bargaining agreements, unreasonable union intervention, civil service boards, and even sympathetic judges enable problem employees to keep working. This system frustrates peers, supervisors and managers, all of who are prevented from effectively dealing with misconduct. This creates the perception that departments condone misconduct, when the reality is that their hands are often tied.

In addition to weeding out problem employees, we need to attract and retain exemplary employees who will promote our values. That means incentivizing officers who maintain the highest moral and ethical character, both on and off duty. We can do this by supporting advanced education and offering compensation commensurate with the public's high expectations for public safety professionals.

Supporting Mental Health

We also need to improve support for mental health. We conduct extensive testing to screen candidates during the hiring process, including psychological screening. But the focus on officers' mental health often ends there. Throughout their careers, officers repeatedly encounter traumatic situations and witness unspeakable acts of violence. They deal with erratic schedules, sleep deprivation, and chronic stress. Unless officers request psychological assistance, or their behavior indicates such a need, they may never be re-evaluated. It may take an officer's behavior crossing the line before leadership realizes a need to intervene. By then it may be too late. Mid-career evaluations and ongoing mental health support could address issues before they become a crisis. Making these evaluations mandatory would overcome the stigma officers may associate with getting professional help.

Expanding Training and Technology

Training officers so that they are equipped to uphold our values is also a challenge. Recruits enter the academy with a variety of life experiences, but they are often in their early 20s. After only six months in the academy and a brief period with a training officer, these young adults are

responding to 911 calls. Officers dutifully respond with hardly any knowledge of what to expect. They often face volatile situations involving high emotion, alcohol, drugs, or mental illness. They must employ their training and experience to de-escalate situations peacefully and without force. Despite the odds, they succeed in roughly 98 percent of cases. In any other profession, that would be an incredible achievement. But in our profession the stakes are high, so we aim for perfection.

In the relatively few instances when force is used, better training and technology will improve how those events unfold. The policies discussed above—from focusing on outcomes rather than outputs to fostering accountability and attracting and retaining good officers—will help, too.

Specializing Incident Response

Reconsidering who should respond to particular incidents represents another cultural shift that would reduce use of force. Our profession carries a special obligation to exceed the public's expectations. We hire people with can-do attitudes who do not want to refuse any call for help from the community. While admirable, this characteristic means we often overextend ourselves. Police agencies have taken on complex issues that they are not always equipped to treat, such as homelessness or mental health. That said, simply reassigning these roles outside of police departments is an incomplete solution. Requiring non-police specialists such as mental health workers or social workers to respond to situations that frequently turn violent could jeopardize everyone's safety.

In the three departments in which I had the honor of serving (LAPD, LBPD and LASD), we addressed this concern with hybrid teams. For example, we formed Mental Evaluation Teams (METs) consisting of a professional mental health clinician and a specially trained officer. This balance proved successful in serving people experiencing mental health crises. If a regular patrol unit were dispatched, the responding officer had few options. Often this meant using force and arresting a person acting out because of their illness. By contrast, in over 90 percent of cases where a MET unit responded, the individual was transported to a treatment facility instead of being incarcerated. Such a high success rate is rare for people experiencing a crisis.

I recommend that this model be studied, evaluated and replicated. We have an opportunity to alter the policing paradigm in America. I hope the Commission will recognize all that officers are tasked with and consider the most effective way to deploy police resources.

Conclusion

In recent weeks, communities across our nation have voiced their distrust for our profession. This can be unsettling for officers committed to public service. That is especially true for families of officers who made the ultimate sacrifice. Even so, we cannot turn back from our mission, from our sworn purpose. We must acknowledge the public's concerns and address them as best we can. Improving police culture in ways that reduce use of force and strengthen community relations is a key part of the solution. Fortunately, most officers are good officers. And good officers support accountability and reform because they want their departments to

achieve the highest standards. Together, I am confident that we can make this shared vision a reality.

Summary of Recommendations

- Standardize universal values, such as respect for life, constitutional policing and developing true partnerships with the communities with whom we serve.

- Critically evaluate what we value and what we reject outright as a profession. Incorporate our core values into all that we do. The following list is but a starting point, but our values system must transcend all of these factors:

    - Standards & policies
    - Recruitment efforts
    - Selection process
    - Hiring
    - Academy Training
    - Socialization
    - FTO Program
    - In-service training
    - Rewards & Discipline

- Ensure the highest standards of professionalism are maintained and that compensation to attract the best candidates possible is strongly considered in the equation.

- Conduct psychological testing and offer mental health support throughout an officer's career, not just at hiring, as is frequently the case. Post-hiring evaluations should inform agencies' evaluation of officer assignments and the need for intervention where appropriate.

- Empower agencies with greater authority to dismiss problem employees for egregious or repeated misconduct.

- Increase police legitimacy through communication and collaboration with community partners

- Emphasize de-escalation techniques and strategies in all interactions with the public.

Ronal Serpas, Ph.D.

Superintendent of Police of the New Orleans Police Department (Ret.) and Professor with the Loyola University New Orleans Criminal Justice Department

Dr. Serpas joined the Loyola University New Orleans Criminology and Justice Department as a full time, tenured, Professor of Practice in August 2014. Dr. Serpas has served as an Adjunct and an Assistant Professor of Criminal Justice, Extraordinary Faculty, Loyola University New Orleans, teaching graduate and undergraduate courses from 1993 to 2001. He has also taught graduate courses at Southern University New Orleans and Tennessee State University. Dr. Serpas has published several articles including *Beyond Compstat: Accountability Driven Leadership; The Next Step in Accountability Driven Leadership: Compstating the Compstat Data; Accountability Driven Leadership: Assessing Quality versus Quantity*; gun violence in America, *Illegal Gun Crimes: A View from the Streets*; police disciplinary systems, *An Employee Disciplinary System that Makes Sense*; the use of termination for police employees who are untruthful, *The Untruthful Employee: Is Termination the Only Response;* a co-author on the topic of crime following a disaster, *Changes and Challenges in Crime and Criminal Justice after Disaster; The Future of Violent Crime Abatement in New Orleans; Implementing the Principles of Procedural Justice and Police Legitimacy; Evidenced-Based Use-Of-Force Policy: How Research Could Improve Use-Of-Force Policy Development and Training,* and the need for actionable research to help guide American police executives.

In October 2017 at the 124th Annual Conference of the International Association of Chiefs of Police (IACP), Serpas was designated by an act of the membership as the fifth Honorary President of the IACP. The IACP is the oldest and largest nonprofit membership organization of police executives worldwide, established in 1893 with more than 30,000 members representing 150 countries. IACP's membership consists of the operating chief executives of international, federal, state, tribal and local agencies of all sizes. Throughout his career, Serpas has participated and contributed on the national and international level of police leadership through his unopposed election as the 4th Vice President of the IACP in October 2011. When he retired from law enforcement, Serpas was the 2nd Vice President, and responsible for providing oversight to the following IACP standing Committees: Civil Rights; Diversity Coordinating Panel; Police Professional Standards, Image, and Ethics; Police Administration; and the Torch Run. Serpas also served for many years as the founding Co-Chair of the Research Advisory Committee (RAC) of the IACP. The IACP RAC Committee unites police executives and academic leaders to create and publish an annual research agenda to identify potential solutions addressing the many and significant concerns throughout the criminal justice system here in the United States and abroad. Serpas is a past Chair of the IACP's Community Policing Committee. He has also served as the Parliamentarian, IACP Board of Directors.

Dr. Serpas is the founding Co-Chair and Executive Director of *Law Enforcement Leaders to Reduce Crime and Incarceration*, an independent project of the NYU-School of Law Brennan Center for Justice, which unites nearly 200 current and former police chiefs, federal and state chief prosecutors, and attorney's general from all 50 states to urge for a reduction in both crime and incarceration. Serpas is a member of the Board of Directors of the *National Police Foundation* and a Steering Committee member of the *Vera Institute of Justice Policing* Program. He has served as a member of the National Advisory Board for *Cure Violence* (Chicago Cease Fire) and an *Executive Fellow* to the *National Police Foundation*. Serpas has been elected a a founding member of the *Council on Criminal Justice* (CCJ), a national invitational membership organization and think tank. Independent and nonpartisan, CCJ advances understanding of the criminal justice policy choices facing the nation and builds consensus for solutions that enhance safety and justice for all. Through research, policy development and other projects that harness the experience and vision of its leaders and members, CCJ serves as a catalyst for system improvements based on facts, evidence and fundamental principles of justice.

Dr. Serpas was a career police officer from 1980 to 2014, serving in three police agencies. From 2001-2014 he was appointed to office following nationwide searches, and served as the Superintendent of Police, New Orleans Police Department from May 2010 until he retired from police service in August 2014, as the Chief of Police of the Metropolitan Nashville Police Department in January 2004 and served until May 2010 and was appointed as the Chief of the Washington State Patrol in August 2001 and served until January 2004.
Serpas began his police career in June 1980 with the New Orleans Police Department rising through all civil service ranked positions and was appointed Assistant Superintendent of Police and the first Chief of Operations in October 1996. His responsibilities included implementing the COMPSTAT and Community Policing models in the New Orleans Police Department.

Dr. Serpas has more than 13 years of experience as a Police Chief and has successfully implemented the Community Oriented Policing philosophy, innovative and successful crime-fighting strategies and achieved demonstrated success in improved citizen satisfaction and support in each of the three departments he has led. Serpas has been a successful change agent in three major law enforcement agencies, and he has also been a leader in applying the concepts of Procedural Justice and Police Legitimacy, to bring transformational change to American Policing.

Dr. Serpas' expert commentary on crime rates, policing and criminal justice reform has appeared in the *New York Times, USA Today, The Hill, NBC News, CBS News, Fox News, The Atlantic Monthly, Wall Street Journal, The Washington Post, NPR, Governing Magazine, The Economist and MSNBC* among other outlets.

Sincerely,

Ronal W. Serpas, Ph.D.
Professor of Practice

Retired Superintendent of Police - New Orleans, LA
Former Chief of Police - Nashville, TN
Former Chief of the Washington State Patrol
Honorary President of the International Association of Chiefs of Police
Former Vice President of the International Association of Chiefs of Police
Member Board of Directors – National Police Foundation
Executive Director and Founding Chair – Law Enforcement Leaders to Reduce Crime and Incarceration Member Council on Criminal Justice (https://counciloncj.org)

LAW ENFORCEMENT LEADERS
To Reduce Crime & Incarceration

June 23, 2020

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

Hon. William P. Barr
Attorney General of the United States

Phil Keith, Director
Office of Community Oriented Policing Services
U.S. Department of Justice

Katherine Sullivan, Principal Deputy Assistant Attorney General
Office of Justice Programs
U.S. Department of Justice

RE: Written Testimony from Ronal W. Serpas to the President's Commission on Law Enforcement and the Administration of Justice

To the Honorable Commissioners:

Thank you for the opportunity to submit written testimony to President Trump's Commission on Law Enforcement and the Administration of Justice on police use of force and culture change. This testimony serves as a complement to our written testimony submitted on June 9, 2020 (enclosed).

The work of this Commission is urgent and vital. The police killing of George Floyd in Minneapolis and recent police involvement in many additional deaths, shootings, and violent incidents have led our country to a decision point. We are at a crossroads on policing in America, and the path we choose at this critical time will impact millions for years to come.[1]

We urge the Commission to seize this opportunity to advance public safety by recommending reforms that will promote healthy and safe communities by (1) improving departments' use of force policies and data collection regarding use of force; (2) increasing law enforcement accountability; (3) promoting community-oriented and problem solving policing strategies; (4) addressing social factors that contribute to justice system involvement; and (5) encouraging changes to police culture and priorities by implementing modern police evaluation metrics.

Enclosed please find our recent federal policy report, entitled *Ensuring Justice & Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, which we issued on April 15 of this year. Started long before the ongoing COVID-19 pandemic and current unrest, the report includes policy solutions in each of five areas, many of which touch directly upon the questions the Commission has been asked to address. Specifically, we offer recommendations on reducing unnecessary incarceration, increasing

mental health and drug treatment, bolstering community policing, improving juvenile justice, and reducing recidivism.

In addition to the policy solutions included in *Ensuring Justice & Public Safety*, we offer the following in response to the Commission's request for testimony on police use of force and culture change.

I. Police Use of Force

A. Improvements to Police Use of Force Policies and Data Collection

Police killings and excessive uses of force make communities less safe. And although no single police incident represents an entire department, nothing undermines years of work developing community trust as quickly as incidents where police use unnecessary or excessive force. These incidents almost invariably perpetuate or cause deep distrust in communities.[2]

The recent spate of incidents involving the police use of lethal and excessive force underscores the urgent need for law enforcement reform to ensure that police practices promote respect for the dignity, rights, and life of every person with whom the police come into contact.[3]

A national standard that raises the threshold for the use of force is needed.[4] In 2017, eleven of the most significant law enforcement leadership and labor organizations in the United States issued a consensus policy on the use of force by law enforcement.[5] At a minimum, all police agencies and municipalities that receive federal funds should be required to adopt policies that incorporate the guidelines in the consensus policy, with even greater incentives offered for the adoption of a more restrictive use of force model.[6] The federal government should also provide training and technical assistance on the implementation of such use of force policies, and on the development of robust policies and training on de-escalation tactics and alternatives to uses of force.[7]

Similarly, police agencies and municipalities that receive federal funds should be required to track uses of force by law enforcement and submit the data to a national database. This effort is already underway, but more work is needed. In 2018, the FBI launched a data collection effort, seeking to collect data on police uses of force to promote informed conversations by law enforcement and policymakers across the United States.[8] Submission of data is voluntary, however, and the FBI recently revealed that only 40% of jurisdictions have submitted use of force data.[9]

On June 16, President Trump took a step in the right direction, issuing an Executive Order that directs the Attorney General to establish a database "concerning instances of excessive use of force."[10] But this does not go far enough. "Excessive use of force" is a legal conclusion — meaning that reports on uses of force may be delayed months or even years while investigations are conducted and concluded. In addition, by only tracking instances of excessive force, law enforcement executives and policymakers are not likely to have sufficient information to identify problematic patterns or trends in the use of unnecessary force in a timely way, or to promptly evaluate evidence of departments' disparate uses of force against Black people and other people of color.

Rather than tying federal funds to participation in the new dataset anticipated by the Executive Order, police and municipalities across the country should be encouraged or, if possible, required to submit data on all uses of force, by conditioning the receipt of federal funds to provision of the data.

B. Increasing Police Accountability

All in law enforcement must work to earn public confidence and respect for the law through their actions. To promote law enforcement accountability nationwide, the federal government should take several concrete steps, including incentivizing the reform of police union contracts and civil service protections, establishing a national database of officer misconduct and encouraging police licensure, and promoting the investigation and prosecution of law enforcement misconduct.

First, the federal government should encourage, and where possible, require localities to undertake reforms to collective bargaining agreements and civil service protections to promote individual officer accountability. Police contracts and state laws that unduly protect officers who are subject to internal discipline undermine accountability and public confidence.[11] Local governments and municipalities should be encouraged or required to reform these agreements and make changes to their jurisdiction's civil service protection laws and regulations to eliminate undue officer protections in internal disciplinary processes.

Although police collective bargaining agreements may serve an important function to the extent that they help protect fair wages and working conditions for officers, these agreements also include myriad protections for police above and beyond what is afforded to most employees.[12] These contract provisions, coupled with state and local civil service protections, often result in police executives' and chiefs' disciplinary decisions being reversed or modified by arbitrators, civil service boards, and grievance panels.[13] This undermines police leadership and accountability, and creates a culture within some police organizations that discourages individual officers from taking responsibility for their actions due to a climate that pits officers against management.[14]

In addition, the federal government should encourage accountability and transparency by establishing a national database of all officers who have been terminated or who resigned due to misconduct, and promote accountability by encouraging the even-handed investigation of such misconduct.[15] Such a database should include but not necessarily be limited to firings or terminations for inappropriate uses of force, failure to intervene in inappropriate uses of force, instances of untruthfulness in workplace matters, false or inaccurate written or oral reports, and failing to notify supervisors of observed misconduct. Officers who resign while being investigated for such allegations should also be included in the dataset. Relatedly, the Commission should recommend that federal, state, and local authorities work together to fully investigate and prosecute allegations of police misconduct, especially in cases involving excessive force. The Department of Justice is uniquely situated to assist in this effort, including by prosecuting appropriate cases and engaging in pattern or practice investigations of police departments where there is evidence of repeated or systematic abuses.

II. Culture Change

Individuals with mental illness or substance abuse problems interact with law enforcement at high rates. Estimates indicate that approximately 79 percent of those behind bars suffer from drug addiction, mental illness, or both.[16] Law enforcement officers are not medical professionals, yet often are tasked with responding first to incidents involving people in crisis — typically when a family member, friend, or neighbor calls 911 to report an incident or that someone is in danger. When law enforcement responds, there are usually only two options available to the officers: make an arrest to defuse the situation or leave. Practically speaking, that often results in an arrest.

Due to the lack of options, officers are often placed in untenable situations, which, over time, can erode community trust as officers are seen as harming, not helping, some of those who most need help. The federal government should promote the development of improved infrastructure that deflects people away from the justice system, and should encourage police departments to collaborate with community organizations, treatment centers, and other social service providers to respond with public health strategies instead of punitive responses when it is safe to do so.

A. Promoting Justice & Legitimacy Through Community and Problem-Solving Policing

Although the term "community policing" has become something of a buzzword, true problem-solving policing emphasizes the collaboration between the police and the community they serve, who share joint responsibility to work toward public safety.[17] Using this strategy, police and community groups should work together as partners to deliver robust public safety strategies, often with community-oriented solutions, not punitive aims.[18] Changes of practice and strategy require funding, however, which the federal government can help provide.

In municipalities across the country, however, many are calling to "defund" the police, with some referring to actual abolition of the police while others advocate for a reorientation of community resources.[19] Non-targeted police budget cuts that result in the deprioritization of problem-solving and community policing strategies will almost certainly harm, rather than help, as communities work to build and maintain trust in this time of crisis. This risk is compounded by the fact that many local governments are already anticipating near-term budget cuts to police as communities recover from the coronavirus pandemic, which could result in cuts to police in nearly half of all cities.[20]

The Commission should recommend restoring targeted funding to appropriate federal offices, such as the Office of Community Oriented Policing Services (COPS) and providing technical support and expertise to police departments so they may expand their problem-solving policing strategies. This Commission should also recommend increased funding for the COPS Office's Collaborative Reform Initiative – Technical Assistance Center (CRI-TAC), which encourages collaborative reform processes at the local level at no cost.[21] Renewing federal support for true community policing, where communities and the police work collaboratively towards safe and healthy communities, is an important step towards promoting community trust and respect for law enforcement.[22]

B. Addressing Social Factors that Lead to Justice System Involvement With Collaborative Community Solutions

Relatedly, law enforcement agencies cannot arrest and incarcerate the way out of public health and social crises.

The federal government, working together with state governments and localities, can help communities develop better responses to the challenges presented by mental illness, homelessness, substance abuse, and other social factors that influence crime and strain criminal justice system resources. To do so, this Commission should incentivize a range of strategies to help localities, including:

- Deflecting people in need of mental health and substance abuse treatment away from the criminal justice system and towards community treatment consistently with public safety;[23]
- Promoting the development of pre-trial diversionary programs and use of citations in lieu of arrest;[24]

- Providing funding to states from the Substance Abuse and Mental Health Services Administration (SAMHSA) and other grants to create community treatment centers;
- Improving juvenile justice strategies, including incentivizing states to raise the age of criminal responsibility, and to implement programs that focus on rehabilitation to help disrupt early on-ramps to criminal justice system involvement;[25]
- Increasing education and vocational training in jails and prisons, including the restoration of Pell grants for all incarcerated people who qualify;[26]
- Expanding access to federal housing and Medicaid to promote successful community reentry following justice system involvement;[27]
- Offering incentives to states to eliminate the use of cash bail;[28] and
- Encouraging localities to reform their fine and fee practices, and incentivizing states to end the suspension of drivers' licenses solely for failure to pay fines, fees and court debt.[29]

Police reform, while crucial, is not criminal justice reform. Police, working alone, cannot make a community safe. But especially in this moment, sustained and proactive engagement with communities and continual reevaluation of police strategies are critical to improving our safety and security, particularly for those who have received disparate treatment for too long.

C. Implementation of Modern Policing Metrics

To effect deep changes of culture, we must alter day-to-day police incentives. Traditional evaluations of police success have typically focused on a relatively small range of standard indicators: reductions in crime, clearance rates, response times, and enforcement productivity.[30] Evaluation metrics with a narrow focus do not, however, adequately incentivize police departments to meet the myriad expectations of our communities, nor do they capture the deep complexity of modern policing.

The Commission should recommend that the Office of the Justice Programs (OJP) and Bureau of Justice Assistance (BJA) prioritize and promote the development of modern police management tools, including but not limited to the CompStat360 framework already being tested in certain jurisdictions, to help departments across the nation better identify and address their local concerns and priorities.[31]

* * * * *

Respect for the rule of law and law enforcement must be built from the ground up. In these fraught times, we must all work for justice for underserved communities and implement strategies that protect all people and encourage changes in police culture, all of which will help to promote law enforcement legitimacy. This Commission can help in that work.

Respectfully,

Ronal W. Serpas, Ph.D.
Executive Director, Law Enforcement Leaders to Reduce Crime & Incarceration
Former Police Superintendent, New Orleans, Louisiana

[1] Emily Bazelon, "A Discussion About How to Reform Policing," *The New York Times*, June 13, 2020, https://www.nytimes.com/interactive/2020/06/13/magazine/police-reform.html.
[2] "Major Cities Chiefs Association (MCCA) Statement Regarding the Death of George Floyd," Major Cities Chiefs Association, May 27, 2020, https://www.majorcitieschiefs.com/pdf/news/news_release_statement_regarding_death_of_george_floyd.pdf.
[3] "Statement from IACP President Steven R. Casstevens on Use-of-Force Incident in Minneapolis," International Association of Chiefs of Police, May 27, 2020, https://www.theiacp.org/news/blog-post/statement-from-iacp-president-steven-r-casstevens-on-use-of-force-incident-in.
[4] Law Enforcement Action Partnership, "Recommendations to Transform Policing," June 3, 2020, https://lawenforcementactionpartnership.org/national-policing-recommendations/.
[5] *National Consensus Policy and Discussion Paper on Use of Force*, International Association of Chiefs of Police, 2017, https://www.theiacp.org/sites/default/files/all/n-o/National_Consensus_Policy_On_Use_Of_Force.pdf.
[6] Camden County Use of Force Policy, January 28, 2013, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d5c89c2e3bc4c000192f311/1566345667504/CCPD+UOF+Policy+%288.21.19%29+%28FINAL%29.pdf.
[7] *National Consensus Policy and Discussion Paper on Use of Force*, International Association of Chiefs of Police, 2017, 3–4, https://www.theiacp.org/sites/default/files/all/n-o/National_Consensus_Policy_On_Use_Of_Force.pdf.
[8] *FBI Announces the Official Launch of the National Use-Of-Force Data Collection*, 2018, https://www.fbi.gov/news/pressrel/press-releases/fbi-announces-the-official-launch-of-the-national-use-of-force-data-collection.
[9] Tom Jackman, "FBI Launched Database on Police Use of Force Last Year, but Only 40 Percent of Police Participated," *The Washington Post*, June 17, 2020, https://www.washingtonpost.com/crime-law/2020/06/17/fbi-launched-database-police-use-force-last-year-only-40-percent-police-participated/.
[10] Exec. Order No. 13929, 85 Fed. Reg. 37325 (June 16, 2020).
[11] Law Enforcement Action Partnership, "Recommendations to Transform Policing," June 3, 2020, https://lawenforcementactionpartnership.org/national-policing-recommendations/.
[12] Catherine L. Fisk and L. Song Richardson, "Police Unions," *George Washington Law Review*, 85 (2017): 712, 737.
[13] Darrel W. Stephens, *Police Discipline: A Case for Change*, New Perspectives in Policing, National Institute of Justice and Harvard Kennedy School Program in Criminal Justice Policy and Management, 2011, https://www.ncjrs.gov/pdffiles1/nij/234052.pdf.
[14] Fisk and Richardson, "Police Unions," 728–29.
[15] Law Enforcement Action Partnership, "Recommendations to Transform Policing," June 3, 2020, https://lawenforcementactionpartnership.org/national-policing-recommendations/.
[16] James Austin and Lauren-Brooke Eisen, *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, 2016, 8, 11–13, https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated.
[17] Timothy N. Oettmeier and Mary Ann Wycoff, *Personnel Performance Evaluations in the Community Policing Context*, Police Executive Research Forum, 1996, https://www.policeforum.org/assets/docs/Free_Online_Documents/Human_Resources/performance%20evaluations%20in%20the%20community%20policing%20context.pdf.
[18] Keli Goff, "How to Solve the Policing Crisis," *The Daily Beast*, January 5, 2015, https://www.thedailybeast.com/how-to-solve-the-policing-crisis; U.S. Department of Justice, Office of Community Oriented Policing Services, *The Impact of the Economic Downturn on American Police Agencies*, 2011, http://www.ncdsv.org/images/COPS_ImpactOfTheEconomicDownturnOnAmericanPoliceAgencies_10-2011.pdf.
[19] Jacqueline Alemany, "Power Up: Protesters 'Defund the Police' Rallying Cry is Achieving Some Progress," *The Washington Post*, June 5, 2020, https://www.washingtonpost.com/news/powerpost/paloma/powerup/2020/06/05/powerup-protesters-defund-the-police-rallying-cry-is-achieving-some-progress/5ed98153602ff12947e84cbd/.
[20] Carl Smith, "Government Falls into a Recession and Job Cuts Soar," *Governing: The Future of States and Localities*, June 3, 2020, https://www.governing.com/work/Government-Falls-into-a-Recession-and-Job-Cuts-Soar.html.
[21] International Association of Chiefs of Police, "Collaborative Reform Initiative Technical Assistance Center (CRI-TAC)," https://www.theiacp.org/projects/collaborative-reform-initiative-technical-assistance-center-cri-tac.

[22] The President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, 2015, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.
[23] Law Enforcement Leaders to Reduce Crime & Incarceration, *Ensuring Justice and Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, 2020, 8–10; International Association of Chiefs of Police, "IACP Safety and Justice Challenge," https://www.theiacp.org/projects/iacp-safety-and-justice-challenge.
[24] Law Enforcement Leaders, *Ensuring Justice*, 10–11; International Association of Chiefs of Police, "IACP Pre-Trial Justice Reform Initiative," https://www.theiacp.org/resources/document/iacp-pre-trial-justice-reform-initiative; International Association of Chiefs of Police, "Citation in Lieu of Arrest," https://www.theiacp.org/projects/citation-in-lieu-of-arrest.
[25] Law Enforcement Leaders, *Ensuring Justice*, 15–18; National Institute on Drug Abuse, "Longitudinal Study of Adolescent Brain Cognitive Development (ABCD Study)," August 20, 2019, https://www.drugabuse.gov/drug-topics/addiction-science/longitudinal-study-adolescent-brain-cognitive-development-abcd-study.
[26] Law Enforcement Leaders to Reduce Crime & Incarceration, "Briefing Memo: Pell Grant Restoration," 2019, http://lawenforcementleaders.org/wp-content/uploads/2019/10/LEL-Pell-Grant-Briefing-Memo.pdf; Letter from members of Law Enforcement Leaders to Reduce Crime & Incarceration to U.S. Senators, August 12, 2019, http://lawenforcementleaders.org/wp-content/uploads/2019/08/Letter-of-Support-REAL-Act-H.R.-2168.pdf.
[27] Law Enforcement Leaders, *Ensuring Justice*, 19–21.
[28] Law Enforcement Leaders, *Ensuring Justice*, 4–5; Ronal Serpas and Taryn Merkl, "Law Enforcement Leaders Agree: Money Bail Has to End, Especially in a Pandemic," *The Appeal*, April 21, 2020, https://theappeal.org/law-enforcement-leaders-agree-money-bail-has-to-end-especially-in-a-pandemic/.
[29] Law Enforcement Leaders, *Ensuring Justice*, 6–10; Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, Brennan Center for Justice, 2019, https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf.
[30] Malcolm K. Sparrow, *Measuring Performance in a Modern Police Organization*, New Perspectives in Policing, National Institute of Justice and Harvard Kennedy School Program in Criminal Justice Policy and Management, 2015, 2, https://www.ncjrs.gov/pdffiles1/nij/248476.pdf.
[31] James J. Willis and Stephen D. Mastrofski, "CompStat 2.0 Development Symposium: What Did We Learn?," in *Perspectives From the Field: Leveraging CompStat to Include Community Measures in Police Performance Management*, eds. Susan Shah, Jim Burch & S. Rebecca Neusteter (Vera Institute of Justice & Police Foundation, 2018), 45–55, https://www.compstat360.org/wp-content/uploads/2018/05/Leveraging_CompStat.pdf.

LAW ENFORCEMENT LEADERS
To Reduce Crime & Incarceration

June 9, 2020

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RE: Written Testimony from Law Enforcement Leaders to the President's Commission on Law Enforcement and the Administration of Justice

Dear Attorney General Barr, Director Keith, and Principal Deputy AAG Sullivan:

On behalf of Law Enforcement Leaders to Reduce Crime & Incarceration, we thank you for the opportunity to submit written testimony to President Trump's Commission on Law Enforcement and the Administration of Justice. In this moment of deep social unrest following the police killing of George Floyd in Minneapolis and police involvement in many additional deaths, shootings, and violent incidents, the Commission's work is of great urgency.

We urge the Commission to seize this opportunity to advance public safety by recommending reforms that will (1) require law enforcement accountability, (2) help build trust and legitimacy in communities, and (3) encourage the implementation of innovative, nationwide strategies to reduce unnecessary incarceration by addressing the social factors that often lead to criminal justice system involvement.

Law Enforcement Leaders to Reduce Crime & Incarceration unites over 200 current and former police chiefs, federal and state chief prosecutors, attorneys general, and correctional officials from all

50 states. Relying on hundreds of years of collective experience, we believe unnecessary involvement with the criminal justice system is counterproductive, as it can create more crime, waste taxpayer dollars, and further divide law enforcement from the communities we seek to protect.

Please find our recent federal policy report attached to this testimony, entitled *Ensuring Justice & Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, which we issued on April 15 of this year. Started long before the COVID-19 pandemic and current unrest, the report includes policy solutions in each of five areas, many of which touch directly upon the questions the Commission has been asked to address. Specifically, we offer recommendations on reducing unnecessary incarceration, increasing mental health and drug treatment, bolstering community policing, improving juvenile justice, and reducing recidivism.

In addition to the recommendations included in *Ensuring Justice & Public Safety*, we offer the following testimony in response to specific areas the Commission seeks to address.

I. Promoting Public Confidence and Respect for the Law and Law Enforcement Officers

A. Improvements in Policing and Accountability to Win and Maintain Community Trust

Public confidence and respect for the law and law enforcement officers must be earned.

The killing of George Floyd on May 25, 2020 at the hands of a police officer, and the apparent complicity of fellow officers in his death, were senseless and indefensible. This unnecessary use of lethal force underscores the urgent need for law enforcement reform to ensure that police practices respect the dignity, rights, and life of every person who comes into contact with police.[1]

It is law enforcement's core responsibility to protect the safety of all people if we are to build trust and nurture police legitimacy in our communities. While no single law enforcement incident represents a whole agency, it is imperative in this moment of crisis that we acknowledge how police misconduct undermines hard-earned public trust.[2] Winning and maintaining that trust is essential to building healthy communities, and ensuring safety and justice for all. Moreover, the quest for racial justice is a core part of making America truer to its constitutional ideals — and improving law enforcement must be a central part of that effort.

It is simple: without the trust of our communities, law enforcement cannot effectively conduct criminal investigations and serve victims of crime.

The Commission should prioritize and incentivize police practices that encourage stronger relationships with communities and root out misconduct and unethical behavior. Law enforcement across the nation must normalize accountability, address racial disparities in the administration of criminal justice, and promote equal justice under the law.[3] To do so, this Commission should promote transparency and accountability nationwide by recommending that federal grant monies and funding streams be tied to the adoption of improved policies for agencies that receive federal funds. For those agencies that do not receive federal grants or funding, the federal government should encourage local governments and municipalities to make changes at the local level.

First, local governments and municipalities should be encouraged or required (in the event they receive law enforcement funding or grant program funding) to reform police contracts and state laws that unduly protect officers who are subjected to internal discipline.[4] Far too often, police disciplinary processes are slow and ineffectual, with decisions by police executives and chiefs subject to reversal or modification by arbitrators, civil service boards, and grievance panels.[5] To increase transparency and accountability, reforms to police contracts and civil service protections are needed.

Additional specific policies the federal government can encourage to promote accountability and transparency include, but are not limited to, the establishment of a national database of all officers who have been terminated or who resigned due to misconduct; increased data collection and reporting regarding police use of force; and implementation of a nationwide standard that raises the threshold for the use of force.[6]

In addition, the Commission should recommend that federal, state, and local authorities work together to fully investigate allegations of police misconduct and prosecute appropriate cases when there is sufficient evidence, and that the Department of Justice engage in pattern or practice investigations of departments in the event of systematic abuses. Anything less fails to live up to the ideals of the Department of Justice and its solemn duty to "ensure fair and impartial administration of justice for all Americans."[7]

B. Community Policing Incentives and Support Through COPS and Byrne-JAG

To build local trust and participate in effective community engagement, police departments need adequate and reliable funding. In an era of tightening state and city budgets, critical law enforcement strategies such as community policing initiatives are suffering cuts.

Community policing's central feature is an emphasis on collaboration between the police and the community, who share joint responsibility to work towards public safety. Dating to approximately the 1970s, community policing refers to a broad range of strategies used by many departments to varying degrees, but when implemented effectively, its two core components remain community partnership and problem solving.[8]

However, the most recent Department of Justice survey, which is itself dated, found that 39 percent of participating police departments had cut back on community policing.[9] In addition, many local governments across the country are contemplating budget cuts to police in the short term as communities recover from the pandemic. A recent survey conducted by the National League of Cities found that local governments predict budget cuts to police in nearly half of all cities of all sizes.[10] In addition, local leaders and activists nationwide are including demands to defund the police as part of the current calls for reform, such as the cut of $150 million to the Los Angeles Police Department.[11] Non-targeted police budget cuts that result in the deprioritization of problem-solving and community policing strategies will almost certainly harm, rather than help, as communities work to build and maintain trust in this time of crisis.

The Commission should recommend restoring targeted funding to the Office of Community Oriented Policing Services (COPS) and providing technical support and expertise to police departments so they may expand their community policing strategies. Such efforts should include

increased funding for the COPS Office's Collaborative Reform Initiative – Technical Assistance Center (CRI-TAC), which encourages collaborative reform processes at the local level at no cost.[12] The COPS Office is also uniquely situated to advance community policing by acting as an information clearinghouse. Renewing federal support for true community policing, where communities and the police work collaboratively in good faith to co-produce public safety, is an important step towards promoting community trust and respect for law enforcement.[13]

C. Implementation of Modern Policing Metrics

It is often said that what gets measured gets done. Traditional evaluations of police success have typically focused on a relatively narrow range of standard indicators: reductions in crime, clearance rates, response times, and enforcement productivity.[14] Evaluation metrics with a narrow focus do not, however, adequately incentivize police departments to meet the myriad expectations of our communities, nor do they capture the deep complexity of modern policing.

Given the range of responsibilities undertaken by today's police departments, modern evaluation and management systems should be more comprehensive and based at least partly on community-oriented policing strategies, community service, and citizen engagement. More holistic management measures would enable departments to make more informed decisions about resource allocation and how to address each community's priorities.

The commission should advise the Office of the Justice Programs (OJP) and Bureau of Justice Assistance (BJA) to prioritize and promote the development of modern police management tools, including but not limited to the CompStat360 framework already being tested in certain jurisdictions, to help departments across the nation address their local concerns and priorities.[15]

Grants from the Edward Byrne Memorial Justice Assistance Grant Program (Byrne-JAG) and State and Local Law Enforcement Assistance funding through OJP could also be used to incentivize community policing by tying grants to modern community policing standards and metrics. In addition, OJP and BJA should be tasked with providing technical support, training, and assistance for the implementation of these more modern police management tools that encourage effective, community-oriented policing strategies.

II. Law Enforcement Challenges Associated with Mental Illness, Homelessness, Substance Abuse, and Other Social Factors that Influence Crime and Strain Criminal Justice Resources

Law enforcement cannot arrest and incarcerate its way out of public health, safety, and social crises.

With approximately two-thirds of individuals who are released from jail or prison being rearrested within three years, arrest and incarceration have proved largely unhelpful to reducing involvement in the criminal justice system.[16] Addressing the underlying reasons people become justice-involved is critical to keeping our communities safe and reducing both incarceration and recidivism.

The federal government, working together with state governments, can help communities develop better responses to the challenges presented by mental illness, homelessness, substance abuse, and other social factors that influence crime and strain criminal justice system resources.

A. Addressing Mental Health & Drug Addiction

Individuals with mental illness or substance abuse problems interact with law enforcement at high rates. Estimates indicate that approximately 79 percent of those behind bars suffer from drug addiction, mental illness, or both.[17] Law enforcement officers are not medical professionals, yet frequently respond first to incidents involving people in crisis — often when a family member, friend, or neighbor calls 911 to report an incident or that someone is in danger. When law enforcement responds, there are typically two options: make an arrest to defuse the situation or leave. Practically speaking, that often results in an arrest.

Different strategies can help. The Commission should promote the implementation and funding of strategies across our nation's criminal justice systems that divert people with mental illness and drug addiction away from arrest and jail.

1. Implementation of Diversionary Programs in the States

Once someone has been formally arrested, that person is likely to suffer myriad long-term collateral consequences from criminal justice system involvement. For many individuals, a public health response would serve better than a law enforcement response. In recent years, jurisdictions across the country have developed numerous strategies and programs to address this challenge. Some programs divert those struggling with mental illness or a substance abuse disorder away from the criminal justice system altogether, while others direct affected individuals to specialized programs within the court system.

Pre-arrest diversion programs allow law enforcement to offer treatment, rather than punishment, to those who need it. One successful example of such a program is the Crisis Response Center in Tucson, Arizona.[18] This approach can help avoid the negative repercussions of an arrest while addressing the underlying causes for an individual's interaction with law enforcement.[19]

When pre-arrest diversion is unavailable or inappropriate for public safety reasons, diversionary options after arrest should be available for individuals suffering from mental health or substance abuse issues. Pretrial diversion programs are often initiated by prosecutors' offices, which evaluate an individual's eligibility for a specific program, and upon completion of the program, the prosecutor typically declines to charge a case or agrees to dismiss charges that have been filed.[20]

To help diversionary programs develop and flourish, the Commission should recommend increased funding for states to provide local governments with improved tools to address the needs of individuals in crisis. Federal assistance and funding to design, implement, and study diversionary programs and practices would go a long way to ensuring these programs are effective at delivering appropriate treatment, reducing recidivism, and conserving law enforcement resources.

2. Community Treatment for Drug Addiction and Mental Health

The Commission should also recommend funding to states from the Substance Abuse and Mental Health Services Administration (SAMHSA) and other grant funding to incentivize states to create community treatment centers to help direct people away from arrest and jail. This strategy would not only better serve many who need help, it would also reduce utilization of costly law enforcement, legal, and emergency services. For individuals with drug addiction and mental health conditions, the lack of access to effective treatment clearly contributes to unnecessary justice involvement.

Local community restoration centers — such as those in San Antonio, Texas and one being developed in Middlesex County, Massachusetts — provide urgent psychiatric care, crisis stabilization and other related services in a less restrictive setting than hospitals or jails, and are sorely needed across the country.[21] Such centers would provide individuals with needed treatment instead of jail and prison time. In addition, well-designed community-based programs not only help reduce recidivism rates, but also facilitate reductions in the need for emergency services, legal system costs, and overall criminal justice system involvement when compared to traditional methods of arrest and incarceration.[22]

B. Improving Juvenile Justice

As discussed at greater length in *Ensuring Justice & Public Safety*, improving juvenile justice is critically important to addressing social factors that often contribute to criminal justice system involvement.

Estimates indicate that approximately 43,000 to 48,000 children were housed in juvenile detention facilities and other residential placements in 2017.[23] That same year, officials made approximately 800,000 juvenile arrests.[24] Evidence suggests that the vast majority of justice-involved children have been exposed to complex traumas in their lifetimes.[25] When children do not receive sufficient rehabilitative support to address their underlying traumas, justice system involvement often impedes their recovery and rehabilitation.[26] This puts youth at greater risk of school dropout, substance abuse disorders, and future offending, among other consequences, which undermines public safety by limiting their potential to thrive in adulthood.

To help disrupt these on-ramps to criminal justice system involvement, the Commission should recommend that the federal government take concrete steps to improve juvenile justice systems across the country. Notably, because there is a 94 percent participation rate in Juvenile Justice Delinquency Prevention Act (JJDPA) grant programs among state, local and tribal juvenile justice systems, the federal government is uniquely positioned to lead efforts for national, lasting reform addressing some of the social factors that cause so many of America's children to become involved in the criminal justice system.[27]

The Commission should recommend federal support for the implementation of state, local, and tribal juvenile justice systems designed for rehabilitation and treatment, informed by research on adolescent brain development and trauma.[28] The Commission should recommend that Congress provide incentives to all 50 states to raise the age of criminal responsibility, while eliminating the practice of automatically transferring youth to adult status without an initial review by a juvenile court.[29] The federal government should also support state efforts to design juvenile justice programs that promote diversion and rehabilitation in order to reduce reliance on juvenile incarceration, by

fully funding the Office of Juvenile Justice and Delinquency Prevention, JJDPA grants, and Juvenile Accountability Block Grants.

C. Improving & Expanding Recidivism Reduction

Although there are of course varying causes for recidivism and rearrest, many of those who seek to reenter society successfully are faced with seemingly insurmountable barriers, including but not limited to limitations on employment, student aid, public benefits, housing, and bars to occupational licensing. Addressing the social and economic factors that lead to our currently high recidivism rates is critically important to reducing future crime and unnecessary incarceration.[30]

In order to support the successful reentry of incarcerated, justice-involved people into society, we must develop comprehensive reentry planning that starts on the first day a person is arrested. As discussed in *Ensuring Justice & Public Safety*, the Commission should support reentry planning and implementation by recommending policies that (1) improve education and vocational training in jails and prisons, including the restoration of Pell grants for all incarcerated people who qualify;[31] (2) expand access to federal housing; (3) end the practice of terminating Medicaid for people in jail or prison, a policy change that is particularly important in light of the ongoing COVID-19 pandemic; and (4) provide relief from the collateral consequences of a conviction.

Helping people reenter society after jail or prison helps stop future crime, restore communities, and promote respect for the law and government, and ultimately, will save law enforcement resources. For these reasons, the Commission should recommend a robust strategy that helps people reenter society and stops the revolving prison door.

* * * * *

Law enforcement, working alone, cannot make a community safe. Only by working with the community can police help address the myriad social problems that lead to criminal justice system involvement. To help close the gap, build stronger and healthier communities, and promote respect for law enforcement and government, we must adopt improved strategies for mental health services, drug rehabilitation, youth programming, and reentry support.

As communities across the country work to recover from the current unrest, while also attempting to contain the COVID-19 outbreak, it is more critical than ever that law enforcement redouble its efforts improve equity and public safety outcomes within the criminal justice system, and that we hold ourselves and each other to a higher standard. Proactive engagement with communities and continual reevaluation of law enforcement strategies are critical to improving our nation's safety and security, particularly for those who have received disparate treatment and inadequate enforcement of the law for too long.

In these fraught times, the Commission can help repair law enforcement's relationships with the communities it serves. We must all work for justice for underserved communities, and implement strategies that promote meaningful legitimacy in law enforcement from the ground up, not the top

down. We thank the President's Commission on Law Enforcement and Administration of Justice for considering our recommendations and perspective.

Respectfully,

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[1] International Association of Chiefs of Police, "Statement from IACP President Steven R. Casstevens on Use-of-Force Incident in Minneapolis," May 27, 2020, https://www.theiacp.org/news/blog-post/statement-from-iacp-president-steven-r-casstevens-on-use-of-force-incident-in.
[2] Major Cities Chiefs Association, "Major Cities Chiefs Association (MCCA) Statement Regarding the Death of George Floyd," May 27, 2020, https://www.majorcitieschiefs.com/pdf/news/news_release_statement_regarding_death_of_george_floyd.pdf.
[3] Law Enforcement Action Partnership, "Recommendations to Transform Policing," June 3, 2020, https://lawenforcementactionpartnership.org/national-policing-recommendations/.
[4] Ibid.
[5] Darrel W. Stephens, *Police Discipline: A Case for Change*, New Perspectives in Policing, National Institute of Justice and Harvard Kennedy School Program in Criminal Justice Policy and Management, 2011, https://www.ncjrs.gov/pdffiles1/nij/234052.pdf.
[6] Ibid.
[7] Department of Justice, "About DOJ," https://www.justice.gov/about.
[8] Timothy N. Oettmeier and Mary Ann Wycoff, *Personnel Performance Evaluations in the Community Policing Context*, Police Executive Research Forum, 1996, https://www.policeforum.org/assets/docs/Free_Online_Documents/Human_Resources/performance%20evaluations%20in%20the%20community%20policing%20context.pdf.
[9] Keli Goff, "How to Solve the Policing Crisis," *The Daily Beast*, January 5, 2015, https://www.thedailybeast.com/how-to-solve-the-policing-crisis; U.S. Department of Justice, Office of Community Oriented Policing Services, *The Impact of the Economic Downturn on American Police Agencies*, 2011, http://www.ncdsv.org/images/COPS_ImpactOfTheEconomicDownturnOnAmericanPoliceAgencies_10-2011.pdf.
[10] Carl Smith, "Government Falls into a Recession and Job Cuts Soar," *Governing: The Future of States and Localities*, June 3, 2020, https://www.governing.com/work/Government-Falls-into-a-Recession-and-Job-Cuts-Soar.html.
[11] Jacqueline Alemany, "Power Up: Protesters 'Defund the Police' Rallying Cry is Achieving Some Progress," *The Washington Post*, June 5, 2020, https://www.washingtonpost.com/news/powerpost/paloma/powerup/2020/06/05/powerup-protesters-defund-the-police-rallying-cry-is-achieving-some-progress/5ed98153602ff12947e84cbd/.
[12] See International Association of Chiefs of Police, "Collaborative Reform Initiative Technical Assistance Center (CRI-TAC)," https://www.theiacp.org/projects/collaborative-reform-initiative-technical-assistance-center-cri-tac.

[13] The President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, 2015, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.
[14] Malcolm K. Sparrow, *Measuring Performance in a Modern Police Organization*, New Perspectives in Policing, National Institute of Justice and Harvard Kennedy School Program in Criminal Justice Policy and Management, 2015, 2, https://www.ncjrs.gov/pdffiles1/nij/248476.pdf.
[15] James J. Willis and Stephen D. Mastrofski, "CompStat 2.0 Development Symposium: What Did We Learn?," in *Perspectives From the Field: Leveraging CompStat to Include Community Measures in Police Performance Management*, eds. Susan Shah, Jim Burch & S. Rebecca Neusteter (Vera Institute of Justice & Police Foundation, 2018), 45–55, https://www.compstat360.org/wp-content/uploads/2018/05/Leveraging_CompStat.pdf.
[16] Mariel Alper, Matthew R. Durose, and Joshua Markman, *2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014)*, Bureau of Justice Statistics, 2018, https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6266; Steven Belenko, Matthew Hiller, and Leah Hamilton, "Treating Substance Use Disorders in the Criminal Justice System," *Current Psychiatry Reports* 15 (2013): 414, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3859122.
[17] James Austin and Lauren-Brooke Eisen, *How Many Americans Are Unnecessarily Incarcerated?*, The Brennan Center for Justice, 2016, 8, 11–13, https://www.brennancenter.org/sites/default/files/2019-08/Report_Unnecessarily_Incarcerated_0.pdf.
[18] City of Tucson, "Tucson Police: Mental Health Support Team," https://www.tucsonaz.gov/police/mental-health-support-team-mhst; Dennis Grantham, "Pima County's Crisis Response Center: Beautiful, and Functional, Too," *Behavioral Health Executive*, July 12, 2012, https://www.psychcongress.com/article/pima-countys-crisis-response-center-beautiful-and-functional-too.
[19] LEAD National Support Bureau, "What Is LEAD?," https://www.leadbureau.org/about-lead.
[20] Melissa Labriola et al., *Prosecutor-Led Pretrial Diversion: Case Studies in Eleven Jurisdictions*, Center for Court Innovation, 2018, https://www.courtinnovation.org/sites/default/files/media/documents/2017-11/pretrial_diversion_case_study_report_final_provrel.pdf.
[21] Kym Klass, "Restoration Center: San Antonio's Answer to Mental Health," *Montgomery Advertiser*, January 27, 2017, https://www.montgomeryadvertiser.com/story/news/2017/01/27/restoration-center-san-antonios-answer-mental-health/96457170/; Middlesex County Restoration Center Commission, *Year One Findings and Recommendations*, 2019, 41, https://www.mamh.org/assets/files/Middlesex-County-Restoration-Commission.pdf.
[22] Ibid.
[23] "Easy Access to the Census of Juveniles in Residential Placement: 1997–2017," https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/selection.asp, last accessed June 9, 2020.
[24] U.S. Department of Justice, Office of Juvenile Justice & Delinquency Prevention, "Juvenile Arrests 2017," https://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qa-Date=2017&text=yes, last accessed June 9, 2020.
[25] Julian D. Ford et al., "Complex Trauma and Aggression in Secure Juvenile Justice Settings," *Criminal Justice and Behavior* 39 (2012): 694, 697.
[26] Nicole Taylor Kletzka and Christine Siegfried, "Helping Children in the Child Welfare Systems Heal from Trauma: A Systems Integration Approach," *Juvenile and Family Court Journal* 59 (2008): 7–8.
[27] National Juvenile Justice & Delinquency Prevention Coalition, *Opportunities for Juvenile Justice & Delinquency Prevention Reform*, 2019, 4, http://www.campaignforyouthjustice.org/images/weeklylegislativeroundsups/FINALC_NJJDPC_Recs_to_116th_Congress_.pdf.
[28] Elizabeth Cauffman, et al., "How Developmental Science Influences Juvenile Justice Reform," U.C. Irvine Law Review 8 (2018): 21, https://scholarship.law.uci.edu/ucilr/vol8/iss1/4.
[29] National Sheriffs' Association, "National Sheriffs' Association Resolution on Youth Tried As Adults," 2018, https://www.sheriffs.org/sites/default/files/2018-02.pdf; Major Cities Chiefs Association, "Policy Statement: Youth in the Adult Criminal Justice System," 2017, https://www.majorcitieschiefs.com/pdf/news/policy_juvenile_age.pdf.
[30] Mariel Alper and Matthew R. Durose, *2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005–2014)*, Bureau of Justice Statistics, 2018, 11, https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf.
[31] Law Enforcement Leaders to Reduce Crime & Incarceration, "Briefing Memo: Pell Grant Restoration," 2019, http://lawenforcementleaders.org/wp-content/uploads/2019/10/LEL-Pell-Grant-Briefing-Memo.pdf; Letter from members of Law Enforcement Leaders to Reduce Crime & Incarceration to U.S. Senators, August 12, 2019, http://lawenforcementleaders.org/wp-content/uploads/2019/08/Letter-of-Support-REAL-Act-H.R.-2168.pdf.

LAW ENFORCEMENT LEADERS
To Reduce Crime & Incarceration

Ensuring Justice and Public Safety

Federal Criminal Justice Priorities for 2020 and Beyond

Foreword by Ronal W. Serpas and Taryn A. Merkl PUBLISHED APRIL 15, 2020

ABOUT LAW ENFORCEMENT LEADERS

Law Enforcement Leaders to Reduce Crime & Incarceration unites over 200 current and former police chiefs, sheriffs, federal and state prosecutors, attorneys general, and correctional officials from all 50 states. Our group urges changes to laws and practices to more effectively fight crime while reducing unnecessary incarceration.

As law enforcement professionals who have spent our lives keeping our communities safe, we believe that the country can reduce incarceration while keeping down crime. We believe unnecessary incarceration is counterproductive, as it can be criminogenic, wastes taxpayer dollars, and further divides law enforcement from those they seek to protect. We aim to build a smarter and stronger criminal justice system by replacing ineffective policies with new practices that reduce both crime and incarceration.

Membership in the group requires holding a current or former position as the leader of a law enforcement agency — including police, state, local and federal prosecutors, sheriffs, and correctional officials — and signing onto the mission statement below. Group action, statements, or endorsements do not necessarily reflect the beliefs of all individual members. Based on our experience as long-serving law enforcement professionals, we know that we can combat violent crime while also seeking justice.

MISSION STATEMENT

As current and former leaders of the law enforcement community — police chiefs, sheriffs, district and state attorneys, U.S. Attorneys, attorneys general, correctional officials, and other leaders — protecting public safety is a vital goal. From experience and through data-driven and innovative practices, we know the country can reduce crime while also reducing unnecessary arrests, prosecutions, and incarceration. We can also reduce recidivism and strengthen relationships with communities. With the goal of building a smarter, stronger, and fairer criminal justice system, we are joining together to urge a change in laws and practices to reduce incarceration while continuing to keep our communities safe.

CONTACT

To learn more about Law Enforcement Leaders and to see a full list of members,
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Law Enforcement Leaders is an independent project of the Brennan Center for Justice.

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MEMBERS

We include over 200 members representing all 50 states. A full membership list is available at www.lawenforcementleaders.org/members.

POLICY RECOMMENDATIONS & STATEMENTS

Policy recommendations and statements, including those herein, do not necessarily reflect the beliefs of all individual members.

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Foreword

By Ronal W. Serpas and Taryn A. Merkl

While we were finalizing the policy recommendations in this report, our country began battling an unprecedented health crisis. The coronavirus pandemic has shined a spotlight on the size of America's incarcerated and justice-involved population, illuminating both the extreme vulnerability of those held behind bars and how our prison population impacts our broader communities. This public health emergency has required politicians and those who manage our criminal justice systems to rapidly reevaluate how many of those who are incarcerated can be safely released, how police and prosecutors can best serve their communities, and how to safely reduce the size of the justice system overall.

Even before the outbreak, the United States stood at a crossroads on criminal justice reform. While some of our leaders have continued to use fear of crime to advocate for policy, many advocates, policymakers, and law enforcement officials from all parts of the country — and across the political spectrum — have realized that certain tough-on-crime policies of the 1990s and 2000s led to unintended consequences, such as the unnecessary incarceration of thousands, high rates of recidivism, and decreased confidence in law enforcement. Ultimately, these challenges risk making our communities, including our law enforcement and correctional officers, less safe.

It was against this backdrop that the First Step Act became law in December 2018.[1] The law provided needed sentencing reform on the federal level and recognized that federal prisons should better promote rehabilitation and successful reentry for the tens of thousands of people who are released from federal custody each year. These ideas are not new, but the bipartisan effort that led to this significant legislation signaled that the country is ready to reexamine its approach to crime and punishment.

As law enforcement veterans who have dedicated our lives and careers to protecting public safety at every level of local, state, and federal government, we are now working to envision a criminal justice system that is fairer and more just while keeping crime low. Our generation of law enforcement leaders helped to cut the violent crime rate to less than half of its peak in 1991, and we are committed to keeping it down.[2] But we must be smart about it. Decades of law enforcement experience, and the study and implementation of innovative programs around the country, have convinced us that crime policies that rely primarily on arrest, jail, and prison are ineffective to ensure public safety.

Members of our group have been at the forefront of various reform efforts for decades. We have tried and tested numerous strategies and programs — such as community and problem-oriented policing, focused violence deterrence, pre-arrest diversion programs, increased access to mental health and drug treatment, and alternatives to incarceration — that reduce unnecessary incarceration while keeping our communities safe. Many of our members are also leading the way on how to best reduce the size of the incarcerated population as we struggle to fight the coronavirus outbreak. Yet implementing and maintaining high-quality

strategies that will reverse the tide of unnecessary incarceration for the long term requires unwavering focus — and funding.

If we are serious as a society about rooting out the causes of our overreliance on the criminal justice system, the federal government has a significant role to play. It is uniquely poised to provide key leadership by making reforms at the federal level and to incentivize local lawmakers to implement innovative and groundbreaking work across the country. Congress and the president can be powerful allies in this effort.

We seek to continue working together with leaders of the legislative and executive branches to shape the national consensus, pass legislation, and steer federal dollars toward programs that encourage safer, healthier communities. To be sure, with thousands of police departments and prosecutors working to keep their communities safe, law enforcement is necessarily a very local concern. Each community must address its own crime problems and challenges. But it is critical that the federal government support these local efforts while providing leadership on how the criminal justice system can drive down crime without causing undue harm to communities.

Our experience has taught us that jail or prison need not be the automatic response for every broken law. The research backs it up: for many nonviolent and first-time offenders, jail or prison is unnecessary for public safety and can endanger our communities in the long term, while causing harm to individuals and families.[3] To counter this, it is essential that we identify policies that direct away from the criminal justice system those who are mentally ill or have an addiction and that we reduce recidivism. This will position us to focus our resources on individuals who commit violent crimes while helping to restore community trust in law enforcement.

We urge Congress and the administration to carefully consider a range of strategies to promote public safety in the face of this unprecedented epidemic and, in the long term, to help ensure justice for local communities. With those goals in mind, this report offers specific policy recommendations in each of five areas:

- Reducing unnecessary incarceration
- Increasing mental health and drug treatment
- Bolstering community policing
- Improving juvenile justice
- Preserving and expanding recidivism reduction

Implementation of and funding for our recommendations will help to forge a path toward our common goal of a safer nation. Congress and the administration should seize the moment for criminal justice reform and lead the way forward to create policies that reduce unnecessary incarceration now and will keep jail and prison population levels low in the long term. The policies and the programs we propose should be the next steps for improving our systems of justice.

Serpas is the former Police Superintendent of New Orleans, and Chief of Police in Nashville, Tennessee. Merkl is a former Assistant U.S. Attorney in the Eastern District of New York, who served as Deputy Chief of the Criminal Division and as Chief of the Organized Crime & Gangs and Civil Rights Sections. Serpas and Merkl now serve as Executive Director and Senior Counsel, respectively, of Law Enforcement Leaders to Reduce Crime & Incarceration.

Reduce Unnecessary Incarceration

Law enforcement's most important goals are to effectively reduce crime, create safe communities, and ensure justice. But unnecessary arrests and unduly long sentences of incarceration can harm the very communities we are duty-bound to protect. As of this writing, our jails and prisons hold approximately 2.2 million people, with another 4.7 million under supervision on probation or parole.[4] Notwithstanding many jurisdictions' efforts to reduce unnecessary incarceration, there are still far too many Americans impacted by the criminal justice system each year.[5]

Data show that reforms can simultaneously reduce incarceration and crime at the same time. Analysis over a ten-year period indicates that from 2007 to 2017, 34 states were able to reduce both crime rates and imprisonment simultaneously.[6] In addition, on the federal level, the passage of the First Step Act was an important milestone that set the stage nationally for further reforms at both the federal and state levels.

There are concrete steps the federal government should take to reduce the number of people in federal custody, and to encourage states to build more equitable justice systems that reduce the number of people in state custody.[7] Policymakers should:

- Ensure full funding of the First Step Act and its faithful implementation to reduce recidivism
- Incentivize states to reform cash bail systems to reduce unnecessary pretrial incarceration
- Encourage states to entirely eliminate the practice of suspending drivers' licenses for non-payment of fines and fees

I. Ensure First Step Act Funding and Implementation to Reduce Recidivism

The First Step Act was signed into law in December 2018 with significant bipartisan support. Some of the First Step Act's key purposes are to increase successful reentry, reduce recidivism, and simultaneously reduce the number of people being held in federal prison — all with the goal of promoting public safety.[8]

Law Enforcement Leaders has long supported federal sentencing reform, particularly to reduce unduly long mandatory minimum sentences.[9] We were pleased to see that several provisions of the First Step Act that impacted federal sentencing immediately took effect, such as reducing certain mandatory minimums, applying the Fair Sentencing Act of 2010 retroactively, and changing the law that required mandatory consecutive sentences in certain firearm cases.[10] Although these reforms have already had, and will continue to have, significant impacts on sentence length, the First Step Act's provisions designed to reduce recidivism require careful implementation and full funding for the long term.

The First Step Act authorized $75 million in funding for the Bureau of Prisons (BOP), but the federal government did not appropriate that funding until just under one year after the law's passage.[11] Although we applaud the inclusion of First Step Act funding in the Consolidated Appropriations Bill for 2020, the federal government must remain zealous in continuing to fund the law. A lapse in funding could put the law's success at risk,[12] and it could undermine congressional objectives to reduce federal recidivism rates.[13] Indeed, the lack of full funding could render the BOP unable to meaningfully increase educational opportunities and ensure that in-prison programming is more universally available. Those provisions are key to the law's goals of improving reentry planning and reducing recidivism — both important for public safety. It is imperative that the federal government allocate full funding for the First Step Act every year.

In addition, the administration must carefully and critically implement all the First Step Act's provisions. The Department of Justice (DOJ) recently released the risk and needs assessment tool required by the First Step Act — the Prisoner Assessment Tool Targeting Estimated Risks and Needs (PATTERN) — along with a comprehensive report detailing the process and the rules.[14] There are, however, concerns about whether PATTERN's criteria accurately identify and predict risks as well as whether PATTERN's algorithm gives sufficient weight to rehabilitative efforts made by the person the tool is being used to evaluate.[15]

For the First Step Act to realize its potential in reducing recidivism and contributing to public safety, the federal government must commit to funding the First Step Act every year and to expanding in-prison programs, as needed, to make training, educational, and rehabilitative programs widely available across the federal prison population for all who need them. The administration should also ensure that the PATTERN tool is regularly evaluated to confirm it is working as intended — that it is free from racial bias and that it places the proper weight on dynamic, rather than static, factors that encourage meaningful rehabilitation.

II. Provide Federal Incentives to Reform Cash Bail Systems

The number of people incarcerated pretrial across the country is staggering: on average, more than 460,000 people sit in local jails on a given day awaiting trial or other disposition of their case.[16] Of those, approximately 146,000 are charged with violent crimes.[17] Many in state and local jails are held because they lack money to pay bail.

In contrast, the federal government eliminated pretrial jailing due to inability to pay cash bail for those charged with federal crimes with the passage of the Bail Reform Act of 1984.[18] States are long overdue to follow suit. To encourage the states, the federal government should enact federal legislation to provide states with grants and technical assistance to design and

Federal Criminal Justice Priorities: Reduce Unnecessary Incarceration

>> Commit to funding the First Step Act every year

>> Expand in-prison education and vocational programs within the federal Bureau of Prisons

>> Ensure that the PATTERN tool is regularly evaluated to confirm it encourages meaningful rehabilitation

>> Provide incentives, grants, and technical assistance through the Bureau of Justice Assistance to help implement new pretrial systems that eliminate cash bail

>> Pass legislation to encourage states to stop suspending drivers' licenses solely for failure to pay fees, fines, and court debt

implement new pretrial systems, specific to their jurisdictions, that move away from cash bail. Two bills that provide incentives and penalties to states to encourage them to do just that have already been introduced in Congress. These bills could serve as starting points for future legislation.[19]

The determination of who poses a significant enough threat to public safety to merit pretrial confinement is a complex one that must be made on an individual basis.[20] There is a growing consensus, however, that a person's ability to pay cash bail should not determine whether they should be detained pending trial. As noted above, that has been the law in the federal courts for decades.[21]

Cash bail operates on the premise that those charged with a crime need a financial incentive to return to court. But that approach is both under and over inclusive. An indigent person who poses no threat to the public and has no intention of skipping court appearances could be detained, while a wealthy individual who poses a risk of flight but has the means to pay bail could abscond.

In practice, lower-income people often stay in jail pretrial due to their inability to make bail, which is a costly use of taxpayer dollars that contributes to the cycle of criminalizing poverty without proven public safety benefits. Unnecessary jail time also often causes undue harm to individuals' lives, families, and communities: after a few days, they may lose their job and custody of their children.[22]

Our state pretrial detention systems should start with a presumption of release for people charged with nonviolent crimes and, like the federal system, should not permit the imposition of financial conditions that result in a person's pretrial detention. Local jurisdictions should undertake efforts to eliminate cash bail and move towards pretrial systems that use an individualized and holistic assessment of each person's case to make pretrial release determinations.

This approach was recently adopted by New Jersey, which overhauled its bail system in 2017. Starting in 2013, a committee of legislators and those who work in the criminal justice system began examining the state's bail practices. The commission found that New Jersey's bail system was seriously flawed because it was both over and under inclusive, as discussed above, and the committee recommended a move away from relying on cash bail.[23]

New Jersey judges now make individual pretrial release determinations, evaluating whether each person is a flight risk or presents a danger of committing a crime while on release. To identify which release conditions are appropriate, police and judges undertake a standardized public safety assessment in each case, which seeks to provide an objective and uniform measure of those two factors. Recent analyses have determined that following the bail and other reforms, New Jersey has enjoyed a much lower rate of pretrial detention as well as a significant reduction in the number of arrests and cases of certain types.[24]

As New Jersey's example shows, where implemented carefully, bail reform can reduce unnecessary pretrial incarceration without impacting public safety. But careful implementation, as was done in New Jersey, can be resource-intensive — requiring new policies, training, and technological infrastructure as well as adequate funding for courts and pretrial services agencies.

The federal government is well positioned to support and incentivize states to develop bail systems that will ultimately save money and help communities by reducing the financial and human costs of unnecessary pretrial incarceration. Federal legislation should provide states with grants and technical assistance through the Bureau of Justice Assistance (BJA) and other incentives to implement new pretrial systems that do away with cash bail.

III. End License Suspensions for Traffic Fees and Fines

Few practices in the justice system today are as counterproductive as suspending drivers' licenses for failure to pay fees and fines.[25] This practice also taxes limited law enforcement resources.

Because cars are critical for mobility in America, suspending a driver's license cuts off an individual's ability to get to work, make money, pay their fine, and support their family. This leaves the individual stuck in a catch-22: stop driving and fall deeper into poverty, or drive without a license and risk further tickets, fines, and possibly even arrest and criminal charges.[26]

Often, people in this circumstance choose to drive, contributing to a large number of driving without a license charges. In addition, when an unlicensed person is involved in a traffic infraction or accident, law enforcement may be placed in the untenable situation of not being able to verify the identity of the driver, which creates challenges for law enforcement, the courts, insurance companies, and any other parties affected by an accident.

The scope of this problem is staggering. From January 2016 to April 2018, New York alone suspended 1.7 million licenses for unpaid traffic debt.[27] The Washington Post estimates that more than 7 million Americans have lost their drivers' licenses for failure to pay court debt, including nearly 650,000 suspensions in Virginia as of late 2016.[28]

Pass legislation to encourage states to **stop** suspending drivers' licenses solely for failure to pay fees, fines, and court debt.

It is difficult to quantify precisely how many law enforcement resources would be saved by avoiding suspended license arrests and unnecessary jail stays if these practices were changed. This is because states do not typically report the underlying reason for the suspension when someone is charged with driving while suspended.[29] But one example of a state that curtailed suspensions for failure to pay offers encouraging signs. In 2013, Washington State implemented a change to its law to prohibit suspensions for failure to pay on nonmoving violations, after which convictions for these offenses declined.[30]

The evidence that is available also suggests that arresting and prosecuting individuals for driving on a suspended license for failure to pay is costly.[31] In cases where a license is suspended for failure to pay court costs, all of these resources are being spent to collect money, not to advance public safety. This is an ineffective use of time and money for police, prosecutors, and courts, with devastating consequences for the individuals and families affected by the policy.

In response, some states have undertaken reforms. For example, Mississippi, Idaho, California, Virginia, Montana, and the District of Columbia have all stopped suspending licenses for nonpayment.[32] In addition, in September 2019, Texas ended an unpopular "driver responsibility" program that required drivers with past traffic offenses to pay onerous annual fees, as much as $2,000 a year for three years, resulting in at least 600,000 Texans becoming eligible for license reinstatement.[33]

More can be done.

Congress should pass legislation to encourage states to stop suspending drivers' licenses solely for failure to pay fees, fines, and court debt.[34] Such legislation could be structured as a grant program to improve state courts or highway infrastructure, or as a withholding of federal

highway funding to states. The latter approach could mirror the National Minimum Drinking Age Act,[35] which quickly succeeded in raising the drinking age to 21 in all 50 states. Like the drinking age and highway safety, the availability of drivers' licenses is closely related to the purpose of highway funding, which is to provide for safe travel and commerce. A bold national strategy to significantly reduce drivers' license suspensions, first proposed here, could be transformative, resulting in state-level reform across the nation that reduces the highly inefficient and harmful practice of suspending drivers' licenses for reasons unrelated to public safety.

By adopting these policies at the federal level, Congress and the administration could make inroads towards reducing unnecessary incarceration while preserving scarce law enforcement resources.

Increase Mental Health and Drug Treatment and Alternatives to Arrest and Prosecution

Individuals with mental illness or substance abuse problems interact with law enforcement at high rates. Estimates indicate that approximately 79 percent of those behind bars suffer from drug addiction, mental illness, or both.[36] Law enforcement officers are not medical professionals, yet frequently respond first to incidents involving people in crisis — often when a family member, friend, or neighbor calls 911 to report an incident or that someone is in danger. When law enforcement responds, we typically have two options: make an arrest to defuse the situation or leave. Practically speaking, that often results in an arrest.

To put the problem in perspective, the most recent available comprehensive statistics show that in 2018, 20.3 million Americans aged 12 or older struggled with a substance use disorder.[37] Meanwhile, nearly 48 million American adults wrestled with a mental health condition, 57 percent of whom received no treatment.[38] Many afflicted individuals just do not have access to care, cannot afford it, or both.[39]

Law enforcement cannot arrest and incarcerate our way out of this ongoing substance abuse epidemic and mental health crisis. With approximately two-thirds of individuals who are released from jail or prison being rearrested within three years, arrest and incarceration have proved largely unhelpful to reducing involvement in the criminal justice system.[40]

Rather than receiving intervention from those best equipped to help, many in crisis are arrested. As a result, people suffering from addiction and mental illness are grossly overrepresented in the justice system. We should look to public health solutions and treat the underlying reasons that lead many of these individuals to justice system involvement. The federal government, working together with state governments, can help communities develop better responses to these crises by taking concrete steps to:

- Assist states in the implementation of diversionary programs
- Provide funding and technical training to implement effective treatment programs for those who are incarcerated
- Increase funding for community-based drug and mental health treatment programs

I. Assist States in the Implementation of Diversionary Programs

Once someone has been formally arrested, they are likely to suffer myriad long-term collateral consequences from criminal justice system involvement.[41] For many, a public health response would serve better than a law enforcement response — provided that such a response does not present a public safety risk. In recent years, jurisdictions across the country have developed numerous strategies and programs to address this challenge. Some programs divert

those struggling with mental illness or a substance abuse disorder away from the criminal justice system while others direct affected individuals to specialized programs within the court system.[42]

To support these initiatives and encourage the development of robust strategies at the state level, the federal government should pass legislation to offer grants to states and offer technical support through BJA for the robust implementation and expansion of diversionary programs for those in need of mental health and drug treatment.[43]

Pre-arrest diversion programs allow law enforcement to offer treatment to those who need it, not punishment. For example, Law Enforcement Assisted Diversion (LEAD) in Seattle and Police Assisted Diversion (PAD) in Philadelphia permit police officers to use their discretion to divert certain individuals into a community-based case-management system rather than arresting them.[44] This approach avoids the negative repercussions of an arrest and instead addresses the underlying cause for an individual's interaction with law enforcement.[45]

In Seattle, where LEAD first started in 2011, individuals who participated in the program were 58 percent less likely to be arrested and 39 percent less likely to be charged with a felony over a term of two years when compared to a control group who were arrested and processed in the traditional way.[46] Other pre-arrest diversion programs work by sending trained emergency response teams to individuals in mental health or drug crises who, after deescalating the situation that led to a law enforcement response, decide whether to move the individual for further evaluation and services.[47]

Successful community reentry planning should start on **day one** of incarceration.

When pre-arrest diversion is not available or inappropriate for public safety reasons, diversionary options after arrest should be considered for individuals suffering from mental health or substance abuse issues. Pretrial diversion programs are often initiated by prosecutors' offices, which evaluate an individual's eligibility for a specific program, and upon completion of the program, the prosecutor typically declines to charge a case or agrees to dismiss charges that have been filed.[48]

For example, Goldilocks, a crime prevention initiative in Deschutes County, Oregon, manages a three-tiered approach to address substance abuse — looking for the "just right" intervention. Based on individuals' circumstances, some of those who are arrested for possession of a controlled substance are evaluated and receive referrals for services and are not charged with a crime. Others have the option to participate in treatment, and if they remain crime free, the prosecutor declines to charge them with a crime and their original arrest record is expunged.[49] Initial results are quite promising, with lower rates of recidivism than average as well as the elimination of hundreds of court appearances.[50]

Federal Criminal Justice Priorities: Increase Mental Health and Drug Treatment and Alternatives to Arrest and Prosecution

>> Provide financial and technical assistance to states to develop pre-arrest and other diversionary programs to treat mental health and drug addiction

>> Offer grants that help local prisons and jails to provide mental health and addiction treatments

>> Fund public health and community programs to treat mental health and drug addiction

Similarly, the Kings County District Attorney's Office in Brooklyn recently launched a pretrial diversion option called the Collaborative Legal Engagement Assistance Response (CLEAR) program. Through CLEAR, individuals arrested for misdemeanor possession of a controlled substance may receive treatment and other community-based services before their initial court appearance. If they meaningfully engage in the program, their case will be declined for prosecution.[51]

Other types of specialized treatment courts also offer diversionary options, such as drug, mental health, or veterans' courts. These courts typically defer conviction or incarceration for eligible individuals by bringing together judges, prosecutors, defense attorneys, treatment providers, and court staff to create an individualized treatment plan.[52] Currently, at least 33 states use substance abuse, mental health, veterans, and other types of specialized courts.[53] However, the treatment available through specialty courts can vary widely and many programs suffer from underfunding.[54]

To help diversionary programs grow and flourish, the federal government should offer incentives and funding for states to provide law enforcement with better tools to address the needs of individuals who are in crisis. Federal assistance and funding to design, implement, and study diversionary programs and practices would go a long way to ensuring these programs are effective at delivering appropriate treatment, helping to reduce recidivism, and conserving resources.

II. Fund the Administration of Treatment Programs in Jails and Prisons

The federal government should also offer funding to states through the Substance Abuse and Mental Health Services Administration (SAMHSA) and other grant programs to encourage states to provide targeted substance abuse and mental health services to people in jail and prison.

For the thousands of incarcerated people in jail or prison suffering from mental health and substance abuse disorders, quality treatment is sorely needed. Rather than exacerbating these individuals' preexisting conditions, incarceration should be an opportunity to start treatment. Successful community reentry planning should start on day one of someone's incarceration. Because substance abuse is often a driver of criminal activity, the opportunity for effective treatment during incarceration can help individuals steer clear of future crime and promote public safety.

However, despite the high numbers of people in correctional facilities who suffer from addiction and mental illness, most are not able to receive the rehabilitative care they need to recover. While incarcerated, only 11 percent of substance-involved people[55] and up to one-third of the mentally ill receive any sort of treatment.[56]

Consequently, upon being released, people are often no better than when they were first admitted into correctional facilities. And sometimes they become worse because incarceration can take a toll on people with preexisting conditions, exacerbating certain mental problems.[57] As a result of all these and other factors, many who are incarcerated ultimately return to jail or prison after their release.

For example, a 2013 study by the Center for Evidence-Based Corrections at the University of California, Irvine, reported that people with serious mental illness were significantly more likely to be re-arrested within one year of release.[58] A five-year study of individuals with mental illness in 30 states found that 77 percent had been re-arrested within a five-year period.[59]

But there is hope in effective, tailored treatment.

The Middlesex County Sheriff's Office's Medication Assisted Treatment and Directed Opioid Recovery (MATADOR) Program offers a promising example. Started in 2015 as Middlesex County was witnessing a peak in overdose deaths linked to the opioid crisis, the program takes a public health approach to addressing the needs of those in jail. As of September 2019, MATADOR had enrolled more than 571 incarcerated individuals into the extended-release injectable naltrexone program and 89 percent of participants who completed the program have not recidivated. And 95 percent of MATADOR participants had not succumbed to a fatal overdose post release. On September 1, 2019, the Middlesex County Sheriff's Office expanded the availability of medication assisted treatment from one to all three FDA approved options, marking an exciting new chapter of MATADOR that continues to strive to lower recidivism, overdoses, and overdose deaths among this high-risk population.[60]

Federal incentives to create and expand such programs could be included in grant funding from the Department of Justice or funding from SAMHSA.[61] Grant funding would permit localities to craft programs with local partners and stakeholders that are customized to address the challenges facing their communities.

III. Fund Community Treatment for Drug Addiction and Mental Health

The federal government should also offer SAMHSA and other grant funding to incentivize states to create community treatment centers in order to direct people away from jail and reduce utilization of costly law enforcement, legal, and emergency services. Addressing the underlying reasons people become justice-involved is critical to keeping our communities safe and reducing both incarceration and recidivism. For individuals with drug addiction and mental health conditions, the lack of access to effective treatment is clearly contributing to unnecessary incarceration.

Local community restoration centers — such as those in San Antonio, Texas and the one being developed in Middlesex County, Massachusetts, which seek to provide urgent psychiatric care or crisis stabilization and other related services in a less restrictive setting than hospitals or jails — are sorely needed across the country.[62] They could provide individuals with needed treatment instead of prison time. Beyond recidivism rates, well-designed community-based programs show reductions in overall criminal justice, emergency services, and legal system costs compared to traditional methods of arrest and incarceration.[63]

Over time, a federal investment in local programs that offer targeted substance abuse and mental health treatment would save money and help restore communities, while reducing the utilization of law enforcement, legal, and emergency services.

To create safer and healthier communities, addressing the underlying substance abuse and mental health challenges of many justice-involved individuals is critical. Federal funding and programs could help states design, implement, and regularly evaluate effective treatment programs, helping to design a more coordinated national response to these crises, while ensuring that state and local programs provide effective treatment. With bold federal leadership — and steady funding — local communities could tackle these challenges with public health approaches and stop the cycle of prosecuting those who truly need help.

Bolster Community Policing

Distrust between citizens and law enforcement renders communities less safe. Although police departments and community leaders in parts of the country have made progress over the past several years to build trust and understanding, there are still divisions between some communities and law enforcement.[64] Tension between the community and police can put officers at risk, impact law enforcement's ability to investigate cases, and ultimately make communities less secure overall.[65] Effective community policing can help, while reducing crime and increasing law enforcement legitimacy.

Community policing's central feature emphasizes collaboration between the police and the community, who share joint responsibility in working towards public safety. Dating to approximately the 1970s, community policing refers to a broad range of strategies used by many departments to varying degrees, but, when implemented effectively, its two core components remain community partnership and problem solving.[66]

Examples of success in community policing include Camden County, New Jersey, which did away with its 141-year-old municipal police department in 2013 and adopted a new, reimagined approach that incorporated community policing. Total crime is now at a 50-year low.[67]

In another example, in 2016, the DOJ chose the Arlington Police Department in Texas to be one of 15 law enforcement agencies to lead a charge to identify and implement best practices to reduce crime while building trust in the community.[68] Notable community policing initiatives in the city include the Arlington Clergy and Police Partnership and Citizens on Patrol programs. Through these programs, the police work with members and leaders of the community to build faith in law enforcement, increase police-community engagement, and connect with youth.[69]

The federal government is well positioned to provide leadership on the development of national community policing goals as well as federal funding, technical assistance, and training through DOJ's Office of Community Oriented Policing Services (COPS Office) and the BJA. Steps Congress and the administration can take now include:

- Fully fund the COPS Office
- Encourage the implementation of systems to measure modern metrics of successful policing through BJA

I. Increase Federal Funding for Local Departments Through COPS and Byrne-JAG

For effective community policing, departments need adequate and reliable funding. Unfortunately, in an era of tightening state and city budgets, these and other critical law enforcement programs are suffering cuts. The most recent DOJ survey found that 39 percent of participating police departments had cut back on community policing.[70]

The federal government should restore funding to the COPS Office and provide technical support and expertise to police departments so they may expand their community policing initiatives rather than cut them back. The COPS Office is uniquely situated to advance community policing by providing grants to state and local law enforcement and by acting as an information clearinghouse.

However, funding for COPS and appropriations for grants to hire community police have varied significantly over the years.[71] Congress and the administration must commit to better funding COPS appropriations for grants to hire local community police professionals. Renewing federal support is an important step toward encouraging effective policing. Grants from the Edward Byrne Memorial Justice Assistance Grant Program (Byrne-JAG) and State and Local Law Enforcement Assistance funding through the Office of Justice Programs (OJP) could also be used to incentivize community policing by tying grants to modern community policing standards and metrics, as described in the next section.[72]

II. Encourage New, Modern Metrics of Successful Policing

Often, *what gets measured gets done*.[73]

Traditionally, evaluations of police success have focused on a relatively narrow range of standard indicators: reductions in crime, clearance rates, response times, and enforcement productivity.[74] Evaluation metrics with a relatively narrow focus cannot, however, adequately capture the complexity of modern policing.[75] In addition, overly rigid metrics risk discouraging innovative problem-solving and community engagement.[76]

Given the range of responsibilities undertaken by today's police departments, modern evaluation and management systems should be more comprehensive and based, at least in part, on community-oriented policing strategies and citizen engagement.[77] More holistic management measures would enable departments to make more informed decisions about resource allocation and how to address community priorities. In addition, strategies such as community meetings and surveys can also help to develop a better picture of the overall performance of a department.[78]

New tools are needed. Since its development, CompStat has been widely accepted as one of the most important policing innovations.[79] And although CompStat is a well-established way to track trends and fight crime, the traditional model accounts for only a small portion of what modern police are responsible for.

It is also notable that although approximately 59 percent of large police agencies use CompStat and community policing methods simultaneously, they often operate separately.[80] Better and different data tracking could help departments integrate their functions and use resources more strategically to address local crime and community concerns.

Federal Criminal Justice Priorities: Bolster Community Policing

>> Expand and fund the Office of Community Oriented Policing Services and Byrne-JAG grants to promote modern community policing

>> Incentivize new and modern metrics of successful policing that incorporate community needs and feedback

>> Direct the Office of Justice Programs and the Bureau of Justice Assistance to prioritize and promote the development of modern police management tools to support local police departments

More comprehensive management tools — including but not limited to the approach offered by the next generation of CompStat, CompStat360 — would provide law enforcement with the tools needed to keep the community safe while integrating community needs and feedback.[81] The next generation of tools should also help facilitate police and community collaboration by assisting in the identification of public safety problems while helping police and the community understand the underlying causes of problems. With this knowledge, law enforcement can measure success using a variety of important indicators beyond crime enforcement — such as whether the police are effectively integrating community feedback and ensuring officer wellbeing.

The administration should direct the OJP and BJA to prioritize and promote the development of modern police management tools to help departments across the nation address their local concerns. Specifically, OJP and BJA could provide greater technical support, training, and assistance for the implementation of modern police management tools, as they are currently doing with CompStat360 in certain jurisdictions.[82]

Community policing is a guiding philosophy for law enforcement agencies and involves much more than placing cops on the beat. But careful and thoughtful implementation of police programs that are tailored to individual jurisdictions takes time, training, and steady funding. Full funding for the COPS Office, Byrne-JAG grants to encourage community policing, and technical assistance from BJA will help departments design more modern systems to enable police departments to be more efficient and more responsive to community concerns. Federal support could go a long way towards ensuring justice and legitimacy in policing, which is the best way to keep our communities safe in the long term.

Improve Juvenile Justice

Estimates indicate that approximately 43,000 to 48,000 children were housed in juvenile detention facilities and other residential placements in 2017.[83] That same year, officials made approximately 800,000 juvenile arrests.[84]

Evidence suggests that the vast majority of justice-involved children have been exposed to complex traumas in their lifetimes.[85] When children do not receive sufficient rehabilitative support to address their underlying traumas, justice system involvement often impedes, rather than accelerates, their recovery and rehabilitation.[86] This only puts them at greater risk of school dropout, substance abuse disorders, and future offending, among other consequences, limiting their potential to thrive in adulthood, which ultimately threatens public safety.[87]

Study after study has proven what common sense has long told us: children's neurological and developmental immaturity often leads to poor decision making.[88] Providing justice-involved children with trauma-informed and developmentally appropriate responses can improve their sense of security in and connection to their communities.[89] This can both reduce delinquency and restore trust between law enforcement and communities.[90] However, we face significant fiscal and structural barriers to implementing best practices.

Important progress on this issue was recently made with the passage of the Juvenile Justice Reform Act (JJRA) of 2018.[91] The bipartisan legislation strengthened protections for youth safety, required states to develop plans to reduce racial disparities, and established funding for communities to create delinquency prevention and diversion programs. To ensure the law best serves justice-involved children and their communities, the administration and Congress should take measures to encourage state and local officials to treat children as children rather than adults.

This is how the federal government can help:

- Incentivize states to raise the age of criminal responsibility
- Fund initiatives to reduce juvenile incarceration in favor of prevention and community-based treatment
- End the cycle of juvenile justice debt
- Provide national leadership through the Office of Juvenile Justice and Delinquency Prevention (OJJDP)

I. Incentivize States to "Raise the Age"

The clinical psychology research is clear: the adult criminal justice system is no place for children under the age of 18. The prosecution and incarceration of youth and adolescents as adults fails to meet their developmental needs, adversely affecting youth rehabilitation.[92]

To date, 47 states and the District of Columbia have raised the age of criminal responsibility to at least 18. Some Northeastern states have considered proposals to raise the age even

higher, Vermont being the first state to raise the age to 21.[93] Georgia, Texas, and Wisconsin remain the only states in the nation yet to raise the age to at least 18.

Notwithstanding this national trend, most states have laws that allow or require prosecutors to automatically transfer children to adult courts for more serious offenses and under certain conditions.[94] In some states, 17-year-olds can be prosecuted as adults no matter their offense. In others, both 16- and 17-year-olds are automatically tried as adults.[95] Furthermore, 31 states have "once an adult, always an adult" mandates, requiring that if someone under 18 has ever been charged as an adult, then all of their future cases must be prosecuted in the adult system, even for nonviolent offenses.[96]

And yet, these transfer laws at times do not achieve their intended goals. Juveniles prosecuted as adults are more likely to recidivate, commit more serious new offenses upon release, and reoffend more quickly than youth processed through the juvenile justice system.[97] Trying juveniles in adult criminal court is generally not an effective means to reduce crime, although it may be necessary in the event of very serious, violent juvenile offenders.

Given the ineffectiveness of processing juveniles in the adult criminal system, Congress should incentivize the three remaining states to raise the age of criminal responsibility to 18. For instance, the Record Expungement Designed to Enhance Employment Act of 2019 (REDEEM Act) would provide federal monetary incentives to states that raise the age of criminal responsibility to at least 18 and channel resources towards community-oriented programs for offending youth.[98]

A similarly structured grant program could incentivize states to eliminate the practice of automatically transferring youth to adult criminal systems without initial review by a juvenile court. These standards of raising the age of criminal responsibility and eliminating automatic transfer have already been endorsed by law enforcement organizations such as the Major Cities Chiefs Association and National Sheriffs' Association.[99]

II. Reduce Reliance on Juvenile Incarceration

The federal government should support state efforts by investing in prevention and community-based treatment programs to keep juveniles in their communities and promote public safety. Over-reliance on detention to reduce youth delinquency has counterproductive effects.

Incarcerated youth experience disproportionate rates of mental illness and a higher risk of self-harm.[100] Further, juvenile detention disrupts psychological development and youths' capability to "age out" of delinquency.[101]

As a result, incarcerated juveniles are more likely to recidivate than youth placed in community-based rehabilitation and probation programs.[102] Moreover, incarcerated juveniles are less

Federal Criminal Justice Priorities: Improve Juvenile Justice

>> Provide federal grants to states to raise the age of criminal responsibility to at least 18

>> Increase funding for the Juvenile Justice Delinquency Prevention Act and other juvenile justice initiatives

>> Reinstate Juvenile Accountability Block Grants to encourage states to design juvenile justice programs that prioritize diversion and rehabilitation

>> Offer grant funding to states to eliminate fees and fines in their juvenile justice systems

likely to graduate from high school[103] and face diminished opportunities in the labor market, limiting their future earning potential and further increasing their likelihood of recidivism.[104]

Since 2002, however, federal funding for juvenile justice programs — including grant funding through the Juvenile Justice Delinquency Prevention Act (JJDPA), which is the primary federal support for state, local, and tribal juvenile justice — has declined from $565 million to $320 million.[105] Congress and the administration should fund the JJDPA and other juvenile justice initiatives to the fullest extent authorized under current law and increase funding in future years. Additionally, Juvenile Accountability Block Grants, which were phased out in 2014, should be reinstated to encourage states to design juvenile justice programs around the goals of diversion and rehabilitation.[106]

III. End the Practice of Imposing Criminal Justice Debt on Youth

Justice-involved youth, many of whom are from low-income households, often bear significant monetary burdens associated with the court system. This includes fees and fines imposed as a result of court proceedings, probation, and rehabilitation programs.[107]

Imposing fines on juveniles wastes scarce law enforcement resources while **trapping** children in poverty and increasing their recidivism risk.

In at least seven states, when youth fail to pay costs, they can be charged with probation violations and thereafter incarcerated, even if they pose no threat to public safety.[108] Consequently, these youth and their families are not only pushed into significant amounts of inescapable debt, but youth are often pushed further into the justice system for inability to pay.[109]

Policies that impose fines on juveniles risk wasting scarce law enforcement resources, while also having long-lasting effects, as they can trap children in poverty and increase their risk of recidivism.[110] States should take action now to stop this practice, as New Jersey just did.[111] To encourage states that fail to act, the administration and Congress should champion a bill that incentivizes states to eliminate juvenile justice fees and fines on youth and their families.

For example, the Eliminating Debtors' Prison for Kids Act of 2019 would offer grant funding for community-based and rehabilitative services to states that specifically eliminate fees in their juvenile justice systems.[112] If passed, the bill would reduce unnecessary juvenile incarceration and the impoverishing effect of the juvenile justice system on youth.

IV. Provide National Leadership on Juvenile Justice Through OJJDP

States should undertake meaningful juvenile justice reform, but needed change is less likely without monetary and technical resources from the federal government. Historically, the OJJDP has served as Congress's primary lever to distribute juvenile justice support to the states. The OJJDP was established in 1974 to provide training, technical assistance, and research to state, local, and tribal juvenile justice programs.[113]

In addition, the OJJDP is responsible for administering JJDPA grants. Considering there is a 94 percent participation rate in JJDPA grant programs among state, local, and tribal juvenile justice systems, the OJJDP is the federal government's best tool to implement lasting national reforms.[114]

Recently, the OJJDP has downsized operations and taken a less active role in the juvenile justice reform movement.[115] The agency has relaxed data reporting requirements on racial disparities for grant recipients and rescinded guidance and other online resources.[116] Further, following the passage of the JJRA in 2018, the OJJDP released little guidance regarding the new law's broad changes and requirements, creating significant barriers to implementation.[117] Taken together, these rollbacks suggest that the OJJDP is not well positioned to lead on juvenile justice reform at the national level.

The federal government must ensure that the OJJDP is fully funded and advances a vision of juvenile justice in this country that better protects children and promotes public safety. With increased funding, the OJJDP could expand its grant programs to award funding to those states that have yet to raise the age of criminal responsibility.

Grant funding could also help states to invest in alternatives to youth incarceration and community prevention programs as well as in-custody rehabilitative, educational, and recreational services. Furthermore, an active OJJDP can develop and provide robust technical assistance to the states to ensure successful implementation of these policies.

Juvenile justice policies must reflect the reality that children have special needs. State, local, and tribal juvenile justice systems must rely less on incarceration and more on providing developmentally appropriate responses whenever possible consistent with public safety. But these approaches require financial and technical support. We call on the federal government to lead the nation toward a new vision of juvenile justice for the health and safety of our children.

Preserve and Expand Recidivism Reduction

To reduce future crime, we must focus on reducing recidivism. Current rates of recidivism in the United States are simply too high: on average, 68 percent of formerly incarcerated people are rearrested within three years.[118] To help justice-involved people successfully reenter society after a period of incarceration, we must work on reentry planning from the first day a person is arrested.

Although there are of course varying causes for recidivism and rearrest, many of those who seek to reenter society successfully are faced with seemingly insurmountable barriers, such as limitations on employment, student aid, public benefits, housing, and bars to occupational licensing, to name a few. As the U.S. Civil Rights Commission recently observed: "Research strongly suggests that relieving some formerly incarcerated individuals from the burdens of certain collateral consequences cultivates successful reintegration into society, helps reduce recidivism, and promotes public safety."[119]

Recent estimates indicate that there are over 44,000 laws in the United States that prescribe collateral consequences for those with a criminal conviction.[120] While certain collateral consequences may make sense to the extent that they are tied to public safety, it is in all of our interest to provide reentering citizens with a path forward, rather than relegating them to permanent punishment as a result of collateral consequences.[121]

Helping people reenter society after jail or prison helps stop future crime. The federal government can help these returning citizens in the following ways:

- Improve education and vocational training in jail and prison
- Expand access to federal housing and end the practice of terminating Medicaid for those in jail or prison
- Provide a path forward for relief from the collateral consequences of a federal conviction

I. Improve Education and Vocational Training in Jail and Prison

The First Step Act recognized the need for expanded education and vocational training in prison, and it created a system designed to reward individuals who participate in programs that will encourage rehabilitation.[122] The federal government should ensure full funding for educational programs in federal prisons and provide states with support and technical assistance through BJA to implement successful programs.

Many studies have shown that prison education is one of the most effective tools for combating recidivism.[123] According to a 2013 study sponsored by the Department of Justice, incarcerated individuals who participate in education programs in prison are 43 percent less likely to recidivate compared to those who do not have the benefit of prison educational opportunities.[124] In light of research showing that approximately two-thirds of those who leave prison are rearrested within three years,[125] we believe that in-custody education is essential to stopping the revolving prison door.[126]

In-prison education also saves money. Data suggest that every dollar spent on prison education saves four to five dollars by reducing reincarceration due to recidivism.[127]

For these reasons, reinstating federal Pell Grant eligibility for more incarcerated people should be a top federal government priority. Prior to the Violent Crime Control and Law Enforcement Act of 1994, which rendered incarcerated individuals ineligible for Pell Grants,[128] the United States had approximately 772 college-in-prison programs operating in over 1,200 correctional facilities, almost all of which closed after the ban went into effect.[129]

Policymakers are now realizing this law's harmful consequences. In 2015, the federal government started the Second Chance Pell pilot program in prisons, which was recently expanded by the Department of Education in 2019.[130] Also in 2019, a bipartisan group of senators introduced the Restoring Education and Learning Act (REAL Act) of 2019, which would repeal the ban, and the House Committee on Education and Labor recently voted in favor of a bill that includes Pell Grant restoration for incarcerated people.[131] As we have previously advocated, the federal government should encourage the development of educational programs in jail or prison, including the restoration of Pell Grants for all those eligible.[132]

II. Expand Access to Housing and Medicaid

To support successful reentry of those coming out of jail and prisons, the administration should update the applicable regulations to increase access to public housing and Medicaid.

For example, a study of an Ohio-based housing reentry program, Returning Home – Ohio, found participation in the program was associated with fewer arrests and reduced incarceration.[133] Similarly, a study of a reentry housing program in Washington found that participants who had housing were less likely to commit new crimes, while periods of homelessness were associated with new convictions and revocations of probation or parole.[134] Increasing access to housing for people with criminal records is critical to effective reentry programming.

Policies that determine which convictions disqualify people from public housing are set partially at the local level, resulting in confusion and uneven standards. Presently, federal regulations require Public Housing Authorities (PHAs) to ban certain individuals convicted of drug offenses and those on lifetime sex registries from public housing.[135] But beyond that, PHAs may ban those with other criminal records for a "reasonable time" before admission, with each local office deciding what a "reasonable time" means.[136]

To improve successful reentry, federal housing regulations should expand access to justice-involved individuals by including a maximum amount of time that a person with a criminal record may be denied public housing. The regulations should also more narrowly constrain which offenses are subject to any exclusions.

Like housing, access to medical care is important for successful reentry. Although there

Federal Criminal Justice Priorities: Preserve and Expand Recidivism Reduction

>> Enact legislation to restore Pell Grant access for all eligible people who are incarcerated

>> Increase access to public housing for justice-involved people

>> Pass legislation that provides relief from the collateral consequences of a federal conviction to encourage successful rehabilitation

>> Direct states to suspend Medicaid rather than terminate eligibility for incarcerated people

is no federal rule against individuals being enrolled in Medicaid while incarcerated, states have created a confusing patchwork of laws surrounding Medicaid eligibility for incarcerated individuals.[137] Some states terminate eligibility for those who are incarcerated, some states suspend eligibility, while still others suspend for a period of time and then terminate.[138] These varying approaches can lead to challenges for those returning from prison.

Research indicates that Medicaid access is associated with lower crime. One study found that a pre-Affordable Care Act Medicaid expansion was associated with reductions in robbery, aggravated assault, and larceny-theft.[139] Most of the benefit came from reducing substance abuse.[140]

Other research found that a Michigan program to help reentering citizens access community-based health care reduced recidivism from 46 percent to 22 percent.[141] Likewise, a study of Florida and Washington found a 16 percent recidivism reduction among individuals with mental illness who had Medicaid upon release from incarceration.[142] Lower recidivism also means economic benefits for communities: according to one estimate, Affordable Care Act Medicaid expansion states cumulatively net $10 billion from crime reduction annually.[143]

The federal government should clearly direct states receiving Medicaid funding to suspend rather than terminate Medicaid eligibility for incarcerated people. The Centers for Medicare and Medicaid Services has already issued guidance encouraging states to do this and will pay for 90 percent of the cost of developing computer systems that allow for this functionality.[144] The federal government should also encourage states to proactively enroll in Medicaid all individuals in their custody who would be eligible upon release.

III. Provide Relief from Collateral Consequences for Those with a Federal Conviction

In addition to improving access to in-custody education, health care, and housing, the federal government should take concrete steps to provide those who have completed their sentence and are returning from federal prison an opportunity to obtain meaningful relief from the collateral consequences of their conviction. Notably, almost all people in federal prison will eventually be released, with approximately 50,000 individuals released from federal custody each year.[145]

In 2019, a bipartisan group of senators introduced the Recognizing Education, Employment, New skills, and Treatment to Enable Reintegration Act of 2019 (the RE-ENTER Act).[146] If passed, the RE-ENTER Act would provide a means for individuals convicted of a federal offense to apply for a federal certificate of rehabilitation acknowledging the individual has demonstrated a commitment to a law-abiding future.[147] If granted by a federal district judge, a certificate of rehabilitation would restore access to certain federal benefits and could also be presented to employers to demonstrate the individual's successful rehabilitation.[148]

Although the relief offered by the RE-ENTER Act is limited, it is a step in the right direction that could help thousands of individuals per year as they reenter society. The federal government should enact legislation that provides incentives to people returning from incarceration to lead a law-abiding life and consider a broader federal sealing or expungement law. Such bills should be designed to provide relief from the collateral consequences of a federal conviction in appropriate cases after an individual completes their sentence and remains crime-free for a period of years.

Promoting successful reentry is key to reducing recidivism — which protects future victims and prevents future crimes. The federal government should adopt these recommendations and support our efforts to promote healthier, safer communities.

Conclusion

Our commitment to public safety and a fair criminal justice system compels Law Enforcement Leaders to encourage Congress and the administration to seize this moment for continued criminal justice reform — to advance fairness, reduce the number of people who are unnecessarily incarcerated, and help to keep our communities safe. The time is now to continue building on the unprecedented bipartisan support that led to the successful passage of the First Step Act. Although there are many possible paths forward for criminal justice reform, our recommendations are based on decades of experience in law enforcement and our commitment to creating safe and healthy communities. By following these recommendations, the federal government can support and augment law enforcement's efforts to ensure safety and justice for all.

Endnotes

1 First Step Act of 2018, Pub. L. No. 115-391 (2018).

2 *Compare* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 2010 tbl. 1 (2011), https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl01.xls (showing a national violent crime rate of 758.2 offenses per 100,000 people in 1991), *with* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 2018 tbl. 1 (2019), https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-1 (reporting a violent crime rate of 368.9 offenses in 2018, for decline of around 51 percent); *see also* Ames Grawert & Cameron Kimble, *Takeaways from 2019 Crime Data in Major American Cities*, BRENNAN CTR. FOR JUSTICE (Dec. 18, 2019), https://www.brennancenter.org/our-work/analysis-opinion/takeaways-2019-crime-data-major-american-cities (describing the post-1990s decline in homicide rates, especially pronounced in some cities).

3 *See* CHERRIE BUCKNOR & ALAN BARBER, CTR. FOR ECON. AND POLICY RESEARCH, THE PRICE WE PAY: ECONOMIC COSTS OF BARRIERS TO EMPLOYMENT FOR FORMER PRISONERS AND PEOPLE CONVICTED OF FELONIES 2 & n.6 (June 2016), http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5 (discussing market impacts and negative outcomes on individuals and their families resulting from criminal justice involvement, including but not limited to prospects for employment, education, public assistance, and civic participation due to felony disenfranchisement) (citing MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS (2015)).

4 JENNIFER BRONSON & E. ANN CARSON, BUREAU OF JUSTICE STAT., PRISONERS IN 2017 (Apr. 2019), https://www.bjs.gov/content/pub/pdf/p17.pdf (estimating the U.S. prison population at 1,489,363 at the end of 2017); ZHEN ZENG, BUREAU OF JUSTICE STAT., JAIL INMATES IN 2017 (Apr. 2019), https://www.bjs.gov/content/pub/pdf/ji17.pdf (reporting the U.S. jail population at 745,200 in the midyear or 2017); DANIELLE KAEBLE & LAUREN GLAZE, BUREAU OF JUSTICE STAT., CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2015 tbl. 1 (2016), https://www.bjs.gov/content/pub/pdf/cpus15.pdf.

5 *See* THE SENTENCING PROJECT, TRENDS IN U.S. CORRECTIONS (June 2019), https://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf (detailing growth rate of the U.S. prison population and comparisons with rates of imprisonment in other countries).

6 Cameron Kimble & Ames Grawert, *Between 2007 and 2017, 34 States Reduced Crime and Incarceration in Tandem*, BRENNAN CTR. FOR JUSTICE (Aug. 6, 2017), https://www.brennancenter.org/blog/between-2007-and-2017-34-states-reduced-crime-and-incarceration-tandem.

7 This is not a comprehensive list, and there are many additional reforms that could be undertaken at the state and federal levels safely, including, *inter alia*, sentencing reform to eliminate harmful mandatory minimums in nonviolent narcotics cases, and the elimination of parole and probation violations for technical violations of supervision.

8 *See* First Step Act of 2018, Pub. L. No. 115-391, § 101(a); NATHAN JAMES, CONG. RESEARCH SERV., THE FIRST STEP ACT OF 2018: AN OVERVIEW (Mar. 4, 2019), https://crsreports.congress.gov/product/pdf/R/R45558.

9 LAW ENFORCEMENT LEADERS TO REDUCE CRIME & INCARCERATION, BRIEFING MEMO: FIRST STEP ACT & SENTENCING REFORM (2018), http://lawenforcementleaders.org/wp-content/uploads/2018/11/LEL-Briefing-Memo.pdf; *see also* Letter from Ronal Serpas, Exec. Dir. of Law Enforcement Leaders to Reduce Crime & Incarceration, to Donald J. Trump, President of the United States, *Police Perspective: FIRST STEP Act (S. 2795) & Sentencing Reform* (Nov. 13, 2018), http://lawenforcementleaders.org/wp-content/uploads/2018/11/LEL-Cover-letter-package.pdf (enclosing earlier letters from Law Enforcement Leaders to members of the United States House and Senate).

10 First Step Act of 2018, Pub. L. No. 115-391, § 403–04.

11 Unfortunately, when it came to funding, Congress did not initially demonstrate the same resolve that led to the First Step Act's passage. Although the Committee on Appropriations submitted its first recommendation for $75 million to implement First Step in May 2019, full funding for the bill was not formally appropriated by Congress until late December 2019. *See* First Step Act of 2018, Pub. L. No. 115-391, § 104 (authorizing $75 million per year for First Step Act funding); Consolidated Appropriations Act, 2020, H.R. 1158, 116th Cong. (2019) (appropriating $75 million for the First Step Act; signed into law December 20, 2019).

12 Notably, at a November 2019 Senate Judiciary Committee oversight hearing, the Director of the Bureau of Prisons (BOP) confirmed that implementation funding for 2019 had come from reallocating funds from within the BOP's preexisting budget. *Oversight of the Federal Bureau of Prisons: Hearing before the Senate Judiciary Committee* (Nov. 19, 2019), https://www.judiciary.senate.gov/meetings/oversight-of-the-federal-bureau-of-prisons. At the same hearing, the BOP Director also commented at length about the BOP's difficulty in hiring sufficient staff to manage all of the federal prisons, underscor-

ing the BOP's need for full funding to keep prisons safe while also working on education and programming that will reduce recidivism in the long run. *Id.*

13 NATHAN JAMES, CONG. RESEARCH SERV., THE FIRST STEP ACT OF 2018: AN OVERVIEW 1–3 (Mar. 4, 2019), https://crsreports.congress.gov/product/pdf/R/R45558.

14 *See* Press Release, U.S. Dep't of Justice, Department of Justice Announces the Release of 3,100 Inmates Under First Step Act, Publishes Risk and Needs Assessment System (July 19, 2019), https://www.justice.gov/opa/pr/department-justice-announces-release-3100-inmates-under-first-step-act-publishes-risk-and.

15 *See* Letter from Ames Grawert, Senior Counsel, BRENNAN CTR. FOR JUSTICE, to David B. Muhlhausen, Director, Nat'l Inst. of Justice, *Public Comment on "PATTERN," the First Step Act's Risk and Needs Assessment Tool* (Sept. 3, 2019), https://www.brennancenter.org/sites/default/files/2019-09/Brennan%20Center_RNAS%20Comment%20Letter.pdf. *But see* U.S. DEP'T OF JUSTICE, THE FIRST STEP ACT OF 2018: RISK AND NEEDS ASSESSMENT SYSTEM – UPDATE 1, 7–25 (Jan. 2020), https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf (revising PATTERN in light of stakeholder feedback, while declining to make some changes).

16 Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2019*, PRISON POLICY INITIATIVE (Mar. 19, 2019), https://www.prisonpolicy.org/reports/pie2019.html.

17 *Id.*

18 *See* Bail Reform Act of 1984, Pub. L. No. 98-473 (1984); 18 U.S.C. § 3141, *et seq.*; *see also* U.S. DEP'T OF JUSTICE, CRIMINAL RESOURCE MANUAL § 26, *Release and Detention Pending Judicial Proceedings*, https://www.justice.gov/jm/criminal-resource-manual-26-release-and-detention-pending-judicial-proceedings-18-usc-3141-et (last visited Feb. 14, 2020).

19 In the 115th Congress, Senator Bernie Sanders (I-Vt.) introduced the No Money Bail Act, S. 3271, with a House companion that had 38 cosponsors. Additionally, Senators Kamala Harris (D-Cal.) and Rand Paul (R-Ky.) introduced the Pretrial Integrity and Safety Act. Both acts included a right to counsel in pretrial release hearings, and data reporting requirements, while the No Money Bail Act sought to prohibit payment of money as a condition of release in the federal criminal justice system, to provide grant money to states to develop alternatives to money bail systems, and to withhold federal funds administered through the Edward Byrne Memorial Justice Assistance Grant Program from states that did not replace money bail after three years. Future legislation could draw on these proposals. *Compare* No Money Bail Act, S. 3271, 115th Cong. (2018), *with* Pretrial Integrity and Safety Act, S. 1593, 115th Cong. (2017).

20 *See generally* COLIN DOYLE ET AL., HARVARD LAW SCH. CRIMINAL JUSTICE POLICY PROGRAM, BAIL REFORM: A GUIDE FOR STATE AND LOCAL POLICYMAKERS (2019), http://cjpp.law.harvard.edu/assets/BailReform_WEB.pdf.

21 18 U.S.C. § 3142(c)(2) (providing that "judicial officer[s] may not impose *a financial condition* that results in the pretrial detention of [a] person") (emphasis added).

22 *See Why We Need Pretrial Reform*, PRETRIAL JUSTICE INST., https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/ (last visited Aug. 2, 2019).

23 *See* NEW JERSEY JOINT COMM. ON CRIMINAL JUSTICE, REPORT OF THE JOINT COMMITTEE ON CRIMINAL JUSTICE 2–4 (2014), https://www.njcourts.gov/courts/assets/criminal/finalreport3202014.pdf?c=3qG.

24 Prior to implementing bail reform in New Jersey, the state estimated that 40% of defendants were in jail because of inability to pay. GLENN A. GRANT, NEW JERSEY JUDICIARY ADMIN. OFF. OF THE COURTS, JAN. 1 – DEC. 31 2018: REPORT TO THE GOVERNOR AND THE LEGISLATURE 6 (2019), https://njcourts.gov/courts/assets/criminal/2018cjrannual.pdf. After reforms, during 2018, 71% of defendants were released by police following their arrest with a date to appear, as compared to 54% before. *Id.* at 5. After reform, rates of reappearance remained relatively stable (92.7% to 89.4%), and new crimes on release remained steady (12.7% to 13.7%). *Id.* At the same time, the jail population declined dramatically: it fell 19% in 2017, the first year of the new law, and an additional 13% in 2018, for a total decline of 44% since 2015, or 3,900 people. *Id.* at 38–39. *See* CHLOE ANDERSON ET AL., MDRC CTR. FOR CRIMINAL JUSTICE RESEARCH, EVALUATION OF PRETRIAL JUSTICE SYSTEM REFORMS THAT USE THE PUBLIC SAFETY ASSESSMENT: EFFECTS OF NEW JERSEY'S CRIMINAL JUSTICE REFORM 13–17 (2019), https://www.mdrc.org/sites/default/files/PSA_New_Jersey_Report_%231.pdf (detailing the decline in arrests following implementation of New Jersey's pre-trial reforms); *id.* at 38, App. Fig. A.1 (reporting the decline in various classes of cases by crime type following New Jersey reforms).

25 *See generally* MATTHEW MENENDEZ ET AL., BRENNAN CTR. FOR JUSTICE, THE STEEP COSTS OF CRIMINAL JUSTICE FEES AND FINES (2019) (hereinafter "STEEP COSTS") (concluding that fees and fines are an inefficient source of government revenue and recommending, *inter alia*, that states eliminate driver's license suspensions for failure to pay criminal fines and fees), https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf.

26 *See, e.g.*, DRIVEN BY JUSTICE COAL., OPPOR-

TUNITY SUSPENDED: HOW NEW YORK'S TRAFFIC DEBT SUSPENSION LAWS DISPROPORTIONATELY HARM LOW INCOME COMMUNITIES AND COMMUNITIES OF COLOR, https://www.drivenbyjustice.org (last visited July 29, 2019).

27 *Id.*

28 Justin Wm. Moyer, *More than 7 Million People May Have Lost Driver's Licenses Because of Traffic Debt*, WASH. POST (May 19, 2018), https://www.washingtonpost.com/local/public-safety/more-than-7-million-people-may-have-lost-drivers-licenses-because-of-traffic-debt/2018/05/19/97678c08-5785-11e8-b656-a5f8c2a9295d_story.html.

29 States typically do not report whether a person's license is suspended because they owe fines and fees, or whether it is suspended for a reason related to public safety, such as a driving-related infraction like reckless driving. *See* STEEP COSTS, *supra* note 25, at 10 (discussing how jurisdictions do not accurately track the costs of collecting fines and fees).

30 ACLU OF WASH., DRIVEN TO FAIL: THE HIGH COST OF WASHINGTON'S MOST INEFFECTIVE CRIME — DWLS III 6–9 (2017), *available at* https://www.aclu-wa.org/docs/driven-fail-high-cost-washingtons-most-ineffective-crime. This report illustrates that convictions for driving while license suspended — third degree ("DWLS III") fell from 27,366 in 2012 to 23,865 in 2013 and 17,735 in 2014. While DWLS III convictions had been falling before that, the change in law also appears to have contributed to the decline.

31 The research in Washington indicated that a DWLS III case cost $328 to prosecute, $328 to defend, $176 in court costs, and $264 in jail costs, with just $91 in revenue — meaning that, overall, just filing the case cost between $568 and $925. *Id*. at 8. Over time, this amounted to $1,316,203,624 spent enforcing DWLS III in Washington from 1994 to 2015. *Id.*

32 *See, e.g.*, H.B. 1352 (Miss. 2019) (enacted Apr. 16, 2019) (amending MISS. CODE ANN. §§ 63-1-51, 53 (2019) to (1) remove contempt for failure to pay a fine or fee for a traffic infraction as a ground for driver's license revocation and (2) provide that failure to pay timely fees and fines is subject to court collection rather than driver's license suspension); H.B. 599, 64th Leg., 2d Reg. Sess. (Idaho 2018), Section 3 (effective date July 1, 2018) (amending IDAHO CODE § 49-328 (2018) to provide that "[a] driver's license shall not be suspended for failure to pay an infraction penalty" and reinstating driver's licenses suspended before July 1, 2018, for failure to pay upon application, without charge); CAL. VEH. CODE § 40509.5 (reflecting 2017 amendments to the California Vehicle Code that limited the ability of courts to suspend driver's licenses for nonpayment of fines); 2019 Va. Acts ch. 854, § 3-6.03, https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/3/3-6.03 (reflecting an amendment to the state budget law that provides for reinstatement of licenses suspended prior to July 1, 2019, and providing that, starting in Virginia fiscal year 2020, "no court shall suspend any person's privilege to drive a motor vehicle solely for failure to pay any fines, court costs, forfeitures, restitution, or penalties assessed against such person"); MONT. CODE ANN. § 46-18-201(6)(b) (West 2020) (providing, in the context of Montana's sentencing law, that "[a] person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution"); *see* D.C. Law 22-449 (2018) (modifying D.C. CODE § 50-2302.05(e) (2020) to eliminate the suspension of driver's licenses "until payment of the penalties, fines, and a reinstatement fee").

33 Troy Closson, *Texas' Driver Responsibility Program Ends Next Month. Here's What That Means For You.*, TEXAS TRIB. (Aug. 20, 2019), https://www.texastribune.org/2019/08/20/Texas-driver-responsibility-program-repeal-what-that-means-explained/; Payton Weidman, *Ending of Driver Responsibility Program Clears Way for 1.5M Licenses to be Restored in Texas*, CBS19 (June 21, 2019), https://www.cbs19.tv/article/news/local/ending-of-driver-responsibility-program-clears-way-for-15m-licenses-to-be-restored-in-texas/501-171e294f-a9cf-46ba-822b-7c600e312f27.

34 As set forth *supra* note 32, states have taken different approaches to stopping the wasteful practice of suspending driver's licenses for non-payment. In Montana, for example, the law simply states that "[a] person's license or driving privilege may not be suspended due to nonpayment of fines, costs, or restitution." MONT. CODE ANN. § 46-18-201(6)(b) (West 2020). A federal statute designed to incentivize states to end this practice could encourage states to adopt similar language, which would still permit the suspension of a driver's license if suspension is an appropriate part of the sentence for an underlying driving-related offense, such as driving while intoxicated or reckless driving. Suspension may also be an appropriate sanction if a court determines that an individual is engaged in purposeful evasion of other court-determined obligations, such as willful failure to pay child support. In such cases, courts should conduct a meaningful inquiry into the individual's ability to pay prior to any driver's license suspension for non-payment of debt.

35 *See* South Dakota v. Dole, 483 U.S. 203, 205 (1987) (summarizing the National Minimum Drinking Age Act before concluding that it was a constitutional exercise of Congress's Spending Clause powers).

36 JAMES AUSTIN & LAUREN-BROOKE EISEN, BRENNAN CTR. FOR JUSTICE, HOW MANY AMERICANS ARE UNNECESSARILY INCARCERATED? 8, 11–13 (2016), https://www.brennancenter.org/sites/default/files/2019-08/Report_Unnecessarily_Incarcerated_0.pdf (providing Brennan Center estimate by analyzing data from U.S. Bureau of Justice Statistics). *See also* JENNIFER BRONSON & MARCUS BERZOFSKY,

Bureau of Justice Stat., Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011–12, 1 fig. 1 (2017), https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf; Doris J. James & Lauren E. Glaze, Bureau of Justice Stat., Mental Health Problems of Prison and Jail Inmates 5 tbl. 5 (2006), https://www.bjs.gov/content/pub/pdf/mhppji.pdf; E. Ann Carson, Bureau of Justice Stat., Prisoners in 2014 5 tbl. 3 (2015), http://www.bjs.gov/content/pub/pdf/p14.pdf.

37 Rachel N. Lipari & Eunice Park-Lee, Substance Abuse & Mental Health Servs. Admin., Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health 2 (2019), https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf; *see also Provisional Drug Overdose Death Counts*, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm?mod=article_inline (last visited Jan. 21, 2019) (indicating rising number of drug overdose deaths).

38 *Mental Health by the Numbers*, Nat'l All. on Mental Health, https://www.nami.org/learn-more/mental-health-by-the-numbers (last visited Jan. 21, 2020); Michele Hellebuyck et al., Mental Health America, Mental Health In America — Access To Care Data (2020), https://www.mhanational.org/issues/mental-health-america-access-care-data (last visited Feb. 14, 2020).

39 Substance Abuse & Mental Health Servs. Admin., Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health 3–4 (2019), https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf; *see also* Rebecca Ahrnsbrak et al., Substance Abuse & Mental Health Servs. Admin., Key Substance Use and Mental Health Indicators in the United States: Results from the 2016 National Survey on Drug Use and Health figs. 45, 46 (2016), https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2016/NSDUH-FFR1-2016.htm#tx (estimating that in 2016, about 21 million people the age of 12 and over needed substance abuse treatment, and yet only 2.2 million people, or 18%, of those who needed treatment were able to access it).

40 Mariel Alper et al., Bureau of Justice Stat., 2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014) (May 23, 2018), https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6266 (observing that approximately two-thirds of individuals who leave prison are rearrested within three years); *see also* Steven Belenko et al., *Treating Substance Use Disorders in the Criminal Justice* System, 15 Current Psychiatry Reports 2 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3859122.

41 *See* Cherrie Bucknor & Alan Barber, Ctr. for Econ. and Policy Research, The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies 10 (June 2016), http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf?v=5 (discussing the impact of incarceration and conviction on employment).

42 *See generally Pretrial Diversion*, Nat'l Conference of State Legislatures, http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx (last visited Jan. 21, 2020); *see also* Substance Abuse & Mental Health Servs. Admin., Substance Abuse Treatment for Adults in the Criminal Justice System 125–54 (2005), https://store.samhsa.gov/system/files/sma13-4056.pdf (discussing treatment options in pretrial and diversion settings).

43 *See* Advocates, Advocates Jail Diversion Program: A Step-by-Step Toolkit (undated), https://mn.gov/dhs/assets/czech-advocates-jds-manual-12_tcm1053-256994.pdf.

44 *Law Enforcement Assisted Division (LEAD)*, King County Dep't of Community & Human Servs., https://www.kingcounty.gov/depts/community-human-services/mental-health-substance-abuse/diversion-reentry-services/lead.aspx (last visited Jan. 21, 2020); *Police-Assisted Diversion: Overview*, Philadelphia Police Dep't, https://www.phillypolice.com/programs-services/pad/ (last visited Jan. 21, 2020).

45 *What Is LEAD?,* LEAD National Support Bureau, https://www.leadbureau.org/about-lead (last visited Jan. 21, 2020).

46 *Id.* (describing the history of LEAD); Susan E. Collins et al., Seattle's Law Enforcement Assisted Diversion (LEAD): Program Effects on Recidivism Outcomes 1 (2017), https://56ec6537-6189-4c37-a275-02c6ee23efe0.filesusr.com/ugd/6f124f_f4eed992eaff402f88ddb4a649a9f5e6.pdf.

47 For example, Memphis has a Crisis Intervention Team while San Diego has a specially-trained Psychiatric Emergency Response Team. *See Memphis Model*, Univ. of Memphis CIT Ctr., http://www.cit.memphis.edu/overview.php?page=2 (last visited Jan. 15, 2020); *Psychiatric Emergency Response Team*, Community Research Found., http://www.comresearch.org/pert.php (last visited Jan. 15, 2020).

48 *See generally* Melissa Labriola et al., Ctr. for Ct. Innovation, Prosecutor-Led Pretrial Diversion: Case Studies in Eleven Jurisdictions (2018), https://www.courtinnovation.org/publications/prosecutor-led-pretrial-diversion-case-studies-eleven-jurisdictions (studying diversion practices in 15 programs at 11 prosecutors' offices around the country; distinguishing between police-led and

prosecutor-led diversion programs); U.S. Dep't of Justice, Justice Manual § 9-22.000, *Pretrial Diversion Program,* https://www.justice.gov/jm/jm-9-22000-pretrial-diversion-program (last visited Jan. 27, 2020).

49 *See* Deschutes County District Attorney's Off., Goldilocks – A Crime Prevention Initiative (2018), http://www.dcda.us/c5/files/1815/4647/6780/Goldilocks_1_pager_with_Results_2018.pdf.

50 *Id.*

51 Press Release, Brooklyn District Attorney's Off., Brooklyn District Attorney Announces Project Brooklyn CLEAR to Offer Treatment for Individuals Arrested with Small Amount of Narcotics (Mar. 6, 2018), http://www.brooklynda.org/2018/03/06/brooklyn-district-attorney-announces-project-brooklyn-clear-to-offer-treatment-for-individuals-arrested-with-small-amount-of-narcotics.

52 *See generally* Gordon M. Griller, Nat'l Ctr. for St. Cts., The Quiet Battle for Problem-Solving Courts (2011), https://www.ncsc.org/~/media/Microsites/Files/Future%20Trends/Author%20PDFs/Griller.ashx.

53 *Pretrial Diversion*, Nat'l Conference of St. Legislatures, http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx (last visited Jan. 24, 2020).

54 At times, specialty treatment courts have been critiqued for not providing evidence-based treatment or effective treatment plans for each individual. *See, e.g.*, Marianne Møllman & Christine Mehta, Physicians for Human Rights, Neither Justice nor Treatment: Drug Courts in the United States (2017), https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf; *see also* Christine Mehta, *How Drug Courts Are Falling Short*, Open Soc'y Found. (June 7, 2017), https://www.opensocietyfoundations.org/voices/how-drug-courts-are-falling-short. Some programs also suffer from underfunding and understaffing. *See id.* (observing that "many drug courts — especially those in rural areas, where access to quality treatment may be scarce — are significantly underfunded and understaffed").

55 Nat'l Ctr. on Addiction & Substance Abuse at Columbia Univ., Behind Bars II: Substance Abuse and America's Prison Population 4 (2010), https://www.centeronaddiction.org/addiction-research/reports/behind-bars-ii-substance-abuse-and-america%E2%80%99s-prison-population.

56 Doris J. James & Lauren E. Glaze, Bureau of Justice Stat., Mental Health Problems of Prison and Jail Inmates 9 & tbls. 14 & 15 (2006), http://www.bjs.gov/index.cfm?ty=pbdetail&iid=789 (estimating that 34% of state, 24% of federal, and 18% of jail inmates with mental illness had received treatment after being incarcerated).

57 *See* Craig Haney, U.S. Dep't of Health & Human Servs., From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities (2001), https://aspe.hhs.gov/basic-report/psychological-impact-incarceration-implications-post-prison-adjustment#N_5 ("Combined with the de-emphasis on treatment that now characterizes our nation's correctional facilities, these behavior patterns can significantly impact the institutional history of vulnerable or special needs inmates.").

58 Jennifer Eno Louden & Jennifer L. Skeem, *Parolees with Mental Disorder: Toward Evidence-Based Practice*, The UC Irvine Ctr. for Evidence-Based Corrections 5–6 & tbl. 4 (Apr. 2011), http://ucicorrections.seweb.uci.edu/files/2013/06/Parolees-with-Mental-Disorder.pdf.

59 Treatment Advocacy Ctr., Treat or Repeat: A State Survey of Serious Mental Illness, Major Crimes and Community Treatment 9 (2017), https://www.treatmentadvocacycenter.org/storage/documents/treat-or-repeat.pdf.

60 Data on file with the Middlesex Sheriff's Office. *See also* Middlesex Sheriff's Off., The MATADOR Program: Utilizing Incarceration to Tackle Addiction and Save Lives: Implementing Medication Assisted Treatment Programs in Jails 1, 9 (2018), https://www.sheriffs.org/sites/default/files/MATADOR%20White%20Paper_April2018.pdf; Press Release, Middlesex Sheriff's Off., Sheriffs Announce Launch of Landmark Medication Assisted Treatment (MAT) Pilot Program (Sept. 6, 2019), https://www.middlesexsheriff.org/home/news/sheriffs-announce-launch-landmark-medication-assisted-treatment-mat-pilot-program.

61 *Grants*, Substance Abuse & Mental Health Servs. Admin., https://www.samhsa.gov/grants; *see, e.g.*, *Fiscal Year 2020 Grant Announcements and Awards*, Substance Abuse & Mental Health Servs. Admin., https://www.samhsa.gov/grants/grant-announcements-2020 (last visited Jan. 24, 2020).

62 *See Restoration Center: San Antonio's Answer to Mental Health*, Ctr. for Healthcare Servs. (Jan. 30, 2017), https://chcsbc.org/2017/01/30/restoration-center-san-antonios-answer-mental-health (describing San Antonio's Restoration Center; observing that following the center's opening in 2008, "close to 50,000 people have been treated, saving the law enforcement more than 100,000 manpower hours that can now be spent on the streets, and saving taxpayers more than $50 million"); Middlesex County Restoration Ctr. Comm'n, Year One Findings and Recommendations 41 (2019), https://www.mamh.org/assets/files/Middlesex-County-Restoration-Commission.pdf (discussing features of restoration centers in different locales around the country and offering best practice recommendations).

63 Middlesex County Restoration Ctr. Comm'n, *supra* note 62, at 42–43 (concluding that restoration

center utilization would result in emergency department and criminal justice system savings).

64 Jessica Saunders et al., *Contemporary Police Stress: The Impact of the Evolving Socio-Political Context*, 20 CRIMINOLOGY, CRIM. JUSTICE, L. & SOC'Y 35, 38 (2019), https://ccjls.scholasticahq.com/article/7739-contemporary-police-stress-the-impact-of-the-evolving-socio-political-context ("Public confidence in, and support of, the police has decreased as racial tensions over the use of force have grown.").

65 *See id.*

66 Timothy N. Oettmeier & Mary Ann Wycoff, *Personnel Performance Evaluations in the Community Policing Context* (Police Executive Research Forum 1996), https://www.policeforum.org/assets/docs/Free_Online_Documents/Community_Policing/personnel%20performance%20evaluations%20in%20the%20community%20policing%20context.pdf (discussing knowing the community and tools for addressing the conditions that threaten its welfare).

67 Steve Adubato, *Camden Revisited: A New Approach to Policing*, NJ MONTHLY (Feb. 4, 2019), https://njmonthly.com/articles/towns-schools/steve-adubato-only-in-nj/camden-revisited-a-new-approach-to-policing; *see also* Sarah Holder, *What Happened to Crime in Camden*, CITYLAB (Jan. 10, 2018), https://www.citylab.com/equity/2018/01/what-happened-to-crime-in-camden/549542.

68 INT'L ASS'N OF CHIEFS OF POLICE, PRACTICES IN MODERN POLICING: COMMUNITY PARTICIPATION AND LEADERSHIP 8–10, 24 (2018), https://www.theiacp.org/sites/default/files/2018-11/IACP_PMP_Community%20Leadership.pdf.

69 *Id*. In addition, to advance the interests of the diverse community it serves, the Arlington Police Department recently enhanced its hate crime and incident reporting protocols and developed specialized training for prosecutors, officers, and civilian investigators, in order to better respond to the community harm created by hate crimes and incidents. *See* Press Release, Arlington Police Department, Arlington Police Department Awarded IACP Leadership In Human And Civil Rights Award (Oct. 31, 2019), https://www.arlingtontx.gov/news/my_arlington_t_x/news_stories/iacp_leadership_award; Press Release, Arlington Police Department, APD Expands Hate And Bias Crimes Policy To Include Hate Incidents (Sept. 12, 2019), https://www.arlingtontx.gov/news/my_arlington_t_x/news_stories/a_p_d_expands_hate_and_bias_crimes_policy.

70 Keli Goff, *How to Solve the Policing Crisis*, THE DAILY BEAST (Jan. 5, 2015), http://www.thedailybeast.com/articles/2015/01/05/the-way-to-solve-the-policing-crisis.html (citing U.S. DEP'T OF JUSTICE, OFF. OF COMMUNITY ORIENTED POLICING SERVS., THE IMPACT OF THE ECONOMIC DOWNTURN ON AMERICAN POLICE AGENCIES (2011), http://www.ncdsv.org/images/COPS_ImpactOfTheEconomicDownturnOnAmericanPoliceAgencies_10-2011.pdf).

71 Nathan James, *In Focus: Community Oriented Policing Services (COPS) Program*, CONG. RESEARCH SERV. (May 21, 2019), https://fas.org/sgp/crs/misc/IF10922.pdf (detailing COPS funding over the years, including the variable funding levels for hiring programs from 1995 through 2019).

72 *See* INIMAI CHETTIAR ET AL., BRENNAN CTR. FOR JUSTICE, REFORMING FUNDING TO REDUCE MASS INCARCERATION (2013) (advancing a "success-oriented" approach to federal funding state and local programs); *id.* at 10 (discussing approaches to policing).

73 This quote is usually attributed to management expert Peter Drucker. *See generally Peter Drucker's Life and Legacy*, THE DRUCKER INSTITUTE, https://www.drucker.institute/news-post/peter-druckers-life-and-legacy (last visited Jan. 14, 2020).

74 MALCOLM K. SPARROW, NAT'L INST. OF JUSTICE, NEW PERSPECTIVES IN POLICING 2 (2015), https://www.ncjrs.gov/pdffiles1/nij/248476.pdf.

75 James J. Willis & Stephen D. Mastrofski, *CompStat 2.0 Development Symposium: What Did We Learn?*, *in* PERSPECTIVES FROM THE FIELD: LEVERAGING COMPSTAT TO INCLUDE COMMUNITY MEASURES IN POLICE PERFORMANCE MANAGEMENT vi (Susan Shah, Jim Burch & S. Rebecca Neusteter, eds., Vera Inst. of Justice & Police Found. 2018), https://www.compstat360.org/wp-content/uploads/2018/05/Leveraging_CompStat.pdf; *see also* PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 16 (2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (recommending the development and adoption of a new method of departmental measurement that assesses organizational excellence "both inside and outside the walls of the agency").

76 U.S. DEP'T OF JUSTICE, OFF. OF COMMUNITY ORIENTED POLICING SERVS., IMPLEMENTING COMMUNITY POLICING: LESSONS FROM 12 AGENCIES 83 (2009) (noting that information obtained from organized source may not reflect the perspective of the larger community), https://cops.usdoj.gov/RIC/Publications/cops-w0746-pub.pdf; Oettmeier & Wycoff, *supra* note 66, at 353 ("Effective problem solving depends on knowing the territory and the people who reside and work there.").

77 Oettmeier & Wycoff, *supra* note 66.

78 *Id.* at 376.

79 *See Compstat and Organizational Change: A National Assessment,* NAT'L POLICE FOUND., https://www.policefoundation.org/projects/compstat-and-organizational-change-a-national-assessment (last visited Jan. 14, 2020) (collecting studies on CompStat).

80 *CompStat360*, Vera Inst. of Justice, https://www.vera.org/projects/compstat-360 (last visited Dec. 13, 2019).

81 CompStat360, https://www.compstat360.org/ (last visited Dec. 13, 2019).

82 The National Police Foundation, BJA, and the Vera Institute for Justice, with support from the U.S. Department of Justice, Office of Justice Programs, and the MacArthur Foundation, are currently providing site-specific technical assistance and training on CompStat360 in a limited number of jurisdictions. *Implementing CompStat360*, CompStat360, https://www.compstat360.org/implementing-compstat360 (last visited Jan. 14, 2020).

83 *See Easy Access to the Census of Juveniles in Residential Placement: 1997–2017*, Off. of Juvenile Justice & Delinquency Prevention, https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/selection.asp; *see also* Wendy Sawyer, *Youth Confinement: The Whole Pie*, Prison Policy Initiative (Dec. 19, 2019), https://www.prisonpolicy.org/reports/youth2019.html.

84 Off. of Juvenile Justice & Delinquency Prevention, Juvenile Arrests (2017), https://www.ojjdp.gov/ojstatbb/crime/qa05101.asp?qaDate=2017&text=yes.

85 Julian D. Ford et al., *Complex Trauma and Aggression in Secure Juvenile Justice Settings*, 39 Crim. Justice & Behavior 694, 697 (2012) ("Approximately 90% of youth in juvenile detention facilities reported a history of exposure to at least one potentially traumatic event in two independent surveys of representative samples."); Andrea J. Sedlak & Karla S. McPherson, U.S. Off. of Juvenile Justice & Delinquency Prevention, Youth's Needs and Services: Findings from the Survey of Youth in Residential Placement 2 (2010) (finding that "[t]he majority of youth responding to this survey (70 percent) report some type of past traumatic experience").

86 Nicole Taylor Kletzka & Christine Siegfried, *Helping Children in the Child Welfare Systems Heal from Trauma: A Systems Integration Approach*, 59 Juv. and Fam. Ct. J. 7, 8 (2008) (discussing how child welfare systems' failure to address children's underlying traumas misses opportunities to build successful support environments in which children can recover and rather "unintentionally causes them additional distress").

87 Michelle V. Porche et al., *Childhood Trauma and Psychiatric Disorders as Correlates of School Dropout in a National Sample of Young Adults*, 82 Child Dev. 982 (2012); Dean G. Kilpatrick et al., *Risk Factors for Adolescent Substance Abuse and Dependence: Data From a National Sample.*, 68 J. of Consulting and Clinical Psychology 19 (2000); Bryanna Hahn Fox et al., *Trauma Changes Everything: Examining the Relationship Between Adverse Childhood Experiences and Serious, Violent and Chronic Juvenile Offenders*, 46 Child Abuse and Neglect 163 (2015).

88 Fair and Just Prosecution & Brennan Ctr. for Justice, 21 Principles for the 21st Century Prosecutor (2018), https://www.brennancenter.org/sites/default/files/publications/FJP_21Principles_FINAL.pdf; *see also* Staci A. Gruber & Deborah A. Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice?*, 3 Ohio St. J. Crim. L. 321 (2005), https://kb.osu.edu/bitstream/handle/1811/73005/OSJCL_V3N2_321.pdf.

89 *Enhancing Law Enforcement Response to Children Exposed to Violence and Childhood Trauma*, Int'l Ass'n of Chiefs of Police, https://www.theiacp.org/projects/enhancing-law-enforcement-response-to-children-exposed-to-violence-and-childhood-trauma (last visited Dec. 13, 2019); Erna Olafson et al., *Trauma-Informed Collaborations Among Juvenile Justice and Other Child-Serving Systems: An Update,* 5 OJJDP J. Juv. Justice 1, 2 (2016).

90 *See Enhancing Law Enforcement Response to Children Exposed to Violence and Childhood Trauma, supra* note 89; *see also* Shantel D. Crosby, *Trauma Informed Approaches to Juvenile Justice: A Critical Race Perspective,* 67 Juv. & Fam. Ct. J. 5 (2016) (discussing how culturally-appropriate, evidence-based, and trauma-informed treatment can mend youth's trust in law enforcement and improve their rehabilitation); Gene Griffin et al., *Using a Trauma-Informed Approach in Juvenile Justice Institutions*, 5 J. of Child & Adolescent Trauma 271, 281 (2012) ("A trauma-informed approach still holds a youth accountable for his or her behaviors but works with the youth to learn how to calm down and use alternative responses. This approach is consistent with other programs that have been successful at reducing recidivism.").

91 Juvenile Justice Reform Act of 2018, Pub. L. No. 115-385 (2018).

92 Ian Lambie & Isabel Randell, *The Impact of Incarceration on Juvenile Offenders*, 33 Clinical Psychol. Rev. 448 (2013).

93 Aidan Ryan, *Crime Bill Would Redefine Juveniles as Up to Age 21*, Boston Globe (July 9, 2019), https://www.bostonglobe.com/metro/2019/07/09/crime-bill-would-redefine-juveniles-age/maHshbBT6QaaX9ooVDVidN/story.html.

94 Anne Tiegen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws,* Nat'l Conference of St. Legislatures (Jan. 11, 2019), http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx.

95 Campaign for Youth Justice, The Consequences Aren't Minor 6 (Liz Ryan & Jason Ziedenberg eds., 2007), http://www.justicepolicy.org/uploads/justicepolicy/documents/07-03_c4yj-consequences_jj.pdf.

96 Tiegen, *supra* note 94.

97 Campaign for Youth Justice, *supra* note 95.

98 H.R. 2410, 116th Cong., REDEEM Act (2019) (bill introduced by the late Rep. Elijah Cummings (D-Md.) and Sens. Cory Booker (D-N.J.) and Rand Paul (R-Ky.)); *see also* S. 697, 116th Cong., Next Step Act of 2019 § 901 *et seq*. (including REDEEM Act language).

99 Nat'l Sheriffs' Ass'n, National Sheriffs' Association Resolution on Youth Tried As Adults (2018), https://www.sheriffs.org/sites/default/files/2018-02.pdf; Major Cities Chiefs Ass'n, Policy Statement: Youth in the Adult Criminal Justice System (2017), https://www.majorcitieschiefs.com/pdf/news/policy__juvenile_age.pdf.

100 Barry Holman & Jason Ziedenberg, Justice Policy Inst., The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities 8–9 (2006), http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf.

101 Laurence Steinberg et al., *Reentry of Young Offenders from the Justice System: A Developmental Perspective*, 2 Youth Violence & Juv. Justice 21, 30–35 (2004); *see id.* at 34 ("Put most bluntly, however, the context of justice system intervention is one that is more likely to arrest individuals' development than promote it. . . . Punishment does nothing to prepare young people for the successful reentry into the community and, as such, heightens the chances that the young offender will experience failure in the worlds of education and work and in the establishment of healthy interpersonal relationships.").

102 Jeff Slowikowski, Off. of Juvenile Justice Delinquency & Prevention, Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders 3 (2011), https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf.

103 Anna Aizer & Joseph Doyle, *What is the Long-Term Impact of Incarcerating Juveniles?*, Vox CEPR Policy Portal (July 16, 2013), https://voxeu.org/article/what-long-term-impact-incarcerating-juveniles.

104 Richard B. Freeman, Nat'l Bureau of Econ. Research, Crime and the Employment of Disadvantaged Youths 9–13 (1991), https://www.nber.org/papers/w3875.pdf.

105 Kristin Finklea, Juvenile Justice Funding Trends, Cong. Research Serv. (Jan. 22, 2020), https://fas.org/sgp/crs/misc/R44879.pdf. While funding initially declined as a result of a 2002 restructuring of juvenile justice grant programs under the JJDPA, some of the recent declines can be attributed to the elimination of funding for Juvenile Accountability Block Grants (JABG) in 2014. *Id.*

106 Juvenile Accountability Block Grants (JABG) provided funding to state, local, and tribal governments to strengthen their juvenile justice systems with developmentally-appropriate, accountability-based programs. In addition, JABG funding was used to provide training and technical assistance to help grantees establish and maintain intervention and treatment programs. Jeff Slowikowski, Off. of Juvenile Justice & Delinquency Prevention, Juvenile Accountability Block Grants Program (2009), https://www.ncjrs.gov/pdffiles1/ojjdp/226357.pdf. *See also Juvenile Justice and Delinquency Prevention Act,* Nat'l Ctr. for St. Cts., https://www.ncsc.org/Services-and-Experts/Government-Relations/Criminal-Juvenile/Juvenile-Justice-and-Delinquency-Prevention-Act.aspx (last visited Feb. 14, 2020).

107 Jessica Feierman et al., Juv. L. Ctr., Debtors' Prison for Kids?: The High Cost of Fines and Fees in the Juvenile Justice System 3 (2016), https://debtorsprison.jlc.org/documents/JLC-Debtors-Prison.pdf.

108 *Id.* at 7, 10, 23 & n.128.

109 *See generally id.*

110 *See* Lorelei Laird, *Court Fines and Fees Trap Juvenile Defendants in Cycle of Debt, New Study Finds*, ABA J. (Sept. 2, 2016), http://www.abajournal.com/news/article/juvenile_court_debt_cycle_study; Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System-Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, 15 Youth Violence & Juv. Justice 325 (2017).

111 Katrina L. Goodjoint, Opinion, *New Jersey Just Eliminated Fines for Youth in the Juvenile System. And That's a Good Thing*, NJ.com (Jan. 22, 2020), https://www.nj.com/opinion/2020/01/new-jersey-just-eliminated-fines-for-youth-in-the-juvenile-system-and-thats-a-good-thing-opinion.html; *see* S. 48, 218 Leg. (N.J. 2020).

112 H.R. 2300, 116th Cong. (2019) (bill introduced by Rep. Tony Cárdenas (D-Cal.)).

113 42 U.S.C. § 5601 (1974).

114 Nat'l Juv. Justice & Delinquency Prevention Coal., Opportunities for Juvenile Justice & Delinquency Prevention 4 (Rachel Marshall & Naomi Smoot eds., 2019), http://cfyj.org/images/weeklylegislativeroundsups/FINALC_NJJDPC_Recs_to_116th_Congress_.pdf.

115 Eli Hager, *This Agency Tried to Fix the Race Gap in Juvenile Justice. Then Came Trump.*, The Marshall Project (Sept. 19, 2018), https://www.themarshallproject.org/2018/09/19/this-agency-tried-to-fix-the-race-gap-in-juvenile-justice-then-came-trump.

116 Nat'l Juv. Justice & Delinquency Prevention Coal., *supra* note 114, at 18 ("Prior to the passage of the JJRA, OJJDP announced that it would be simplifying compliance requirements for the [Racial and Ethnic Disparities] core protection, including decreasing the number of points at which states must measure disparities from 9 points of contact with the justice system to 5, of which a state must only submit data on 4. While addressing racial disparities

requires more than data collection, understanding disparities at each contact level allows states to fully understand the problem and develop effective and meaningful plans to reduce racial disparities."); *see also* Press Release, U.S. Dep't of Justice, Attorney General Jeff Sessions Rescinds 24 Guidance Documents (July 3, 2018) (announcing the rescission of six Office of Juvenile Justice & Delinquency Prevention guidance documents), https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-24-guidance-documents.

117 *See* Off. of Juvenile Justice Delinquency & Prevention, Key Amendments to the Juvenile Justice and Delinquency Prevention Act Made by the Juvenile Justice Reform Act of 2018 (2019), https://www.ojjdp.gov/pubs/252961.pdf. Notably, a four-page guidance report for a law of this magnitude is insufficient to guide states in how to implement the new requirements.

118 Mariel Alper & Matthew R. Durose, Bureau of Justice Stat., 2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005–2014) tbl. 7 (May 23, 2018), https://www.bjs.gov/content/pub/pdf/18upr9yfup0514.pdf.

119 U.S. Comm'n on Civ. Rts., Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities 6 & n.40 (2019), https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf?eType=EmailBlastContent&eId=d37030a2-bfe6-4784-866a-7db61d64f357 (citing Steven D. Bell, *The Long Shadow: Decreasing Barriers to Employment, Housing, and Civic Participation for People with Criminal Records Will Improve Public Safety and Strengthen the Economy*, 42 W. St. L. Rev. 1, 10–11 (2014)); *see also* Tanya N. Whittle, *Felony Collateral Sanctions Effects on Recidivism: A Literature Review*, 29 Crim. Justice Policy Rev. 505 (2016), http://journals.sagepub.com/doi/pdf/10.1177/0887403415623328 (collecting sources); U.S. Dep't of Justice, *Second Chances Vital to Criminal Justice Reform* (July 30, 2015), http://www.justice.gov/opa/blog/second-chances-vital-criminal-justice-reform (observing that "participation in pro-social behaviors like employment, education and civic engagement — the very things that people with criminal records are often barred from participating in — actually reduce recidivism").

120 *National Inventory of Collateral Consequences of Conviction*, CSG Justice Ctr., https://niccc.csgjusticecenter.org/ (last visited Jan. 24, 2020) (providing searchable database of collateral consequences by consequence type and jurisdiction; reporting 44,778 total consequences as of January 2020 if no criteria are deselected).

121 John G. Malcolm, *The Problem with the Proliferation of Collateral Consequences*, 19 Federalist Soc'y Rev. 70, 76 (2018), https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/uGOtBEWwvcZ858q4g31VuZl9kFhd8U2HLltdkAZN.pdf; *see also id.* at 75 (observing that "[l]ike the criminal conviction itself, civil sanctions carry real consequences that can be as injurious as they are demoralizing" (internal quotation marks omitted)).

122 *See* Press Release, U.S. Dep't of Justice, Department of Justice Announces the Release of 3,100 Inmates Under First Step Act, Publishes Risk and Needs Assessment System (July 19, 2019), https://www.justice.gov/opa/pr/department-justice-announces-release-3100-inmates-under-first-step-act-publishes-risk-and; *see also* 18 U.S.C. § 3635(3) (defining evidence-based recidivism reduction programs, as codified following passage of the First Step Act of 2018, Pub. L. No. 115-391 § 101(a) (2018)).

123 *See generally* Lois M. Davis et al., Rand Corp., Evaluating The Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults (2013), https://www.rand.org/pubs/research_reports/RR266.html; *see also* Patrick Oakford et al., Vera Inst. of Justice, Investing In Futures: Economic and Fiscal Benefits of Postsecondary Education in Prison (2019), https://www.vera.org/downloads/publications/investing-in-futures.pdf; Daniel Karpowitz & Max Kenner, Bard Prison Initiative, Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility for the Incarcerated (2003), https://www.prisonpolicy.org/scans/crime_report.pdf (analyzing federally-published data).

124 Davis et al., *supra* note 123, at 39; *see also generally* Oakford et al., *supra* note 123.

125 Mariel Alper et al., Bureau of Justice Stat., 2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005–2014) (2018), https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6266 (observing that approximately two-thirds of people who leave prison end up rearrested within three years).

126 *See generally* Newt Gingrich & Van Jones, *Foreword*, *in* Education for Liberation (Gerard Robinson & Elizabeth English Smith eds., 2019).

127 *See generally* Davis et al., *supra* note 123, at 59.

128 Richard Tewksbury et al., *Opportunities Lost: The Consequences of Eliminating Pell Grant Eligibility for Correctional Education Students*, 31 J. Offender Rehab. 43, 44 (2000), https://doi.org/10.1300/J076v31n01_02.

129 Ellen Condliffe Lagemann, Liberating Minds 9 (2016); *see also* Max Kenner, *The Long History of College in Prison*, *in* Education for Liberation 19 (Gerard Robinson & Elizabeth English Smith eds., 2019) (describing the history of prison education and Pell grants for incarcerated people).

130 Press Release, U.S. Dep't of Educ., Secretary DeVos Builds on 'Rethink Higher Education' Agenda,

Expands Opportunities for Students Through Innovative Experimental Sites (May 20, 2019), https://www.ed.gov/news/press-releases/secretary-devos-builds-rethink-higher-education-agenda-expands-opportunities-students-through-innovative-experimental-sites.

131 Press Release, Schatz, Lee, Durbin Introduce Bipartisan Legislation to Restore Educational Opportunities for Those Incarcerated and Improve Public Safety (Apr. 9, 2019), https://www.schatz.senate.gov/press-releases/schatz-lee-durbin-introduce-bipartisan-legislation-to-restore-educational-opportunities-for-those-incarcerated-and-improve-public-safety; *see* College Affordability Act of 2019, H.R. 4674, 116th Cong. § 4016 (2019).

132 Law Enforcement Leaders to Reduce Crime & Incarceration, Briefing Memo: Pell Grant Restoration (2019), http://lawenforcementleaders.org/wp-content/uploads/2019/10/LEL-Pell-Grant-Briefing-Memo.pdf; Letter from members of Law Enforcement Leaders to Reduce Crime & Incarceration to U.S. Senators (Aug. 12, 2019), http://lawenforcementleaders.org/wp-content/uploads/2019/08/Letter-of-Support-REAL-Act-S.-1074.pdf.

133 *See* Jocelyn Fontaine, *The Role of Supportive Housing in Successful Reentry Outcomes for Disabled Prisoners*, 15 Cityscape 53, 61 & ex. 2 (2013), https://www.huduser.gov/portal/periodicals/cityscpe/vol15num3/ch3.pdf (finding arrests reduced by 27% for the treatment group versus 37% for the control group, and a reduction in reincarceration of 6.6% versus 11%, a year after release); *see also* Kimberly Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism?*, Housing Matters: An Urban Institute Initiative (Feb. 27, 2019), https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism.

134 *See* Faith E. Lutze et al., *A Multisite Outcome Evaluation of Washington State's Reentry Housing Program for High Risk Offenders*, 41 Crim. Justice & Behav. 471 (Apr. 2014), https://s3.wp.wsu.edu/uploads/sites/436/2014/11/Criminal-Justice-and-Behavior-2014-Lutze-471-91.pdf.

135 24 C.F.R. § 982.553(a)(1), (2)(i) (2019).

136 24 C.F.R. § 982.553(a)(2)(ii) (2019).

137 As of this writing, eight states terminate Medicaid for people who are in prison rather than suspending it while nine states terminate rather than suspend Medicaid for people who are in jail. *See States Reporting Corrections-Related Medicaid Enrollment Policies in Place for Prisons or Jails*, Henry J. Kaiser Family Found., https://www.kff.org/medicaid/state-indicator/states-reporting-corrections-related-medicaid-enrollment-policies-in-place-for-prisons-or-jails/?currentTimeframe=0&sortModel=%7B%22colId%22 (last visited Feb. 13, 2020). Of the states that suspend, some have time limited suspension (*e.g.*, suspending for up to a year and then terminating). *See* Medicaid & CHIP Payment & Access Comm'n (MACPAC), Medicaid and the Criminal Justice System 4 (July 2018), https://www.macpac.gov/wp-content/uploads/2018/07/Medicaid-and-the-Criminal-Justice-System.pdf. While certain states prohibit individuals in prison from applying for Medicaid, other states facilitate Medicaid enrollment prior to release in some form, which may include training corrections staff on applications, or having dedicated staff for this purpose. *See* Catherine McKee et al., State Medicaid Eligibility Policies for Individuals Moving In and Out of Incarceration, Henry J. Kaiser Family Found. 1 (Aug. 2015), http://files.kff.org/attachment/issue-brief-state-medicaid-eligibility-policies-for-individuals-moving-into-and-out-of-incarceration.

138 McKee et al., *supra* note 137.

139 Hefei Wen et al., *The Effect of Medicaid Expansion on Crime Reduction: Evidence from HIFA-Waiver Expansions*, 154 J. Pub. Econ. 67, 78–79 (2017), http://dx.doi.org/10.1016/j.jpubeco.2017.09.001.

140 *Id.* at 79.

141 Judith Solomon, Ctr. on Budget & Policy Priorities, The Truth About Health Reform's Medicaid Expansion and People Leaving Jail 4 (June 24, 2014), https://www.cbpp.org/sites/default/files/atoms/files/6-25-14health.pdf.

142 *Id.*

143 Qiwei He, *The Effect of Health Insurance on Crime: Evidence from the Affordable Care Act Medicaid Expansion* 1 (Jan. 9, 2018), https://ssrn.com/abstract=3087500.

144 Pew Charitable Trusts, How and When Medicaid Covers People Under Correctional Supervision 7 (2016), https://www.pewtrusts.org/-/media/assets/2016/08/how_and_when_medicaid_covers_people_under_correctional_supervision.pdf.

145 *See* Glenn R. Schmitt & Hyun J. Konfrst, U.S. Sent'g Comm'n, Life Sentences in the Federal System 1 (2015), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf (discussing the rarity of life sentences in the federal system and observing that "[v]irtually all offenders convicted of a federal crime are released from prison eventually and return to society or, in the case of illegal aliens, are deported to their country of origin"); *see also* Jennifer Bronson & E. Ann Carson, Bureau of Justice Stat., Prisoners in 2017 (Apr. 2019), https://www.bjs.gov/content/pub/pdf/p17.pdf (detailing that in 2016, 626,019 individuals were released from prison including 52,035 who were released from federal custody, and that in 2017, 622,377 individuals were released from prison including 49,461 who were released from federal custody).

146 The Recognizing Education, Employment, New skills, and Treatment to Enable Reintegration Act of 2019, S. 2931, 116th Cong. (2019) (hereinafter "RE-ENTER Act").

147 *See* Letter from Ronal Serpas & Taryn Merkl, Exec. Dir. & Senior Counsel, respectively, of Law Enforcement Leaders to Reduce Crime & Incarceration to U.S. Senators (Dec. 3, 2019), http://lawenforcementleaders.org/wp-content/uploads/2019/12/2019.12.3_LEL-REENTER-Act-Letter.pdf; *see also* Press Release, Senator Sheldon Whitehouse, Cornyn, Whitehouse Introduce Bill To Recognize Former Inmates Who Are Successfully Rehabilitated (Nov. 21, 2019), https://www.cornyn.senate.gov/content/news/cornyn-whitehouse-introduce-bill-recognize-former-inmates-who-are-successfully.

148 *See* RE-ENTER Act, *supra* note 146 (providing for modification of eligibility for federal housing and other federal benefits for those who have received a certificate of rehabilitation, and requiring courts to consider a certificate of rehabilitation in evaluating an individual's qualifications for service on juries).

LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

Eriks Gabliks

Director, Oregon Department of Public Safety

Eriks Gabliks is the Director of the Oregon Department of Public Safety Standards and Training (DPSST). He has served with DPSST since 1991 and has had the honor and privilege to serve as the Director for the past eight years overseeing a staff of more than 450 employees.

DPSST is the state's centralized training academy operating the 235-acre campus that serves more than 41,000 constituents around the state. DPSST provides the state's Basic Police, Basic Corrections, Basic Parole and Probation, and Basic Telecommunications (9-1-1) to employees of the state's 208 criminal justice agencies. On an annual basis DPSST provides training to more than 25,000 participants through programs offered at the Oregon Public Safety Academy and on a regional basis. Oregon's basic training programs and certification standards are created in partnership with the 24-member, Governor appointed and senate confirmed, Board on Public Safety Standards and Training (BPSST).

Eriks began his public safety career in 1980 with the Monmouth County (NJ) Sheriff's Department. He holds a Bachelor's Degree in Fire Service Administration from Western Oregon University and a Master's with Honors in Public Policy and Administration from the Mark O. Hatfield School of Government at Portland State University. He also completed the 77th Session of the Federal Bureau of Investigation's Law Enforcement Executive Development Seminar (LEEDS) in Quantico.

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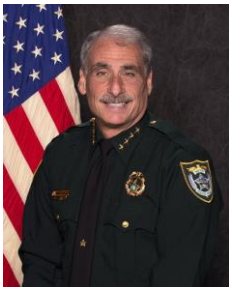
Michael Chitwood

Sheriff, Volusia County, FL



Volusia Sheriff Mike Chitwood is a second-generation law enforcement officer with more than three decades of experience in policing. He started his career in 1988 with the Philadelphia Police Department. After a decorated 17-year career at Philadelphia PD, during which he received 58 official commendations for valor, bravery, heroism and merit, Chitwood began his career as a police chief. After serving as chief in Shawnee, Oklahoma, Chief Chitwood took on an opening in the city of Daytona Beach, Fla., where he spent a decade bringing new crime-fighting technology and community-based policing strategies to the department. The Daytona Beach Police Department was one of the first agencies in Florida to adopt body cameras. In 2016, the surrounding county of Volusia elected Mike Chitwood as sheriff, and he was re-elected without opposition in June 2020. Sheriff Chitwood is a graduate of the 204th session of the FBI National Academy and today serves as secretary of the Police Executive Research Forum, a Washington, D.C.-based research organization dedicated to improving police services and developing innovative law enforcement policy in America.