Best Practices for Police Reform

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A Report of the College-Community Partnership for Racial Justice

in cooperation with

The Law and Justice Lab of the Levitt Center for Public Affairs at Hamilton College

*

community4justice.org

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INTRODUCTION AND EXECUTIVE SUMMARY

by

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- Veronica Tichenor, Professor of Sociology; Coordinator, Community and Behavioral Health Program, SUNY Polytechnic Institute

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*Thanks to Christina Willemsen, Zach Schuman and Gianni Hill, ‘21 of the Levitt Center and Nancy Rabinowitz, Emeritus Professor of Literature, Hamilton College

"I can't help thinking that this country has a great work before it."

- Chief Justice Salmon Chase, 1865

TABLE OF CONTENTS

Introduction

The College-Community Partnership for Racial Justice

Service to their home communities and a commitment to social equity are long-standing values of the institutions in the College-Community Partnership for Racial Justice. The partnership includes three public colleges: Herkimer College, MVCC, and SUNY Poly, three private colleges: Hamilton College, MWP-Pratt School of Art, and Utica College, and two non-profit organizations: the Latino Association of the Mohawk Valley and the Mohawk Valley Frontiers Club. The Partnership has also cooperated with the Mohawk Valley United Way and the Community Foundation of Herkimer and Oneida Counties on a public opinion survey and publicity campaign. The work of the Partnership is catalogued at: community4justice.org

In addition to the Partnership, a number of other organizations in Oneida and Herkimer Counties, including the NAACP, For the Good and the YWCA, have the goal of racial justice. Still others, including the State Attorney General's social justice division and Legal Services of Central New York, have racial justice as a duty. The Partnership builds on the resources and capacities of its constituent members to add to the movement for racial justice undertaken by these and other local organizations several, critical elements- *education, research and evaluation*:

- **Education**

Beginning September 23, 2020, and continuing weekly, the Partnership, in cooperation with the Levitt Center for Public Affairs at Hamilton College, presented an eight-part webinar/TV broadcast series on topics related to racial justice and law enforcement reform. The Series drew on faculty and administrators of Partner colleges, public officials, local justice activists and expert professionals in each issue area to serve as presenters, respondents and roundtable participants. Educational outreach was incorporated into each webinar by way of real-time Q&A for those on-line among the over 500 who were registered for the series. The large number of registrations and

hundreds of viewers on WPNY provided a local forum of unprecedented size for the topics discussed. Recordings of the discussions are archived at community4justice.org

Racial Justice and Criminal Justice Reform in Oneida and Herkimer Counties

1. 9/23 **BLACK LIVES MATTER: THE MOVEMENT AND ITS IMPORTANCE TO ALL OF US**.
Presentation: Clemmie Harris- Utica College
Response: Bernard Hyman- Utica College,
Response: Delvin Moody- Utica City Council
Moderator: Frank Anechiarico – Hamilton College

2. 9/30 **WHAT IS SYSTEMIC OR INSTITUTIONAL RACISM?**
Presentation: Anthony Baird – Utica College
Response: Mark Montgomery – SUNY Poly
Response: Todd Franklin – Hamilton College
Response: Ronni Tichenor- SUNY Poly
Moderator: Ralph Eannace – Utica City Court

3. 10/7 **WHY IS DIVERSITY NOT ENOUGH? TRAINING AND BEST PRACTICES FOR POLICE REFORM.**
Presentation: Troy Little- MVCC
Response: Musco Millner – Utica College and MVCC
Response and Moderator: Frank Anechiarico- Hamilton College

4. 10/14 **UNDERSTANDING THE USE OF FORCE**
Presentation: Bernard Hyman- Utica College
Response: Steve Lockwood – plaintiff's attorney
Response: Mark Polkosnik – Herkimer College
Moderator: Gbemende Johnson – Hamilton College

5. 10/21 **JUSTICE IN THE PROCESS**
Roundtable:
Patrick Johnson – Save Our Street
Scott McNamara- Oneida County District Attorney
Moderator: Ronni Tichenor, SUNY Poly

6. 10/28 **CORRECTIONAL POLICY AND RE-ENTRY**
Presentation: Doran Larson- Hamilton College
Response: Courtney Muhammad – prison ministry
Response: Lee Carr – re-entry initiative
Moderator: Tony Colón

7. 11/4 **HOW ARE WE HANDLING DOMESTIC VIOLENCE AND MENTAL HEALTH INTERVENTIONS?**

Roundtable:
Kevin Lewis – Mental health professional
Catherine Berryman- Hamilton College
Moderator: Frank Anechiarico – Hamilton College

8. 11/11 **INTEVIEW WITH POLICE OFFICIALS ON LAW ENFORCEMENT REFORM**

Interviewers:
Musco Millner- Utica College
Frank Fowler – Former Chief, Syracuse Police Department
Respondents:
Kevin Beach – Rome Police Chief
Robert Maciol – Oneida County Sheriff
Mark Williams – Utica Police Chief

A companion report to this one presents and analyzes the results of a public opinion and experience survey commissioned by the Partnership and funded by the Levitt Center. The survey was conducted by Zogby Strategies during the first weekend of September, 2020. Additional responses to the questionnaire were collected in a targeted survey in East Utica later that month. A further 150 responses were recorded by the United Way's phone-text based response system. The latter two surveys were funded by the Community Foundation.

Subsequent to the release of this report, another set of webinars is planned that will include the public in discussions with municipal officials of their plans for reform.

- **Research**

To date the Partnership has harnessed the talent of 12 professors, 20 expert professionals and 35 college students in the analysis of the Surveys, the organization of and presentation of the Webinar, and in culling best practices for the chapters of this report. The research presented here was produced by students in parallel courses at Utica and Hamilton Colleges. The instructor of the Utica College course, Prof. Bernard Hyman, organized a series of meetings with police officials, while the Hamilton College course, taught by Prof. Frank Anechiarico, Prof. Gbemende Johnson and Judge Ralph

Eannace of Utica City Court, reviewed scholarly and other literature on policing and criminal justice generally.

Analysis of the Surveys is incorporated into this report and, as noted, will be presented separately in a report by Prof. Johnson of Hamilton and Prof. Veronica Tichenor of SUNY Poly. Using the STATA and Excel platforms, Prof. Johnson and the students under her direction have been able to discern relative differences by race and residency in the experience and evaluation of the police and other parts of the criminal justice system.

As municipalities prepare responses to the Governor's reform mandate (Executive Order 203, 2020), the Partnership has been called on by the responding committee in Utica and several towns for best practice models in various policy areas. The next phase of the Partnerships work is dedicated to adapting its research to the reform agendas of the 24 police jurisdictions in the two counties.

- **Evaluation**

As legendary, UCLA basketball coach John Wooden put it, "Without proper evaluation, failure is inevitable." This maxim is particularly true of reform in the public sector. Legislatures and faced with revenue shortfalls due to the pandemic and are generally unwilling to spend on unproven programs. A number of the programs highlighted here promise to reduce costs in the long-run. But to justify funding needed to initiate reform, whether funds come from local budgets, other levels of government or foundation grants, reforms must be designed so that their operations, products and outcomes can be measured and assessed.

One of the most important servicse the Partnership can provide to local governments is a forum for cooperation. There are several reform areas—response to mental health emergencies and domestic disputes is one—where cooperative arrangements between jurisdiction would be both efficient and effective. The reform workshops scheduled for February (TBA), will allow such arrangements to be made in such a way that they can be evaluated. Partnership member

colleges are willing and able to conduct evaluations of law enforcement reforms and the design of cooperative arrangements.

Responding to the Governor's Mandate

The Webinar Series and the Surveys are key parts of the Mohawk Valley's contribution to the New York State Police Reform and Reinvention Collaborative. Governor Cuomo lays out the key components of the state mandated process in an introduction to the police reform workbook. The work that the Partnership has and will add is noted in italics below each component:

> "Collaborative" is the key word. It would be a mistake to frame these discussions as an adversarial process or an effort to impose top-down solutions. Issues must be aired but solutions must be crafted. The collaborative process should:
>
> · [1] Review the needs of the community served by its police agency, and evaluate the department's current policies and practices;
>
> *The Surveys of public opinion and experience conducted in Oneida and Herkimer Counties assess needs and report residents' evaluations of current policies and practices.*
>
> · [2] Establish policies that allow police to effectively and safely perform their duties;
>
> *The recommendations in this report follow a public health model that defines officer safety and effectiveness as parts of community wellness.*
>
> · [3] Involve the entire community in the discussion;
>
> *The webinar both informed and involved the entire community in a discussion of critical issues in law enforcement and racial justice.*
>
> · [4] Develop policy recommendations resulting from this review;
>
> *The chapters that follow include a number of policy recommendations. They are summarized in the next section of this introduction*.

· [5] Offer a plan for public comment;

The reform workshops for municipal officials noted above are planned as webinar/TV broadcasts that will allow public participation and comment.

· [6] Present the plan to the local legislative body to ratify or adopt it, and;

The Partnership will aid municipalities in this process, particularly in the design of measures for performance evaluation of new initiatives.

· [7] Certify adoption of the plan to the State Budget Director on or before April 1, 2021

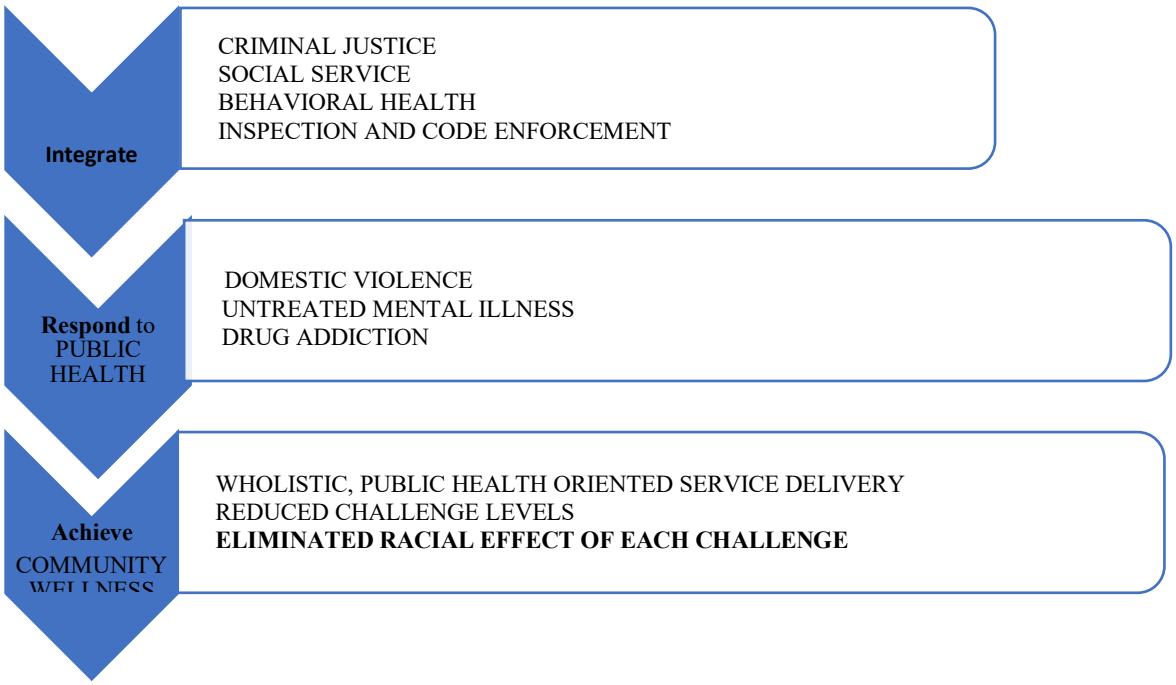
[Source: *New York State Police Reform and Reinvention Collaborative: Guide for Public Officials and Citizens,* August, 2020]

Policing and Racial Justice as Matters of Public Health

Physical health and mental health depend on a safe environment. Unbiased, public-regarding policing contributes to the physical and mental health of residents. And, as the police see themselves sharing responsibility for reducing the risk of violence with behavior health and social service providers, their own safety will be better ensured. Repeated comments by current and former police officers in the webinar Series made it clear that both patrol and ranking officers would like to share the responsibility for mental health related emergency calls. These calls are dangerous for the mentally ill person and the responding officer both. It would be even better to get help to at risk individuals soon enough to avoid such emergencies.

There are a number of references to public health and community wellness in this report. The model they proceed from considers law enforcement a part of an integrated public health mission. The challenges listed in the second rung of the model are found in all neighborhoods, but have differential effects by race and have been inadequately treated in predominantly Black communities.

Figure 1. Community Wellness Encompassing Racial Justice



This model provides a way of thinking about police reform as part of larger, holistic re-orientation of public service, including policing. This is not to ignore housing, employment and education, each of which is also a serious challenge to racial justice and community wellness. However, domestic violence, untreated mental illness and drug addiction are more immediately law enforcement problems. Keeping this model in mind when considering reforms as disparate as incident de-escalation training, police oversight and implicit bias awareness brings cohesion and unity to municipal police reform agendas.

Executive Summary

The Black Lives Matter movement has generated law enforcement reform prjects around the U.S. One response to the movement is an Executive Order (203) issued in June of this year by New York Governor Andrew Cuomo. By April 1, 2021, every political jurisdiction in New York State that operates a police department must deliver to the State Budget Office a plan for reform, which. . .

> . . . shall consider evidence-based policing strategies, including but not limited to, use of force policies, procedural justice; any studies addressing systemic racial bias or racial justice in policing; implicit bias awareness training; de-escalation training and practices; law enforcement assisted diversion programs; restorative justice practices; community-based outreach and conflict resolution; problem-oriented policing; hot spots policing; focused deterrence; crime prevention through environmental design; violence prevention and reduction interventions; model policies and guidelines promulgated by the New York State Municipal Police Training Council; and standards promulgated by the New York State Law Enforcement Accreditation Program. (E.O.203, June 12, 2020)

This project that produced this report includes the work of Hamilton College undergraduates in a Law and Justice Lab practicum. The project had three goals:

- **Analysis of data** collected by the public opinion and experience survey conducted by Zogby Strategies in September, 2020.
- Providing context for the data with research into **best practices** in relevant policy areas.
- Preparing a range of criminal justice **reform options** for local governments in Oneida and Herkimer Counties based on data and best practices.

The recommendations summarized in this section and explained in subsequent chapters are evidenced based and drawn from the latest research conducted by academic scholars, government agencies and think-tank researchers. The following resources have

been critical to the analysis here and are recommended for further information about the reforms under consideration:

GOVERNMENT

National Criminal Justice Reference Service
https://www.ncjrs.gov/
National Institute of Justice
https://nij.ojp.gov/
U.S. Bureau of Justice Statistics
https://www.bjs.gov/
Congressional Research Service
https://crsreports.congress.gov/search/#/?termsToSearch=policing&orderBy=Relevance
U.S. Government Accountability Office
https://www.gao.gov/search?rows=10&now_sort=score+desc&page_name=main&q=policing
New York State Division of Criminal Justice Services
https://www.criminaljustice.ny.gov/crimnet/pubs.htm

UNIVERSITIES

Harvard Ash Center – Government Innovators
https://www.innovations.harvard.edu/search/site/?f[0]=im_field_topics%3A147&
Yale Justice Collaboratory
https://law.yale.edu/justice-collaboratory
Hamilton Library – JSTOR and NEXIS UNI
https://my.hamilton.edu/offices/lit
Cornell Legal Information Institute
Citation system
https://www.law.cornell.edu/citation/

THINK TANKS AND INTEREST GROUPS

Harvard Library Think Tank Search
https://guides.library.harvard.edu/hks/think_tank_search
Vera Institute of Justice
https://www.vera.org/
International Association of Chiefs of Police
https://www.theiacp.org/topics/recruitment-personnel
Rand Corporation Center for Quality Policing
https://www.rand.org/well-being/justice-policy/centers/quality-policing.html
Officer.com https://www.officer.com/on-the-street/article/21139788/domestic-call-response-tactics

An Evidence-Based Reform Agenda

The reforms proposed here draw on scientific evaluation and are designed to meet the following criteria:

- ❖ Counteract bias and advance racial equity and justice
- ❖ Improve community wellness and public health
- ❖ Improve public safety and the effectiveness of law enforcement
- ❖ Protect the welfare and safety of law enforcement officers and other service personnel serving the community

For complete descriptions, context and supporting research relevant to each of the reforms listed in this summary, please refer to the chapters that follow. The following list is not a blueprint. Instead, these reforms provide a framework for discussion and design of reforms that are appropriate for each local jurisdiction.

Abstract of Reform Proposals

Chapter 1. Treatment of People with Mental Illness

- Crisis Intervention Training
- Co-response Teams
- Systemwide Mental Health Assessment
- Mental Health Courts
- Cognitive Behavioral Therapy
- Specialty Mental Health Probation

Chapter 2. Patrol and Traffic Stops

- Restrict Pre-texual Traffic Stops
- Informed Consent to Searches, “Right to Know”
- Dashboard Data on Stop Demographics

- Problem-Oriented Policing, SARA Model
- Yale Collaboratory Procedural Justice Guidelines
- Patrol Zone Re-districting

Chapter 3. Oversight

- Transparency of Disciplinary and Complaint Process
- Investigative Model
- Civilian Review Board Model
- Auditor-Monitor Model
- Independent Prosecutor for Serious Law Enforcement Misconduct
- Ending Qualified Immunity
- Transparency of Police Collective Bargaining
- Removal of Disciplinary Give-Backs in Police Contracts

Chapter 4. Domestic Dispute Intervention

- Social-Emotional Learning Program for Youth: Safe Dates
- Creating Protective Environments
- Green Dot Bystander Program
- Multidimensional Treatment Foster Care
- Co-Response Teams
- Community-Based Offender Rehabilitation
- Restorative Justice Procedures

Chapter 5. Diversity Recruitment

- Police Residency Requirement
- Leadership Intervention in Department Culture
- U.S. Army Marketing Model
- Higher-Education Model of Cluster Hiring

- Policing Approach Through Health Wellness and Youth

Chapter 6. Trial Process

- Revive the Commission on Prosecutorial Misconduct
- Transparency of Conviction Integrity Unit Process
- Track Racial Disparities in Prosecution
- Racial Impact Training for Prosecutors
- St. Louis Model of Plea Bargain Sheets
- Wider Judicial Review of Plea Bargains
- Decline to Prosecute Low-Level and Racialized Arrests
- Decline to Prosecute School-Based Incidents
- Clean Slate - Conviction Expungement Model
- Sensitivity to Immigrant Vulnerability in the Trial Process
- Eliminate Peremptory Challenges of Prospective Jurors
- Restorative Justice Alternative

Chapter 7. Inmate Re-entry

- Frequent Users Service Enhancement Housing Model
- Housing First
- Open Access to Vocational and Degree Programs in Jails and Prisons
- Court Diversion to Treatment Programs
- End to Former Inmate Discrimination in Employment
- Clean-Slate Conviction Expungement Model
- Post-Release Psychological and Life-Skills Support

Chapter 8. Police Training and Racial Sensitivity

- Revised Implicit Bias Training
- De-escalation Training

- Crisis Intervention Training
- Officer Duty to Intervene in Bias Incidents
- New Orleans Ethical Policing is Courageous Model

The reach of these reforms goes beyond policing, because of the integrated nature of the criminal justice system. The behavior of prosecutors and the effectiveness of probation and diversion programs have a direct impact on crime rates, the racial impact of law enforcement and, also, officer wellness.

Several reforms appear in more than one chapter, which indicates the wide recognition they have received nationally and a high-level of effectiveness: *co-response teams, crisis intervention training, diversion programs, process transparency, adited oversight and restorative justice.*

**

CHAPTER 1.

TREATMENT OF PEOPLE WITH MENTAL ILLNESS

by

Neha Jain, Rebecca Ridgway, and Ryan Brij Stewart

A Law Enforcement Dilemma

On March 23rd of 2020, Daniel Prude, a 41-year-old Black man, asphyxiated, and died after a hood was placed over his head by Rochester Police (Gold, 2020). Prude had been acting erratically before the interaction with police and his brother Joe Prude had called emergency services on March 22nd. Daniel Prude had a mental health evaluation at Strong Memorial Hospital before being released later that night. Prude began acting erratically again after being released and his brother once again called emergency services. This time, police showed up and the altercation began to deteriorate. Prude was nude and bleeding and while initially, Prude was complying with the officers, he began to yell at police to give him the gun and began spitting at officers (Gold, 2020). The officers placed a 'spit hood' over Prude's head and wrestled him to the ground. The officers continued to hold Prude face down on the pavement for more than two minutes during which Prude stopped breathing. Prude later died due to brain damage as a result of a lack of oxygen (Gold, 2020). This section will look at interactions between mentally ill individuals, law enforcement officers, and the criminal justice system. It will then make recommendations to improve and reduce these interactions.

Mentally ill individuals are more susceptible to arrest because they often exhibit inappropriate behavior that engenders suspicion about their actions. Once approached by law enforcement they can display symptoms of paranoia, often pose a risk of escape, violently resist arrest or pose injury to themselves or others (Costello, 2019). While their inappropriate responses are a product of their mental illness, law enforcement officers are often unable to recognize this and approach mentally ill individuals the way they would approach any other individual posing a potential threat (Concannon, 2019). Thus, individuals killed when approached or stopped by law enforcement officers in the community are disproportionately high for those with mental illnesses (Teplin, 2000). In some instances, police officers are able to recognize an underlying mental illness; in other instances, they misread the situation

or are unsure of how to respond. This uncertainty can lead to officers drawing their weapons. Consequently, 1 in 4 fatal police encounters ends the life of an individual with a severe mental illness. Moreover, the risk of being killed during a police encounter is nearly 16 times greater for individuals with untreated mental illnesses (Fuller et al., 2015).

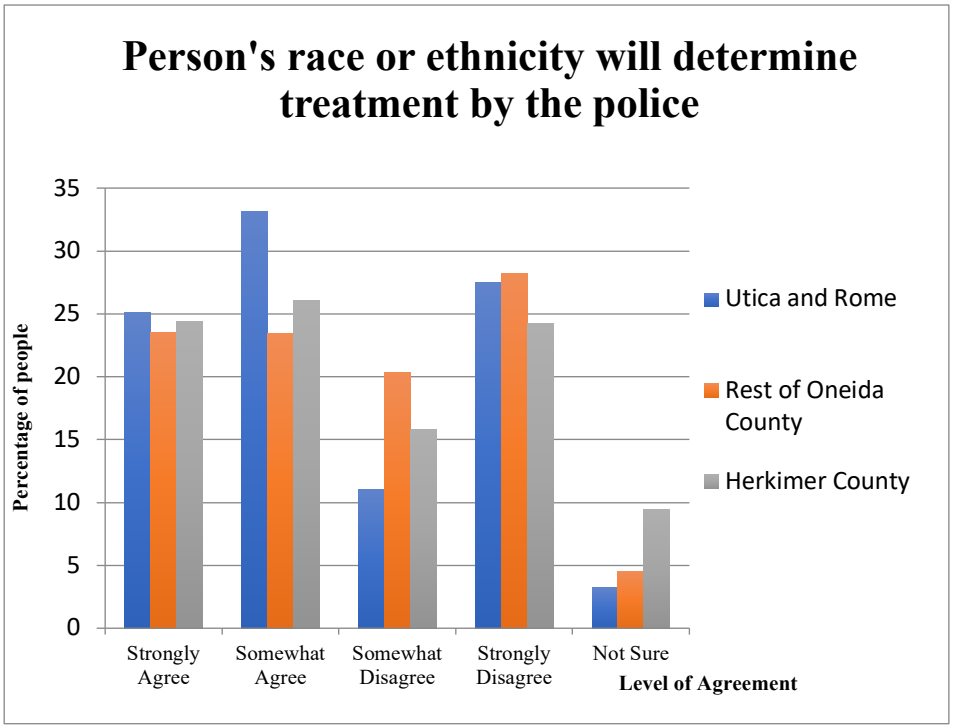
Interactions between law enforcement officers and mentally ill individuals are often more fatal if the individual is African American or Latinx. Nelson (2016) offers an explanation for this, suggesting that race and disability exacerbate these interactions because they collectively "construct a perfect criminal" -- requiring the use of disciplinary force and punishment. This was evident in the fatal police shooting of Walter Wallace, an African American individual, on the 26th of October, 2020, in Philadelphia. Walter Wallace suffered from bipolar disorder and was in crisis at the time he was approached by police officers. The police officers perceived his movement towards them as threatening and shot him seven times.

The prevalence of mental illness in police shootings indicates the need to reduce encounters between on-duty law enforcement officers and individuals with mental illnesses all together. *Increased access to behavioral health services and early intervention with individuals likely to act-out publicly are vital to preventing fatal encounters.*

Racial disparities

People of color are less likely to be identified in encounters with the police as having a mental illness. Evidence shows that mental health screening tools used by jails produce racial disparities where fewer black and Latinx individuals screen positive. Thus, these individuals often go undetected in jail populations for mental illnesses (Prins et al., 2012). Pope (2019) also suggests that law enforcement officers are less likely to support racial and ethnic minorities in distress. When they do receive support, it is often of lower quality than that provided to white individuals. Individuals in Herkimer and Oneida counties are in agreement that race and ethnicity

often determine treatment by the police. The adverse impact of the intersection between race and mental illnesses also provides strong evidence for the need to decrease interactions of mentally ill individuals and law enforcement officers.



Police discretion

While the law legitimizes an officer's power to intervene with an individual undergoing a mental health crisis, it cannot control the officer's response. Officers who encounter an individual exhibiting behavior that strays from normal standards are faced with three choices: transporting the individual to a mental hospital, arresting the individual or resolving the situation informally (Bittner, 2014).

Hospitalization

In theory officers have the option to transport distressed individuals to the hospital. However, stringent requirements for hospital admission limit this choice in practice. Individuals that are "too dangerous," those who have substance abuse disorders or those with numerous previous hospitalizations are often not admitted to

hospital psychiatric wards (Teplin, 2000). In addition, individuals who have previously been incarcerated are likely to be turned away. Because a sizable number of all individuals with serious mental illness have had some interaction with the criminal justice system, hospitalization is often not an option.

Arrest

Individuals with mental illnesses are more susceptible to arrest in comparison to those without mental illnesses and are often held criminally liable for decisions and behavior produced by their disability. (Bittner, 2014). Law enforcement officers arrest mentally ill individuals when their actions do not comply with community standards and are either "too severe" or "not severe enough" for hospitalization. Pope (2019) finds that law enforcement officers are more likely to arrest racial and ethnic minorities, indicating that police discretion regarding the behavior of mentally ill individuals exacerbates racial inequality.

Informal options

Law enforcement officers often resolve a situation informally when they believe they have the necessary tools to effectively diffuse a potentially violent situation. Bittner (2014) found that officers were more likely to employ informal options when they had any form of relationship with the residents they serve. This familiarity often allows officers to predict the outcome of the interaction encouraging them to informally resolve a situation instead of hospitalizing or arresting the person in question.

Evaluated Best Practices

Two categories have been developed to describe best practices for the interaction of law enforcement and people with mental illness. The first category deals directly with how law enforcement officers respond to individuals experiencing

a mental health crisis. This group of direct practices includes *crisis intervention training* and *co-response units*. The second category focuses on a more holistic approach to improve the lives of those suffering from mental illnesses. These reforms are focused on *limiting interaction* between people with mental illnesses and the police.

Crisis Intervention Training

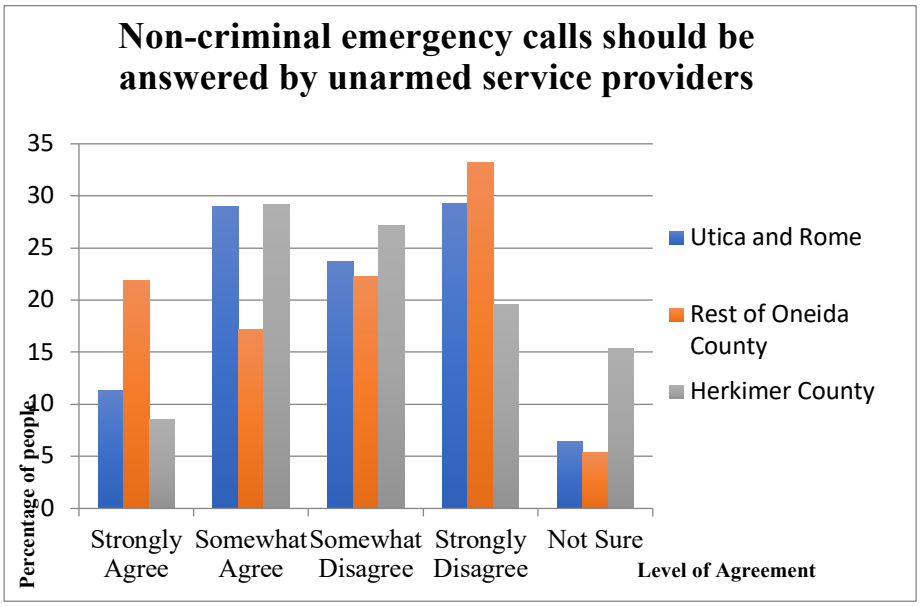
Crisis intervention training (CIT) has been one of the most widely implemented and evaluated reforms related to police response to mental health emergencies. Since its development in 1988, 2,700 police departments nationwide have implemented voluntary CIT training (Fuller et al*.,* 2015). The impact of CIT depends on the context in which it is applied. It is difficult for researchers to make causal connections between outcomes with the training in their evaluations of CIT due to various limitations, such as lack of control groups, limited data, and small sample sizes. One positive result of CIT found by Rogers, McNeil and Binder (2019) is that CIT leads to an increase in diversions from jails to in-patient treatment. Similarly, after interactions with CIT officers an increased number of individuals voluntarily sought treatment, avoiding involuntary psychiatric admissions. Rogers, McNiel, and Binder (2019) have not conclusively linked CIT with fewer violent incidents or fewer arrests, but officers report that their emergency interactions are more positive due to the training.

Research has found that the biggest limitation to the success of CIT is officers' attitudes toward the training and toward people in crisis. Researchers have noted that the effectiveness of the training is directly related to how officers view it. Ron Bruno, the executive director of Crisis Intervention Team International, argues that some departments and officers treat the training as just another box to tick (Westervelt 2020). Additionally, Cassidy Blair Haigh (2020) finds that officer

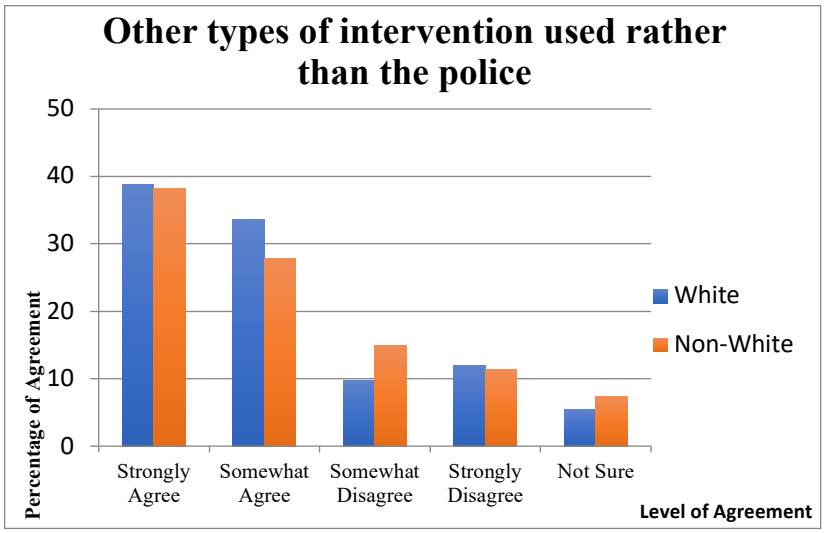
perception of individuals with mental illness, which can be based on the lingering stigma of mental illness, may determine the outcome of an interaction. Overall, CIT has been found to have a positive impact in preparing officers to deal with individuals with mental illness in emergency situations.

Co-response Units

A second, evidence-based reform of the interaction between people with mental illnesses and the police is co-response units. Co-response units add a trained mental health or other social service professional to police response units. Some co-response models assign social workers, psychologists, paramedics, or substance abuse experts to accompany police officers (Fuller et al. 2015). The premise of co-response units is to identify ways to defuse a potentially violent situation by reducing and sharing the responsibility of the police officer making decisions in a crisis situation. The police officers ensure the safety of everyone involved and the mental health professionals initiate interventions, including recommendations for resources. The following table indicates that including police officers in any response arrangement is the preference of a majority of local residents.



However, when given the option of "other types of intervention" instead of the police alone, non-white and white individuals strongly believed that the police are not best equipped to support mentally ill individuals



Crisis Intervention Response Units in Denver

Even though co-response units are not as common as CIT, there have been a number of evaluations of their effectiveness. One indication of success is Denver's Crisis Intervention Response Unit. Police officers on the team have reported that the social workers have integrated well into the functioning of the department (Innovations in American Government Award 2018). Further, the Department reported that having social workers riding with their officers positively impacted the residents struggling with mental illness as well as relieving stress and reducing uncertainty for participating police officers. The social workers helped to foster a police culture where officers were more aware of their own mental health and need for self-care. The Denver model is focused on community wellness by making sure that the individuals were aware of community resources and receive treatment. It was found that co-response units only arrested 2 percent of the individuals they interacted with. (Innovations in American Government Award 2018). One of the key findings from Bailey et al. (2018) was that interagency cooperation and dynamics are crucial for the success of co-response units. Because co-response units often incorporate other agency professionals, like social workers, both the officers' and service agency professionals' attitudes towards each other were shown to influence the success of the program.

Systemwide Mental Assessment Response Teams (SMART) in Los Angeles:

Influenced by the Memphis Police Department, in 1991, the Los Angeles Police Department introduced co-response unit called SMART (Systemwide Mental Assessment Response Team), which paired specially trained officers with mental health professionals to respond to emergency calls. During the period they implemented these teams, Fuller, et al. found that some form of acute or chronic severe mental illness characterized more than 60 percent of the 101 individuals engaged by SMART. These individuals also all had prior involvement in the criminal justice system, showcasing the high rates of repeat police encounters with individuals with mental illnesses. Through the implementation of SMART, the Los Angeles

Police Department found that mental health professionals and trained officers together were more likely to support, rather than arrest or use force upon individuals in distress (Fuller et al., 2015).

CAHOOTS Program in Eugene, Oregon

Eugene, Oregon, introduced the Crisis Assistance Helping Out On The Streets (CAHOOTS) program, which provides support to mentally ill individuals without the involvement of the police. Service requests are made through non-emergency police lines and teams dispatched consist of a medic (nurse or EMT) and a crisis worker (an individual who has had experience working in the mental health field). The program attempts to provide stabilization in case of urgent medical needs or psychological crisis, assessment, advocacy and occasionally transportation to a hospital for treatment (Brennan, 2019). In the instance that the individual exhibits violent or life-threatening behavior to the medic team dispatched, a police officer is also dispatched. *In 2019, CAHOOT workers responded to 24,000 calls and police backup was requested only 150 times*, showcasing that majority of the time police officers are not required in providing effective support to mentally ill individuals (Maxouris, 2020).

Mobile Crisis Assessment Team (MCAT)

Locally, the Mobile Crisis Assessment Team, or MCAT, run by The Utica Neighborhood Center, Inc. is a resource for law enforcement departments to improve their interactions with people experiencing a mental health crisis. MCAT, based in Utica, provides 24/7 crisis intervention to Oneida, Herkimer, Schoharie, Otsego, Delaware, and Chenango counties (The Neighborhood Center, Inc.). According to their brochure, “MCAT seeks to de-escalate a crisis situation, preventing possible harm, keeping the problem outside of the legal system and avoiding hospitalizations when appropriate. Concerns which are causing a person a serious problem in

functioning is reason to call" (The Neighborhood Center, Inc.). MCAT coordinates with schools, medical providers, as well as law enforcement.

According to MCAT Director Kristin Sauerbier, the connection between the program, community wellness, and the police is clear. The program offers a 24/7 crisis-line, peer-advocacy, and in-person mental health evaluation. "For Oneida County from 1/1/19-12/31/19, MCAT conducted 570 face-to-face mental health assessments in the community and completed 8,459 crisis calls. For Herkimer County, there were 112 face-to-face mental health assessments and completed 1,945 crisis calls during the same time frame" (Sauerbier, 2020) Their funding depends on state and county grants. The program would like to expand through a pilot co-response program with Utica Police and hopes to develop similar programs across the other counties. The biggest constraint to further expanding the MCAT program is funding for salaries in order to hire new employees. S

Other Interventions

By limiting the number of arrests of individuals in crisis, these interventions function to de-carcerate people with mental illnesses through treatment. In an evaluation of CIT, Hassel (2020) mentioned that training was not enough to effectively help those with mental illness without adequate community mental health resources (Hassel 2020). The cycle of arrests and mental health crises will continue without adequate resources devoted to mental health treatment, especially outpatient services. Adequate resources are also essential for the success of co-response units, also (The Leadership Conference Education Fund, 2019). The interventions noted in the literature on this topic are designed to help formerly incarcerated individuals, and include mental health courts, specialty probation, cognitive behavioral therapy, and medication.

Mental Health and the American Carceral System

With a larger per-capita carceral population than any other country in the world and recidivism rates of over 75%, the American carceral system cycles Americans and particularly Black Americans in and out of jail and prison repeatedly (BBC, 2005; Wright et al., 2013). This cycling is particularly common for people with mental illnesses (Zgoba et al., 2020). Mental health issues are extremely common in the system of incarceration and those with mental health issues often have longer criminal histories than those without (Zgoba et al., 2020). Changes to the way the carceral system interacts with individuals with mental health issues can work to reduce their cycling. In turn, people with mental health issues will have fewer interactions with the police and thus fewer instances where police use force inappropriately or unnecessarily.

Here we will analyze the relationship between the American system of incarceration and people with mental health issues. We will then look to the local community, first at public opinion on mental health issues within the carceral system and then at local mental health treatments currently in place for offenders. We will look at a number of methods that help offenders with mental health issues and reduce recidivism rates.

Caught in a Cycle

Mental health issues are shockingly common in the American carceral system. Estimates for serious mental health issues for incarcerated people range from twenty to fifty percent (Center, 2014; Khazan, 2015). Incarcerated people suffer from a wide range of mental health issues but the most common issues are depression (21 percent) and bipolar disorder (12 percent) (Khazan, 2015).

The reason so many incarcerated people have mental health issues is complex. It can be difficult to pinpoint a causal link between mental health and criminality because of confounding factors. Some researchers have found that bipolar disorder—the second most common mental health issue for incarcerated people—predisposes

people toward anti-social behavior (Swann et al., 2011). Furthermore, incarcerated people with mental health issues on average have longer criminal histories than those without mental health issues (Zgoba et al., 2020). These longer criminal histories demonstrate cycling as a key problem for people with mental health issues in the carceral system.

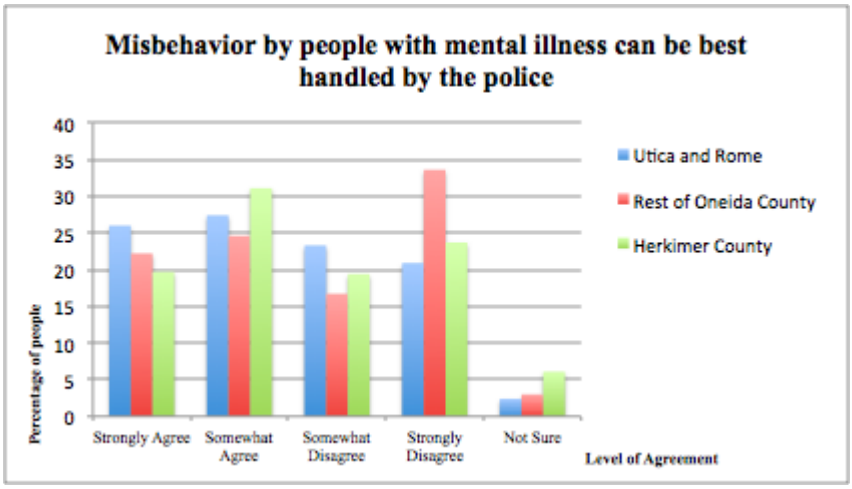
Once someone is released from prison, the chance they will be rearrested within six years is almost eighty percent (Alper, Durose, & Markmen, 2018). Over seven hundred thousand people leave incarceration every year, almost a third of the entire incarcerated population, and still, total incarceration has seen little change (*Trends in U.S. Corrections*, 2018).

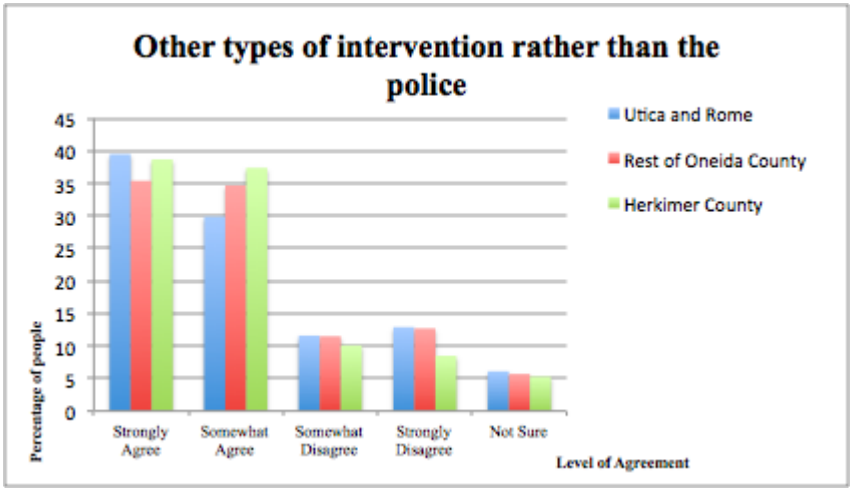
The issue is even worse for people with mental health issues. The fact that incarcerated people with mental health issues have longer criminal histories indicates that they return to jail and prison more often as well. However, it is not clear whether people with mental illness recidivate at a higher because they commit crime at a higher rate or because they are more likely to have negative interactions with the police that result in arrest more often. Regardless of why people with mental health issues are reincarcerated so often, their levels of cycling are so high that any effective reduction in recidivism should be a priority. This is particularly true because there are a number of methods that help reduce recidivism for offenders with mental health issues in particular.

Local Opinions on Mental Health and Incarceration

When local residents were asked whether “Misbehavior by people with mental illness can best be handled by the police,” 51.1 percent of people in the local area somewhat or strongly agree, while 45.5 percent of people somewhat or strongly disagree (Zogby Polling, 2020). However, when asked “Regarding misbehavior by people with mental illness, other kinds of intervention should be used rather than the police” 71.2 percent of people somewhat or strongly agree while only 23.0 percent of

people somewhat or strongly disagree (Zogby Polling, 2020). These two answers seem to contradict each other, which creates difficulty interpreting the data. Because the first question was asked first, it is likely that when people are asked if police can properly handle people with mental health issues, they generally agree, but if other options are available, they broadly prefer those other options.





When looking at the carceral system, local residents broadly agree that more rehabilitative solutions should be put in place. When asked whether "More education and training programs should be available to inmates of jails and prisons," 68.9 percent somewhat or strongly agree, while only 15.1 percent somewhat or strongly disagree (Zogby Polling, 2020). Similarly, when asked whether "People released from jail or prison in my community should get help finding housing and jobs," 81.9 percent of local residents somewhat or strongly agree, while only 13.9 percent of

local residents somewhat or strongly disagree (Zogby Polling, 2020). While neither of these questions directly address issues of mental health vis-à-vis the carceral system, they present clear evidence that local residents want more rehabilitative options for incarcerated and formerly incarcerated people.

Taking all four questions into consideration, it appears that there is a strong local desire for mental health treatments that do not involve the police as well as a desire for the carceral system to redirect focus on rehabilitation as opposed to retribution.

Current Local Mental Health Treatment for Formerly Incarcerated People

Oneida Senior Parole Officer José Schwarz and Head of Reentry in Oneida County Emma Rasmussen both noted that there were a fair number of mental health treatment programs in the area. Schwarz was positive about the programs saying that "the majority of guys with mental health issues we get on programming and it works pretty well. Not perfect, but pretty well." Rasmussen, however, noted that many former offenders go through three or four mental health programs feeling like no one spent any time one on one to help deal with their issues. Rasmussen talked about how many former offenders felt like they weren't seen as real people in the programs they went through, instead feeling like they were being churned through a bureaucracy. (Interviews)

Rasmussen found that cognitive-behavioral therapy booklets were surprisingly effective—individuals who had gone through several programs with little benefit felt they were being treated like people, not objects on a conveyor belt. Schwarz felt that medication was key to ensuring the mental health of former inmates. Out of roughly twenty or twenty-five former offenders he would work with on a medication regimen "roughly fifteen will be good. It's not that they're perfect, but they're managing well and they'll come to you if they're having problems. Another five are here and there. And then you get one or two who are just off the wall." Yet Schwarz would often struggle to get former inmates appointments with psychiatrists to get medication.

Sometimes the senior parole officer would have to send former offenders to the emergency room just to get a prescription filled.

Beyond the programming and medication, Oneida County has other treatments for mental health issues. There is an Oneida mental health court that replaces punishment with mental health treatment. Utica City Judge Ralph Eannace founded and operates the mental health court. An analysis of the Court by Alexander Scheuer (2018) found that while 3-year recidivism for mentally ill offenders generally runs at approximately 54 percent, the Utica Mental Health Court's recidivism rate is only 19 percent. Scheuer acknowledges that the Utica Court does in some sense cherry-pick its participants, as it only takes offenders it believes will be successful. However, the substantial differential in recidivism between typical offenders with mental illness and participants in the mental health court indicates that the mental health court's impact is significant (2018, p. 94). Scheuer's findings have been verified elsewhere. Other studies of mental health courts have shown them to notably reduce three-year recidivism from fifty to twenty percent (Ridgley et al., 2007). Beyond this, the increased cost of mental health treatment is more than offset by the reduction in total incarceration (Ridgley et al., 2007). The mental health court appears to be effective and possibly the best element of mental health treatment in the local criminal justice system.

Effective Practices for Mental Health in the Carceral System

There are several other methods that have shown to be effective disrupting the carceral cycle for people with mental illness. This section will look at three of those methods: specialty mental health probation, cognitive behavioral therapy, and medication.

Specialty mental health probation has shown similar success to mental health courts. Specialty mental health probation has parole officers see a smaller cohort of parolees, give them special mental health attention, and place them in mental health programs. Specialty mental health probation has been shown to both reduce

recidivism from 52 percent to 29 percent and cut costs by lower incarceration costs that make up for the cost of increased mental health care (Skeem, 2017).

However, beyond systems put in place within the criminal justice system itself, direct treatment is also necessary. There is a strong consensus in mental health care that **cognitive-behavioral therapy** is both the most effective way to treat most mental health issues and the best form of therapy for reducing recidivism (Wright et al., 2014). Cognitive-behavioral therapy is a form of therapy designed to change a patient's patterns of thinking or behavior, with the understanding that changes to either will result in changes to the other (Martin, 2019). Mental health programs for formerly incarcerated people tend to use a variety of treatments, many of which are often unstudied or when studied show low success (Wright et al., 2014). Making sure to use evaluated, evidence-based treatments—such as cognitive behavioral therapy—is critical.

Lastly, **medication** has been shown to be effective in treating people with mental health issues. Though many medications have somewhat minor impacts, the ease of prescription makes it a convenient option that can make a real difference (Reingle Gonzalez & Connell, 2014). For some, the difference between medication and no medication is stark (Reingle Gonzalez & Connell, 2014).

If properly implemented, these interventions will demonstrably reduce recidivism and carceral costs while helping offenders with mental health issues live better lives. Beyond this, a reduction in cycling will mean that there are fewer police interactions, violent and otherwise, with civilians—including Black civilians.

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CHAPTER 2.

POLICE PATROL AND OFFICER INITIATED STOPS

by

William Andriola and Jackson Harris

Officer Initiated Stops

Introduction

Officer-initiated, vehicular and pedestrian stops are the most common form of civilian contact with the police. Every day in the United States, more than 50,000 drivers are pulled over by the police (Pierson et al., 2020). According to a 2015 study by the United States Bureau of Justice Statistics, in any given year 10 percent of all U.S. residents are involved in a traffic stop (Davis et al., 2018). The same survey found that in 2015, 2,503,700 pedestrians were stopped in the U.S. Reflecting the frequency of both forms of police interaction, a recent survey of Herkimer and Oneida County revealed that more than more than 35 percent of residents reported being "stopped or questioned by the police."

Yet despite reforms in recent years, stops remain tainted by racial bias; a recent Stanford University study of more than 100 million stops nationwide found that Black drivers were both more likely to be stopped by police (see Figure 1) and were searched with a lower threshold of evidence than white drivers (see Figure 2)

Figure 1: Stop Rates

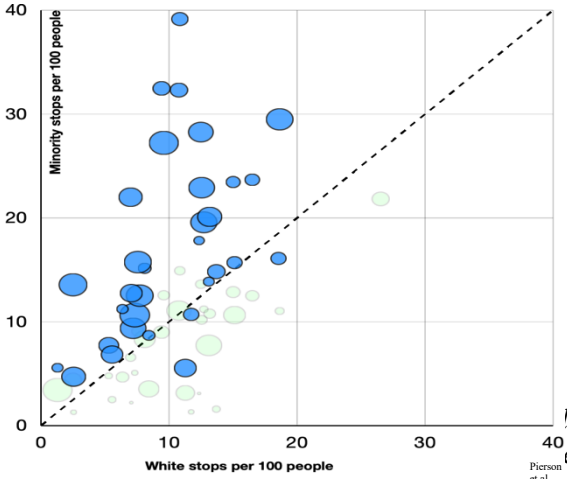
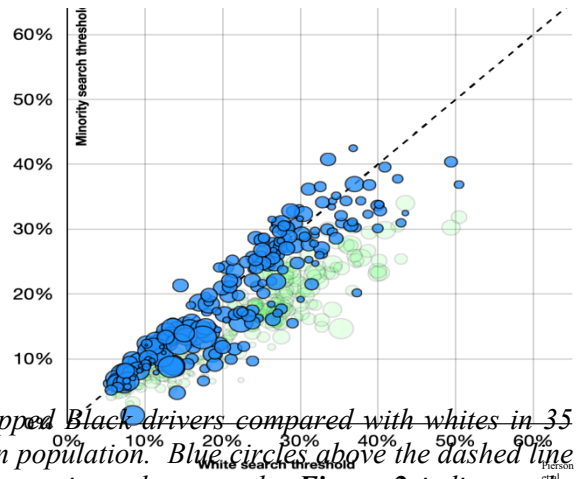


Figure 2: Threshold of Evidence for Search



lice stopped Black drivers compared with whites in 35 ences in population. Blue circles above the dashed line indicate cities where Black residents are disproportionately stopped. ***Figure 2*** *indicates the threshold of evidence that triggers a search, calculated using search rates and hit rates for contraband. Blue circles below the middle line indicate cities where Black drivers are stopped with a lower level of suspicion than whites according to this test, indicating some form of police bias. In both figures, green circles represent Latino driver stop and search rates. See Pierson et*

(Davis et al., 2018, Pierson et al., 2020). The researchers further determined that Black drivers are less likely to be stopped after sunset, when

the "veil of darkness" makes it more difficult for officers to determine the race of vehicle occupants, than during daylight hours.[1] The effect of driver visibility to the officer on the rate at which Black drivers are stopped indicates racial profiling.

Traffic stops play a major role in lower African American trust in the police and have catalyzed police shootings of unarmed Black men such as Walter Scott, who was stopped for a broken taillight (Blanks, 2016). The ubiquity of officer initiated stops in American life underlies the necessity of effective reforms to correct for racial disparity. This section of the chapter will first explain the components and functions of an officer-initiated stop, before describing the history and legality of the practice as it exists today. The section will conclude with a discussion of potential reforms that would make officer initiated stops both more effective and just. Throughout, the analysis will emphasize racial justice and the legitimacy of the police as essential elements of community wellness.

Overview of Officer Initiated Stops: Purpose, discretion, and racial injustice

Officer initiated stops vary in justification and can serve to find missing persons, turn-up contraband, and improve traffic safety (Gau, 2012). At the core of officer-initiated stops is a high degree of individual officer discretion: officers cannot possibly stop all drivers who violate a traffic safety law, nor can they stop all individuals on a street who violate minor public ordinances. Officers therefore have broad discretion in deciding to initiate a stop.

[1] See Pierson et al. (2020) for more details on this method of statistical analysis of bias. See also Ritter (2017), who identified similar patterns of racial bias in an analysis of Minneapolis Police Department stops.

There are two main categories of routine vehicular traffic stops. The first is a traffic enforcement stop, where the officer pulls over a driver for clearly violating a specific traffic law, with the intent to issue a warning or citation for that violation. Investigatory stops, on the other hand, might use traffic violations as pretext for the stop, but fundamentally involve an officer believing a particular person to be suspicious and hoping to find evidence of criminality, like drugs (Epp, 2014). While traffic stops are often scripted, investigatory stops are "circumspect and probing" (Epp, 2014, p. 78). Due to the sheer number of road regulations, it is likely that an officer who drives behind someone for long enough will witness a "technical or trivial offense" that enables an investigatory stop (LaFave, 2004, p. 1845).

Ticket writing both generates revenues for municipalities and acts as a deterrent to traffic law violation. In 2017, for instance, officers in New York State issued 3,725,376 traffic tickets ("Traffic," 2014). Many law enforcement officers consider traffic stops to be dangerous: officers must approach a vehicle without much information as to the number of occupants or presence of weapons (Smith, 2016). Though a 2001 statistical analysis found that traffic stops are no more hazardous than many other police interactions when considering the sheer number of stops that occur each year, officers still generally perceive a sense of danger in many routine traffic stop scenarios, potentially heightening tensions (Lichtenberg & Smith, 2001).

Once a traffic stop is initiated, an officer has discretion over violation charged, as well as whether to ask to search a vehicle—such a request does not require probable cause.[2] These searches, known as consent searches, require an individual to affirmatively consent. The high level of officer discretion in traffic stops magnifies the potential for racial disparities and leads to unequal outcomes. African Americans are more likely to be stopped, particularly as part of "investigatory stops," as well as

[2] The Supreme Court has established the standard of probable cause for a search as requiring "a fair probability that a search will result in evidence of a crime being discovered" ("Probable Cause," n.d.). During a traffic stop, the Plain View Doctrine holds an officer may seize immediately visible contraband or evidence in a vehicle without a warrant, so long as the officer has "probable cause to believe that the item is connected to criminal activity" ("Plain View Doctrine," n.d.).

more likely to be searched, than whites (Blanks, 2016, p. 934). One study found that African Americans are an appalling 270 percent more likely than white Americans to be subject to investigatory police stops (Epp, 2014, p. 155). African American drivers are also more likely to be stopped or searched in majority white neighborhoods where they might appear "out of place"; an analysis of stop data in New Jersey found that African Americans were four times more likely than whites to be frisked in some majority-white suburbs (Carroll & Gonzalez, 2014, p. 570)

Yet an individual officer need not be blatantly racist for bias to appear in his decisions. Racial disparities in traffic stops likely result from implicit biases and social conditioning that associates Blackness with criminality (Tillyer & Engel, 2013). Given the number of quick, low information decisions that officers must make over the course of traffic stops, heuristics and stereotypes are likely to come into play (Baumgartner, 2018). Still, the result for Black Americans is the same: a sense of "surveillance and legalized racial subordination" (Epp, 2014, p. 151). For more serious outcomes of stops, like arrests, officers have less discretion, and therefore driver race and gender do not seem to impact decision making (Tillyer & Engel, 2013).

Constitutional requirements for officer-initiated stops

Officer initiated stops and searches, such as traffic stops, are limited at a national level by U.S. Supreme Court jurisprudence, as well as at a state and local level by laws and state constitutions. While the Fourth Amendment provides that individuals be free from "unreasonable searches and seizures," the Supreme Court has upheld the ability of officers to stop vehicles in a wide array of situations. In *Whren v. United States* (1996), the Court unanimously held that stops were legitimate as long as the officer observed "any objective violations of the law, no matter how minor," and even if the officer was using that violation as pretext for investigation of a broader

suspicion (Epp, 2014, p. 35).[3] Stops could only be deemed constitutionally prohibited on racial discrimination grounds if the defendant proved the officer specifically used race as a rationale, a nearly impossible standard to meet. Later Court rulings, like *United States v. Arvizu* (2002), have reinforced these broad investigatory powers, while *Schneckloth v. Bustamonte* (1973) allows officers to search vehicle without probable cause as long as the driver consents (Gau, 2012). Some legal experts believe that the Court's traffic stop rulings have created an environment in which officers have "virtual *carte blanche*" for stopping any vehicle: "whether you stand still or move, drive above, below, or at the speed limit, you will be described by the police as acting suspiciously should they wish to stop or arrest you" (Congressional Research Service, 2020, p. 2). These Supreme Court rulings, however, only set a maximum allowable degree of officer discretion: state and local law can limit situations in which an individual can be searched or stopped.

Officer initiated stops in New York State

Prior to the Supreme Court's *Whren* ruling, New York State courts had held that pretextual stops violated residents' constitutional rights (Abramovsky & Edelstein, 2000). Though the *Whren* ruling initially raised doubts about this precedent, New York State courts have since restrained officer searches to a greater degree than other states, like New Jersey, by prohibit clearly pretextual searches under the New York State constitution. Still, despite court rulings like this, New York State has seen widespread dragnet-style searches, such as New York City's "Stop and Frisk" program. Though this program has been dramatically scaled back in the face of legal challenges, large numbers of consent searches of New York City residents continue ("Right," 2018).

A recent Zogby survey of attitudes of Herkimer and Oneida County residents found that, while 81.4 percent of individuals who were stopped by police believed

[3] The majority opinion in *Whren* noted that the Supreme Court has "never held, outside the context of inventory search or administrative inspection…that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment…Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis" (*Whren v. United States*, 1996, pp. 812-813).

police treated them "appropriately," about one fifth of individuals felt they were treated unfairly. Of these individuals, most cited feeling as though they were stopped illegitimately (48.5 percent) or that they were verbally abused by officers (74.4 percent) as the reason for their feelings. The backlash against perceived illegitimate stops connects particularly to the practice of investigative stops, and to stops based on minor traffic infractions, in which the reason of the stop is more likely to appear pretextual to the driver. (Data in a companion report on the survey discusses whether minority residents were more likely to feel stops were inappropriate.)

Local support for an alternative to police traffic enforcement, automatic traffic enforcement using cameras, was mixed, suggesting that such a policy might elicit political backlash. In particular 26.8 percent of respondents indicated that they "strongly disagree" with such an effort, compared with 13.9 percent who indicated they "strongly agree" with the measure.

Best practices and targets for reform: racial and procedural justice

Reforms to officer initiated stops in Oneida and Herkimer Counties can address racial disparities by using the framework of procedural justice. The principles of procedural justice hold that civilians will evaluate systems based not on the outcome they receive, but on whether the process itself seems fair (Epp, 2014). Officer initiated stops and consent searches particularly implicate procedural justice because of the degree of officer discretion involved. Studies suggest, for instance, that individuals pulled over for speeding do not feel more distrustful of the police because they understand the reason for the stop to be legitimate (Blanks, 2016). On the other hand, a stop that is perceived to a pretext for a broader investigation or to be the result of racial profiling, would be judged illegitimate, even if officers are respectful and polite (Blanks, 2016, p. 939). After all, "a procedure that consistently produces unfair outcomes will eventually be viewed as unfair itself" (Epp, 2014, p. 6). Making stops more procedurally just thus benefits law enforcement by improving trust between law enforcement and the communities that those officers serve. This in turn benefits society at large by reducing crime as civilians feel more comfortable

cooperating with officers to bring serious criminals to justice. Finally, more procedurally just policing of course benefits the individuals who interact with the police by making encounters feel fair and nondiscriminatory.

Eliminating or reducing investigative stops, where an officer is motivated to stop an individual less by a particular traffic violation than by a suspicion that something is wrong, would increase perceptions of procedural justice while also decreasing racial discrimination. These stops are also inefficient: officers must stop many innocent people in order to find someone who are acting criminally. There is little evidence that scattershot tactics like investigatory stops are effective in fighting crime (Epp, 2014; Baumgartner, 2018).[4]

Some police departments have reduced investigative stops by refocusing traffic enforcement on serious violations, such as high-speed and recklessness, rather than minor violations like equipment defects (Epp, 2014). Hamden, Connecticut, for instance, cut defective equipment stops after a state analysis revealed them to be related to racial bias (Cohen, 2016). The measure reduced the number of Black drivers being pulled over by nearly 25 percent, resolving the statistical disparity. Such a change could be communicated through internal guidelines and norms or, more transparently, through formal policy change. By refocusing routine traffic stops on their original purpose—traffic safety—departments can use their resources more efficiently, keep officers safe by minimizing potentially dangerous traffic stop encounters, and reduce racial disparities in policing.

Procedural justice also entails reform to consent searches that would prohibit searches in the absence of probable cause in routine traffic stops. While consent searches can sometimes find evidence of illegal activity, they are a biased and inefficient way to do so: only a small percentage of searches turn up evidence of illegal activity. Young Black or Latino men are also more likely to be asked to be

[4] One careful analysis of the effect of widespread investigatory stops in New York City (Stop and Frisk) on crime rates by criminologist Franklin Zimring found that such stops "do little to reduce crime" (Zimring, in Epp, 2014, p. 154). Instead, Zimring linked reductions in New York City violent crime to more carefully targeted police enforcement efforts that actively pursued perpetrators.

searched, potentially reflecting unconscious biases of officers (Gau, 2012). Finally, consent searches hurt an individual's assessment of procedural justice because they do not always feel truly voluntary: many individuals are not aware of their right to refuse a search, and the power imbalance between an officer and a driver makes it more likely that the driver will permit the search (Epp, 2014). Alternatively, reforms might require written consent to a search on a form that explains the right to refuse (Baumgartner, 2018). In one North Carolinian town, for instance, requiring written permission reduced the number of consent searches by more than 75 percent (Baumgartner 196). Meanwhile, in October 2020, the Syracuse Common Council passed a similar "Right to Know" act on a 7-1 vote, requiring officers to "provide individuals with business cards, obtain knowing consent before conducting certain searches, and provide data publicly on stops and searches in [the] city" (Carter, 2020). These laws increase public perceptions of procedural justice in police encounters by ensuring individuals are both informed of their rights and able to address grievances. The State of Connecticut recently went one step further, prohibiting consent searches on routine traffic stops altogether as part of a police reform bill passed during the summer of 2020 (Yankowski, 2020).

Finally, municipalities and departments should consider consistent data collection and analysis of police stop interactions, including of the race of individuals involved, as recommended by the Governors Highway Safety Association (Adkins, 2020). Data should be easily accessible to the public, and analysis should be regularly conducted by independent parties. Connecticut, for instance, has since 2012 required all police departments to collect data on stops and submit them to an oversight board on a monthly basis (Barone et al., 2020). Data are then analyzed annually by independent criminal justice researchers at and published online. Analysis has revealed 31 departments or state police troops that displayed statistically significant racial or ethnic disparities in stop data, allowing for targeted reforms. A number of other states, including California, Rhode Island, and Oregon, have since replicated this model of racial profiling analytics.

Conclusion

Ultimately, reforms to officer-initiated stops have the potential to improve police legitimacy, particularly with Black and other minority communities that are disproportionately targeted by such stops. While larger scale reforms such as ending the War on Drugs—which would reduce officer incentive to search vehicles in the first place—can only be accomplished at a national level, local governments and police departments retain significant authority to shape how their community perceives the police.

Summary of suggested best practices:

- Reduce or eliminate potentially discriminatory investigatory stops by refocusing traffic stops on serious traffic violations rather than minor equipment or administrative issues. Develop policy to communicate to officers that pretextual stops should be avoided.
- Reform consent searches in absence of probable cause by implementing "Right to Know" rules that inform civilians of their right to refuse a search. Consider banning all consent searches in absence of probable cause on routine traffic stops.
- Collect and publish comprehensive data on officer initiated stops (including race of the stopped individual) in an easily accessible online format. Conduct regular analyses of data to ensure no racial bias.

The Organization of Police Patrol

Introduction

Traditional police patrol is typically organized around "the beat," the geographic area to which a patrol unit is assigned. The traditional patrol model has units randomly driving around these assigned patrol zones, given significant autonomy

over where to go and what to do, when not answering calls. There are thought to be three beneficial effects of police patrol. First, that it deters crime; people who may commit a crime will be discouraged by the presence of police, or by the potential arrival of police. Second, that it increases the speed of police in responding to incident reports and other calls; patrol units are often closer to an incident than police stationed at the precinct and can be quickly dispatched to respond. Third, that patrol increases police visibility and should provide a sense of security and safety to citizens.

There is reason to question these supposed effects, however. In the 1970s, research was conducted that challenged traditional assumptions of police patrol. The 1974 Kansas City Preventive Patrol Experiment was the seminal study of patrol efficacy. Researchers and statisticians worked alongside police administrators to develop a months-long experiment whereby 15 patrol zones of Kansas City were divided into three groups: five "reactive" zones, where police patrols were eliminated; five "proactive" zones, where the number of on-duty police patrols was doubled or tripled; and five "control" zones where the normal number of patrols were on-duty. The patrols were traditional preventive patrols, required to remain in their zone but otherwise given full autonomy. The study tested whether there was a difference among the zone groups by several criteria, including crime level, response-time to calls for service, perception of safety by citizens, and perception of police by citizens. The results of the study showed *no significant difference* on any measure between the reactive, proactive, or control groups. (Kelling, 1974: 2-3) And yet, the study had little impact on patrol policies.

Policy Evaluations and Recommendations

No single policy for patrol organization will have a significant beneficial effect without the concurrent implementation of at least some of the others. If policies are not coordinated, or are executed without consideration of other factors, they may be counterproductive in the long-term.

The first best practice is hotspot policing. Long before any formal research had been conducted on hotspot crime, police understood that there are specific locations that are trouble-prone. The traditional response to such areas, however, was to heighten the levels of patrol area-wide and increase reactive arrests. This was in spite of studies which showed, as early as 1974, that increasing the number of cops on the street made little difference to crime levels.

Hotspot policing, on the other hand, has been shown to have a significant impact on crime reduction. In a typical city, around 50% of total crime occurs in 5% of places (i.e. addresses or street segments). (Sherman, Gartin, & Buerger, 1989; Weisburd, Bushway, Lum, & Yang, 2004) A 2012, meta-analysis of research on hotspot policing reviewed 19 studies of hotspot policing in cities across the country from 1989 to 2012 found that, of the 25 tests contained in these studies, 80% reported noteworthy crime control gains associated with hotspot policing. (Braga, et al., 2012: 30) Today, seven out of every ten police departments nationwide use hotspot policing, including the NYPD, which developed its own predictive algorithm for identifying hotspots.

There has been some pushback against hotspot policing. The first concern is that there is a dispersion effect as a result of hotspot policing, which means that if crime is prevented from occurring at the hotspot, it will simply move around the corner. Yet, research has shown that the opposite is true — there is in fact a *diffusion effect* whereby preventive hotspot policing not only decreases crime at the hotspot but also in the surrounding blocks.
(Weisburd et al. 2006)

The second concern is that predictive policing will amplify racial bias. Algorithms predict what is or is not a crime hotspot based on crime-data that goes back to the 1990s. The data employed reflect decades of racial profiling and racially biased over-policing of African-Americans; thus, the algorithms is likely to extend, chronic racial discrimination by designating hotspots in African-American or low-income neighborhoods. One of the most important variables in determining police

deployment should be aggregate calls for service, which, although they too can be affected by racial bias, are one of the best signals to the police that there is a community need.

The third concern about hotspot policing is that while there is some evidence that police legitimacy increases for residents of areas subjected to hotspot policing due to improved conditions (Shaw 1995; Braga and Bond 2009; Braga 1997), there is also evidence that aggressive hotspot policing can sometimes devolve into zero-tolerance tactics. These tactics have been shown to cause deep divides between the police and the community they serve. (Rosenbaum, 2006) Not only is this kind of aggressive policing related to racial profiling, but it is unrelated to crime control. (Kochel,2011)

The point of hotspot policing is having a police presence at known centers of criminal activity — rather than being a pretext for crackdowns and arrests. Research on the kind of activities police should be engaging in to decrease the crime at hotspots indicates that arrests have a smaller impact on crime control than situational prevention strategies, which aim to disrupt surface-level conditions, such as abandoned buildings or poorly lit streets, which may encourage crime. (Clark, 1995) Ultimately, the unique circumstances of an area will require unique measures. But even simply increasing the time police spend on a given corner has been shown to have a significant short-term effect on crime. (Koper, 1995)

Problem-oriented policing aims to address the underlying causes of crime as opposed to reactively responding to flare ups. It stands in stark contrast to the brand of broken windows theory used to justify oppressive policing in many jurisdictions. Broken windows theory holds that small signs of public disorder, such as graffiti or broken windows, will encourage crime and greater disorder. (Kelling and Wilson, 1982) Problem-oriented policing, on the other hand, holds that crime is typically the result of deeper problems in an area. Problem-oriented policing involves a four-step method called the SARA model, created in the late 1980s but shown as recently as

2010 to have a modest but significant reductive effect on crime. (Weisburd et al., 2010)

SARA is an acronym for the four steps of the method: (S)canning to identify problems, (A)nalyzing these problems using extensive data, (R)esponding with tailored interventions, and (A)ssessing the success of the response. Crucial to problem-oriented policing is understanding that there is no one-size-fits-all solution to crime or to the problems that underpin it. While more research could help to uncover patterns of problems, it's impossible to ascribe a single catch-all crime prevention technique.

Community policing, another best practice, is highly relevant here. Community policing as a practice has become misunderstood as the term has become overused. What is essential is for police to prioritize involving the community and consulting with local citizens as much as possible in identifying problems and determining solutions. Indeed, the community should be involved in every step of the SARA process — this not only increases transparency, but also effectiveness, as nobody knows the problems that face neighborhoods better than its residents. It is clear then that community policing would be highly helpful in problem-oriented policing. Having police officers who reside in the areas that they patrol can also beneficially influence the effectiveness of patrol as well as the trust between the community and the police. This is reflected in the Zogby survey results, in which an overwhelming 77.7% of respondents agreed (48.8% strongly and 29% somewhat) that police should live in the area they serve. Overall, this will contribute to long-term increase of police legitimacy by increasing trust not only of the police by citizens, but also of citizens by the police. Police legitimacy and trust has been shown to be one of the most effective ways to reduce crime in the long-term. (Sherman and Eck, 2002)

The final best practice is the use of advanced models to redesign patrol districts. One such model was designed in 2013 by a team of UVA researchers and applied in Charlottesville, VA. This creative method of patrol reform redesigned

patrol districts based on two objectives: maximizing speed in responding to calls for service and fairly distributing workload between officers. Other variables, such as equal distribution of hotspots within patrol districts, could be included in the algorithm to adjust the parameters of a successful model simulation.

There are many ways for the police forces of Oneida and Herkimer Counties to adapt to the growing body of research on police patrol best practices. In police patrol there is much room to improve the cost efficiency of policing by focusing limited resources. There is clear evidence that methods such as hotspot and problem-oriented policing increase effectiveness of policing. Finally, reform can improve fairness and effectiveness by instituting problem-oriented and community policing, which replace aggressive, zero-tolerance, and arrest-oriented policing. Crucially, these policies cannot be seen as discrete and unrelated.

Best practices, in short:

- Hotspot Policing
- Problem-Oriented Policing
- Community Policing
- Patrol Zone Redistricting

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CHAPTER 3.

OVERSIGHT OF LAW ENFORCEMENT AGENCIES

by

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Models of Civilian Oversight of the Police

Introduction:

Officer misconduct breaches police-community trust and impedes the contribution of law enforcement community welfare. How can civilian oversight improve public trust in the police for people of color? What are the best ways to incorporate civilians into the process of holding the police accountable for misconduct? To address these questions, this section will lay out the current structure of national and New York State policy, discuss and analyze local survey results, and list the best practices for civilian oversight.

National Policy

The idea of civilian oversight of the police developed in the 1920s as incidents of excessive force created a demand for monitoring the police. Civilian oversight agencies were first established in major cities where these incidents occurred. Following these early efforts, oversight of the police has typically operated at the municipal level and is in a few cases county-wide (De Angelis et al., 2016). Most civilian review boards are established by municipal ordinance, but some are created by "state statute, voter referendum, mayoral executive order, police chief administrative order, and memorandum of understanding" (Finn, 2001, p. 98). An important part of legislative enactment is that the oversight agency gains the power to develop its own rules and regulations. At the highest level of institutionalization, charter amendments ensure that an oversight body is permanent (Finn, 2001).

The largest cities across the country have the most robust civilian oversight agencies, while smaller jurisdictions generally do not include civilians in the oversight process, if there is one. A survey of the 78 members of the Major Cities Chiefs Association found that of civilian oversight models, 40% are civilian review boards, 30% are hybrid models, 20% are solely investigative and 10% use an auditor/monitor model (Stephens et al., 2018).

New York State Policy

The National Association for Civilian Oversight of Law Enforcement (NACOLE) identifies ten New York State jurisdictions that have civilian oversight of their police departments: Albany, Buffalo, Ithaca, Newburgh, New York City, Rochester, Schenectady,

Syracuse, the Town of Clarkstown and the Village of Ossining. New York State oversight agencies commonly follow civilian review board models (National Association for Civilian Oversight of Law Enforcement [NACOLE], 2016).

Recent legislation important to understanding civilian oversight in New York State is the repeal of 50-A and the creation of the Law Enforcement Investigative Office. The repeal of 50-A, formerly an exception to New York's Freedom of Information Laws (FOIL). Repeal of 50-a enables public involvement in police oversight. It permits public disclosure of police disciplinary records and information, like body camera footage and records of previous misconduct (Innocence Project, 2020). Oversight agencies can now publicize the outcome of misconduct trials, increase public transparency, and improve accountability (NY CCRB, 2020). Notably, Utica was the first municipality in the State to put police personnel records on-line.

In issuing a mandate to "review, study, audit, and make recommendations to police agencies in the State," in June of 2020, Governor Cuomo authorized the creation of the Law Enforcement Misconduct Investigative Office, a branch of the Department of Law. LEMIO will tackle statewide misconduct complaints concerning local law enforcement agencies. The new agency will conduct independent reviews of police misconduct by officers with five or more separate, qualified complaints against them ("Governor Cuomo Signs Legislation," 2020, para. 6). Because the creation of this branch is so new, determining how it will influence civilian oversight is difficult, but it will likely be most effective in the most obvious cases.

Relevant survey questions and analysis

According to the September, 2020, survey of Oneida and Herkimer Counties conducted by Zogby Strategies, 18.6 percent of all respondents felt that they were treated inappropriately by a police officer. Specifically, 26.1 percent of Herkimer County respondents felt they were treated inappropriately, as well as 12.6 percent and 22.1 percent of respondents in Utica and Rome and the rest of Oneida County, respectively. The number of residents who feel they were treated inappropriately implies a need for increased accountability in combating, what is in some cases perceived as racial bias and in others as discourteous or abusive treatment. Those who felt they had been treated inappropriately by the police were, on average, less likely to trust the police than those who did not experience this conduct

Specifically, 92.7 percent of residents who did not experience inappropriate treatment have high trust in the police. Yet only 44.9 percent of respondents who deemed that they were treated inappropriately have trusted the police.

When asked if a person's race or ethnicity determines treatment by the police, 58.2 percent of Utica and Rome respondents agreed, 46.9 percent of the rest of Oneida County respondents agreed, and 50.5 percent of Herkimer County respondents agreed. Poll data reveal that believing police treatment is contingent on race or ethnicity splits along racial lines. While just 53.4 percent of white individuals surveyed agree that a person's race or ethnicity will determine how they are treated by the police, 60.7 of non-whites agreed. While still a significant majority, there is a racial disparity among Utica-Rome respondents when asked if the police serving the local area can be trusted. 86.1 percent of white respondents agreed, with fewer, 76.2 percent, of non-white respondents agreeing. Similarly, people of color in the rest of Oneida County and in Herkimer County have a decreased sense of trust in the police compared to white people.

One reason for trust disparities is majority agreement that ethnic or racial background determines how someone will be treated by police. Eighty-percent of respondents who think race or ethnicity does not determine police treatment have a strong trust in the police. In contrast, only 35.2 percent of respondents who think race or ethnicity determines police treatment have a strong trust in the police.

Oversight increases transparency in the way police misconduct is handled and can lead to greater trust in the police, while simultaneously acting as a deterrent to officer misconduct. At a more general level, it is increasingly recognized that police oversight is important to promoting the public health of the entire community. According to the American Public Health Association (APHA) (2018), experiencing police misconduct "negatively affect[s] the ability of people and communities of color to achieve basic rights of housing, education, economic opportunities and access to services, as well as increased risk of death and chronic disease" (para. 3). Additionally, if people do not feel comfortable contacting the police because of a lack of trust, lives are lost in emergencies (Haskins, 2018). Involving local citizens in the oversight process helps create a democratic mechanism that holds the police accountable and decreasing divisions between the police and citizens. Civilian oversight promotes a holistic focus on community wellness.

Best practices

Civilian oversight of policing brakes down into three models:

- In the investigative model, an independent agency duplicates or replaces the internal review of misconduct complaints.
- The civilian review board model comments on completed internal affairs (IA) investigations performed by the police agency.
- The auditor/monitor model analyzes systematic trends in complaint investigation and makes recommendations for long-term improvement. Auditor/monitor agencies may also complete independent investigations (Terrill & Ingram, 2016).

It should be noted that each model draws aspects from the others (Stephens et al., 2018). A review of best practices should balance feasibility, independence, and cost with effectiveness.

Investigative oversight agencies, though their form varies across the nation, have a proven track record of success, when they are provided appropriate resources (Miller, 2002). One example of a highly regarded investigative civilian oversight agency is the New York City Civilian Complaint Review Board, which sustains 80% of complaints (NACOLE, 2016). Additionally, "a study of 17 law enforcement agencies found that citizen review boards sustain police brutality complaints at a higher percentage than do the police themselves" (United States Commission on Civil Rights, 2020, para. 6). Further, a Bureau of Justice Statistics study on use of force complaints indicated that civilian oversight agencies increase misconduct reporting by helping civilians become more confident and reassured by the complaint resolution process. The study found that "communities with civilian oversight receive 11.9 complaints per 100 officers and those without civilian oversight receive 6.6 per 100 officers" (Stephens et al., 2018, p. 25).

Civilian review boards, by their very nature, do not include law enforcement officers (De Angelis et al., 2016). Successful agencies have the power to effect reforms beyond reviewing police internal investigations. (NACOLE, 2016). Transparency of police

organizations and their policies is critically important to oversight. Best practices of civilian oversight bodies include imperatives to:

- publish policies and procedures, rules of conduct, and all board decisions on-line,
- announce changes to the media, and
- conduct regular surveys of public confidence in the agency.

A model of transparency is the civilian oversight agency in Seattle, which seeks to provide civilians complete access to the process (Stephens et al., 2018). Civilian oversight does not succeed when citizens view it as just another part of municipal bureaucracy.

Who should staff civilian oversight bodies is also an important consideration. Conducting an independent investigation requires a team that has training and experience in program review, though not necessarily of law enforcement operations. Standard requirements for both review board members and investigators are appointment by the city council, voter registration, and residence in the jurisdiction. (De Angelis et al., 2016). Some jurisdictions require that civilian board members attend citizen police academies. The bottom line is that citizen board members and investigators must have relevant training and qualifications to ensure the legitimacy and effectiveness of any police oversight initiative.

Some agencies, like the CCRB in New York City, have the sole ability to investigate and determine if misconduct occurred (NY CCRB, 2020). However, the authority to determine the outcome of an investigation is rare among civilian oversight bodies. Instead, most oversight agencies that conduct investigations into misconduct review evidence make recommendations to the police chief (NACOLE, 2016). This does not mean that investigative agencies are ineffectual. For example, in Denver, “10% of community complaints and 57% of internal complaints were closed with one or more sustained findings” (Mitchell, 2019, p. 6). The punishment for sustained complaints between 2016 and 2019 has included suspension, termination, demotion, or the option of resignation before punishment. Other punishments are oral and written reprimands, as well as fines. Oversight models are most effective when an agency has the power to conduct thorough investigations, including the power to subpoena witnesses. It is also vital that oversight agencies have a good relationship with the municipal officer who will determine outcomes and sanctions. Additionally, all investigations must have a clear deadline (Finn, 2001). Since, most, existing oversight agencies do not have the

authority to determine sanctions for misconduct, auditor may better incorporate meaningful civilian oversight.

Unique to the **auditor/monitor model** is that it typically requires a single employee to carry out its functions. NACOLE (2016) recommends that auditor/monitors have at least a bachelor's degree in a related field, with preference for a graduate degree. The auditor model takes a long-term perspective that the civilian review-investigative models do not offer and provides a more holistic approach to police oversight. An auditor investigates complaint processes routinely, and reviews the thoroughness, impartiality, and what become transparent internal police policies and investigation process, issuing periodic reports based on observation and data collection (Witkin, 2016). This model operates on the principle that the complaint-resolution process and citizens' interactions with the police are to be monitored all the time, not just when something goes wrong. This allows the identification of patterns of behavior and administrative routines that may be modified to counteract racial bias and prevent future misconduct. Auditors can oversee and collect data on every step of the complaint process, and may also look into police training and the arbitration of misconduct charges (De Angelis et al., 2016). An auditor might assess whether residents know how and where to complain and study the demographics of residents who do. (NACOLE, 2016; Mitchell 2019). For example, in Portland, an auditor discovered that residents had trouble reporting complaints because they did not know how to identify the officer in question, resulting in changes to badging (Finn, 2001).

Because the auditor collects data consistently, and not just when complaints arise, he or she can alert the police chief, public, and policymakers to larger trends (NACOLE, 2016). Auditors can also analyze how the police implement reforms over time. While an auditor may or may not be given authority to evaluate specific instances of misconduct (auditor models sometime leave this to review boards that have separate investigators), auditors have other ways of exercising their power. In Tucson, the auditor can appeal to the city manager if the police chief does not agree to adapt policy recommendations, and the manager, city council, and mayor can compel change (Finn, 2001).

Another consideration in selecting an oversight model is its relationship with the police. A frequent criticism of the investigative and review board models is that they work against the police, sometimes increasing tension between the police and the community. Surveys show

that police officers favor the auditor model of civilian oversight, for an auditor reviews the investigation procedure, not just the conduct of officers (Stephens et al., 2018; Finn, 2001). This allows the auditor to often have a better understanding of a give police agency and to develop a working relationship with officers and supervisors. (De Angelis et al., 2016).

In Portland, a civilian board supplements an independent investigative auditor. Citizens work with police to promote community wellness. A police official attends board meetings and answers questions posed by the citizens and reports on internal investigations. Led by the auditor, the board drafts quarterly public reports, and focuses on civilian concerns, bringing them to the attention of the auditor and linking the broader community to the oversight process. The board conducts surveys of the public, including, as is the case in Tucson, surveys that evaluate the performance of the auditor. Boards that include elected officials, as well as youth outreach coordinators, as in Denver, help build a strong oversight coalition and can function as town-hall meetings, educating the public about police work and procedure (Finn, 2001; Mitchell, 2019).

Further information on the auditor and other models:

https://www.portlandoregon.gov/ipr/

https://www.tucsonaz.gov/manager/independent-police-auditor-civilian-investigator

https://www.denverauditor.org/project/audit-of-police-operations/

https://www.usccr.gov/pubs/sac/wv0104/ch4.htm

A demographically representative committee of citizens also facilitates mediation between police officers and residents. (Hatch, 2006) Using a process of complaint mediation (often based on a restorative justice process) can help an auditor and board identify trends in the handling of complaints and facilitate dialog between police officers and residents. Including this aspect of procedural justice can help improve residents' trust in the police (NACOLE, 2016). According to the 2019 Annual Report from the Denver independent monitor, "approximately 80% of the community members and 97% of the officers/deputies who participated in a mediation and completed a mediation survey in 2019 reported feeling satisfied with the mediation process" (Mitchell, 2019, p. 3).

Cost is a final, important consideration. Investigative agencies are more expensive per complaint than review boards and auditors because of high staffing costs, though the cost may

be offset by decommissioning police internal investigations (De Angelis et al., 2016). An auditor can reduce costly litigation by correcting systemic and specific problems like identifying high-risk employees (NACOLE, 2016). Overall, only limited information about the budgets of civilian oversight is available. (Finn, 2001).

Figure 1

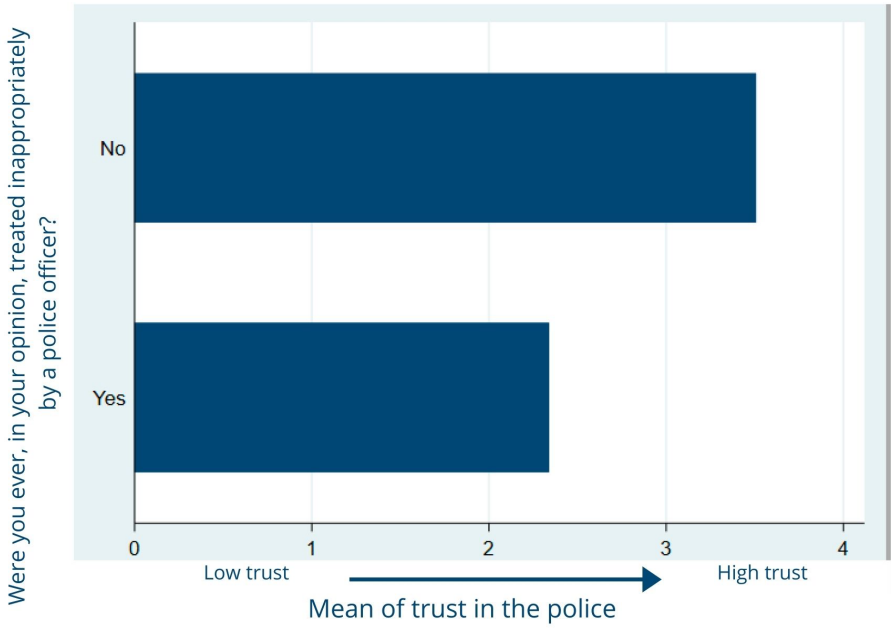
Were you ever, in your opinion, treated inappropriately (physically or verbally) by the police?	Trust in the Police		
	Low Trust	High Trust	Total
No	10.41	131.7	142.1
	.0594	.7518	.8113
	.0732	.9268	1
Yes	18.21	14.85	33.06
	.104	.0848	.1887
	.5508	.4492	1
Total	28.62	146.5	175.1
	.1634	.8366	1
	.1634	.8366	1

Key: weighted count
cell proportion
row proportion

Note: Values are weighted percentages.

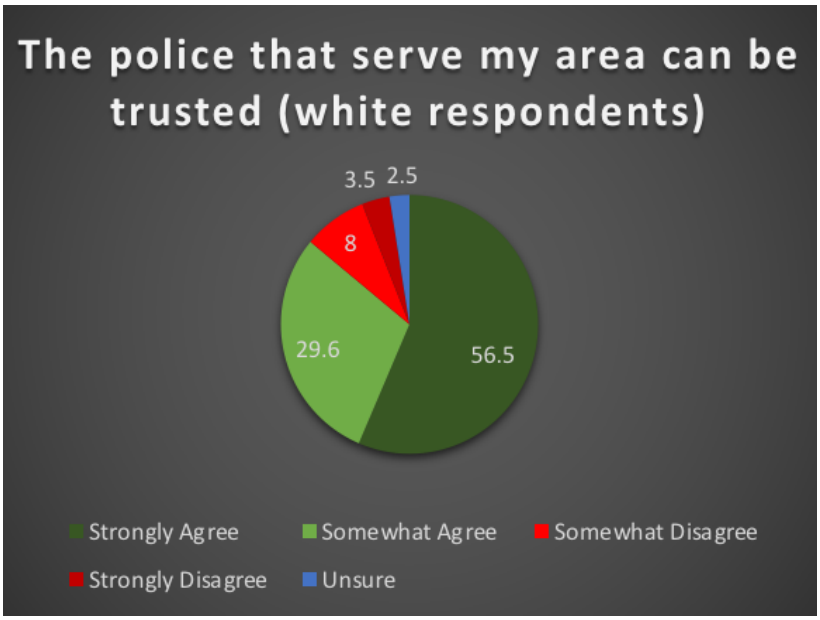
Figure 2

How Inappropriate Treatment by the Police Impacts Mean Level of Trust in the Police



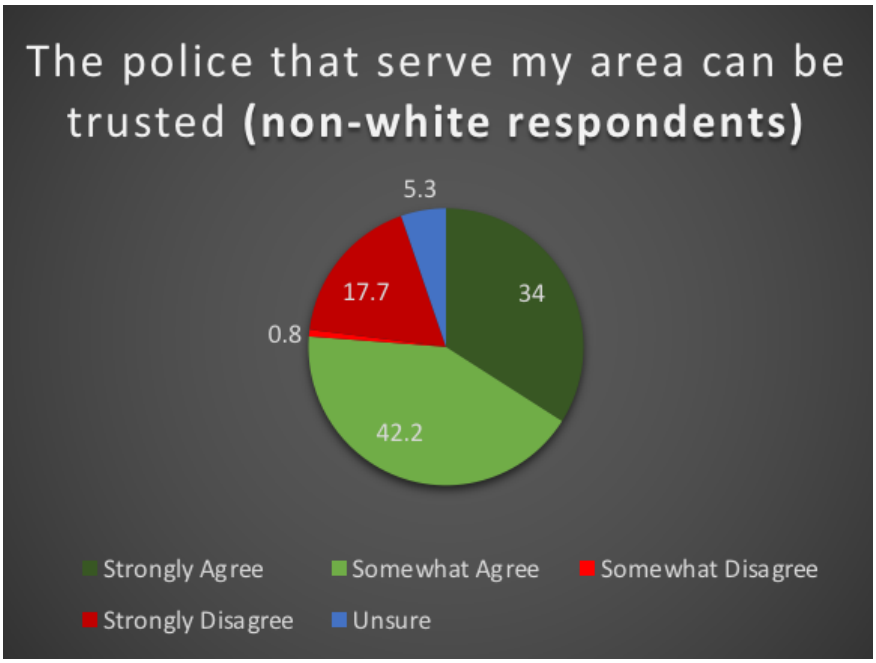
Note: Respondents were asked to rate their trust in the police. One corresponds to strongly disagreeing that the police serving the local area can be trusted, two to somewhat disagreeing, three to somewhat agreeing, and four to strongly agreeing.

Figure 3



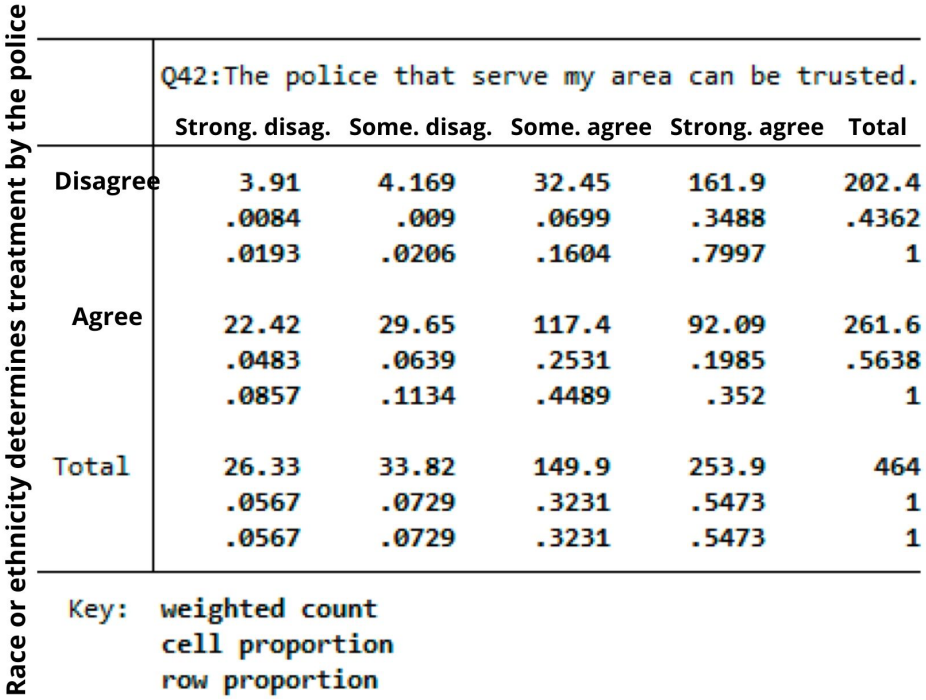
Note: All values are in percentages.

Figure 4



Note: All values are in percentages.

Figure 5



Race or ethnicity determines treatment by the police	Q42:The police that serve my area can be trusted.				
	Strong. disag.	Some. disag.	Some. agree	Strong. agree	Total
Disagree	3.91	4.169	32.45	161.9	202.4
	.0084	.009	.0699	.3488	.4362
	.0193	.0206	.1604	.7997	1
Agree	22.42	29.65	117.4	92.09	261.6
	.0483	.0639	.2531	.1985	.5638
	.0857	.1134	.4489	.352	1
Total	26.33	33.82	149.9	253.9	464
	.0567	.0729	.3231	.5473	1
	.0567	.0729	.3231	.5473	1

Key: weighted count
cell proportion
row proportion

Criminal Investigations and Prosecutions & Qualified Immunity

Introduction

A nationwide study of state and local law enforcement agencies found that only about 8% of use of force complaints against officers were sustained. Very few officers receive disciplinary action when it is often the case that the police investigate misconduct and decide disciplinary consequences for their own officers (Hickman, 2006). The goal of oversight is to establish trust and transparency, community involvement, and accountability (NACOLE, 2016). The data from the August 28th-30th, 2020 Survey of Oneida and Herkimer Counties demonstrates the need to address those goals through policies that improve oversight of the police. This section of the chapter focuses on the ways in which officers can be held accountable in the aftermath of misconduct.

As elsewhere in this report, a community wellness approach is used to address what is in some cases a toxic organizational culture of police departments. The public health

model can be used to improve officer wellness, reduce misconduct and decrease the need for legal redress. Where it exists, unreformed, traditional police culture "hold[s] strongly unfavorable views of both citizens and supervisors, show[s] disdain and resentment toward procedural guidelines, reject[s] all roles except that which involves fighting crime, and value[s] aggressive patrolling tactics and selectivity in performing … law enforcement duties" (Terrill et al., 2003). Officers and police departments that embody traditional police culture of "aggressive order maintenance" are more likely to use coercive tactics than officers and departments that emphasize a "problem-solving/community partnership approach" (Terrill et al. 2003).

Policies that address the public health problems of racism and poverty can also reduce police misconduct. A study of police misconduct in New York City from 1975 to 1996 found that instances of police misconduct increased in communities suffering from structural disadvantages including economic resource deprivation, systemic barriers to economic mobility, and lack of participation in social institutions (Kane 2002). Police misconduct also increased in communities as the Latinx population increased (Kane 2002). A community wellness approach that changes problematic police culture and builds a relationship between police and marginalized communities will reduce police misconduct.

Current Practices

New York State has a few key police oversight mechanisms: internal review and investigations, criminal prosecutions through local district attorneys' offices, and the Special Investigations and Prosecutions Unit in the New York Attorney General office. Internal police misconduct investigations lack transparency and are associated with low public trust. (Simmons, 2015) Prosecutors work closely with police officers daily and rely on them to investigate cases, testify at trials, and question suspects (Simmons, 2015). In order to do their jobs successfully, prosecutors need cooperation from law enforcement. Additionally, 80% of local prosecutors nationally are elected and receive support and endorsement from police unions (Simmons, 2015). This conflict of interest obstructs procedural justice and undermines public confidence (Robertson, 2018 and Simmons, 2015).

In 2015, Governor Cuomo issued Executive Order No. 147, which appointed the State attorney general as special prosecutor when an officer causes the death of an unarmed civilian or there is a question as to whether the civilian was armed and posed a danger. This executive order led to the creation of the Special Investigations and Prosecutions Unit (SIPU) to investigate and prosecute these cases. SIPU seeks to improve transparency and strengthen public trust in the criminal justice system when these incidents occur (SIPU, 2020). However, it is narrow in scope and considered to be underinclusive (Robertson, 2018).

A major barrier to police oversight is the judicially created doctrine of qualified immunity. Qualified immunity shields “public officials who are performing discretionary functions from civil liability” (Novak 2020). The Supreme Court created the doctrine of qualified immunity to protect public officials from trivial and harassing lawsuits, so that the fear of being sued would not interfere with job performance or deter individuals from entering public service. However, critics say the doctrine does not achieve its stated purpose in practice. Rather, the doctrine serves to shield law enforcement officers and other public employees from accountability (Novak 2020). Justice Sonia Sotomayor expressed this view in several dissents. She wrote that the modern application of qualified immunity "renders the protections of the Fourth Amendment hollow” (*Mullenix v. Luna,* 2015). There is also a concern that the evolution of the doctrine makes it nearly impossible for plaintiffs to prove their cases, which undermines the essence of the Civil Rights Act of 1871. The Civil Rights Act of 1871, Section 1983, gives citizens the right to sue state government officials for civil rights violations (Carlos, 2019). A study of appellate courts from 2005 to 2019 revealed judges’ increasing tendencies to grant qualified immunity to law enforcement officials in excessive force cases (Novak 2020).

Best Practices

Criminal Prosecution and Investigation

“Best practices” here means the use of independent investigators and independent prosecutors. This is an action item in the final report of the Task Force Report on 21st Century Policing. Independence reduces bias and perception of bias during criminal

proceedings by removing political pressures on local district attorneys. There are several possibilities to consider when opting for an independent prosecutor to oversee cases involving police officers. The first is to refer the case to a prosecutor from a nearby jurisdiction. While a different district attorney would be familiar with the criminal law of that state, he/she would not be subject to local political demands. Additionally, administrative costs would be lower than in other models (Robertson, 2018). However, district attorneys from nearby jurisdictions are still criminal justice insiders and have similar relationships with local law enforcement (Robertson, 2018). The second model is to refer cases involving law enforcement misconduct to the state attorney general's office. This would mean expanding the role of SIPU in New York to include all cases involving police-suspects. State attorneys general are not subject to local political pressure, but the New York State Attorney General is an elected official with a statewide constituency. (Robertson, 2018)

The third option is to have the Attorney General, community organizations, or a local board appoint a special prosecutor. This can be done by choosing a special prosecutor to serve for a certain period of time or the special prosecutor can be chosen from a list of qualified attorneys. This model insulates the special prosecutor and satisfies the principle of independence (Robertson, 2018). A bill introduced in the Minnesota state Senate adopts this model by giving a special prosecutor "sole prosecutorial jurisdiction" over cases involving the use of force by an officer that results in great bodily harm or death of an individual (S.F. No. 3518, 2016). This bill would establish a Board of Special Prosecution, which consists of five members appointed by the governor. The bill requires that there be at least one member of the board who has been the subject of an officer's use of force or is closely associated with someone who has. Further, there needs to be at least one person of color, one police officer, and a local attorney with criminal prosecution experience on the Board. The Board would appoint an attorney as the state's special prosecutor who would independently investigate and prosecute officer-involved incidents. The special prosecutor would serve a two-year term. The bill requires the special prosecutor to issue a public explanation if a determination is made that criminal prosecution of an officer is not justified (S.F. No. 3518, 2016).

Independent prosecution and investigation of police misconduct can also be done separately. Examples of this are the Police Ombudsman of Northern Ireland, the Norwegian Bureau for the Investigation of Police Affairs, and Ontario, Canada's Special Investigations Unit (Katz, 2014). Each of these agencies is independent of law enforcement departments and makes recommendations to an independent prosecutor (Katz, 2014). Regardless of which model a jurisdiction chooses, all prosecutors and investigators charged with handling police misconduct cases need to be equipped with sufficient resources to conduct thorough and independent investigations. Independent investigators should also be required to report their findings to the public to ensure trust and transparency.

Ending qualified immunity

The qualified immunity affirmative defense shields law enforcement officials from accountability. (Neily, 2020). Without accountability, officers may use their power without meaningful consequences. (Carlos, 2019) Since it is unlikely that the U.S. Supreme Court will overturn the qualified immunity doctrine or the federal law that establishes qualified immunity, it should be noted that the New York State Legislature has the authority enact a "'state analogue' to Section 1983" similar to the one Colorado enacted in June of 2020 (Schweikert, 2020). The analogue law allows individuals to sue police officers for violating their constitutional rights under the Colorado state constitution (Schweikert, 2020). Colorado is the first state in the U.S. to specifically prohibit the qualified immunity.

Conclusion and Recommendations

When thinking about ways to improve oversight of the police, it is important to assess possible reforms by measuring the extent to which they will achieve the goals of oversight: trust and transparency, community involvement, and accountability.

- Establish a Board of Special Prosecution through state legislation
    - The Board should be composed of community members appointed by the governor
    - The Board should appoint a special prosecutor to serve a two-year term with sole prosecutorial jurisdiction over police misconduct cases

    - The special prosecutor should be required to publish public explanations when he/she/they chooses to not prosecute an officer
- Prohibit the qualified immunity defense in New York State through legislation

Police Unions and Law Enforcement Disciplinary Policy

In the wake of nationwide protests against police brutality and racial injustice in 2020, the role of police unions in shaping law enforcement policy has drawn criticism from advocates for criminal justice reform. Through rhetoric, lobbying, political campaign support and contract bargaining, police unions can effectively obstruct most efforts to reform law enforcement policies (Schreiber et. al., 2020). This section will explain how police unions obstruct reform efforts–especially civilian oversight–as well as what policies will encourage an equitable relationship between police unions and the communities their members serve.

Like all labor unions, police unions are membership organizations that represent employees through collective bargaining over the conditions of employment. Unlike the broader labor movement in the United States, police unions have retained economic and membership strength since the institution of bargaining laws for public-sector employees in the 1960s (Levin, 2020, p. 1334-36). Police unions have among the highest unionization rates in the United States: as of 2017, police unions in the United States had an average membership rate of 75 to 80 percent, compared to the national average union membership rate of only 10 percent (York et. al. 2017, p. 179). The high unionization rate of police unions contributes to their unprecedented organizational capacity and efficiency in advocating for officers, which has often included preventing the development of comprehensive, effective oversight.

In New York State, the Public Employees Fair Employment Act–the Taylor Law–grants public employees the right to organize and be represented by employee organizations, while requiring that public employers negotiate and enter into agreements with these unions (“Public employees”, 1967). Like other public employee unions, police unions bargain collectively over basic employment conditions like salaries, overtime pay, benefits, vacation, and promotion schedules. But police unions have also been successful in

bargaining for agreements that undercut police accountability (Rushin, 2017, p. 104, 1191). By way of protecting their members, police unions often bargain to weaken accountability mechanisms and block reforms that increase transparency (Rad, 2017, p. 104; NAACP, 2020, p. 1-8).

Police union bargaining has produced procedures disqualifying misconduct complaints if they are submitted too many days after an incident occurs or if an investigation takes too long and has produced rules that prevent officers from being interrogated immediately after being involved in an incident and that limit how, when, where, and for how long officers may be interrogated. Many union contracts give the accused officer access to information and evidence prior to questioning, a privilege not granted to civilian suspects. Contracts also include purge clauses and other rules to prevent information on officer misconduct from being recorded or retained. Cities are often required to pay costs relating to police misconduct, including giving officers paid leave while under investigation, paying officers' legal fees, and paying for settlements. Finally, police unions often negotiate rules that explicitly prevent civilian oversight by blocking the subpoena power of civilian oversight organizations and limiting the power to discipline officers to only the Chief of Police (NAACP, 2020).

In a 2016 study of 81 of the 100 most populous American cities' contracts with police unions, 72 cities included at least one of the barriers to police accountability noted above (McKesson, 2016, p. 2). Sixty-four of the 81 cities limited disciplinary consequences for officers through rules like blocking consideration of an officer's past history of misconduct in future cases or limiting the capacity of civilian oversight structures to hold police accountable (McKesson, p. 4). As of 2017, only eight states require that contract negotiations between police unions and municipalities be made public, while just four states require public release of drafts of police disciplinary procedures before ratification (Rushin, 2017, p. 1245). In states with a Law Enforcement Officers' Bill of Rights (LEOBOR), strong officer protections are upheld by state law, making reform of police unions or their contracts impossible without repealing the LEOBOR statute (Fisk & Richardson, 2017, p. 737) New York State has not enacted a LEOBOR statute.

According to the Zogby survey data of residents in Oneida and Herkimer Counties in New York, substantial majorities of white and non-white residents agree with proposals for criminal justice reform around domestic disputes, mental health and treatment, reforming the Courts, and procedural justice. Though majorities of white and non-white respondents agreed that they trust the police, there were substantial divergences in the size of these majorities between white and non-white respondents. While 56.5 percent of white respondents strongly agreed that the police in their area can be trusted, only 34.0 percent of non-white respondents strongly agreed that the police in their area can be trusted. There was also a considerable divergence on white vs. non-white respondents' views on the relationship between the police and their neighborhoods: 85.6 percent of white respondents agreed that their neighborhood has an excellent relationship with the police, but only 68.6 percent of non-white residents agreed with that statement. There is clearly room to improve the relationship between the police and the substantial portions of the community that do not have a positive view, or trust, of the police.

Police unions can be agents of reform and racial justice in their communities. Around the United States, there are examples of police unions working to facilitate reforms and improve the quality and perception of policing in their communities that involves rank-and-file officers. An early example of this is Chief August Vollmer of the Berkeley Police Department, who in the early 1900s put together a "Friday Crab Club", which brought together rank-and-file officers to meet with the Chief on a weekly basis to review officer behavior, especially use of force (Fisk & Richardson, 2017, p. 759-760). These meetings also involved the invitation of experts, community members, and those accused of criminal conduct to address the group, offering a medium for discourse with the community and peer review by fellow officers. In Milwaukee in the 1960s and 1970s, the police union organized meetings with citizen groups without formalization or funding from the Milwaukee Police Department. Police unions have historically commissioned reports by legal scholars, helped the Department of Justice in investigations, and cooperated with Police Chiefs to institute DOJ-mandated reforms (Fisk & Richardson, p. 760-761).

In Oakland in the 1970s, Chief Charles Gain created Violence Prevention United with the help of a social psychologist, to address police violence (Fisk & Richardson, p. 760). The unit involved rank-and-file officers and diverged from the hierarchical

organization of the rest of the police force (Fisk & Richardson, p. 760). It was successful in generating officer enthusiasm and reducing violent confrontations between police and citizens (Fisk & Richardson, p. 761).

These examples illustrate that "while it might be difficult to convince unions to move away from their core mission to protect their membership from discipline," unions have been willing to engage with other reform efforts (Fisk & Richardson, p. 767). Cooperative initiatives that involve rank-and-file officers and the community offer the promise of inclusive reform.

With community members largely excluded from contract negotiations between municipalities and police unions, the public is left to pursue police reform through external legal mechanisms. Such legal mechanisms are reactive rather than preventative means to pursue police reform. External legal mechanisms function like "cost raising misconduct regulations", and generally fail to combat systemic misconduct (Rushin, p. 1241). Instead, they "raise the cost of officer misconduct by exacting monetary, evidentiary, or criminal penalties" (Rushin, p. 1241). Even when the Department of Justice compels police departments to change their policies under the Violent Crime Control and Law Enforcement Act of 1994, they must work around collective bargaining agreements in order to avoid police union challenges to Federal consent decrees.

Procedural justice reform modeled around community (and community-led) policing requires municipalities to enact inclusive procedural mechanisms that involve officers up and down the chain of command, along with community members, in the development of police procedures and disciplinary policy. (Fisk & Richardson, p. 772). Promoting transparency in contract negotiations with police unions can be a vital first step toward reforming municipalities' relationships with police unions. New York State has already taken a step toward transparency by repealing § 50-a, which was a section of the New York Civil Rights Law which allowed law enforcement to shield police misconduct records from the public (Governor Andrew M. Cuomo, 2020). Officer personnel records are being released by police departments throughout New York State, improving accountability. Another means to provide for public oversight of police contracts and collective bargaining by police unions is the New York State Administrative Procedure Act (SAP), which "guarantees that the actions of administrative agencies conform with sound standards… [and

ensures] that equitable practices will be provided to meet the public interest." Police departments are such agencies, and the SAP ensures that the public has a right to be a party to their rulemaking process.

While public access to police union contracts is important, municipalities can emphasize community policing by including residents in negotiations with police unions. To ensure the inclusion of relevant stakeholders, New York State can require by statute that collective bargaining sessions regarding police disciplinary procedures be open to the public, including public availability of drafts of procedures before ratification by municipal governments (Rushin, 1244). Similarly, communities could establish notice-and-comment procedures, elect civilians to a commission tasked with creation of disciplinary procedures, or put disciplinary measures through the same procedure as other municipal ordinances with public hearings and a vote by local elected officials (Rushin, p.1244). Beyond reforming current policies, police unions can advocate for a community wellness approach to racial justice by pushing for increased funding for public functions that complement the work of police, like mental health services.

It is clear that "police officers need reasonable procedural safeguards during disciplinary investigations" that do not "go so far as to shield offending officers from accountability" (Rushin, p. 1243). Legal and administrative provisions that should be reconsidered include:

- rules that disqualify misconduct complaints (e.g. time limits on submittal of complaint & investigations)
- policies that prohibit immediate interrogation of officers
- providing officers with privileged information/evidence that civilians do not get access to prior to interrogation
- time limits on discipline for misconduct
- requiring cities to pay costs related to police misconduct (e.g. giving officers paid leave while under investigation, and paying legal fees and costs of settlements)
- bans on filing of anonymous complaints
- purge clauses on disciplinary records
- disciplinary trial boards

- use of vacation leave in lieu of suspensions
- inclusion of the public in police collective bargaining process

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CHAPTER 4.

DOMESTIC DISPUTE INTERVENTION

by

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Domestic Pathology and Law Enforcement

Domestic violence is a chronic, pervasive problem. Nearly "1 in 3 women (36.3%) experienced some form of contact SV during their lifetime" and "individual state estimates of lifetime experiences of contact SV ranged from 29.5% to 47.5%" (Smith et al., 2017, p. 18). Sexual violence is not exclusive to any particular way of life, but there is strong statistical evidence that shows domestic violence disproportionately affects communities of color. In particular, "African American females experience intimate partner violence at a rate 35% higher than that of white females, and about 2.5 times the rate of women of other races" (Women of Color Network, 2006). Addressing domestic violence and accounting for the racial and cultural disparities will lead to improved police-community-relations and the overall betterment of public health.

Until the early 1990s, U.S. lawmakers did not show much concern for domestic violence issues, let alone how to mitigate them effectively. It was not until the 1970s that the concept of intimate partner violence gained any public recognition, which it did by way of the Women's Movement. (Sack, 2004) Outside the judicial system, which many feminists viewed as part of the patriarchy, non-profit organizations were formed to provide battered women with essential services. (McKinnon, 1989) By the 1980s, activists began to demand reform through state action and substantial policy change. Due to constitutional rulings such as *Thurman v. City of Torrington* (1984) - which deemed it a violation of the equal protection clause to treat victims of domestic violence differently than those victimized by strangers -public policy changed to recognize domestic violence as more than a family matter. Jurisdictions began to enact arrest policies that empowered domestic violence intervention by the police.

Moving from awareness to reform, sweeping changes in the international perception of domestic violence came in 1993, when the United Nations Conference on Human Rights enacted the Declaration of the Elimination of Violence Against Women (DEVAW). Though lacking enforcement power, this declaration marked the first international effort to condemn gender-based violence. Substantively, the DEVAW declared domestic violence to be a public health and human rights concern rooted in the notion that gender-based violence violates women's fundamental rights to "equality, security, liberty, integrity, and dignity." (U.N., 1994)

In 1994, the U.S. Congress passed the Violence Against Women Act (VAWA). This sweeping legislation provided $1.6 billion for the prosecution of crimes against women, allowed for civil redress of domestic violence offenses, created community coordinated responses, established victims' rights, ensured federal guarantees for the prosecution of interstate domestic violence offenses, and instituted protections for undocumented victims. Since 1994, VAWA has been reauthorized and expanded three times to include protections for all genders, LGBTQ victims, Native Americans, provisions for on-campus education in colleges, and eviction protections for victims. (*U.S. v. Morrison*, 2000)

Police training for domestic dispute intervention is limited. Generally, police are told to respond to a call as fast as possible, without knowing if it is a repeat caller or the level of risk to the responding officer. On average, "Police responded to nearly two-thirds of reported nonfatal domestic violence victimizations in 10 minutes or less" (Bureau of Justice Statistics, 2017). Once on the scene, normally accompanied by at least one other police officer, the responder is trained to ensure the safety of everyone involved. Once all parties have been identified, officers are to separate those involved and seize any potential weapons. Separating the two parties prevents threats or intimidation from influencing later testimony. After gathering evidence and statements, officers determine if an offense has been committed; if so, the offender is arrested, and the victim is provided with a phone number of a local domestic violence service provider.

In New York State, a Mandatory Arrest Policy requires arrest if the officer finds any sign of a law being broken (Criminal Procedure (CPL) 140.10). After Connecticut implemented its Mandatory Arrest policy, a study “found the dual arrest rate in adult intimate family violence cases to be 33%," meaning that there was an increase in the number of alleged victims being arrested as well the alleged perpetrator (Hirschel, 2007). Data vary state by state, but overall, mandatory arrest policies are shown to reduce the risk of violence and improve victim safety. Coupled with mandatory arrest policies, scenario-based training prepares officers for domestic dispute calls with realistic scenarios, some designed with maximal potential for violence.

But, whatever the law, the assessment of domestic disputes is almost entirely left to the discretion of responding police officers. This makes training especially important. A third-party police training service, Apex Officer, provides statistics on police training state

by state. These statistics indicate that thirty-three of the fifty states do not require de-escalation training to become a police officer. Under New York Executive Order 203, Governor Cuomo has called on local governments to address the needs of their communities, which calls attention to a variety of police-based interactions, "including but not limited to, use of force policies, procedural justice; any studies addressing systemic racial bias or racial justice in policing; implicit bias awareness training; de-escalation training and practices (New York State Government, 2020). During training, officers are reminded constantly that domestic violence calls are the most dangerous and volatile. This is the mental framing officers have when answering a domestic dispute call. However, even intensive training cannot account for stress and emotion that influence an officer's assessment of a scene and the decisions he or she decides to take. As is apparent from the evidence presented below, both the public and experts agree that alternatives to the conventional model of police response to domestic disputes should be considered.

Race and Police Response to Domestic Disputes

Police response time and likelihood or arrest or arrests after arriving vary significantly depending on the race of those involved in the dispute and the demographic makeup of the neighborhood in which the dispute occurs. Race appears to be one of the strongest determinants of police response to domestic calls . “Findings show that police exert more effort when victims are White. They arrive faster at the scene of the crime and exert more follow-up effort after the crime has occurred" (Howerton, 2006). Once officers have assessed the situation, "black offenders were approximately 39% more likely to be arrested than white offenders" (Lytle, 2014). Also, "the incidents with the highest arrest probabilities were those in which the offender was Black, and the victim was White, while the incidents with the lowest probabilities were those in which the offender was white and the victim was Black" (McCormack & Hirschel, 2018). Officer discretion and implicit bias factor into the racial disparities related to domestic dispute intervention.

Further, Black women are victimized by abusers disproportionately. “31.5% of all women will experience domestic violence,” but over 40% of Black women will be domestic violence victims (Blackburn Center, 2020). Additionally, “Black women are 2.5 times more likely to be murdered by men than White women” (Blackburn Center, 2020). However, “they are

less likely than White women to use social services, battered women's programs, or go to the hospital because of domestic violence" (Women of Color Network, 2006). One main reason for underreporting and not reaching out to community services is mistrust of the system. Black men are also affected by domestic violence at a rate of 40.1% in the form of "intimate partner physical violence, intimate partner sexual violence and/or intimate partner stalking" (National Coalition Against Domestic Violence, 2020). Systemic racism and distrust of service providers make it less likely that Black victims and survivors will receive timely, effective assistance and support.

Communities of color show significantly lower levels of trust in police than in other communities. Lower levels of trust and lower likelihood of reporting crime are compounded with the disparate level of victimization of Black women, particularly. Additionally, "Black women who live in impoverished areas are three times more likely to experience domestic violence as those who live in other areas" (Blackburn, 2020). There are "four dominant elements that explain Black women's experience with domestic violence: notions of race loyalty, housing segregation and the lack of available resources, lack of culturally competent service providers, and gender entrapment" (Jordan, 2017). For undocumented or immigrant women, there is the fear of deportation. Native American women who are victims of domestic violence and are not always protected by the law in tribal jurisdictions. Having more resources and services present in communities of color, where cultural diversity is pertinent, can reduce the likelihood of victimization.

Dimensions of Domestic Violence in Oneida and Herkimer Counties

The Zogby Poll data collected in Oneida and Herkimer Counties shows broad support for alternatives to police intervention in domestic disputes. While the data show that most people across races either somewhat agree or strongly agree with the statement that "Police would best handle DV incidents," a follow-up asking whether "other kinds of interventions should be used in DV disputes" also received broad, majority support: 56.6% of White respondents either strongly agreed or somewhat agreed that there should be other kinds of intervention as did 66.3% of non-White respondents.

Another important finding of the Zogby Polling is response to the question, "to what extent do you agree with the statement 'domestic violence is a serious problem in my

community.' While just more than a third, 35.4%, of White respondents either strongly agreed or somewhat agreed, a substantial majority, 58.3%, of non-White respondent either strongly agreed or somewhat agreed. This finding is congruent with national figures and confirms the disparate effect domestic violence has on minority communities.

Looking at the statistics in Herkimer County specifically, we found that there were 154 reports related to domestic violence in 2018. They were comprised of 9 for aggravated assault, 131 for simple assault, 6 for sex offenses, and 8 for violating protective orders (NYS Division of Criminal Justice Services, 2018, p. 2). In Oneida County, there was an increase in domestic violence in the 2010s. From 2009 to 2014, the number of domestic violence reports per 10,000 residents in Oneida County rose from 64 to 71 (Oneida County Health Coalition, 2017, p. 2).

One program in Oneida County is designed to hold convicted offenders accountable by requiring participation in either the Choices Program or the Samaritan Counseling program. The Choices Program "is 26 weeks long with weekly group sessions at a cost to the Offender based on a sliding scale based on financial capability, up to $15 per session" and must be completed prior to being discharged from probation (Oneida County Probation Department, 2020). These programs are offered in conjunction with specific probation conditions such as the prohibition of all alcohol use, random home visits, and other conditions to ensure the offender's accountability and victim's safety.

Prevention and Risk Reduction

Because domestic violence is a pervasive issue globally, there are models of risk prevention in other countries that are worthy of consideration. One model called the '**Domestic and Family Violence Prevention Strategy**' was created in Queensland, Australia. This model is long-term and has four consecutive action plans, each of which has been carefully evaluated. The Strategy's main goals are to shift community attitude to one of zero tolerance for domestic violence, to create intimate relationships on the basis of respect and nonviolent conflict resolution, and to involve community leaders and employers in an effort to support victims and reinforce expectations of healthy domestic relationships. These goals were chosen based on the causes of domestic and family violence, which "are founded in cultural attitudes and behaviors, gender inequality, discrimination and personal behaviors

and attitudes" (Queensland Government, 2015, p. 2). The strategy is very community-oriented and focuses on changing those parts of the system that tolerate domestic violence. It has been effective in involving people from all parts of the community. For example, "between 2017 and 2018 an increasing number of state schools implemented the Respectful Relationships Education Program, which educates students in Prep to Year 12 on the drivers of domestic and family violence and gender-based violence" (Prep is Australia's equivalent of pre-school and kindergarten in the United States) (Queensland Government, 2019, p. 2).

Another approach to risk prevention was developed by the National Center for Injury Prevention and Control. The Center issued a report in 2017 called '**Preventing Intimate Partner Violence Across the Lifespan: A Technical Package of Programs, Policies, and Practices**.' It has a list of strategies with corresponding approaches for preventing domestic violence including, teaching safe and healthy relationship skills, engaging influential adults and peers, disrupting the developmental pathways toward partner violence, creating protective environments, strengthening economic supports for families, and supporting survivors to increase safety and lessen harms (Niolon et al., 2017, p. 12). The report describes the factors that increase the likelihood that someone will become an abuser, such as "poor behavioral control; social problem-solving deficits; early onset of drug and alcohol use; an arrest prior to the age of 13; and involvement with antisocial peers, crime and violence" (Niolon et al., 2017, p. 23). The programs, policies, and practices named in this package aim to combat those factors.

One of the approaches associated with teaching safe and healthy relationship skills is implementing **social-emotional learning programs for** youth. A program called '**Safe Dates**' was developed for eighth and ninth graders and entails ten classroom sessions where students learn communication skills, anger management, and how to resolve conflicts in a peaceful manner. Students who participated in this program "reported between 56% and 92% less perpetration and victimization, respectively, at four-year follow-up when compared to control students, and program effects were consistent across gender, race, and baseline experience with TDV" (Niolon et al., 2017, p. 16)—a remarkable success story.

Another strategy presented in the Center's 2017 report is designed to **create a protective environment** by modifying the physical and social environments of neighborhoods. A critical part of the approach is reducing alcohol outlet density (the number

of places one can buy alcohol in a given area). For instance, "in a population-level survey of U.S. couples, an increase of 10 alcohol outlets per 10,000 persons was associated with a 34% increase in male-to-female partner violence" (Niolon et al., 2017, p. 31).

Green Dot, a bystander program, empowers college students to react appropriately and intervene in situations of domestic violence, through a four to six hours training session. Three years after the students went through the program, "the intervention campus had a 9% lower rate of overall violence victimization, 19% lower rate of sexual harassment and stalking perpetration, and 11% lower rate of sexual harassment and stalking victimization when compared with two non-intervention college campuses" (Niolon et al., 2017, p. 20).

Among programs designed to provide economic support for families, Washington State's **Housing First** program stands out. Housing First gives domestic abuse survivors economic stability and physical safety by offering social and psychological support services and financial assistance. It helps survivors cover expenses for housing, childcare, primarily. An evaluation of the Housing First pilot program found that "96% of participants remained stably housed after 18 months. Fully 84% of survivors reported an increase in physical safety for themselves and their children" (Niolon et al., 2017, p. 39). This program demonstrates the importance of financial independence so that survivors do not return to an abusive situation, because they have no alternative.

Finally, **Multidimensional Treatment Foster Care**(MTFC) has been proven effective in disrupting the generational cycle of domestic violence. This treatment "provides short-term placements of children and youth with persistent and significant behavioral challenges with extensively trained foster parents, family therapy for biological parents, and behavioral and academic supports to youth" and led to a "72% reduction in violent crimes among participants" (Niolon et al., 2017, p. 26). This approach gives parents and children distinct treatment and support regimens that target specific behavior patterns and given children a break from the stress of being in an environment of domestic violence, avoiding further emotional trauma. The treatment component aids children in dealing with their response to abuse in the home and the attachment anxiety that goes with it. Simultaneously, it gives the parents time and space to examine abusive behaviors and either repair or responsibly end their relationship. The treatment is effective because it works on the family as a whole to end the cycle of abuse.

Reform of the Conventional Response to Domestic Disputes

Co-response Teams

Co-response teams dispatched to domestic dispute calls are similar to those described for use in mental health emergencies in Chapter 1. In some jurisdictions, co-response teams are used to respond to both types of calls. In Houston, the Harris County Sheriff's Office has seen substantial improvements in police handling of domestic violence and mental health since 2008, by dispatching social workers alongside sheriff's deputies in response to domestic violence calls. Alongside social workers, deputies receive 80-hour training including a state-mandated psychology course. As deputies receive groundwork training, social workers receive instruction to familiarize themselves with the pressures of being a police officer—"to better understand the barriers that come with wearing a gun belt" (Deputy Phillip Abbott of Harris County Sheriff's Office, 2020). Deputy Abbott reported that officers are "highly receptive to this. Although we are well-trained, we now have better interactions with civilians"(P. Abbott, personal communication, October 20, 2020). The social workers wear different uniforms from the deputies to promote a psychological shift and receptiveness in citizen response.

A similar program in Richmond, Virginia, The Second Responders Program, also led to positive change. The findings from this program showed that…

> "…subjects expressed very positive views about their experience with Second Responders and reported receiving a range of information and services for them. Perhaps more important, subjects who received intervention from both the police and the Second Responders were *significantly more likely to rate the police very highly across several measures*" (Lane, 2004; emphasis added).

Along with positive encounters between civilians and police, "a number of officers remarked that the presence of Second Responders in their precincts led to casual conversations about domestic violence and greater awareness of the problem" (Lane, 2004). An earlier study showed that "social workers referred women more often than did police officers to shelters, social services, and legal aid as well as taking more action to ensure their safety" (Home, 1992).

The police chief Mark Ward of Alexandria, Kentucky, called for employing social workers to co-respond to domestic calls, after identifying a distinct lack of situational skills among his officers. Initially criticized for his effort, "now, four years later, the program is considered indispensable: it frees officers from repeat calls for non-criminal issues and gets residents the help they needed but couldn't get" (Wood 19 Sept. 2020). Chief Ward stated "we've been tasked – sometimes unjustifiably – with solving all the problems of our community. Just call the police, they'll take care of it. And we can't do that. It's unrealistic" (Wood 19 Sept. 2020). The co-response program also has financial benefits: "A new officer would cost the department around $100,000 up front, adding a new social worker – who does not need to be equipped with a weapon or kitted-out cruiser – costs about half of that" (Wood 19 Sept. 2020). Louisville, Kentucky is also planning to implement social worker-police co-response teams in 2021.

Alternatives to Incarceration

Post-conviction alternatives to incarceration are widely varied in their approaches and underlying theoretical assumptions. Most closely connected to the existing criminal justice system are **domestic violence courts**. These specialized courts are staffed by trained officials whose goal is to support victims and rehabilitate offenders by coordinating with social services and local women's organizations. These courts mandate treatment programs and generally outsource them to local non-profits. (N.I.J .Domestic Violence Courts, n.d.) Domestic violence courts emphasize monitoring and treatment, with the threat of incarceration for noncompliance. Current research suggests that the domestic violence courts, though effective at connecting survivors with resources, do not reduce offender recidivism in a statistically significant way. Within the first three years, almost 30% are rearrested on domestic abuse offenses and 50% are rearrested on other offenses, exceeding the national recidivism rate. (Cissner, et al., 2015)

A second, widely adopted reform are **batterer intervention programs** (BIPs), which are mandated either post-conviction or post-incarceration. These programs use the Duluth Model Method. Abuse, according to this model, stems from a male-generated need for power and control reinforced by patriarchal expectations and norms. (Dutton, 2007) The

Duluth model focuses on feminist reeducation and nonviolence courses. Unfortunately, similar to the domestic violence courts, the Duluth model has no demonstrable impact on offender recidivism. (Miller, et al.,2013)

The Duluth model is often conflated with **Cognitive Behavioral Therapy** (CBT), but they are fundamentally different approaches. CBT is a form of talk therapy in which the patient and provider collaborate on strategies for managing negative emotions and unpack trauma in a safe environment. (Martin, 2019) This approach is based on the theory that how we think and conceive of different situations determines how we respond. CBT practitioners believe that batterers act out in harmful and dangerous ways when they lack anger control, relationship, and communication skills that often result from past abuse. Stuart, et al., 2007) CBT aims to teach those skills while unpacking trauma that has created a violence-oriented world view and subsequent inappropriate reactions to stimuli. CBT, as noted in Ch. 1, is widely used in treating various mental illnesses and has been mobilized in such settings as mental health courts. (Freucht and Holt, n.d.) CBT has yet to show a clear impact on domestic abuse recidivism. (Cognitive Behavioral Therapy, n.d.)

A related but relatively new approach is **batterer categorizing**, in which mental health professionals screen batterers to provide them with treatments unique to different psychopathologies. This approach is based on the theory that different offenders commit DV crimes for different reasons. For example, clinicians simulate physical and verbal altercations then monitor offender heart rate. A significant heart rate decrease indicates psychopathic tendencies. These screenings are significant because people with different psychopathologies respond differently to various treatments. Contrary to effects in the general population, subjects with severe antisocial tendencies have been shown to respond exceptionally well to feminist reeducation models with relatively low rates of recidivism. In contrast, subjects with psychopathic tendencies respond poorly to feminist reeducation and have high rates of recidivism. (Huss, et al., 2006). *There is evidence that these screenings greatly improve treatment efficacy.*

The last post-conviction alternative to incarceration is **community-based rehabilitation** programing. Varying widely in approach, funding, and duration, community-based programs blend tailored and standardized interventions. To receive accreditation, federal funding, and court partnerships, community-based rehab programs must meet a set

of criteria. These criteria include qualified staff, a minimum number of group and individual sessions, and up-to-code facilities. (NYS Code) Evaluative research shows that these programs are highly effective, boasting, on average, 33% reductions in recidivism. (Miller, et al., 2013) Despite positive results, researchers differed about just what makes these programs so successful. Plausibly, the Washington State Policy Institute suggests that offenders may be responding to acceptance and support from their community as a means of forgiveness for their actions. (Miller, et al., 2013) Another significant aspect of community programming is higher cultural competency. Programs run by community members are set in the context of local culture and norms and can get through to batterers through shared experience and mutual understanding. (Healey, et al., 1998) According to the National Institute of Justice, high cultural competency is directly linked to positive program outcomes and reducing recidivism among batterers. (Healey, et al., 1998)

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CHAPTER 5.

PERSONNEL DIVERSITY IN LAW ENFORCEMENT

by

Yvenide Belizaire, Mya Berretta and Rosa Carter

Lack of Personnel Diversity in Police Agencies

Introduction

The first black officer was hired in New York State in 1911. Black people are shot and killed by police at 2.5 times the rate of white people (Edwards, Frank, et al. 2019). Approximately 1 in 1,000 black boys and men will be killed by the police, compared to 0.39 out of 1,000 white boys and men (Edwards, Frank, et al. 2019). In the summer of 2020, large protests over the police killing of Breonna Taylor and other victims of police brutality persisted across the United States and elsewhere (Setty & Yan, 2020). One common demand for reform is to increase the racial and ethnic diversity of predominantly White male law enforcement agencies.

Diversity of Personnel Nationally

A 2016 Law Enforcement Management and Administrative Statistics (LEMAS) survey of 3,471 law enforcement agencies confirms that American police departments are predominately White and male: 98 percent reported having at least one white male officer. In contrast, 31 percent had at least one Black officer, and 29 percent had at least one Hispanic officer. Gender interacted with race and ethnicity: 51 percent of reporting agencies had at least one White female officer and only 12 percent had at least one Black or Latinx female officer (LEMAS, 2016).

Similar conclusions emerge when examining representation in higher ranks. Supervisors, from sergeants and chiefs are predominately White males: 69 percent of the agencies had at least one White supervisor versus 11 percent with a Black supervisor and

7% with at least one Latinx in the upper ranks. personnel in this position. In the reporting departments, 91 percent of the police chiefs were White, 4% were Black, and 3% were Latinx (LEMAS, 2016).

Diversity of Personnel in New York State

The national statistics reflect a problem also evident in New York State. Research confirms that police agencies in New York State generally do not reflect the communities they serve. For example, in 2016, Utica recorded a population of 60,675 in which 58 percent was white, 15 percent was Black, 12 percent Latinx, and 15 percent were other for a total of 42 percent non-White. However, only 6 percent of the Utica Police Department is non-White (Leatherby, 2020). The Utica department appointed its first Black female sergeant in 2015 (Thomas, 2015). Before her appointment, Syracuse Police Chief Kenton Buckner was one of the only minorities to hold such a high police leadership role in New York State (Wright, 2020).

Organizational Culture and Racial Bias in Law Enforcement Agencies

What difference does racial and ethnic diversity make in the fairness and effectiveness of policing? In sum, personnel diversity is a determinative factor of organizational culture. Organizational culture is the shared perspective and approach of members to the organization's work and environment (Smircich, 1983). The longer an organization exists, the more entrenched its culture. Organizational culture is "socially constructed" by its employees and leaders (Ruijer, 2016). Culture influences behaviors more heavily than "formal rules," and often culture will outweigh officials' forces of "sanctions and rewards" if the inside consensus is that of secrecy and obstruction (Ruijer, 2016). All organizations have cultures. Culture becomes dysfunctional when it hinders or displaces an agency's goals, duties, and missions.

Police Culture

The six, widely-recognized elements of police culture are: "police officers are the only crime fighter, no one else understands the stressors and the demand of the job, loyalty to each

other comes first, bending the rules is essential to winning the war on crimes, the public is demanding and unsupportive, and detective work is better than patrol work" (Sparrow, Moore, and Kennedy 1992 as cited by Levitt p.107). Socialization plays a big part in assimilating new recruits to the culture and teaching them the unwritten rules of policing (Coffey and Atkinson, 1994; Harper and Lawson, 2003; Volti, 2008, as cited by Rick and Parent 2015). These cultural tenets can be harmful to transparency. For example, loyalty can hinder transparency by becoming a code of secrecy that tolerates officer abuse. Additionally, "bending the rules to win the war on crimes" leads to corruption and constitutional violations.

The goal of diversity recruitment is to make police culture less insular and less liable to tolerate and reinforce bias and abusive behavior. However, in cases of affirmative programs to increase diversity, existing officers will often resist change. In the October 6, 2020, College-Community Partnership for Racial Justice webinar, "Why is Diversity Not Enough? Training and Best Practices for Policing Reform", Musco Millner, former diversity recruiter for the New York State Police, said that in his experience, White police officers often feel that diversity recruitment is a threat to their existence. (commuity4justice.org) This, he argued, is due to a lack of understanding of the benefits of diversity. The point of diversity recruitment, Milner said, is not to replace White cops; but to strengthen the organization's commitment to procedural justice and cultural inclusivity.

Nonetheless, if existing officers do not hold this point of view and instead see diversity recruitment as discriminatory, they may retaliate to maintain the status quo. An early example of retaliation against affirmative action is Northside Pittsburgh in 1970. Black residents faced with police mistreatment lobbied Mayor Flaherty to increase the number of Black police officers in a largely Black precinct. The mayor agreed to transfer a percentage of White officers to another precinct and to replace them with Black officers. White officers called in sick, forcing to back-off (Grim 2020). The "Blue Flu" is a tactic used to maintain the status quo by removing accountability in contract negotiations, obstructing police reforms, and as a solidarity action for officers who face discipline (Grim 2020). The Blue Flu was evident recently as a protest against charging the Atlanta police officer who shot and killed Rayshard Brooks (Grim 2020).

Police Culture and the Personal Values of Officers

The paramilitary education that recruits receive is based on breaking down individuals to put them back together in a way that is reflective of organizational police culture (Chappell and Lanza-Kaduce, 2010 as cited in Rick and parent 2015). Thus, paramilitary education counteracts diversity as recruits are assimilated into a mono-cultural work environment. For recruits to hold onto personal ethics of inclusivity and procedural justice, training must reinforce, rather than neglect or negate these values (by Rick and Parent 2015).

If the training and the work environment do not support positive, individual values and lived experience, diversity recruitment is little more than symbolic (U.S. Department of Justice, 2016). It is clear that some police agencies (and other types of organizations) use the recruitment of women, LGBTQ, and people of color as a gesture to protect them from criticism. In the October 6 webinar, Troy Little, a former New York State Police officer, and law enforcement program director at Mohawk Valley Community College said, "often the job shapes the officer, instead of the new officer shaping the job" (Little, 2019). Women, LBGTQ officers, and people of color often feel pressured either to accept the "current culture of White heterosexual masculinity" or be alienated to the point where they leave the organization (U.S. Department of Justice, 2016).

Additionally, the lack of transparency in the promotion process contribute to the poor retention of minorities in police departments. POC, LGBTQ, and women often to not receive the mentorship necessary to move up the next rank (U.S. Equal Employment Opportunity Commission, 2016). White males often find it easier to find the guidance to adjust to the environment and succeed. On the other hand, POC, women, and LBGTQ officers often find themselves outside of the networking group for these opportunities (U.S. Equal Employment Opportunity Commission, 2016).

Leadership and Culture Change

Leaders are a critical part of organizational culture. Organizational values are shaped and enforced by leaders. If those values are compromised are compromised by tolerating bias and abuse, the organization becomes corrupt (Anechiarico, 2017). Thus, compromised-corrupted- values become normalized, and the progress towards justice and equality is all but impossible. However, leaders dedicated to reform can facilitate culture change because workers will listen and abide by trusted leaders' beliefs (Hennessey,1998). Unfortunately, existing

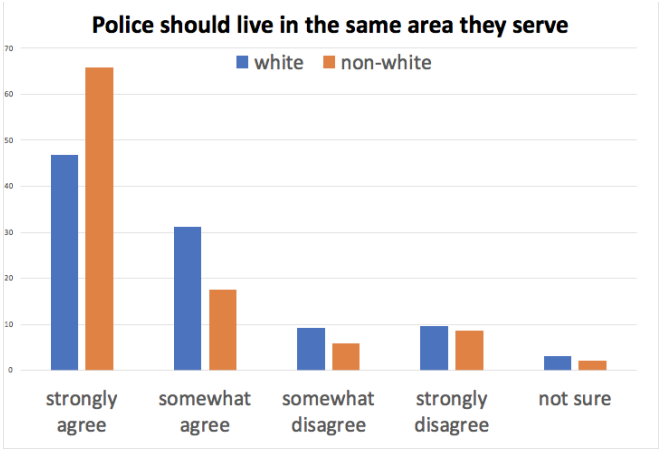
leaders of an organization may well be part of the problem. (Smircich, 1983). For these reasons, it is often necessary to bring in an independent party to assess existing culture and recommend change based on values of inclusion and community wellness.

Officer Residency and Police Culture

One factor that influences diversity recruiting and citizen trust of the police is officer residency. The laws on residency vary. For example, to be a police officer in New York City, one must live in one of the city's five boroughs or move to one of these places within 30 days of being hired. Locally for the Utica department, officers must live in the city limits for five consecutive years before moving to a neighboring area. In addition, new hires are permitted six months to find a home in Utica. Potential officers will be allotted a fair amount of time to locate a home in Utica, which may attract applicants from further distances. The Zogby survey asked about agreement with this statement: "Police should live in the same area they serve" (fig. 1). Approximately 84% of non-white people agreed and 78% of white people agreed. The data suggest that local citizens believe that officers living in the area they serve is important.

Figure 1

Police should live in the same area they serve

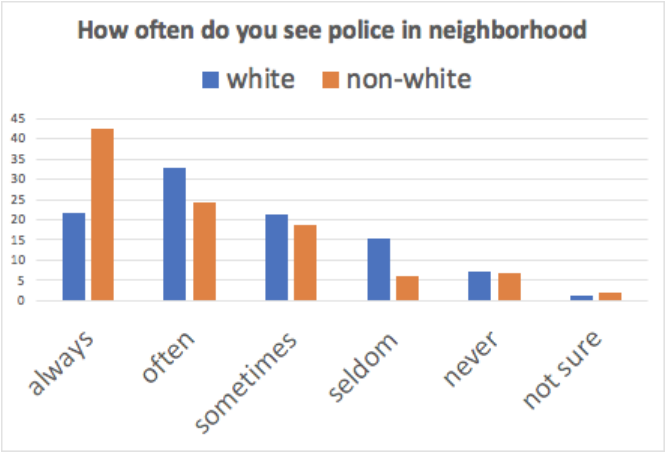


Note. There were 66 non-white respondents (orange bars) and 423 white respondents (blue bars).

Twenty-five percent of Utica's population are refugees, speaking 42 languages. As noted above, the 163 Utica Police officers consists of 163 officers are 93 percent White (United States Department of Justice 2016). In June 2020, the Utica police force hired 14 new officers; 13 white males and 1 white female (Liberatore 2020). On a related issue, the Zogby survey asked: "How often do you see police officers in your neighborhood" (fig. 2).

Figure 2

How Often do you see police officers in your neighborhood?



Note. There were 66 non-white respondents (orange bars) and 423 white respondents (blue bars).

Tools for Improving Personnel Diversity in Law Enforcement

Modeling the U.S. Army's Marketing and Recruitment Campaign

Since the inception of the all-volunteer military in the U.S., the armed forces have innovated publicity and outreach to young people. Their latest campaign contains elements that are translatable to diversity recruitment in domestic law enforcement minus the warrior label. The military has taken the lead among all types of organizations in its effort to diversity its personnel. As General Julius Becton and other retired officers wrote in an *amicus* brief to the U.S. Supreme Court in the University of Michigan affirmative action cases in 2003, "[A] highly qualified, racially diverse officer corps educated and trained to command our nation's racially

diverse enlisted ranks is essential to the military's ability to fulfill its principal mission to provide national security." (*Grutter v. Bollinger*, 2003: Becton *amicus curiae*) The same can be said of domestic law enforcement.

Army Enterprise Marketing | Army Enterprise Marketing | Nov. 20, 2019 [https://www.tradoc.army.mil/]

"What's Your Warrior?" is an evolution of the Army's most recent marketing campaign, *Warriors Wanted*, and is designed to directly appeal to youth audiences by emphasizing the Army's vast array of talent requirements.
This campaign communicates that there are many ways to be a warrior and, through Army service, Soldiers can both contribute to something greater than themselves while improving who they will become.

This campaign distinguishes the Army's recruitment efforts by accentuating that teams are exponentially stronger when diverse talents join forces. The intent of 'What's your Warrior?' campaign is to:

- **Engage** 17-24 year-old Gen Z youth, who live at the intersection of 'purpose' and 'pragmatism. Gen Z men and women are driven to make a positive difference in the world in a smart way.
- **Educate** Gen Z's extremely limited knowledge of the Army beyond its role in active combat.
- **Create** a more distinctive identity for the Army that is in step with today's visual and verbal vernacular plus the values and goals of Gen Z youth.
- **Convert** the target audience's respect and admiration for the Army, into a relevant path to achieving their life goals or developing their skill sets.

What continued efforts does the Army have planned?

1. To overcome the misperceptions that have been created by popular media and movies, the Army will continue to

- Communicate and inform its mission to prospects and their influencers through TV commercials, digital, paid search, billboards, and social media ads.
- Market innovative efforts to appeal to prospect audience between the ages of 17-24.
- Use digital and social media to engage with prospects and influences and drive them to GoArmy.com.
- Maximize return on investment by marketing in a strategically integrated manner.

Why is this important to the Army?
"What's Your Warrior?" ensures the Army is reaching potential future Soldiers and their influencers with relevant, inspiring and highly engaging content. "What's your Warrior?" highlights the ways the Army can powerfully develop recruits' unique skills, and put them in an extraordinary position to impact the world, their community, and their own lives.

Modeling Cluster Hiring in Higher Education

Of particular note is the proven personnel diversification strategy of cluster hiring. While are no known uses of this strategy by police agencies, but it has been used in higher education and may be adapted to law enforcement. The approach is to intentionally hire a cluster of individuals from the same racial or ethnic group to avoid the isolation of new diversity recruits and provide a mutual support system.

Cluster search committees at North Carolina State University were trained to address unconscious bias then implemented this training across the institution (Phillips 2015). University administrators were trained to support the clusters once hired. The core of this effort is to incentivize effective work and to move cluster hires toward tenure. Since 2011, twelve clusters for a total of thirty-five new instructors have been hired, substantially improving the diversity of the NCSU faculty (Phillips 2015).

Rutgers University President Robert Barchi announced an additional twenty-million dollars in strategic funding to extend the Rutgers Faculty Diversity Initiative through June 2024 (Admin. Rutgers 2019). The initiative launched in 2016 and twenty-two million dollars has supported the hiring of seventy-nine new diverse faculty members from underrepresented communities (Admin. Rutgers 2019). Additional funds are dedicated to support mentoring and retention. Though not a cluster program, explicitly, Rutgers recognized the need for cohesion in the new cohort of hires by hosting one-day conferences to attract potential applicants from across the country (Phillips 2015).

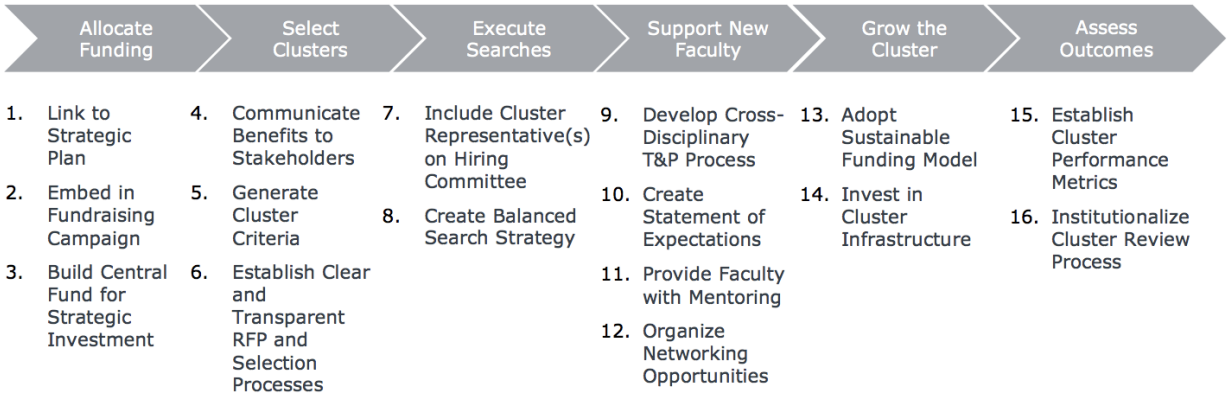
Since 2009, Fresno State has hired five clusters totaling thirty-nine new faculty, leading in a few years to a 20 percent increase in the number of Latinx senior administrative leaders (Phillips 2015). The advancement of minority faculty to senior

administrative ranks allows younger non-white faculty to see the possibilities of an leadership career path.

A barrier to implementing cluster hiring is the fact that the local police departments, under New York State law, must hire one of the three top scorers on the civil service exam (Rockwell 2018), a policy that does not prioritize personnel diversity and requires amendment. At this point, however, it is useful to review the imperatives for the planning and implementation of cluster hiring, since performing these steps has proven to be effective in increasing diversity. (Attis, Lund 2017):

Table 1

16 Imperatives of Cluster Hiring



Personnel Diversity in Law Enforcement as a Matter of Community Wellness

Understanding law enforcement as an element of community wellness—and crime control as a matter of public health-- encourages a perspective among law enforcement officers that connects the police to the residents they serve. It is not only the health and safety of residents at stake, but the health and safety of police officers,

also. The City of West Palm Beach, Florida, implemented Policing Approach Through Health, Wellness, and Youth, known as PATHWAY, that focuses on youth empowerment and crime prevention. PATHWAY has “diversion and restorative justice efforts to integrate health and wellness education and services” (Daniel, 2015). The program has allowed the city to facilitate a partnership between the City of West Palm Beach Police Department, various community and city organizations, and their resources “in an effort to combat crime, and specifically juvenile crime, which really targets and focuses on juvenile crime involving Black males” (Daniel, 2015). These efforts minimize Black male youth and the police's negative interactions, instead promotes a youth-centered supported system between the police and the communities affected by juvenile crime in West Palm Beach. A key element of this effort is personnel diversification in all City agencies and departments.

A similar program focused on creating a youth-based support system is in New York City. The New York Police Department has an agency dedicated to youth development that includes Police Athletic League. PAL offers opportunities, starting from elementary school to high school, for local youth and police officers to get to know each other through soccer and baseball leagues. Other, similar NYPD programs are the Junior Police Club and the annual “Police Commissioner for a Day” essay contest. These programs allow the students to learn about police officers' jobs and what it takes to keep a community safe (Police Athletic League of New York City, n.d.). As illustrated on their website, 93% of communities that have PAL say their attitude towards police has improved. 90% of community participants felt safer in their neighborhoods due to programs like PAL Playstreet offered during the summertime (Police Athletic League of New York City, n.d.). Notably, the Utica Police Department started a PAL program in the summer of 2020.

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CHAPTER 6.

THE TRIAL PROCESS

by

Alma Bradley and Marlena Napier-Smith

Criminal Procedure and Community Wellness

The concept of community wellness — a holistic public health approach to collective stability, safety, and fitness—considers racism and bias in the criminal justice system to be public health problems. (Sussman, 2015; SIPCW, 2020) Because "the conditions that shape health" include "the implicit bias that Black and Brown communities experience in every aspect of their lives," racism at all levels of the criminal justice system erodes community wellness. (SIPCW, 2020) Incarceration has been proven to negatively affect not only the health of the incarcerated, but also the health of the community, family, and inmate due to the stresses, stigmas, and cost burdens caused by imprisonment. (Gifford, 2019: 372)

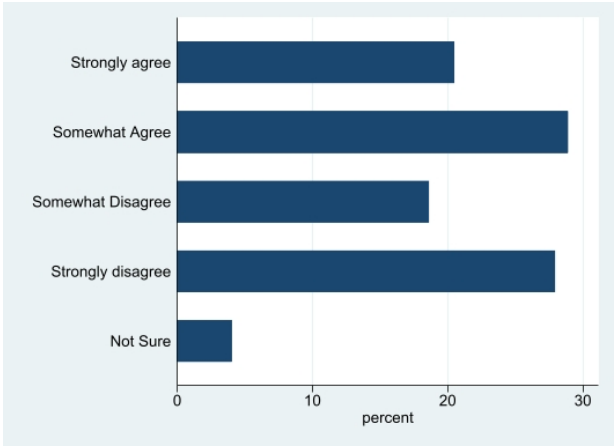
Public Opinion and Experience of Local Criminal Justice

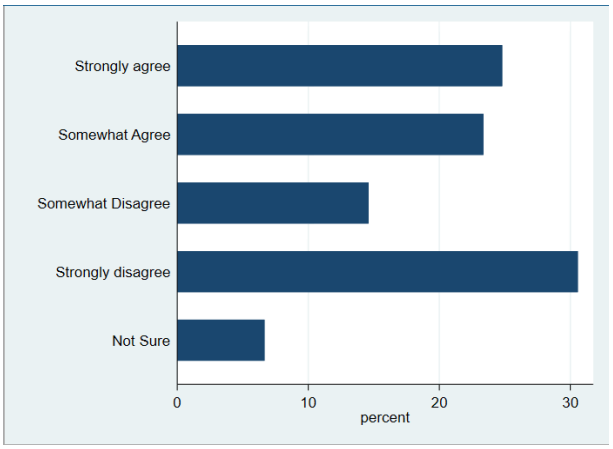
The 2020 Criminal Justice Survey of Oneida and Herkimer Counties conducted by Zogby Strategies asked whether respondents agreed "That a person's race or ethnicity will determine how they are treated by the courts". Slightly less than half (49.3%) of all respondents agreed (either strongly or somewhat), while 46.4% disagreed (either strongly or somewhat). In contrast, a slightly higher percentage of all respondents (53.4%) agreed that a person's race or ethnicity will determine how they are treated by the police. These responses indicate that in Oneida and Herkimer Counties the courts are perceived as somewhat more objective and somewhat less racially biased than the police. However, it is notable that 49.3% of respondents think that race determines treatment in court. Further, non-White and White respondents held different views; the percentage of Non-White respondents that agreed that race is a factor in treatment by the courts was 5.5% higher than White respondents, though levels of strong disagreement with the assertion among White respondents and among Non-White respondents were similar (27.7% and

27.9%, respectively). Significantly, a much higher proportion, 66.6%, of respondents who were immigrants to the US agreed that a person's race or ethnicity affected their treatment in the court (either strongly or somewhat), while 25.4% disagreed (somewhat or strongly).

Figure 1:

Responses to Question 40: Level of Agreement "That a person's race or ethnicity will determine how they are treated by the courts"





White Respondents Non-White Respondents

Note: Data collected from Hamilton College Levitt Center. "Poll of 500 Adults in Oneida and Herkimer Counties." John Zogby Strategies, September 2020.

Racial Disparities in Prosecution in New York State

People of color are disproportionately overrepresented in the U.S criminal justice system. In Oneida County in 2019, 85% of the adult population was white, while 6% was Black and 5% was Latinx. Despite this, 61% of arrests were white, 29% were Black and 8% were Latinx, while 53% of the felony arrests were white, 35% were Black and 10% were Latinx. Most notably, 46% of those sentenced to prison in Oneida county were white, 41% were black and 12% were Latinx. Similar to national rates, people of color are disproportionately arrested and imprisoned in Oneida County; despite comprising only 6% of the population in Oneida county in 2019, black people represented 41% of all prison sentences, while white people comprised 85% of the adult population and only 46% of prison sentences. (NYS DCJS, 2019) While policing contributes to this disparity, data on racially disparate sentencing indicate that prosecutors, juries and judges also play a major role.

Table 1:Arrests and Sentences in Oneida County

Oneida County								
	Population (18+)		Arrests		Felony Arrests		Prison Sentences	
Race/Ethnicity	#	% of Total	#	% of Total	#	% of Total	#	% of Total
White	152,731	85%	2,779	61%	582	53%	87	46%
Black	11,053	6%	1,310	29%	380	35%	78	41%
Hispanic	9,164	5%	363	8%	107	10%	22	12%
Asian	6,563	4%	60	1%	21	2%	1	1%
Other-Unknown	462	<1%	27	1%	7	1%	1	1%
Total	**179,973**	**100%**	**4,539**	**100%**	**1,097**	**100%**	**189**	**100%**

Note: Table collected from New York State Division of Criminal Justice Services, NYS Adult Arrests and Prison Sentences by Race/Ethnicity in 2019: https://www.criminaljustice.ny.gov/crimnet/ojsa/comparison-population-arrests-prison-demographics/2019%20Population%20Arrests%20Prison%20by%20Race.pdf

While racial disparities result from unequal treatment at every step of the criminal justice system, considerable research substantiates prosecutorial bias. Starr & Rehavi (2012) found that Black defendants face significantly more severe charges than Whites, even after controlling for characteristics of the offense, criminal history, defense counsel type, age and education of the offender, and crime rates and economic characteristics of the jurisdiction. (Staff and Rehavi,2012) Racial

disparities exist in prosecutors' choices to seek sentencing enhancements and sentencing for nonviolent crimes (especially property and drug offenses). (ACLU,2014) A 2014 Vera Institute of Justice study examined 222,542 resolved prosecutions over two years in New York County, one of the largest studies of its kind conducted in the US, and found that race was statistically significant at every stage of prosecutorial discretion, including which cases to dismiss, what to recommend at bail hearings and what plea bargains and sentences to recommend. For instance, prosecutors were found to be more likely to offer Black and Latinx defendants plea deals on misdemeanors that included jail time; 40% of Black defendants and 36% of Hispanic defendants were offered plea deals involving incarceration, rather than probation or community service while only 33% of white defendants and 17% of Asian defendants were offered deals entailing incarceration. (McKinley, 2014) Racial disparities in prosecution can arise through implicit bias, but also through prosecutorial misconduct.

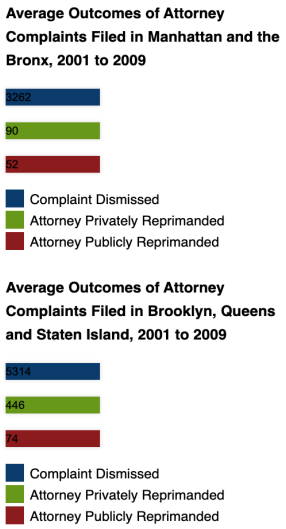
Oversight of Prosecutorial Behavior

In New York State, the first check on prosecutorial misconduct allegations is review by state appellate courts. A 2013 ProPublica investigation on prosecutorial misconduct in New York State found that while these courts often criticize prosecutorial tactics, they let convictions stand if they conclude the conduct in question did not decide the outcome of the case. For instance, in a 2009 ruling, a state appellate court found that a Manhattan prosecutor should have disclosed a co-conspirator's statement that the defendant wasn't actually involved in the shooting he was charged with, but concluded there was "no reasonable possibility that the failure to disclose … contributed to the verdict." (Sapien and Hernandez, n.d.) It has been pointed out that allowing non-dispositive misconduct to go unpunished creates the moral hazard of legitimizing other, more damaging conduct. Even in cases where state appellate courts concluded that NYC prosecutors had committed dispositive misconduct, courts did not refer prosecutors for investigation or reprimand.

Propublica found that of such cases only one of 30 prosecutors was disbarred, suspended or censured.

Another approach is for state appellate courts to refer prosecutors to the state bar disciplinary committee which reviews allegations of misconduct against all practicing attorneys. However, Propublica found that these committees rarely reprimand attorneys, and if they do, they are more likely to do so privately. Between 2001 and 2009, only 1 percent of 91,000 complaints received by the First and Second Department committees in New York State resulted in public sanctions and just 5 percent of all the complaints resulted in private letters of caution or admonition, which are confidential except to the complainants and attorneys. This pattern is further illustrated by the average outcomes of attorney complaints filed in Manhattan and the Bronx from 2001 to 2009, of which 3262 were dismissed, 90 were privately reprimanded and only 52 were publicly reprimanded. Propublica also noted that few disciplinary committee members even remember reviewing prosecutor's actions. (Sapien and Hernandez, n.d.)

Figure 2: Attorney Complaints



Note: Figure collected from Joaquin Sapien, Sergio Hernandez. "Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody." ProPublica. https://www.propublica.org/article/who-polices-prosecutors-who-abuse-their-authority-usually-nobody.

In 2018, New York State took steps to remedy the lack of prosecutors' oversight by enacting a first in the nation Commission on Prosecutorial Conduct, an eleven-member panel charged with investigating a wide range of prosecutorial misconduct. However, in January 2020, a State judge ruled the Commission unconstitutional, noting that the law creating the it was "inconsistent with the provisions of the New York State Constitution" by making prosecutors, but not other attorneys, liable to judicial discipline (Slattery, 2020) There are no reports of plans to revive the commission.

Conviction Integrity Unit (CIU)

Like many jurisdictions across the county, Oneida County has a Conviction Integrity unit, which reviews cases to prevent, identify, and remedy false convictions. Conviction Integrity Units have been involved in 269 exonerations nationally, through 2017, and while the National Registry of Exonerations warns that it is too soon to know whether these units will produce a change in the way prosecutors operate, CIUs have accomplished a great deal in a short period of time. (National Registry of Exonerations, 2017) The Oneida County CIU was established by District Attorney Scott McNamara after the 2008 exoneration of Steven Barnes, who was convicted for murder and spent 20 years in prison following eyewitness misidentification. (Center for Prosecutor Integrity, 2014) The CIU consists of a coordinator, three assistant DAs, three forensic experts, and one community representative. A second seven-member committee consists of four assistant prosecutors, two police officers and one civilian, who receive and review the final recommendation for action from the CIU before it is sent to the District Attorney. Despite being established in 2013 the Oneida County CIU has not yet exonerated anyone. There is little, accessible, public information on the operation of the Oneida county CIU, such as yearly reports, a working website or contact information. (National Registry of Exonerations, 2017)

The National Registry of Exonerations recommends increased transparency and accessibility and a close working relationship with the criminal defense bar to improve CIUs. The Registry identifies the CIUs in Dallas and Brooklyn as particularly successful. Both were set up with the help of local defense attorneys, public defenders, and innocence organizations. The Brooklyn CIU's external review panel includes defense lawyers for increased accountability and it works with the Innocence Project to collect data on cases under review to identify patterns related to wrongful conviction. (Morrison, 2020)

Best Practices for Prosecutors

Motion for Justice is a product of the Dignity, Racial Justice, and Prosecution Initiative led by the Vera Institute of Justice's (2020) and John Jay College of Criminal Justice's Institute for Innovation in Prosecution. Motion for Justice recommendations include:

***Hold Listening Sessions with Marginalized Communities*:** In order to promote racial justice within the criminal justice system, prosecutors should create working relationships with communities of color who are disproportionately overpoliced and disparately prosecuted. Ties should also be developed with formerly incarcerated people and their families. Examples include the Michigan joint task force on jail and pretrial incarceration which holds listening sessions to learn more about community areas of concern and ideas for reform. Similarly, the San Francisco DA's office regularly hears and takes suggestions from the Formerly Incarcerated Advisory Board and other advisory boards specific to different marginalized identities.

***Track and Analyze Data on Racial Disparities in Prosecution*:** Prosecutors should identify and record racial disparities at key decision points including charging, pretrial release, plea offers, and sentencing. Such data will surface implicit bias and indicate areas for redress of racial injustice. San Francisco's and Chicago's district attorneys'

offices have an online dashboard that tracks the race of people arrested, arraigned and convicted. The Vera Institute for Justice produced, "A prosecutor's Guide for Advancing Equity" which describes how to build such a database. (Vera Institute of Justice, 2014)

Shift Office Culture with Education and Training: District Attorneys should understand the mission of prosecution as improving community wellness rather than raising rates of conviction and imprisonment. In St. Louis, the DA emphasizes community wellness through Plea Bargain sheets (see figure 3), which ask prosecutors to identify why the person charged committed this crime and if the underlying reason can be better addressed by the community rather than the plea and trial process. The Manhattan D.A.'s Academy, with the Institute for Innovation in Prosecution at John Jay College of Criminal Justice and the Center for Justice at Columbia University, hosts a semester-long seminar for individuals incarcerated at Queensboro Correctional Facility, Edgecombe Correctional Facility, and prosecutors from the Manhattan D.A.'s Office. The course is a forum for in-depth, respectful conversation about the criminal justice system and has produce jointly-authored policy proposals. (Proscution.org, n.d.)

Figure 3:St. Louis Plea Bargain Sheets

Case Number: _____ **Date of Incident (MM/DD/YY)**: _____
Issue Date (MM/DD/YY): _____ **Issue Attorney**: _____
GJ/PH Attorney: _____ **Trial Attorney**: _____
Evaluator: _____ **Defense Attorney**: _____

Case Information
Charge(s):

Related Case(s):

Person Charged
Name: _____ DOB (MM/DD/YY): _____ Gender: _____

Race/Ethnicity: _____

Is the person charged in jail? Y N If so, how long have they been detained? _____
Conviction(s):

Arrest(s):

Victim(s)
Name: _____ Age _____ Gender: _____ Phone Number: _____

Relationship to Person Charged (if applicable) _____

Name: _____ Age _____ Gender: _____ Phone Number: _____

Relationship to Person Charged (if applicable) _____

Case Assessment

Legal Issues:

Evidentiary Issues:

Witness Issues:

Anticipated Defense:

Jury Appeal:

Impact
Why did the person commit this offense (substance abuse, mental health, financial difficulties, etc.)?

What will help the charged person address the reasons underlying the crime?

Can those underlying reasons be safely addressed in the community?

Have we learned about any potential conviction consequences (immigration, housing, employment, etc.)?

How can we help the victims heal from the inflicted harm (if applicable)?

Plea Negotiation History
Previous Offers and Dates Extended
_____ Date (MM/DD/YY): _____
_____ Date (MM/DD/YY): _____
_____ Date (MM/DD/YY): _____

Recommendation
Trial Attorney: _____ Team Leader: _____
Date plea extended (MM/DD/YY): _____

Result of plea offer:
Accepted Declined Counter-Offer

What is the counter offer? (if applicable)

Note: Figure collected from *A Prosecutor's Guide for Advancing Racial Equity,* Report. The Vera Institute of Justice, 2014.

***Decline to Prosecute*:** Prosecutors can contribute to community well-being by reconsidering the impact of the criminal law, by referring for treatment and support services (like restorative justice), rather than prosecution, cases that criminalize behavior related to poverty, substance use and mental illness. A first step is to reconsider charges that result in racial disparities in conviction and incarceration. Further, prosecutors may decline to prosecute arrests referred from pretextual stops, which, as pointed out in Ch. 2., do not improve public safety and account for racial disparities in policing. Beginning in February, 2020, San Francisco District Attorney Boudin will no longer seek charges for contraband seized in pretextual stops. (Johnson, 2020) Many prosecutor's offices have expanded declination policies for low-level drug possession such as in Bexar County (San Antonio), TX; Suffolk County (Boston), MA; Cook County (Chicago), IL; Baltimore City, MD; St. Louis City, MO; Hennepin County (Minneapolis), MN; Ramsey County (St. Paul), MN; Jefferson County (Louisville), KY; and Kauai County, HI.(Vera Institute of Justice, 2020) Durham County also decline referrals for school-based incidents that reflect over-policing of schools in marginalized communities.(Durham District Attorney, 2019)

Support Automatic Expungement of Criminal Records and Clean Slate Policies: People whose criminal records are expunged tend to do better than their counterparts with criminal records. Starr and Prescott (2019) found that in Michigan, people with expungements were eleven percent more likely to be employed and were earning 22 percent higher wages, after controlling for employment history and changes in the Michigan economy, than those with criminal records that had not been expunged. (Prescott and Staff, 2020) Expungements are currently implemented in 22 states including New York. However, many people eligible for expungements do not request them, in part due to the difficulty of navigating the legal process required.

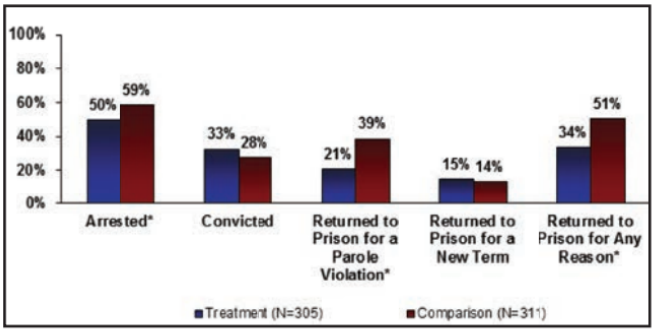
Starr and Prescott (2019) found that in Michigan only 6.5% of those qualified received expungements within five years of becoming eligible, and over 90% of those eligible do not even apply. New York can simplify the expungement process through Automatic criminal record clearance, also known as "Clean Slate" policies, which have been implemented in Pennsylvania, Michigan and Utah, and passed with overwhelming bipartisan support. (Clean Slate Initiative, n.d.)

In New York City for instance, applicants without criminal records received 80 percent more callbacks than those with criminal records. (Agan and Starr, 2017) DA's offices can partner with Code for America, which has created technology that "reads criminal history data, then maps data to determine eligibility for relief under the applicable statute, and produces the necessary documentation for courts to update records". (n.d.) Code for America has partnered with five District Attorney's Offices in CA, who together have used this technology to clear 75,000 marijuana convictions.

***Prosecute with Immigrants in Mind*:** In 2017, the Brooklyn District Attorney's Office hired two immigration attorneys to train prosecutors on immigration issues and how to make plea offers and sentencing recommendations in an effort to avoid disproportionate consequences, such as deportation, while also maintaining public safety. (Johnson, 2017) Given the substantial, local immigrant population and high number (66.6%) of immigrant respondents who agree (either somewhat and strongly) that race and ethnicity determines court treatment, similar step should be considered in Oneida County to minimize collateral immigration consequences of criminal convictions, particularly for misdemeanor and other low-level offenses. In 2014, immigrants comprised of 18.2% of Utica's population and 7% of the population in Oneida County. (NYS Comptroller, 2016)

Collaborate with defense attorneys and probation officers on a best plan for re-entry: The San Diego District Attorney's Office created the SB 618 San Diego Prisoner Reentry Program in 2006. Under the program, prosecutors work with the probation office at the time of an individual's plea or sentencing on a "Life Plan," which includes case planning, ongoing case management from prison through community reentry, motivational techniques, and utilization of social supports. The San Diego Association of Governments found that SB 618 participants were less likely than the comparison group to be rearrested, returned to prison for a parole violation or returned to prison for another offense (see Figure 1). Based on findings from the evaluation, the SB 618 San Diego Prisoner Reentry Program improved outcomes for participants. (Mulmat and Burke, n.d.)

Figure 1. SB 618 Participation Related to Reduced Recidivism.



**Differences significant at .05 level.*

Note: Figure from Darlanne Hoctor Mulmat, and Cynthia Burke. *Addressing Offender Reentry: Lessons Learned From Senate Bill 618 San Diego Prisoner Reentry Program.* Report. https://aca.org/aca_prod_imis/docs/Corrections Today/Mulmat_Burke.pdf.

Jury Selection and Peremptory Strikes

Racial disparities in jury selection are mainly a result of peremptory strikes as they allow for both the defense and prosecution to remove jurors without a demonstrated reason. Peremptory strikes based on race, ethnicity, or gender are unconstitutional. (*Batson v. Kentucky*, 1986; *Hernandez v. New York,* 1991; *J.E.B. v. Alabama*, 1994)

However, court records historically indicate that even a limited number of peremptory strikes establish the basis for a racialized selection. Black jurors are removed at disproportionately high rates by the prosecution and judges while White jurors are removed by the defense at higher rates than their non-White peers. (Wright, 2018) As a result, the racial composition of juries is often not reflective of the defendant's community-- a violation of the 6th Amendment. These patterns decrease the legitimacy of the trial processes and are readily apparent to citizens who have taken part in the jury selection process, witnessed a trial, or been tried for a crime themselves. Moreover, variations in the racial composition of both jury pools and standing juries have been proven to result in vastly different conviction rates; namely, jury pools without a single Black juror result in a 16% higher conviction rate for Black defendants than for White defendants. (Anwar, et al., 2012: 1017-1055) Thus, ensuring racially balanced juries is a necessary step in the process of ending mass-incarceration in the US, especially for non-White populations.

A 2018 study of jury selection across all 100 counties in North Carolina found that the perceived trends were not only a reality, but also perhaps to a more significant degree than originally expected. On average, prosecutors remove twice as many available Black jurors as available White jurors, and defense attorneys remove a little over twice as many available White jurors as their Black counterparts. (Wright, et al., 2018). Judges removed available Black jurors for cause at higher rates than available White jurors. (Wright, et al., 2018). These trends are more extreme in urban areas than in rural ones. (Wright, et al., 2018). As of 2012, urban counties in the U.S. are now majority non-White. (Pew Research Center, 2018)

The court's initial ruling in *Batson v. Kentucky,* which ruled peremptory strikes based on race unconstitutional, has since been elaborated and expanded, though the procedure for objecting to peremptory strikes based on race or ethnicity has proven ineffective in preventing race-based strikes. These objections, called Batson claims, are frequently dismissed due to the high standard for proof and the failure of judges to accurately identify racial bias. In a Batson claim, one party presents a *prima facie*

case that a particular peremptory strike was racially or ethnically motivated, at which point the other party must present a race-neutral justification for the strike. The Batson Claim system relies on several assumptions in order to work: that the accused party is honest about their intentions and willing to recognize their own bias, and that judges are capable of distinguishing between strikes made based on race and strikes made for other reasons. (Smommers and Norton, 2007) Because these assumptions do not always hold, Batson Claims are relatively useless as a means of preventing racial biases in the jury selection process. Several cases heard by the court since *Batson* demonstrate these shortcomings and the court's awareness of them. In both *Flowers v. Mississippi* (2019) and *Foster v. Chatman* 2016), the court found evidence of discriminatory intent in peremptory strikes made by prosecutors despite the respective trial courts' findings that these strikes were made for race-neutral reasons.

In 2018, Washington State implemented General Rule 37 (GR37), in an attempt to address major flaws in the Batson standard. The rule eliminates the burden of presenting a *prima facie* case of discrimination and instead requires the party that made the strike in question to explain its race-neutral reasons for the strike immediately upon objection. (O'Brien and Grosso, 2020:122) The rule also directly addresses Batson's sole focus on conscious and explicit forms of bias by expanding the scope of bias that can be objected to. In addition to explicit racial bias, the Rule qualifies "implicit, institutional, and unconscious" race and ethnic biases as unlawful reasons for peremptory strikes. (Wash.Ct. Gen.R.37) This includes striking a juror for expressing a belief that law enforcement practices racial profiling or living in a high-crime neighborhood, among other reasons. Although these justifications disproportionately exclude Black jurors, they were considered race-neutral reasons for a strike prior to GR37. (O'Brien and Grosso, 2020:122) Further, the rule stipulates that judges consider "whether the party has used peremptory strikes

disproportionately against a given race or ethnicity, in the present case or in past cases." (Wash.Ct. Gen.R.37)

Because it is recent, the effect of GR37 cannot yet be determined. However, preliminary interviews with attorneys, judges, and other court staff indicate that since GR37's implementation, attorneys are more hesitant to strike non-white jurors; objections to peremptory strikes will also likely become more frequent. (Sloan, 2020).

Other reforms to jury selection are limited in number and not necessarily focused on race. California's State Assembly Bill 3070, passed in 2020, adds to the demographic characteristics that are protected under peremptory strikes by allowing either party during jury selection to challenge strikes that may be based on gender identity, sexual orientation, national origin, or religious affiliation. (California State Assembly Bill No. 3070 § 1a.) Though this expansion of existing protections may result in less biased jury selection in California, the bill has not yet been evaluated.

Another factor that contributes to racism in the jury selection process is the lack of transparency of jury selection data which, though a matter of public record, is notoriously inaccessible to the general public and therefore difficult to analyze. (Wright, 2018) This obstacle to accountability can be removed by creating public, online, searchable databases of jury selection records. This reform is nonpartisan and widely beneficial. It will inform constituents of elected judges and prosecutors' peremptory challenge patterns. Publicizing and organizing this data will also contribute to future research on the racial disparities in jury selection which can facilitate future reforms better tailored to specific problems in New York State.

Plea Bargaining

Plea bargaining, or guilty pleas in exchange for a lesser sentence or punishment than would be faced should the defendant be found guilty in trial, is widely criticized as "an informal and unregulated process" that facilitate "waivers of constitutionally guaranteed trial rights." An estimated 90% of guilty pleas, which account for the vast

majority of convictions yearly, are a result of plea bargaining. (Vera Institute of Justice, 2020) Due to high levels of prosecutorial discretion and general lack of oversight, determining the exact effects of racial, ethnic, and other biases in plea bargaining is difficult. However, general trends reflect disparities in plea deals across both race and gender. (Vera Institute of Justice, 2020) Pretrial incarceration and the burden of cash bail — no longer an issue for most charges in New York State — are two often related factors shown to increase a defendant's likelihood of taking a plea offer, both of which disproportionately affect non-white defendants. (Vera Institute of Justice, 2020) The likelihood of a Black defendant receiving a plea offer that includes incarceration is around 70% higher than for their White counterparts. The pretrial nature of plea bargaining makes it difficult to determine how incarceration and conviction rates would change without it, but its "coercive nature," encouragement of "forfeiture of procedural protections," and contribution to mass incarceration all warrant more research, regulation, and reform. (Vera Institute of Justice, 2020)

Most existing reforms aimed at remedying the harms caused by plea bargaining focus on ensuring that defendants make informed, level-headed decisions to accept or reject a plea offer. New York State's reform of the cash bail system is intended to prevent imposing financial burdens that may pressure a defendant to accept a plea as a way of ensuring sooner release from custody. Another approach is reforming the discovery turnover process — mainly, ensuring timely release by the prosecution of the evidence against the defendant — to allow defendants ample time to consider the advantages and disadvantages of exercising their right to trial. Both bail and discovery reforms have been implemented in New York.

As many critiques of plea bargaining revolve around prosecutorial discretion, discourse on plea bargaining reform often posits restrictions on prosecutorial oversight, particularly surrounding charge bargaining. Charge bargaining, which is "routinely diagnosed as a major driver of plea bargaining's pathology," refers to the strategic manner by which prosecutors select and organize the charges against

defendants in order to facilitate a guilty plea. (Crespo, 2018:1306) Manipulating charges in this way gives prosecutors unprecedented power over a defendant's vulnerability to sentencing and is therefore at "the core of prosecutorial power in the United States." (Crespo, 2018:1310) One way of curbing this power is to prohibit prosecutors from changing charges after filing them, but this approach relies heavily on voluntary participation by prosecutors and ignores their influence over the initial filing of charges. Instead, some states — including New York — stipulate that prosecutors replace dismissed charges with charges of similar severity to prevent overly coercive charge bargains. (Crespo, 2018: 1362) Jurisdictions can take added steps to reform charge bargaining by giving judges the ability to approve or reject proposed changes to charging, further ensuring that prosecutors do not abuse their control over charging instruments. This addition to judicial discretion has already been adopted in 33 states.

Aside from these approaches, critics of plea bargaining have proposed several reforms that directly alter the process, many of which target the "trial penalty," or the difference in severity of sentence between the plea offer and the sentence the defendant would receive if convicted in trial. The aforementioned "penalty" is named as such because it is considered a means of punishing defendants for exercising their constitutional right. (Abrams, 2013) While some reformers advocate putting lower limits on sentences resulting from plea bargaining to decrease the "trial penalty," others have proposed limiting increases in post-trial sentences. The latter approach has the goal of ensuring consistency across plea deals while decreasing sentence lengths under all circumstances. (Covey, 2007) These limitations, called "plea ceilings," would simultaneously guarantee uniformity across prosecutors and prevent unnecessary penalization of defendants who execute their right to trial.

Restorative Justice

Restorative justice refers to the movement to find alternatives to incarceration, facilitate victim-perpetrator mediation, and address the holistic harms brought about

by crime that cannot be solved by the criminal justice system. Instead of focusing on punishment, restorative justice requires the cooperation of all parties — including the victim and perpetrator — to craft sanctions that "prioritize the objectives of stakeholder reparation and relationship restoration." (Saulnier and Sivasubramaniam, 2015:513) Although there are a number of ways of achieving these goals, restorative justice by definition reduces incarceration and — consequently — recidivism rates, both of which influence community wellness.

In Herkimer and Oneida Counties, survey respondents were very supportive of the restorative justice mission, with 74.1% of individuals agreeing at some level that "if both the accused and victim agree, the courts should offer an alternative to trial and punishment that allows both parties and community representatives to meet to determine the best way to repair the damage from the offense." Alternative courts, such as mental health and drug courts, can be considered forms of restorative justice. At present, most restorative justice efforts center around juvenile offenders or non-criminal conflicts. In cases where all involved parties agree, local courts can partner with Empowered Pathways to expand alternative dispute resolution programs for select criminal cases. Reseach indicates that the long-term effects of domestic violence such as post-traumatic stress disorder and depression are reduced by restorative adjudication rather than by more conventional procedures. (Joyful Heart Foundation, 2019)

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CHAPTER 7.

COMMUNITY RE-ENTRY OF FORMERLY INCARCERATED PERSONS

by

Andrew Shultheiss and Camille Sirianni

Reintegrating in Society

After an individual is released from jail or prison, the challenges they face are far from over. Inmates reentering society have problems finding housing, jobs, and face discrimination due to their criminal records. The goal of reentry policy is to help facilitate the transition from prison into society. In a report by S. Darman and J. Darman (2007), an ex-offender in Oneida County described reentry to the community as "confusing, to put it simply. I was out of touch. No housing, no job, no family, no support. It was a scary time" (p. 16). The reentry process is not functioning to successfully reduce recidivism and allow ex-offenders to rejoin society as healthy members of the community who work and pay taxes (S. Darman & J. Darman, 2007). In this section, we will address housing, education, employment, and then expungement of records as crucial elements of successful reentry into civic society. There are many areas in which our counties can do better; successful re-entry of the formerly incarcerated is in everyone's interest. Our recommendations, based on research and the Zogby survey conducted . . . , are presented at the conclusion of this chapter.

Housing

It is important to note that there are differences in post-incarceration challenges between prisons and jails due to differences in sentence length (Mertaux et al., 2007, p.5). Jails often do not hold inmates who are serving more than a year, and the median stay length for a jail is one day. despite not being as disruptive to personal lives as prison (Mertaux et al., 2007, p.5), the number of people who struggle with homelessness after a jail sentence is larger than it is for those leaving prison. After leaving prison, at least 1/10th of inmates become homeless for a period, though this rate can be even as high as 50% in cities like San Francisco (Mertaux et al., 2007, pp.5-6).

Specific barriers exist in Oneida and Herkimer Counties. First, there is a lack of adequate discharge planning services (Metraux et al., 2007, p.8). The Oneida County Jail does not offer any explicit pre-release or housing programs (Oneida County Sheriff's Office, n.d.). Mohawk Correctional Facility and Mid-State Correctional Facility, which are state prisons, do offer some housing and pre-release services. Both facilities offer Temporary Release programs; within two years of their earliest release date, prisoners are allowed a furlough of up to seven days to seek housing (New, n.d.). Seven days is a very short time within which to find housing, and the program only applies to inmates who have families to which they can return.

Housing is affected by a related lack of financial security upon release (Metraux et al., 2007, p.8). After leaving prison or jail, formerly incarcerated individuals often do not immediately have employment (discussed below), and sometimes must pay for other services such as child support, supervision fees, and restitution, leaving them with little for housing (Metraux et al., 2007, p.8). This leaves inmates unable to afford unsubsidized housing, but government subsidized housing is often denied to ex-offenders.

Emergency housing services when available are only for only a few days. These emergency housing services rely on Department of Social Services emergency housing per-diem subsidies. Moreover, in Utica, the Rescue Mission of Utica's Emergency Housing Program has direct admission for prisoners, but it is chronically overbooked. There are also three emergency housing services for women which are also overcrowded (Darman & Darman, 2007, pp.25-26). Portions of New York State's $20 billion plan to combat homelessness should be set aside for these subsidies or for direct funding of emergency housing (Office, 2019).

In Oneida County, there are few transitional housing programs and most of it is focused on individuals recovering from substance abuse. Thus, the threshold for admission often includes the applicant having a documented drug problem. (Darman & Darman, 2007, pp.26-29). Only individuals with the highest risk assessment scores are eligible to receive it. To help inmate reentry, the admission process would have to

be changed. At the county level only “half a dozen” individuals per month receive transitional housing assistance because funding is scarce (S. Darman, personal communication, November 16, 2020). Individuals who do receive transitional housing usually only stay up to two years since it is temporary; thus they must find new housing at the end of that period (S. Darman, personal communication, November 16, 2020). Another related problem is that transitional programs often have an intake process that does not start until an individual returns to the community, leaving them effectively homeless until that process is complete. Instead, these services should start the intake process at the end of an inmate’s sentence so that they have housing upon release (Darman & Darman, 2007, p.29). This would require cooperation between the holding facility and the transitional programs; it could be developed in tandem with prison housing programs.

When a reentering individual struggles with homelessness, they are more likely to be rearrested. Transitional housing should be viewed only as a temporary measure before the individual is placed into more permanent housing. In response to the need for permanent housing, New York City created the Frequent Users Service Enhancement (FUSE) Initiative. This program took individuals who cycled in and out of jail and homeless shelters more than four times per year and put them into supportive housing. The FUSE II program, which further explored the implications of the first program, resulted in 86% of participants living in permanent housing after 24 months while only 42% of the comparison group were living in permanent housing (Aidala et al., 2013, p.iv). Additionally, there was a 40% reduction in time individuals spent incarcerated over the comparison group (Aidala et al., 2013, p.v).

While the cost of the FUSE II program was estimated to be $23,290 (2012 dollars) per person per year, there were savings in public costs, including AOD, medical, and mental health hospitalizations, which offset 67% of this cost (Aidala et al., 2013, pp.50-51). Other savings in expenses such as prison stays, nursing home stays, arrest and prosecution, and other medical or social outcomes were not included in this cost analysis (Aidala et al., 2013, p.51). Thus, the savings would in fact be

much greater, and make the program affordable. It is a program well worth implementing.

A Housing First program can also be successful. Like the FUSE initiatives, these programs provide housing for homeless individuals, though individuals in a Housing First program usually have a mental illness or a drug addiction. A Housing First program contrasts a "treatment first" program where rehabilitation and stabilization are deemed necessary before an individual acquires housing (Aubry et al., 2015, p.463). Aubry et al. (2015) found that individuals in a Housing First program maintained stable housing for significantly longer than those in a treatment first program; after one year, the were more likely to remain in stable housing, and as a consequence, they also reported other social advantages such as a higher increase in quality of life and better functioning within their community (p.466). This illustrates that even with substance abuse problems and mental illness, individuals placed into housing first were able to maintain stability, which is important for exiting inmates and could help their full transition from prison to civil society.

Education

Prisoners consistently rank below average US households in terms of literacy and math levels. The incarcerated would benefit greatly from education programs, however, they are not easily accessible. Jones and Manger (2020) argue that there are three types of barriers to education within the prison system: institutional, situational, and dispositional. Each barrier requires different solutions to ensure inmates have the opportunity to further their education.

First, let's look at institutional barriers; these include a lack of funding, insufficient education resources, restricted classroom space, and limited teacher availability and training (Jones & Manger, 2020, p.159). Local jail facilities often lack educational programs entirely; for instance, the Oneida County Jail has no education programs per se, and instead focuses on vocational and labor-oriented programs (Oneida, n.d.). Herkimer County Correctional Facility does offer education towards a GED (Martin, n.d.).

Mohawk Correctional Facility and Mid-State Correctional Facility both have multiple education programs. Both have the Academic Outreach Program, which is for individuals whose needs are not met within a normal classroom, the Adult Basic Education Program, which focuses on bringing reading and math skills up to a 6th grade level, and the High School Equivalency Program (New, n.d.). In Oneida County, inmate reading and math levels, high school graduation or GED rates are higher than the state averages (Darman & Darman, 2007, p.46).

Education is of value for itself, but also for reducing recidivism. Lower recidivism rates, however, are most strongly correlated with the attainment of college credits (Jones & Manger, 2020). Mohawk Correctional Facility has an established college program with Herkimer County Community College, and Mid-State Correctional Facility is in the process of establishing this same program. However, according to Doran Larson, a professor at Hamilton College who started the programs, they lack sufficient funding and resources and can only enroll a very small proportion of interested inmates.

In 2018-19, in Oneida County 18 college courses were offered at Mohawk State Correctional Facility, which enrolled twelve to fifteen students each. These programs in total cost for $75,000. (D. Larson, personal communication, October 26, 2020).

It is more cost effective to educate prisoners than to reincarcerate. In fact, “to be cost-effective, an educational program in prison would need to reduce the 3-year reincarceration rate by between 1.9 percentage points and 2.6 percentage points to break even … findings indicated that participation in prison education is associated with a 13-percentage-point reduction in the risk of reincarceration within 3 years after release” (Jones & Manger, 2020, pp.161-162). One obvious recommendation is to allocate more resources for educational programs in prisons.

Situational barriers are less significant than institutional barriers; they affect inmates who arelet out on parole, released, or transferred without completing a program (Jones & Manger, 2020, p.159). Any inmate who stays within a facility for more than three months has time to work towards a college degree, as college

courses do not exceed that length. This is easier in maximum-security facilities since inmates are there longer and the facilities often have more resources (D. Larson, personal communication, October 26, 2020). Situational barriers affect younger inmates the most as they are more likely to receive shorter sentences and thus have their education interrupted (Jones & Manger, 2020, p.160). A possible solution to some of these situational problems is a program such as the Illinois Department of Corrections' Prisoner Entrepreneur Education Program that allows ex-offenders to participate for up to 3 years after their release (Illinois, n.d.).

Dispositional barriers present the least serious problems for inmate education. Dispositional barriers include attitude towards education, learning difficulties, and personal hindrances (Jones & Manger, 2020, p.159). Locally, many more prisoners want to take higher educational courses than can be accommodated (D. Larson, personal communication, October 26, 2020). After taking a course alongside regularly enrolled college students, inmates reported higher levels of self-efficacy than at the beginning of that course (Jones & Manger, 2020, p.158). Putting inmates in a classroom with college students can foster growth and motivation needed to overcome dispositional barriers.

Costs and Benefits

Each of the above recommendations have costs associated with them. But the costs are often offset by decreased spending in the case of successful re-entry. It might seem that New York State spends a lot on its prison population. While New York State has the highest average cost per inmate in the United States, upwards of two-thirds of the expenditures are personnel costs (Vera, 2015). Only 17% of spending on average is "devoted to a catchall category that includes facility maintenance, programming costs for incarcerated people, debt service, and legal judgments", which in New York state comes to under $32 per resident per year for this category (Vera, 2015). It is unclear how much of that category is even directly devoted to programs, and there is little information about New York State spending

directly on prison programs. However, this $32 per resident per year is a relatively small number that would benefit inmates if increased.

The poll conducted by Zogby Strategies (2020) reveals that the local population in Oneida and Herkimer Counties supports the creation of more programs for prisoners. Out of 500 polled local individuals, 68.8% stated they would support increased education and training programs for inmates of jails and prisons (Zogby, 2020). Local individuals supported helping released inmates find jobs or housing even more overwhelmingly, with 82% of respondents indicating that the agree with this increased aid (Zogby, 2020). Local support could be used to help garner traction for new programs. While specific cost measures were not presented to these individuals, the abundant support indicates that these policy changes could be politically viable.

Employment

Employment is important as a source of income; if an ex-offender has expenses and no income, they are more likely to turn to illegal sources of funds. Moreover, a source of income will affect housing prospects, as well as other aspects of daily life. A report by Visher et al. (2008) shows that two-thirds of former inmates rely on family and friends for financial assistance. This statistic signals a need for financial support among the formerly incarcerated population. The most recent data show that in Oneida County, only 34.3% of parolees are employed (S. Darman & J. Darman, 2007). Although a criminal record may be preventing some of those parolees from obtaining employment, Oneida County faces a unique obstacle in comparison to some other counties in New York State. In Oneida County, there is approximately three times the parole population compared to Suffolk County as a proportion to their respective population (S. Darman & J. Darman, 2007). Thus, the competition for those who are formerly incarcerated is higher, making employment for people with criminal records more difficult to achieve (S. Darman & J. Darman, 2007). In addition, for those who are formerly incarcerated, having a job creates

structure to their daily lives and contributes to their psychological well being (S. Darman & J. Darman, 2007).

One method of improving levels of employment in the formerly incarcerated population, is to provide vocational training to inmates while they are incarcerated. A report by Visher et al. (2008) showed that those who participated in vocational training programs had better employment outcomes than those who did not. In Oneida County 12.7% of parolees who are under active supervision, are employed with wages which are above minimum-wage (S. Darman & J. Darman, 2007). When this sample is analyzed further, this percentage rises to 41.7% when those with some college or vocational school are included (S. Darman & J. Darman, 2007).

One possible explanation of the low rates of employment among the formerly incarcerated might be the quality of the vocational training they receive. An evaluation of these programs is necessary. If prison programs at Mid-State Correctional Facility and Mohawk Correctional Facility are not producing valuable members of the workforce because of dated teachings and practices, the formerly incarcerated population will be at a disadvantage. Moreover, when inmates do not perceive vocational programs to be worthwhile, fewer will participate (Hudson), and those participating will be less invested in the training. It takes buy-in from those who are participating for them to get something out of it (Vacca, 2004; Hudson).

In addition to vocational training within prisons, outside support programs are also of great importance for reentry. One support program was Jobs and Hope, a reentry employment program for homeless ex-offenders which was run by the Oneida County Department of Workforce Development (S. Darman & J. Darman, 2007). Although this program had success, with over a hundred homeless ex-offenders finding employment at the time of the report, Jobs and Hope only had one person employed full-time (S. Darman & J. Darman, 2007). With the absence of Jobs and Hope, there are no longer any support programs specifically geared towards the reentry population. A program that will take an individualized approach to aiding ex-offenders in job readiness is required (S. Darman & J. Darman, 2007).

Court mandates can also strongly affect the reentry process. While the Utica Drug Court is focused on treatment, there is a conflict that arises between the court mandated treatment and the search for employment (S. Darman & J. Darman, 2007). For example, drug treatments normally occur in the middle of the day, putting many in a difficult situation in which there are two or more competing priorities of attending court mandated treatments or engaging in a job search (S. Darman & J. Darman, 2007).

Finally, outside support organizations can play an important role in advocating to local businesses on behalf of ex-offenders. Although New York State prohibits hiring discrimination on the basis of a criminal record, it is known that employers across the country would rather not hire ex-offenders (S. Darman & J. Darman, 2007; Freeman, 2003). These organizations can provide information about the benefits to hiring ex-offenders, such as the Work Opportunity Tax Credit, which reduces tax liabilities by up to $2400 per ex-felon who is from a low-income family. Employers need to be made aware of these benefits at a larger scale (S. Darman & J. Darman, 2007).

Expungement of records

Criminal records can act as a barrier to housing, employment, social status, and have future consequences (e.g., license requirements, access to welfare benefits, health benefits, public housing, food stamps), inhibiting successful reentry into their communities (Prescott and Starr, 2020). Although New York State has what is called a certificate of relief that allows drug charges to be expunged upon completion of treatment, there is no process by which other ex-offenders can expunge their criminal records. However, other states like Michigan, have found remarkably low recidivism rates among those who have had their records expunged (Prescott and Starr, 2020). Prescott and Star (2020) found that among expungement recipients, from the time of their expungement, the two-year arrest rate was 3.4%, the two-year conviction rate was 1.8%, the five-year arrest rate was 7.1%, and the five-year conviction rate was 4.2%. These small numbers indicate the benefit of expungement on recidivism,

which translates into lowered costs of imprisonment and greater chances for a successful reentry. Moreover, those who had their records cleaned showed a higher employment rate While some may argue that retaining criminal records acts as a deterrent to further crime, researchers are generally skeptical (Prescott and Starr, 2020). Psychologists argue that when making the decision to commit a crime, the formerly incarcerated individual is not thinking of the repercussions of a past incarceration. Thus, expungement of records would likely not have an impact on future crime rates. However, access to expungement remains a concern for implementation of the practice.

In order to have a record expunged, the ex-offender must go through a somewhat lengthy process. Fees associated with expungement of records are another barrier (Prescott and Starr, 2020). Thus, it is not surprising that there are disparities in who is able to succeed in having their records expunged.

One way of mitigating these disparities is by making the expungement of records an automatic process instead of a process by which ex-offenders would need to apply in order to have their records expunged. When the expungement of records is not an automatic process, a combination of lack of information, administrative hassle, fees, distrust with the legal system, lack of access to counsel, and low motivation act as barriers for ex-offenders to seek expungement (Prescott and Starr, 2020). As with many legal processes, expungement requires the applicant to be informed and well organized (Prescott and Starr, 2020). Ex-offenders struggle to advocate for themselves and fully understand what their options are because of the complexity of the legal system (Prescott and Starr, 2020). Administrative complexity and delay can increase an already lengthy expungement process (Prescott and Starr, 2020). Tracking and preventing disparities will be important in all processes of reform.

Ex-offenders often feel distrust for and fear of the criminal justice system, which can serve as a severe psychological barrier to seeking expungement. The entire process can seem to be too daunting to complete (Prescott and Starr, 2020). Without proper legal counsel the process is even more difficult; thus disparities in

wealth exacerbate unequal access to expungement (Prescott and Starr, 2020). Lastly, in the circumstances in which a criminal record may not act as a barrier to reentry success, those individuals may have insufficient motivation to have their records expunged, until the day it impacts an aspect of their life such as acquiring a loan (Prescott and Starr, 2020). Thus, New York state should adopt an automatic expungement policy, which could be adapted depending on conviction type.

Reentry is a holistic process. With one pillar of successful reentry (e.g., housing, education, employment, expungement of records) left unsteady, the formerly incarcerated population will be less likely to meet their goal of becoming a valuable member of society. In order to make this happen, Oneida and Herkimer Counties should adopt and implement the following reforms.

Due to the financial burdens of the proposed methods of reform, the interests of the community should be considered using survey data from Hamilton College which polled from Oneida and Herkimer Counties. When asked for their level of agreement about a statement saying if more education and training programs should be made available to inmates of jails and prisons, 68.7% of respondents agreed at some level. When asked for their level of agreement about a statement saying that people who are released from jail or prison should receive help finding housing and jobs, 81.9% of respondents agreed at some level. Both of which, holding a strong majority in favor of assistance in the reentry process, showing a support for reform efforts. Although there is support among the communities of Oneida and Herkimer Counties, it is likely that if the recommended practices are adopted, lower recidivism rates will provide benefits that may outweigh the increased costs (Freeman, 2003). It must be mentioned that community wellness is improved with the successful reentry of the formerly incarcerated population. It is more effective and easier to see how this population has the ability to be upstanding citizens and contribute greatly to our community, when institutions act with humanity and care. By mitigating the barriers facing the ex-offender population here in Oneida and Herkimer Counties, reentry can be more successful.

Recommendations

Overall, formerly incarcerated individuals in Oneida and Herkimer Counties would benefit from increases and changes in programs dealing with their reentry to society; there is widespread community support for changes in the current system. Our findings specifically support the following:

- Creating and funding more emergency and transitional housing.
- Putting the most at-risk individuals into housing like the FUSE Initiative or Housing First program.
- Creating and funding programs within the prisons that are available for those who exit prisons will help inmates achieve educational goals and help inmates find jobs and stay out of prison.
- Teaching prisoners within classrooms with college students to help address self-efficacy issues the inmates may have.
- Better funding and broadening the scope of local college education programs.
- Improving communication between facilities in the case of transfer
- Offering post-release programs modeled on those in Illinois, in conjunction with pre-existing local resources and organizations.
- Vocational training should be made available to all inmates. The content that is provided must be up to date and applicable to the current job market. Regular monitoring should assure the relevance of the training offered and measureefficacy of current vocational training, identifying what is working well and issues that need to be addressed.
- Funding must be allocated towards the development of specific reentry support programs to assist the reentry population with employment, housing, and other reentry specific issues. Such support programs also serve as advocates for the reentry population by communicating with local businesses about the benefits these individuals can provide as employees. With an infrastructure of meaningful support programs, there is an additional need for increased communication and

collaboration between the institutions that plan court mandates and the time necessary for securing employment in order to provide the reentry population with a greater opportunity for success.

- Policy makers at the state level should define and implement a procedure for the automatic expungement of criminal records.

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CHAPTER 8.

POLICE TRAINING AND RACIAL SENSITIVITY

by
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Police Training and Race

This chapter will consider how effective training is in equipping the police with the resources and tools needed to do their jobs while mitigating harm. In a comprehensive analysis, the Bureau of Justice looked at 664 law enforcement agencies and their training practices across the United States from 2011 to 2013 (Reaves, 2016). They found that the majority of agencies implement training in environments that are more stressful as opposed to non-stressful, with basic training lasting an average of 21 weeks (Reaves, 2016). Within this training, basic operations, like patrol procedures and report-writing, took up a majority of training, at approximately 200+ hours (Reaves, 2016). Weapons, use of force, and defensive tactics took up the next biggest chunk at 168 hours (Reaves, 2016). Following this was 89 hours spent on self-improvement, which includes health and fitness, then legal education at 86 hours, community policing at 40 hours, and lastly, social issues, like mental health and domestic violence, at an average of 10-13 hours (Reaves, 2016).

Because of the sheer scope of training, in this section we will address two types of training which have recently resurfaced as relevant and in need of greater analysis: implicit bias training and weapons/use of force training.

Implicit Bias

Implicit bias is defined as holding a stereotype which is "relatively inaccessible to conscious awareness and/or control" (Project Implicit, 2011). Implicit bias can take many various forms, but in the context of law enforcement, it manifests itself most in the associations between race and criminality. While incidents of police brutality can happen and have happened across all racial lines, black individuals are disproportionately affected by policing practices. In a 2019 data analysis of police-involved deaths from 2013-2018, researchers found that black men are 2.5 times more likely to be killed by police than white men (Edwards, Lee, and Esposito 2019). Even when accounting for factors like population and previous criminal records, black men are arrested, stopped,

searched, and subjected to force at much higher rates than white men (Edwards et al., 2019).

These racial disparities have unfortunately always been a prevalent part of our legal system and policing practices. In the local data collected through the Zogby survey, 273 individuals, a majority of the 500 participants polled, stated that they did not believe racial/ethnic bias was a significant issue in the community of Oneida and Herkimer counties (Zogby Strategies, 2020). However, 268 individuals, again a majority out of the total 500, then answered that one's race and/or ethnicity does indeed affect their treatment by law enforcement (Zogby Strategies, 2020).

An explanation for this disparity could be that while overt incidents of discrimination may not be seen in the local community, police brutality and discrimination often play out on a large, national scale. These incidents have contributed to calls for implicit bias training, which has become more widespread in recent years. Although there is no federal mandate requiring implicit bias training for law enforcement agencies across the country, several state and local law enforcement agencies have implemented such training for their recruits. In Connecticut, the Police Accountability Bill was amended to include a section on implicit bias training (Bovée et. al, 2020). In New Jersey, Assembly Bill No. 3641 was passed in July of 2020 requiring implicit bias training to be built into operations training for all law enforcement agencies in the state (NJ.Gov, 2020). Another unique component of this bill requires this implicit bias training to be renewed every five years, so that law enforcement officers are able to receive a continuous refresher on this topic (NJ.Gov, 2020).

The most researched and most comprehensive form of implicit bias training has been in New York City. In 2018, New York City entered a $4.5 million contract with Fair and Impartial Policing, a Florida-based company that provides implicit bias training to law enforcement agencies across the country (Baker, 2018). The training for NYPD officers largely took place in an academic context, with classes of approximately forty, taught by two instructors who led discussions and lectures, but also engaged officers in role-playing scenarios and exercises (Baker, 2018). In the classroom, implicit bias was framed in a non-

accusatory context. Instead, officers were taught that biases are unconscious and affect all people, and don't require malicious intent. The goal was not to erase bias completely, but rather to recognize it in the context of policing and learn to manage attitudes and behaviors to mitigate harm. In exercises, officers were taught to perform self-checks, aimed at conscious and controlled decision-making; these self-checks included asking questions such as, "Would I be stopping this person if they were white?", or changing other demographic identifiers (Baker, 2018).

In July of this year, the John F. Finn Institute, which had been following the NYPD's implicit bias training program, wrapped up their two-year analysis, the first study of its kind to really examine implicit bias in the context of law enforcement and its effects (Worden et al., 2020). Overall, the institute found a significant change in the attitudes of trained officers; pre- and post-training, assessed officers reported feeling more prepared to recognize and manage their biases (Worden et al., 2020). They were more receptive to conversations about implicit bias training, and more aware of how implicit bias affected their jobs (Worden et al., 2020). However, the training and these changed attitudes did not necessarily translate into effects on behaviors. The institute found that the NYPD statistics on stops, frisks, and arrests remained largely unchanged, with black individuals still affected at rates disproportionate to their representation in the community (Briscoe, 2020).

Across the country, implicit bias training has also received backlash in other contexts, with research indicating it is not only ineffective, but may in fact additionally have counterproductive effects. In a 2006 study of corporate policies on affirmative action and diversity in 708 companies, researchers found that programs and training centered on diversity and reducing implicit bias had very little positive effect, and in fact actually decreased representation of black women (Kalev, Dobbin, & Kelly, 2006). These effects could possibly be attributed in part to the responses of those in high-status groups that may feel especially targeted by implicit bias training, most particularly, white men. In a 2016 study, researchers found that when exposed to pro-diversity language and programming in a mock hiring scenario, white individuals not only believed that women

and minorities were treated fairly, but they themselves actually felt more threatened and discriminated against (Dover, Major, & Kaiser, 2016). These studies suggest that implicit bias training can have negative and adverse effects on those being trained. As such, the way in which implicit bias training is taught and delivered needs to be seriously re-examined.

However, in looking at implicit bias training, it is sometimes difficult to ascertain efficacy and value simply because it is still a very new, and in many places, underdeveloped form of training. On a local level, implicit bias training was only incorporated into law enforcement agencies in the last year (Little, 2020). It is so recent that as of yet, all current police officers have not received it. It is also not a distinct or separate topic of its own; it is built into the lecture on procedural justice, with only an hour or so of time devoted to this topic (Little, 2020). Furthermore, on the local level, due to the costs of hiring outside parties or specialists, this training is taught by general topic instructors (Little, 2020). General topic instructors are themselves police officers who receive a teaching certification after a week-long seminar, and the format of the lessons themselves may not be the most conducive to effective learning.

Other factors play a role in the difficulty of assessing and reforming implicit bias training; this includes societal, cultural, and educational aspects. Biases are so deeply ingrained in our society and permeate through not just our systems of law enforcement, but contribute to inequity in education, healthcare, the economy, and other social institutions that can all affect the way our criminal system works. It takes much more than just a few sessions of implicit bias training to counter these deeply established stereotypes that characterize our world. Additionally, there still exists a divide between academia and police; experience and being out in the field as an officer is highly valued in the world of law enforcement, and there can be hostility when presented with a curriculum from someone who does not have experience in that world. It can be difficult, then, for lessons to be both delivered and received; instructors may not be familiar with jurisdiction-specific experience.

Another difficulty in reforming implicit bias training is that it must be done in the context of other types of training; it is one thing to talk about recognizing and managing biases in the low-stress, controlled environment of the classroom, but quite another to exercise those in the field. When split-second decisions must be made, police officers may very likely turn to instinct and rely on what they receive the most training on- that is, weapons and use of force.

Use of Force

We turn now to the training that is most prevalent, weapons and use of force. On the national scale, weapons and use of force training takes up a significant portion of academy training. It includes firearms, weapons retention, defensive tactics, and use of force. Locally, a minimum of three to four weeks must be spent on weapons training, with agencies encouraged to devote more time to specializing on weapons like tasers and pepper spray (Little, 2020. Weapons training is one of the few skills that must be renewed. In New York, officers need to renew firearms certification twice a year, hitting targets at an accuracy rate of 78% or higher (Feuer, 2012).

However, the issue with this is that the controlled environments of target practice at a firing range are not applicable to the real world. The field simulations are limited to only a three-day portion of the training, meaning that for the rest of the time, officers practice shooting at unmoving, nonthreatening paper silhouettes (Feuer, 2012). Furthermore, a study of the NYPD conducted by RAND in 2008 found that due to the sheer number of officers who need to pass the test in order to be put back on patrol, firearms training and recertification are often rushed (Feuer, 2012).

In New York, weapons and physical restraints training is revisited each quarter, but no other use of force or defensive tactics are refreshed. There is also no physical education requirement, so after meeting physical health and fitness standards during academy training, officers are not required to stay in shape (Little, 2020). This too, can push the envelope when it comes to increasing use of force as opposed to de-escalation, as threatened officers who feel they are not in shape to defend themselves otherwise may

feel safer using weapons. In-service de-escalation training is also not required in thirty-four states. The training emphasis on weapons and firearms leads to over-reliance on deadly force (Mahbubani, 2020).

We now turn to the important topic of de-escalation training: how not to use those weapons, you might say. We will introduce the current national and local policies regarding de-escalation training, and analyze the relevant questions in the survey of residents of Herkimer and Oneida counties conducted by Zogby Analytics.

National Policy on De-escalation

Calls for increasing training programs have been a part of the discussion around police reform well before the killing of George Floyd and the most recent movement to end police brutality. Instances of excessive use of force, and instances where officers appear to escalate rather than de-escalate interactions, have received national attention, increasingly so in recent with the adoption of body cameras and the use of smartphones. Despite its prominence in the national dialogue on police violence, however, policies and definitions of de-escalation training remain vague and inconsistent.

This inconsistency poses a challenge in evaluating training practices. In 2016, the U.S. Department of Justice published a survey of the 664 state and local law enforcement academies active from 2011 to 2013. The report found that in 2013, the average number of hours of training required for special jurisdiction police (e.g. park rangers or public transportation police) agencies was 1,075 (p. 4). The average training required for county police academies was a similar 1,029 hours. Sheriffs' offices, technical schools, and state POST (Peace Officer Standard Training) agencies, however, averaged 706 hours, 703 hours, and 650 hours, respectively (Bureau of Justice Statistics & Reaves [BJS & Reaves], 2016, p. 4).

The Bureau of Justice Statistics was not at all specific in its discussion of the amount of time dedicated to the use of force in police training academies:

> An average of 168 hours per recruit were required for training on weapons, defensive tactics, and the use of force. Recruits spent most of this time on firearms (71 hours) and self-defense (60 hours) training. Recruits also spent an average of 21 hours on the use of force, which may have included training on agency policies, de-escalation tactics, and crisis intervention strategies. (BJS & Reaves, 2016, p. 5)

For context, these 21 average hours, some of which "may" have included training on de-escalation tactics, were *at least* four hours less than the average training for writing police reports, which the Bureau of Justice Statistics found was 25 hours (2016, p. 5). In fact, the average number of hours spent training on the use of force was significantly lower than 21 (Table 2).

Table 2, from the Bureau of Justice Statistics, was likely the basis for the claim that an average of 21 hours was spent training on the use of force. The number appears to have been drawn from the nine average hours spent on "mediation/conflict management" together with the 12 average hours of "Problem-solving approaches" (Table 2). However, the asterisk in the table indicates that averages were calculated *only* from the academies that offer such training. This distinction may be of negligible impact when discussing the 25 average hours of training dedicated to writing police reports, training that was offered by 99 percent of police academies (BJS & Reaves, 2016, p. 8), but training in the use of force was far less standardized than report writing. A substantial 18 percent of the 664 academies offered no "mediation/conflict management" training, and one in five provided no instruction in "Problem-solving approaches". (Table 2). Thus, the true average time of training was seven hours for conflict management, and 10 for problem solving (figures rounded). The Bureau of Justice Statistics' average of time dedicated to the use of force was overestimated by four hours. Significantly, 120 to 133 police academies do not provide any de-escalation training- and even those that do may not require it.

New York State Policy on De-escalation

Like most states, New York does not require that officers receive de-escalation training to become certified. However, de-escalation and use of force training is included in the Mohawk Valley Police Academy's curriculum for basic training (Oneida County Sheriff's Office, 2020). Utica Police Chief Mark Williams says this training includes role-playing and takes up eight hours of a course that is eight weeks in length (Fowler et al., 2020). Among academies that offer de-escalation training, this figure falls slightly below the national average (BJS & Reaves, 2016).

However, officers' training does not end when they leave the academy. Officers in Utica complete a mandated eight hours of in-service de-escalation training annually (Fowler et al. 2020). Like the academy, the Rome Police Department uses reality-based de-escalation training. "You have your officers role-playing different scenarios, which helps quite a bit," says Rome Chief of Police Kevin Beach, "It's not just somebody putting up something on a board." Beach says these scenarios can range from verbal de-escalation practice, to shoot/don't-shoot drills (Fowler et al., 2020). All officers in Oneida county receive annual in-service training on the county's use-of-force policy (Policy 300, 2020, p. 7).

According to Prof. Mark Polkosnik of Herkimer College, officers in Herkimer County receive in-service training in de-escalation practices every three months (Hyman et al., 2020). While Polkosnik did not mention the duration or extent of this training, the three-month frequency compares favorably to most of New York State. A CBSN survey from 2019 shows that de-escalation training is optional in Buffalo, and the frequency of the training is one hour per year. In Rochester, the de-escalation retraining is required, but only four hours every two to five years (Table 3). Conversely, the New York City police department reported 32 hours of de-escalation training but did not clarify the frequency of this training (CBS New York, 2019).

Survey Responses

Three questions from the survey conducted by Zogby Analytics are relevant to the scope of this chapter. Question 23 asks residents of The Mohawk Valley: "Were

you ever, in your opinion, treated inappropriately (physically or verbally) by a police officer?" Of the 180 respondents who had been stopped by the police, 34 answered "Yes" and 146 answered "No" (College-Community Partnership for Racial Justice [CCPRJ], 2020).

The next question was directed to respondents who answered "Yes" to question 23. Question 24 asked: *"In what way was the treatment inappropriate?"* Respondents were given five choices and could select multiple. Of the 34 respondents, 25 indicated that they had experienced verbal abuse, described by the survey as "yell[ing], curse[s] or insult[s]", and five respondents indicated that they had experienced an "Inappropriate use of force" described as "push[ing], shov[ing], or hit[ing]". The other three answers were "Illegal stop or search", which was the second most chosen answer at 16, "Other", which was chosen five times, and "Inappropriate sexual comments or contact" which was selected twice (CCPRJ, 2020).

Question 25 also followed up with the 34 respondents who indicated that they had been treated inappropriately by a police officer in Question 23. Question 25 asks: *"How many times did these incidents occur?"* Of the 34 respondents, 30 indicated that the incidents had been limited to one or two instances; the other four respondents indicated that they had experienced more than two instances inappropriate treatment (CCPRJ, 2020).

Two responses in particular stand out as meaningful in the context of use of force and de-escalation training. Twenty five of 34 respondents indicated that their experience of mistreatment by police had involved verbal abuse. Three-fourths of inappropriate conduct from police, then, involves verbal abuse. In theory, this is a matter for de-escalation training, which instructs officers to avoid aggressive approaches to interactions with citizens.

Of surveyed residents who have had contact with the police in Mohawk Valley, slightly less than one in five has felt that they were treated inappropriately. Almost 75 percent of those instances involved aggressive behavior from law

enforcement. That is a substantial figure, and it is a problem.

Best Practices and Results

There is no widespread study proving (or disproving) the effectiveness of de-escalation training. While most accounts report it to be positively productive, ultimately, the answer to *"does de-escalation training work?"* depends on who you ask. If you ask Cleveland Police Chief Calvin Williams, that answer would be a resounding "*yes.*"

Cleveland adopted "training aimed at reducing the use of force" in 2014, spurred by the death Tamir Rice (Gillers, 2020). Cleveland's General Police Order 2.01.02, released on the first day of 2018, addresses de-escalation procedures. Signed by Williams, the report outlines pages of steps that officers might take to de-escalate situations, from taking into account mental illnesses and potential intoxication (p. 1), to standing back and "slowing down the pace of the incident" (p. 3).

"We expect officers to de-escalate, to de-escalate, to de-escalate prior to any use of force, and we've held officers accountable if they haven't done that," Williams told the *Wall Street Journal* (2020), and he believes it's worked. A Cleveland Division of Police (CDP) report shows a 32 percent reduction in instances of use of force in 2017 from the two years prior (Gilbert 2020).

However, for all the detailed methods and practices it lays out, General Police Order 2.01.02 lacks a clear description of required de-escalation training. After three pages of strategy, recommendations and practices, Order 2.01.02 dedicates only the final sentence to training: "Officers shall receive integrated, scenario-based training at least yearly on de-escalation techniques and tactical ways to handle situations where the use of force can be avoided or the level of force minimized" (2018, p. 3).

Perhaps part of Cleveland's success lies in the Crisis Intervention Team (CIT) programs developed alongside de-escalation efforts after 2014. In 2015, the City of Cleveland received a federal grant of $200,000 and community funding of $260,000

for its CIT Co-Responder Pilot Project, in which the CDP partnered with FrontLine Service, a non-profit behavioral and mental health service provider (FrontLine Service, 2020), to dispatch a team of two mental health workers and two police officers (Mental Health Response Advisory Committee [MHRAC], 2019, p. 3). The percentage of individuals who needed to be transported to an emergency department dropped from 87 percent to 44 percent when the crisis workers were present, which, apart from saving the city and the police time and resources, "decreases the likelihood of a situation escalating since law enforcement are not having to take an Individual into custody" (MHRAC, 2019, p. 4).

The original grant from the Federal Bureau of Justice Assistance funded the program through 2017, and then through the end of September 2018 after the City of Cleveland applied for and received an extension. Hoping to continue the program, the city applied for an expansion grant in 2018, but this time it was not awarded. The CIT Co-Responder Pilot Project ended in September of 2018 (MHRAC, 2019). The timing of the CIT Co-Responder Pilot Project appears to align with the reduction in the use of force observed by the CDP.

In Cleveland, CIT has been integrated into the training and structure of the CDP. Cleveland's CIT Program features increased training, community engagement, and collaboration between the CDP and the City of Cleveland Mental Health Response Advisory Committee (MHRAC) (General Police Order 5.11.02, 2018, p. 2). Under Order 5.11.02, all crisis incidents handled by the CDP must be reported annually to the public and to the MHRAC (2018, p. 2). The MHRAC is charged with tracking and reviewing officers' performance in collaboration with the CDP and using the results to recommend "appropriate changes to the CDP's policies, procedures, and training" (2018, p. 4).

The order identifies the Specialized CIT Officer as the "most integral" component of the CIT Program (2018, p. 5). These officers assume the "primary responsibility" and "handle all crisis incidents assigned or self-identified" in addition to their standard duties (p. 5). Specialized CIT Officers are always voluntary, and

applicants are assessed on many criteria, including their performance in past crisis intervention situations (p. 6). In addition to the eight annual hours of crisis intervention training that the 2018 CIT Program order requires of all officers, Specialized CIT Officers complete an initial 40 hours minimum of enhanced crisis intervention training (p. 6).

The 40-hour training curriculum was finalized by the Training Sub-committee of the MHRAC (MHRAC, 2019, p. 1). Besides instruction in crisis de-escalation techniques, the training also includes visits to mental health and substance abuse facilities, listening to perspectives of individuals with mental health issues and their family members, instruction in conducting field evaluations, and an overview of Specialized CIT Officers' "civil commitment criteria" among other things (p. 6). Specialized CIT Officers are expected to "participate in community engagement, awareness, and education," and foster relationships with the community's social service organization (p.5).

The MHRAC 2018 Annual Report found that the officers' use of verbal de-escalation in crisis situations increased from 72 percent in 2014 to 91 percent in 2018 (2019, p. 13). The report also found that officers' use of handcuffs in crisis situations declined from 21 percent in 2014 to nine percent in 2018 (p. 13).

Specialized CIT Officers have the opportunity to strengthen relationships between the community and the whole of the CPD. In addition to building trust with the community and providing vital data for law enforcement, the program's transparency and careful data-tracking makes it possible to "recognize successful officer interactions and performance" (General Police Order 5.11.02, 2018, p. 5). Not every officer can be a Specialized CIT Officer, but the effects of the CIT program are felt across the force.

The CIT Program order mandates that all CPD officers be trained annually on when to call in or consult a Specialized CIT Officer, and on how to respond to crisis incidents when a CIT officer is not immediately available (2018). The CPD's General Police Order on de-escalation procedure directs officers to consider whether

subjects may be in a "mental health/behavioral crisis" and request a Specialized CIT Officer accordingly (2018, p. 3). Order 5.11.02 says: "Specialized CIT Officers respond to the everyday crisis intervention calls and are the catalyst in the intervention process. These voluntary officers are critical in changing the way crisis incidents are handled" (2018, p. 5).

Duty to Intervene

Finally, how and why might intervention training be useful and what are best practices for intervention training? Can we create an environment where officers hold themselves to ethical standards of response?

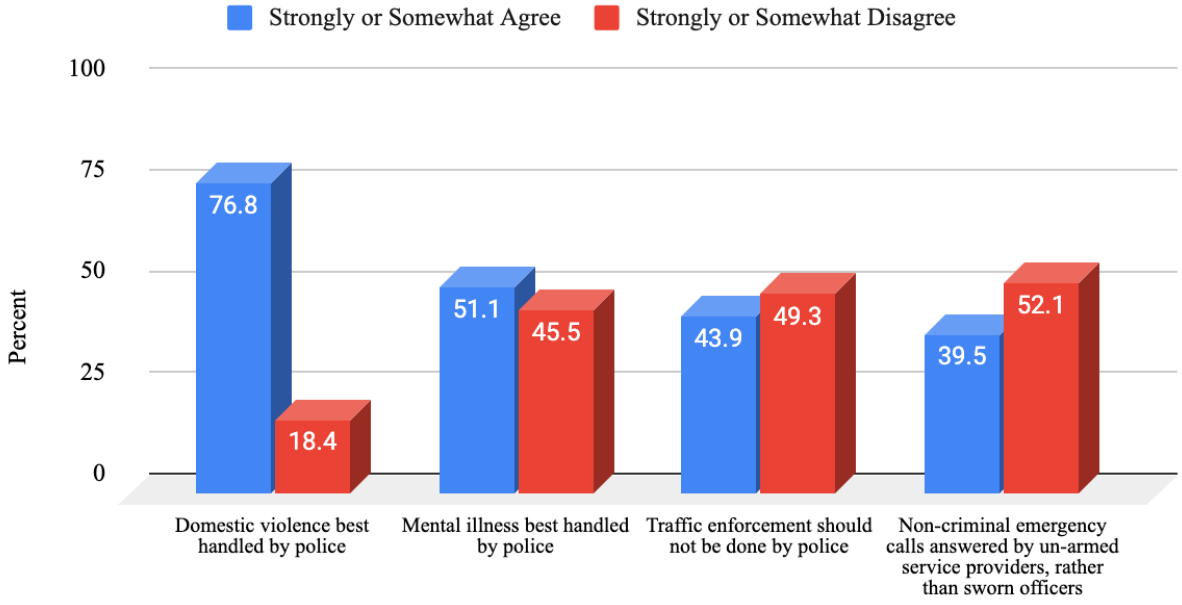
In many jurisdictions, including in Minneapolis where the George Floyd killing occurred, police officers have a legal duty to intervene when they see fellow officers breaking rules, using excessive force, or behaving in a manner inconsistent with best practices and training (Vasilogambros, 2020). In the George Floyd situation, obviously, such intervention never happened (Vasilogambros, 2020). Moral values require officers to step in on behalf of a civilian being mistreated in a police encounter. Intervention training makes it more likely an officer will intervene.

The rationale behind investing in and implementing intervention training rests, in part, on the varied responsibilities of police officers. Nationally, and in Oneida and Herkimer Counties, the job of police officers includes patrolling and routine traffic stops, and more specialized, difficult work like responding to domestic violence situations and mental health crises. Data from a recent Zogby poll of 500 Oneida and Herkimer county residents reveals the broad array of duties citizens expect police officers to perform. More than three quarters of respondents (76.8 percent) strongly or somewhat agreed with the statement "Incidents of domestic violence can best be handled by the police," while a slim majority (51.1) of respondents strongly or somewhat agreed with the statement "Misbehavior by people with mental illness can best be handled by the police." It is important to note, however, that respondents also responded favorably to alternative options for domestic violence situations and

mental illness crises. Seventy one percent of respondents strongly or slightly agreed with the statement “Regarding misbehavior by people with mental illness, other kinds of intervention should be used rather than the police,” and 57.4 percent of respondents strongly or slightly agreed with the statement “In domestic disputes, other kinds of intervention should be used rather than the police.” Additionally, a plurality of respondents strongly or somewhat disagreed with the statement “Traffic enforcement should be done by speed detecting cameras and automatic fines, rather than police stop,” indicating that local residents prefer traffic enforcement to be handled by officers, adding another task to their responsibilities. Finally, a slim majority of respondents (52. 1 percent) strongly or slightly disagreed with the statement “Most non-criminal emergency calls should be answered by un-armed service providers, rather than sworn police officers,” again indicating the wide variety of tasks residents expect police officers to perform. (Table 1)

Table 1

Oneida and Herkimer County Residents' Opinions on Police D…



Despite burdensome expectations and responsibilities, training time is limited. A 2017 national survey by the Pew Research Group shows how little time rank-and-

file police officers spent on training in the previous 12 months. In four areas of specialized training (how to deal with individuals who are having a mental health crisis, how to de-escalate a situation so it is not necessary to use force, bias and fairness, and how to deal with people so they feel they've been treated fairly and respectfully), respondents indicated that they received less than four hours of training (in each area) in the last 12 months (Morin, et al., 2020). In two other areas of training (firearms training involving shoot-don't shoot scenarios and nonlethal methods to control a combative or threatening individual), only slim majorities of officers responded that they had received four or more hours of training (Morin, et al., 2020).

Taken together, the data from the recent Zogby poll of Oneida and Herkimer county residents and the 2017 national survey done by the Pew Research Group tell an important story. Police officers are expected to carry out varied responsibilities, while only having limited in-service training time. That presents a clear problem: how should those responsible best allocate time and resources to train police officers for their wide array of tasks?

Intervention training is one way to train officers that applies to all facets of the job. Police officers will have to respond to a variety of situations-- that is a given. Instead of learning how to perfectly handle domestic violence, mental health crises, etc., some officers instead learn how to stop each other from behaving violently (Aronie and Lopez, 2017). Others do not. The George Floyd incident, as well as the more recent, local incident in Utica where officer Matthew Felitto kicked a suspect who was restrained and in custody instinctively look and feel wrong. Training officers to intervene in such situations could save lives and improve community-police relations.

The New York State Municipal Police Training Council Use of Force Model Policy includes a duty to intervene:

> Any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable

> under the circumstances shall intercede to prevent the use of unreasonable force, if and when the officer has a realistic opportunity to prevent harm (“Use of Force,” 2019).

However, the Mohawk Valley Community College’s law enforcement program does not include any coverage of intervention training, at least according to its online syllabus (“Criminal Justice: Law Enforcement,” n.d.).

The New Orleans Police Department’s Ethical Policing is Courageous (EPIC) is a useful model. EPIC has produced promising, preliminary results. EPIC trains officers to intervene when they see misbehavior or excessive force. EPIC emphasizes a shift in police culture, but frames that shift as positive for the force, making clear that the shift in culture is pro-police, not about ratting on your teammates to internal affairs. Instead, EPIC is about protecting officers, and creating a more professional culture (“Peer Intervention,” n.d.). The EPIC model uses the scholarship of Dr. Ervin Staub and his work around bystandership, specifically three important insights. First, there are common inhibitors to intervention regardless of circumstance (Staub, 2003). Second, actions of some people will affect the likelihood that others intervene (Staub, 2003). And third, a lack of intervention is often taken as permission by those who commit misconduct (Staub, 2003). EPIC aims to educate officers about these inhibitors in the hopes that education and awareness will overcome psychological barriers to intervention. Then, when one officer acts to intervene, more will be likely to do so in the future, and officers who might commit misconduct will no longer be able to take the lack of intervention as permission for their actions.

Since implementing EPIC in 2015, NOPD has had fewer incidences of excessive use of force and also fewer disciplinary cases and civilian complaints. These reductions cannot be attributed solely to EPIC, however, since NOPD introduced a new Use of Force standard and body camera requirements at the same time (Aronie and Lopez, 2017).

Politicians enacting police reform have to deal with competing constituencies. Investing in training, especially intervention training, might be a way to create a

broad coalition that supports reform. Intervention training would satisfy citizen demands for reform of police conduct. It might also satisfy officers and police unions, especially if the programs like the NOPD's EPIC are framed as a culture shift that promotes police safety and professionalism.

In addition to the aforementioned reforms around intervention training, its implementation should also incorporate the concept of community wellness. While intervention training does not necessarily integrate the four critical service areas, it does serve and further the concept of community wellness in two critical ways.

First, it acknowledges that officers are members of the community, and they, as much as any other members, deserve environments that promote their health and well-being. Intervention training will promote that wellbeing. If officers step in to prevent each other from using excessive force, then officers will be involved in fewer disciplinary proceedings. Additionally, if police culture becomes less tolerant of misbehavior that could benefit officers' mental health. Instead of having to worry about whether misconduct should be reported or how to handle it, intervention training will teach officers how to stop it and promote a culture that does not tolerate it. Studies have shown that officer suicide is often related to their negative views about the profession (Rouse et al., 2015). Intervention training can change the culture of the profession to prevent these negative views.

Second, including the concept of community wellness in intervention training should promote the training itself. If officers see themselves as members of a community, rather than distinct or apart from it, then they will be more likely to step in to prevent officer misconduct, as that misconduct harms members of the community they themselves are a part of.

Conclusion and Recommendations:

- Implement intervention training based on the New Orleans EPIC model
- Intervention training should include both academy and in-service training

- During implementation, emphasize that the reform is pro-police: rather than trying to get officers in trouble, intervention training should protect officers
- During implementation, emphasize and community wellness

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