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32 Shots in the Dark: How Local Governments Can Increase Police Accountability When States Refuse To

Marcia M. Ziegler*

On March 13, 2020, Breonna Taylor was shot to death in her apartment hallway by police officers executing a search warrant. The warrant was based on a false affidavit, the executing officers acted criminally on scene, and in the aftermath, detectives spread misinformation about the case on social media. While there was some limited accountability for the officers involved, many citizens considered the official response to be lackluster. After a period of public protest, Louisville and other cities all over the country have examined options for police reform at the local level. While most law enforcement agencies operate in a framework of state law that shields them through qualified immunity and other protective statutes, local governments do have the power to effect change. This Article reviews some recent initiatives nationwide related to police reform and discusses how local governing bodies can increase accountability.

I. INTRODUCTION AND THE KILLING OF BREONNA TAYLOR

She was almost asleep when it began. Breonna Taylor went to bed in her Louisville apartment on the evening of March 12, 2020, and never left home alive again. Shortly after midnight, she was shot to death in

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her hallway by a Louisville Metro Police Department officer.¹ She was not the target of the investigation that night. She had neither resisted arrest nor interfered with the police. She posed no threat to anyone, nor was she involved in any illegal activity. Breonna's killing was the culmination of an investigation many view as being riddled with errors, missteps, and outright lies—and holding the officers involved accountable has proven difficult.²

The battering-ram search and shootout that killed Breonna started as a narcotics case.³ Two men were being investigated for selling drugs in a neighborhood miles away from Breonna's; one of them had dated her in the past. That man sent Breonna a package through the mail—a package that he says contained clothes and shoes. That lone incident proved the basis for the warrant to search her home the night she was killed.⁴ Detective Joshua Jaynes was the officer who obtained that warrant; his probable cause affidavit stated that he “verified with a U.S. Postal inspector” that the package Breonna received was suspicious.⁵ In the first significant misstep, this statement was allegedly untrue.⁶ He didn't verify anything with the post office but instead relied on someone else's word—the word of fellow Detective Jonathan Mattingly.⁷

Mattingly, for his part, had directed other detectives to ask their postal service sources whether the target of his narcotics investigation was sending Breonna suspicious packages. He wasn't, and they told Mattingly so.⁸ Nevertheless, this information didn't deter the operation. Instead, Mattingly was involved in executing the warrant that night; along with Detectives Brett Hankinson and Myles Cosgrove, the team took a battering ram to Breonna's door at midnight. Both Breonna and her boyfriend thought they were being robbed, and her boyfriend shot at the perceived intruder. Officers responded with thirty-two shots into

1. See *Standage v. Braithwaite*, Civil Action No. ELH-20-2830, 2020 U.S. Dist. LEXIS 240744, at *9 (D. Md. Dec. 22, 2020).

2. See Richard A. Oppel, Jr. et al., *What to Know About Breonna Taylor's Death*, N.Y. TIMES (Dec. 12, 2022), <https://www.nytimes.com/article/breonna-taylor-police.html>.

3. *Id.*

4. Roberto Roldan, *Board Upholds Firing of Ex-Cop Who Got Search Warrant for Breonna Taylor's Apartment*, LOUISVILLE PUB. MEDIA (June 30, 2021), <https://www.lpm.org/news/2021-07-01/board-upholds-firing-of-ex-cop-who-got-search-warrant-for-breonna-taylors-apartment>.

5. *Id.*

6. *Id.* (referring generally to Radio Interview with Roberto Roldan, City Politics and Government Reporter, WPFL NEWS (June 30, 2021)).

7. See David Nakamura et al., *Four Officers Involved in Breonna Taylor's Killing Face Federal Charges*, WASH. POST (Aug. 4, 2022), <https://www.washingtonpost.com/national-security/2022/08/04/breonna-taylor-federal-charges-fbi-garland/>.

8. Roldan, *supra* note 4.

their home, into the neighboring apartments, and five into Breonna who died in the hallway.⁹ Mattingly, the only police casualty, suffered one shot to the leg from which he recovered.¹⁰

This literal overkill proved to be the second major violation of police policy and the law.¹¹ Hankinson, whom the police chief described as “blindly” shooting into not only Breonna’s home but a neighboring apartment, fired at least ten shots without having a clear target.¹² At the time, a man, a pregnant woman, and her five-year-old child were home next door to Breonna.¹³

After she was shot five times, Breonna received no medical intervention for over twenty minutes.¹⁴ This third significant error was exacerbated by the fact that, again, contrary to police policy, the ambulance that had been standing by on scene had been told to leave about an hour before the raid. Officers turned their attention away from Breonna in the hallway to their wounded comrade who recovered from his lone shot to the leg. These same officers did not render aid to her as she choked and struggled to breathe before her death.¹⁵

Breonna Taylor’s killing was the impetus for widespread protests across the country and, in the aftermath of her death, many wanted more accountability for the officers whose lies, mistakes, and blatant disregarding of police policy killed her.¹⁶ That accountability was hard to come by. The initial criminal repercussions resulting from the state and local investigation were minimal. When Attorney General Daniel Cameron presented the case to a grand jury, the officer who shot Breonna was not indicted, no homicide charges resulted, and only one officer was indicted on state misdemeanor charges for shooting into a neighboring residence.¹⁷ There were no local repercussions for the officers involved in

9. See *Napper v. Hankinson*, No. 3:20-cv-764-BJB, 2022 U.S. Dist. LEXIS 134182, at *2 (W.D. Ky. July 28, 2022).

10. Oppel et. al., *supra* note 2.

11. *Id.*

12. Darcy Costello & Tessa Duvall, *Officer Brett Hankinson fired from LMPD in Breonna Taylor shooting, has 10 days to appeal*, THE COURIER-J. (Jan. 24, 2021), <https://www.courier-journal.com/story/news/politics/metro-government/2020/06/23/breonna-taylor-shooting-lmpd-has-fired-detective-brett-hankinson/3246917001/>.

13. See *Hankinson*, 2022 U.S. Dist. LEXIS 134182, at *3.

14. Tessa Duvall and Darcy Costello, *Breonna Taylor was briefly alive after police shot her. But no one tried to treat her*, THE COURIER-J. (July 17, 2020), <https://www.courier-journal.com/story/news/crime/2020/07/17/breonna-taylor-lay-untouched-20-minutes-after-being-shot-records/5389881002/>.

15. *Id.*

16. See *Standage*, 2020 U.S. Dist. LEXIS 240744, at *1.

17. Brakkton Booker & Rachel Treisman, *A Year After Breonna Taylor’s Killing, Family Says There’s “No Accountability,”* NPR NEWS (Mar. 13, 2021),

the application for the search warrant and even the misdemeanor charges ended up in an acquittal.¹⁸

The Louisville Metro Police Department also did little to discipline the officers from an employment standpoint, and the repercussions were incongruous at best. Hankinson, the only officer who faced local charges, was fired within ninety days. Cosgrove, the officer who actually shot Breonna, was not fired until January 2021.¹⁹ Mattingly was allowed to retire from the force; he wrote a book “to set the record straight” and is reportedly considering a Congressional run.²⁰ No other officers involved in the warrant application suffered criminal or employment consequences as the result of the state investigation.²¹

All of these repercussions, as ineffective as each arguably was, were reactive in nature—to prevent the next unnecessary death, measures must be proactive. Municipalities all over the country have considered the steps they can take to prevent this from happening, but their power is limited by state law, often by design. Much of the research in the area of police accountability focuses on state and federal solutions, and articles which focus on local options typically discuss singular solutions. This Article reviews a variety of local approaches to accountability, especially those which might apply in states where the political climate is resistant to change. It discusses the state framework, scholarly approaches to accountability, and how local governments all over the country are impacting change even in the face of state opposition. However, what works in one locality might not even get a vote in another as the political landscape varies widely even across a given state. As a result, this work seeks to discuss various options without necessarily advocating for one over another. Even small changes might allow for larger future reforms, and municipalities have plenty of options.

<https://www.npr.org/2021/03/13/973983947/a-year-after-breonna-taylors-killing-family-says-theres-no-accountability>.

18. Nicholas Bogel-Burroughs, *Officer Acquitted of Endangering Breonna Taylor's Neighbors in Raid*, N.Y. TIMES (Mar. 3, 2022), <https://www.nytimes.com/2022/03/03/us/breonna-taylor-brett-hankison-acquitted.html#:~:text=Brett%20Hankison%20Acquitted%20of%20Endangering%20Breonna%20Taylor's%20Neighbors%20%2D%20The%20New%20York%20Times>.

19. Natalie O'Neill, *Ex-cop Myles Cosgrove, who fatally shot Breonna Taylor, sues to get his job back*, N.Y. POST (Apr. 14, 2022), <https://nypost.com/2022/04/14/cop-who-fatally-shot-breonna-taylor-sues-to-get-his-job-back/>.

20. Tessa Duvall, *Ex-cop Myles Cosgrove, who fatally shot Breonna Taylor, sues to get his LMPD job back*, THE COURIER-J. (Apr. 14, 2022), <https://www.courier-journal.com/story/news/local/breonna-taylor/2022/04/13/breonna-taylor-case-ex-lmpd-cop-myles-cosgrove-sues-get-job-back/7311071001/>.

21. For an analysis of the 2022 federal investigation, which ultimately did result in consequences for the officers who applied for the search warrant, see *infra* Section IV(c).

II. THE FRAMEWORK OF STATE LAW

Historically, state law is protective of police officers, whether by establishing affirmative protections and defenses or from its application of qualified immunity to state actors.

A. *Qualified Immunity*

Qualified immunity is a legal standard that protects law enforcement officers from civil liability under the historical concept that a sovereign can only be sued when it so allows.²² In state cases, a law colloquially known as Section 1983²³ allows citizens to sue state law enforcement actors when the police violate their constitutional rights.²⁴ It was not until 1971 that the Supreme Court of the United States allowed such a case under the Fourth Amendment against federal actors.²⁵ In *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*,²⁶ the Court set forth the standard that “[t]he qualified immunity defense shields ‘government officials performing discretionary functions . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.’”²⁷ In order to hold a law enforcement officer liable for any damages, up to and including the death of an innocent civilian, it must be shown that the officer violated a “clearly established” constitutional right.²⁸ While “there does not have to be ‘a case directly on point,’ existing precedent must place the lawfulness of the particular [conduct] ‘beyond debate.’”²⁹ In order to find an officer liable, “[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.”³⁰

In practice, this standard essentially means that unless a specific pattern of conduct has already been “clearly established” as unconstitutional, a police officer will escape liability for it, no matter how devastating the results. Courts have reviewed all kinds of police conduct

22. *See generally, Immunity*, BLACK’S LAW DICTIONARY (11th ed. 2019).

23. 42 U.S.C. § 1983.

24. *Id.*

25. *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

26. *Id.* *Bivens* stands for the proposition that there is an implied cause of action when the federal government violates our rights under the Fourth Amendment, even though no statute specifically authorizes it. *Id.* at 403.

27. *Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019).

28. *See Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1199–1200 (11th Cir. 2007).

29. *District of Columbia v. Wesby*, 138 S.Ct. 577, 590 (2018).

30. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

that many citizens would view as obviously problematic and found the officers involved to be protected by qualified immunity. In *Corbitt v. Vickers*,³¹ the United States Court of Appeals for the Eleventh Circuit held that an officer's conduct did not meet the standard of "clearly established" as unconstitutional in examining the execution of an arrest warrant.³² The subject was in the home, and an officer had handcuffed several children in the backyard.³³

The family dog, "Bruce," was present during the operation. At that point, Officer Vickers—deputy sheriff for Coffee County—discharged his firearm at Bruce, but the shot missed. It is undisputed that Bruce did not pose a threat and was not aggressive, and no other officers made an effort to subdue the dog. Bruce retreated under the house after the first shot. After Bruce came out from under the house, Vickers fired at the dog again. While the second shot missed Bruce, the bullet hit a ten-year-old child lying eighteen inches in front of Vickers, who was readily viewable by Vickers. The child, SDC, suffered medical and mental trauma and currently receives ongoing treatment for both.³⁴

In *Jessop v. City of Fresno*,³⁵ the plaintiffs alleged that the City of Fresno police stole thousands of dollars' worth of cash and rare coins in the execution of a search warrant.³⁶ In holding that this theft was not a "clearly established" violation of civilian rights, the court stated, "[a]lthough the City Officers ought to have recognized that the alleged theft of Appellants' money and rare coins was morally wrong, they did not have clear notice that it violated the Fourth Amendment—which, as noted, is a different question."³⁷ The court went on to conclude that "[b]ecause the City Officers could not have known that their actions violated the Fourteenth Amendment's substantive due process clause, they are entitled to qualified immunity against Appellants' Fourteenth Amendment claim."³⁸

31. 929 F.3d 1304 (11th Cir. 2019).

32. *Id.* at 1323.

33. *Id.* at 1308.

34. Jameson M. Fisher, *Shoot at Me Once: Shame on You! Shoot at Me Twice: Qualified Immunity. Qualified Immunity Applies Where Police Target Innocent Bystanders*, 71 MERCER L. REV. 1171, 1173 (2020) (citing *Corbitt*, 929 F.3d at 1308).

35. 936 F.3d 937 (9th Cir. 2019).

36. *Id.* at 939–40.

37. *Id.* at 942.

38. *Id.*

In *Latits v. Phillips*,³⁹ three police officers, including Officer Phillips, pursued Latits, a driver who fled from a traffic stop.⁴⁰ After one of the police officers lied, stating to dispatch that Latits had “tried to ram [his] vehicle,” an approximately thirty-second pursuit occurred. A second officer was again dishonest, stating “[Latits] hit me several times.”⁴¹ Body and dash cameras confirmed that no bystanders were endangered and the only collisions were the fault of the police involved; nevertheless, the four-minute incident ended with the driver being shot to death.⁴² While Officer Phillips, the officer who ultimately fatally shot Latits, was terminated for violating policy, the court determined the three officers involved were all shielded from civil liability otherwise.⁴³ “At the time of the actions of Officer Phillips, however, it cannot be said that existing precedent made it clear to reasonable officials that what Phillips did violated the Fourth Amendment. Thus, this case fails to satisfy the ‘clearly established’ prong of the qualified immunity doctrine.”⁴⁴

In February 2016, seventy-year-old Jose Oliva, a military veteran, had a routine dental appointment at a Veterans Affairs hospital in El Paso, Texas.⁴⁵ While going through security, Oliva placed his belongings, including his identification, in a screening bin.⁴⁶ An officer named Nivar asked to see his ID, and then

Nivar, inexplicably agitated, came around the security checkpoint and approached Oliva with handcuffs drawn. Nivar then instructed Oliva to walk through the metal detector, at which point [Officer] Barahona grabbed Oliva and Nivar put him in a chokehold. Before slamming Oliva to the ground, the officers wrenched his arm behind his back so violently that it made “a loud popping sound.” The officers then handcuffed Oliva and detained him in a side room before charging him with disorderly conduct—a charge that was later dropped.⁴⁷

The officers’ assault on Oliva was brutal, resulting in multiple surgeries and persistent ear and throat trauma.⁴⁸ While the United States District Court for the Western District of Texas ruled in Oliva’s

39. 878 F.3d 541 (6th Cir. 2017).

40. *Id.* at 544.

41. *Id.* at 545.

42. *Id.* at 546.

43. *Id.*

44. *Id.* at 553.

45. Petition for Writ of Certiorari, *Oliva v. Nivar*, 141 S. Ct. 2886 (2021) (No. 20-1060), 2021 WL 397584, at *3.

46. *Id.*

47. *Id.*

48. *Id.* at *4.

favor, the United States Court of Appeals for the Fifth Circuit reversed.⁴⁹ In the circuit opinion, the court ruled that Oliva's beating constituted a "new context" under *Bivens*, and thus, dismissed his claims.⁵⁰ In May 2021, the Supreme Court of the United States denied certiorari on Oliva's case, allowing the Fifth Circuit's dismissal to stand. As such, when confronted with a clearly egregious behavior on behalf of federal officers, the Supreme Court maintained immunity for the officers.⁵¹

Scholars often also discuss the doctrine of qualified immunity as harsh and unfair.⁵² While "[t]he Supreme Court has described it as incredibly strong . . . [l]egal scholars and commentators describe qualified immunity in equally stark terms, often criticizing the doctrine for closing the courthouse doors to plaintiffs whose rights have been violated."⁵³ Some argue that the doctrine has "outlived its utility."⁵⁴ In a 2022 lecture, S. Rafe Foreman describes the history of the doctrine and examines it in a more modern context.⁵⁵ In describing several illustrative cases where civilians were killed or severely injured and could not seek redress, Foreman opines that the thousands of police shootings since the Washington Post began tracking them in 2015 would all result in immunity.⁵⁶ He goes on to detail that the use of interlocutory appeals can string litigation out for years—which advantages the police.⁵⁷ After analyzing cases where people in diabetic distress and clear mental health crises were not given medical assistance or were shot to death, and others where people died after being hog-tied or were forced to sit in human excrement, Foreman comes to the conclusion that the doctrine is absurd.⁵⁸ "In short, its utility has expired."⁵⁹

Other scholars come to the same conclusion. In *Qualified Immunity: A Legal, Practical, and Moral Failure*,⁶⁰ Jay Schweikert argues that the doctrine "has no valid legal basis, it regularly denies justice to victims

49. *Id.* at *5.

50. *Id.*

51. *Oliva v. Nivar*, 141 S. Ct. 2669 (2021).

52. Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 6–7 (2017).

53. *Id.* at 2.

54. S. Rafe Foreman, *Goldman Lecture Series: Qualified Immunity: A Legal Fiction That Has Outlived Utility*, 48 OHIO N.U.L. REV. 503, 553 (2022).

55. *Id.*

56. *Id.* at 520.

57. *Id.* at 520–21.

58. *Id.* at 546.

59. *Id.*

60. Jay Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, CATO INST. (Sept. 14, 2020), <https://www.cato.org/policy-analysis/qualified-immunity-legal-practical-moral-failure>.

whose rights have been violated, and it severely undermines official accountability, especially for members of law enforcement.”⁶¹ In *After Qualified Immunity*,⁶² Joanna Schwartz argues for “a world without qualified immunity,” and discusses that courts across the country struggle to apply the doctrine.⁶³ Foreman, Schweikert, and Schwartz are but three members of a growing chorus of academics, lawyers, and legislators who argue the doctrine has worn out its welcome.⁶⁴

The Supreme Court of the United States has stated that the doctrine of qualified immunity is so strong that it “protects all but the plainly incompetent or those who knowingly violate the law.”⁶⁵ While many civil claims against law enforcement are filed under Section 1983, and the majority of qualified immunity precedent applies that federal standard, many states have also enacted qualified immunity statutes independently. State legislation can be more specific than the federal standard and can either bolster or reduce police protection. While the doctrine has been interpreted slightly differently in different jurisdictions, the related Supreme Court precedent remains a solid underpinning of civil immunity for police across the country.

Recently, some states are looking to abolish qualified immunity altogether. In 2021, the California legislature passed Senate Bill 2,⁶⁶ the Kenneth Ross Jr. Police Decertification Act.⁶⁷ While establishing a decertification process for officers charged with wrongdoing, this Act would also eliminate some qualified immunity for them as well.⁶⁸ Even with this movement toward reducing qualified immunity, overall, states have had limited success because of the incredible power of police unions.⁶⁹ The Washington Post examined the issue in 2021, discussing

61. *Id.*

62. Joanna Schwartz, *After Qualified Immunity*, 120 COLUM. L. REV. 309 (2020).

63. *Id.* at 310.

64. See, e.g., Osagie K. Obasogie & Anna Zaret, *Plainly Incompetent: How Qualified Immunity Became An Exculpatory Doctrine of Police Excessive Force*, 170 U. PA. L. REV. 407 (2022); David G. Maxted, *The Qualified Immunity Litigation Machine: Eviscerating the Anti-racist Heart of § 1983, Weaponizing Interlocutory Appeal, and the Routine of Police Violence Against Black Lives*, 98 DENV. L. REV. 629 (2020); Phillip Sheng, *An “Objectively Reasonable” Criticism of the Doctrine of Qualified Immunity in Excessive Force Cases Brought Under 42 U.S.C. § 1983*, 26 BYU J. PUB. L. 99 (2011).

65. *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quoting *White v. Pauly*, 580 U.S. 73, 79 (2017)).

66. 2021 SB-2 Ch. 409 (Cal.).

67. *Id.*

68. *Id.*

69. See Kimberly Kindy, *Dozens of states have tried to end qualified immunity. Police officers and unions helped beat nearly every bill*, WASH. POST (Oct. 7, 2021),

the myriad bills that had been introduced across the country since George Floyd's death.⁷⁰

[I]n state after state, the bills withered, were withdrawn, or were altered beyond recognition. At least 35 state qualified-immunity bills have died in the past 18 months, according to an analysis by The Washington Post of legislative records and data from the National Conference of State Legislatures. The efforts failed amid multifaceted lobbying campaigns by police officers and their unions targeting legislators, many of whom feared public backlash if the dire predictions by police came true.⁷¹

However, some states have seen success in the effort to turn immunity back. “[M]ore than half of all state legislatures have considered bills against qualified immunity . . . [s]o far, only Colorado and New Mexico have enacted laws that fully ban qualified immunity for police officers, while Connecticut and Massachusetts have imposed more modest limits.”⁷²

Nevertheless, and notwithstanding significant political, academic, and community pressure to revisit immunity,

the Supreme Court has been downright bullish about qualified immunity doctrine in recent years. Since 2005, when John Roberts became Chief Justice, the Court has granted certiorari to consider twenty qualified immunity denials, and ruled in the government's favor every time. The Court has repeatedly chastised lower courts for failing to use qualified immunity to shield government officials from damages liability. And the Court's recent decisions have further expanded qualified immunity's reach.⁷³

Qualified immunity remains a strong doctrine across most of the country, resulting in the dismissal of cases of even egregious circumstances of police misconduct.

https://www.washingtonpost.com/politics/qualified-immunity-police-lobbying-state-legislatures/2021/10/06/60e546bc-0cdf-11ec-aea1-42a8138f132a_story.html.

70. *Id.*

71. *Id.*

72. Nick Sibilla, *New York City Bans Qualified Immunity For Cops Who Use Excessive Force*, FORBES (Apr. 29, 2021), <https://www.forbes.com/sites/nicksibilla/2021/04/29/new-york-city-limits-qualified-immunity-makes-it-easier-to-sue-cops-who-use-excessive-force/?sh=70bc6b3167e9>.

73. Schwartz, *supra* note 62, at 310–11.

B. State Statutes Protective of the Police

Notwithstanding recent efforts to restrict qualified immunity, many state codes currently expand protections for police above and beyond the typical framework of establishing immunity. For example, Kentucky law provides police officers due process protections that surpass any provided to the general public. Codified in the “Police Officer Bill of Rights,” Kentucky Revised Statutes (KRS) section 15.520⁷⁴ applies both to complaints brought by citizens and to internal complaints of officer misconduct.⁷⁵

Under this Act, all citizen complaints against police officers must be taken via a signed, sworn affidavit unless the complaint alleges criminal activity.⁷⁶ If the citizen complainant fails to execute this affidavit, discipline can only be brought against an officer if the employing agency launches an investigation and can independently corroborate the allegations.⁷⁷ Practically speaking, this requirement alone reduces officer discipline cases irrespective of the validity of such claims. For example, consider a case where a citizen alleges a police officer executed an improper traffic stop that ultimately resulted in an unconstitutional arrest. Should they report this to the internal affairs division, under Kentucky law, their first step is to engage with an officer in the same jurisdiction as the one they are accusing.⁷⁸ Then, if the responding officer views this complaint as not alleging criminal activity, the citizen must file a sworn, signed affidavit containing the allegations.⁷⁹ Not only does this document memorialize the allegations with the same agency who may have wronged the civilian, but if he has pending charges at the time as a result of the arrest, the citizen must waive his Fifth Amendment right in writing and under oath just to start the investigation. In most cases, counsel on the underlying arrest may often advise against this, and complaints fail. In addition, complaints are reduced through the use of officer discretion—not only does internal affairs decide whether an

74. KY. REV. STAT. ANN. § 15.520 (2018).

75. *Id.*

76. KY. REV. STAT. ANN. § 15.520(3)(b) (2018).

77. *Id.* at (3)(c).

78. KY. REV. STAT. ANN. § 15.520. This is typical nationwide, in that most complaints of officer misconduct are taken by the department that employs the officer. In essence, civilians must ask the people who wronged them to hold themselves accountable, and even if there is a separate internal affairs division, they usually serve the same chief or administrator. There are alternative models, like Indianapolis’s use of its Citizens’ Police Complaint Office, an independent investigative body. See *Citizens’ Police Complaint Office*, INDY.GOV (Nov. 9, 2022), <https://www.indy.gov/agency/citizens-police-complaint-office>.

79. KY. REV. STAT. ANN. § 15.520(3)(c).

allegation is criminal or not, they can also decide not to investigate any allegations without a sworn affidavit.⁸⁰

Once an internal investigation against an officer commences, the Kentucky Police Officer Bill of Rights extends more protection to accused officers. Kentucky Revised Statutes § 15.520(4)(a) requires a formal hearing in order to discipline an officer.⁸¹ While the requirement for such a hearing is fairly standard nationwide,⁸² this particular Act has several exceptional protections built into it.⁸³ KRS § 15.520(5)(c) provides:

Unless otherwise agreed to in writing by the officer, no police officer shall be subjected to interrogation for alleged conduct that violates law enforcement procedures, until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing. The notice of interrogation shall include a statement regarding any reason for the interrogation and shall be served on the officer by certified mail, return receipt requested, or by personal delivery.⁸⁴

This provision means that any interrogation of an officer accused of misconduct that falls short of criminal activity as determined by internal affairs will be significantly delayed. Once a citizen makes a complaint, an affidavit must follow. Then, once an investigation begins, internal affairs serve a request to interrogate the accused officer. Only after forty-eight more hours pass may that interrogation begin, and even then, it must occur while the officer is on duty, potentially delaying it further.⁸⁵ At that point, likely a week or more after the initial complaint, and perhaps even longer after the incident in question, these complaints are less likely to be successful.

If a complaint does progress to a hearing, an officer is afforded significantly more protection than in other employment contexts. They are informed in writing of the specific allegations,⁸⁶ are entitled to certified mail service of the allegations,⁸⁷ and a statutory gag order is placed on the agency.⁸⁸ The officer is further protected at any disciplinary

80. *See id.*

81. KY. REV. STAT. ANN § 15.520(4)(a) (2018).

82. *See* Byron Warnken, *Due Process in Police Disciplinary Hearings: The Need for a National Law Enforcement Officers Bill of Rights*, SSRN (July 7, 2010), <https://ssrn.com/abstract=1635429>.

83. KY. REV. STAT. ANN. § 15.520(5)(c) (2018).

84. *Id.*

85. *Id.* at (5)(d).

86. KY. REV. STAT. ANN § 15.520(6)(a) (2018).

87. *Id.* at (6)(b).

88. *Id.* at (6)(c).

hearing with a twelve-day notice requirement, copies of all witness statements, subpoena power, and the right to appeal to the circuit court.⁸⁹ Further, the officer has the right to counsel, but there is no concurrent right for the complainant.⁹⁰ As such, the officer is in a better position to exercise the due process rights afforded by this section.

Multiple other states have enacted similar “bill of rights” statutes to protect law enforcement officers. Also called “Blue Lives Matter” acts, these laws have extended legal protection of police officers significantly in the last decade. In 2017, Texas’s Police Protection Act⁹¹ went into effect, enhancing penalties for crimes committed against law enforcement officers.⁹² In addition, the Act also created a hate crime category for crimes against law enforcement officers—giving them the same legal status as constitutionally protected classes like race, gender, and ethnicity.⁹³

In 2020, Georgia followed Texas’s lead and passed Official Code of Georgia Annotated § 35-8-7.4,⁹⁴ a statute criminalizing “bias motivated intimidation” of law enforcement officers.⁹⁵ Passed alongside a traditional hate crimes law which applied to cases with victims in traditionally protected classes like race and religion, this law was initially part of that Act, making first responders a protected class. After political outcry, the bills were separated and passed individually.⁹⁶

Missouri’s 2021 Police Officer Bill of Rights,⁹⁷ written by an attorney for the police union, tracks the Kentucky statute closely.⁹⁸ It gives police officers a twenty-four-hour waiting period between written notification of the allegations and any interrogation.⁹⁹ Allegations are required to be in a formal affidavit including the affiant’s identifying information, even if the affiant is a fellow officer. All interrogations of accused officers must

89. KY. REV. STAT. ANN § 15.520(7)–(8) (2018).

90. *Id.* at (7)(e).

91. TEX. CODE. CRIM. PROC. ANN. art. 42.014 (2017).

92. *Id.*

93. *Id.*

94. O.C.G.A. § 35-8-7.4 (2020).

95. *Id.*

96. Jeff Amy, *Georgia Governor signs new law to protect police*, WASH. POST (Aug. 5, 2020), https://www.washingtonpost.com/national/georgia-governor-signs-new-law-to-protect-police/2020/08/05/5e92d8ae-d778-11ea-a788-2ce86ce81129_story.html.

97. S. 26, 101st Gen. Assemb., Reg. Sess. (Mo. 2021).

98. Orli Sheffey & William Freivogel, *Missouri Lawmakers Gave More Privileges To Police Accused Of Misconduct, Bucking National Trend*, KCUR NEWS (Sept. 21, 2021), <https://www.kcur.org/politics-elections-and-government/2021-09-21/missouri-lawmakers-gave-more-privileges-to-police-accused-of-misconduct-bucking-national-trend>.

99. *Id.*

occur on duty and officers cannot be harassed or coerced in relation to their statements. But the 2021 Missouri Bill of Rights goes one step further than Kentucky's older law—it provides an exception to the state's Sunshine Law¹⁰⁰ and seals all documents relative to police misconduct investigations and only allows such disclosure by subpoena or court order. As such, not only does the Missouri law contain all of the same discouragement for the filing of complaints, but it ensures that any investigations will be conducted in secrecy by the same agency from which the complaint originated. In this aspect, law enforcement in Missouri now enjoy significant legal protections solely as a result of their chosen profession that other citizens do not receive.¹⁰¹

While states have passed and strengthened these laws protective of law enforcement for decades, some evidence supports the assertion that the tide is changing at the state level—at least in some parts of the country. Louisiana was yet another state to strengthen their Police Officer Bill of Rights, but this state law has recently been scaled back in light of the 2020 murder of George Floyd at the hands of former officer Derek Chauvin.¹⁰² Before 2021, Louisiana's Blue Lives Matter law allowed accused officers thirty days to secure counsel, during which time no interrogations could occur.¹⁰³ Not only did 2021 legislation scale that requirement back to fourteen days, it also now requires any complaint that has been sustained, or supported by evidence, to remain in the officer's personnel file for a decade.¹⁰⁴ In 2021, Maryland was the first jurisdiction to completely repeal their law enforcement bill of rights,¹⁰⁵ and both Rhode Island and Delaware have introduced repeals.¹⁰⁶

In addition to some expansion of these Bill of Rights laws, some jurisdictions have also passed laws criminalizing the publication of police

100. MO. REV. STAT. § 610.011 (2004).

101. *Id.*

102. Wesley Muller, *Legislation to reform officer bill of rights clears house committee*, LA. ILLUMINATOR (Apr. 30, 2021), <https://lailluminator.com/2021/04/30/legislation-to-reform-officer-bill-of-rights-clears-house-committee/>; LA. STAT. ANN. § 40:2531 (2021).

103. LA. STAT. ANN. § 40:2531 (2017).

104. LA. STAT. ANN. § 40:2531(B)(7) (2021).

105. See Ovetta Wiggins & Erin Cox, *Maryland enacts landmark police overhaul, first state to repeal police bill of rights*, WASH. POST (Apr. 10, 2021), https://www.washingtonpost.com/local/md-politics/hogan-vetoes-police-accountability/2021/04/09/c0ac4096-9967-11eb-962b-78c1d8228819_story.html.

106. Mark Eichmann, *Bill to change Delaware police Bill of Rights won't happen this year*, WHY NEWS (June 29, 2021), <https://why.org/articles/bill-to-change-delaware-police-bill-of-rights-wont-happen-this-year/>; Ishitaa Gupta, *RI legislators, activist groups call for the repeal of the Law Enforcement Officers' Bill of Rights*, BROWN DAILY HERALD (Sept. 10, 2021), <https://www.browndailyherald.com/article/2021/09/ri-legislators-activist-groups-call-for-the-repeal-of-the-law-enforcement-officers-bill-of-rights>.

activity—even when documented in public—including the attempt to criminalize the filming of police in public places.¹⁰⁷ In May 2021, the governor of Oklahoma signed two companion bills into law that have been described as “anti-doxxing” laws applicable only to public officials, but the actual text of the laws is significantly broader.¹⁰⁸ These laws state:

Whoever, with the intent to threaten, intimidate or harass, or facilitate another to threaten, intimidate or harass, uses an electronic communication device to knowingly publish, post or otherwise make publicly available personally identifiable information of a peace officer, public official, or a crime victim, and as a result places that peace officer, public official, or crime victim in reasonable fear of death or serious bodily injury shall, upon conviction, be guilty of a misdemeanor.¹⁰⁹

Debate of the bill in the Oklahoma legislature included a discussion of citizens being liable under this statute if they were to post a video of an encounter with an officer without blurring name badges. As such, this law makes legally posting public encounters difficult, if not impossible, as the definition of “personally identifiable information” wasn’t specified under the law. If a court were to rule that an officer’s face or voice was “personally identifiable,” posting any public video of such an encounter would be illegal.¹¹⁰

The Florida legislature considered House Bill 11¹¹¹ in its 2022 session.¹¹² This legislation would penalize any citizen who comes within thirty feet of an officer with the intent of interfering with or harassing that officer “directly or indirectly.”¹¹³ Florida law already includes several statutes criminalizing obstructing the duties of an officer, but none have

107. OKLA. STAT. ANN. tit. 21, § 1176 (2022). It has been widely reported that the single most compelling piece of evidence at the trial regarding George Floyd’s murder was a cellphone video made by a seventeen-year-old girl. Had one of these laws been in effect at the time of his murder, it would have been legally more likely that the only person to serve jail time as a result of his death would have been her.

108. *Id.*

109. *Id.*

110. See Deon Osborne, *Oklahoma bill makes it illegal to post photos of police with “threatening intent,”* BLACK WALL ST. TIMES (Feb. 24, 2021), <https://theblackwallsttimes.com/2021/02/24/oklahoma-bill-makes-it-illegal-to-photo-or-film-police-dems-vote-yes/>.

111. Fla. H.R. Bill No. 11, Reg. Sess. (2022) (unenacted).

112. *Id.*

113. See Editorial, *Protect police, but also protect the rights of Floridians to watch the police,* ORLANDO SENTINEL (Aug. 20, 2021), <https://www.orlandosentinel.com/opinion/editorials/os-op-florida-law-proposed-limit-recording-police-20210820-4hv2tpnpevgibfnw7idhjbyyua-story.html>.

established such a perimeter.¹¹⁴ This bill was first introduced in early 2021, where it died in committee, as it did again in 2022, but the chilling consequences such a law would have on the public are great.¹¹⁵ Darnella Frazier, the seventeen-year-old who captured the video of George Floyd's murder,¹¹⁶ estimated being approximately five feet from the incident at the time. If a bill like this ever passes, bystanders like Darnella could feasibly be either kept thirty feet from police activity, where it would be far more difficult to capture clear video and sound, or be arrested. Should a citizen object, they would also face arrest, at which time they would no longer be able to capture video.

These laws arguably impede police accountability but remain in force in dozens of states.¹¹⁷ As such, “[n]o other group of public employees enjoys equivalent legislation related to disciplinary matters, and the provisions of some [Law Enforcement Officers’ Bills Of Rights] grant police officers more specific protections than are provided other public employees in federal, state or local civil service laws.”¹¹⁸ Such protection may specifically include insulation for criminal activity and may grant significant due process for internal investigations and inquiries.¹¹⁹ In many parts of the country, state governments are set up to protect the police even in light of significant local pressure otherwise, and localities must acknowledge this in their approaches to the issue.

C. State Statutes that Specifically Restrict the Powers of Municipalities

States have also recently passed laws explicitly targeting municipal power in multiple scenarios. For example, in April 2021, Florida enacted two laws increasing already robust police protection, restricting local control of police budgets, and specifically targeting police protesters.¹²⁰

114. FLA. STAT. ANN. § 843.01 (2014); FLA. STAT. ANN. § 843.02 (2014).

115. See *HB 1581*, MY FLA. HOUSE (Nov. 15, 2022), <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=72816>; *HB 11*, MY FLA. HOUSE (Nov. 15, 2022), <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=73023>.

116. The first time the bill was introduced, the language was perhaps more targeted toward a situation like George Floyd's murder. Specifically, the language criminalized “approaching [a] law enforcement officer or remaining within specified distance of such officer with specified intent after receiving warning not to approach.” Fla. H.R. Bill No. 1581, Reg. Sess. (2021) (unenacted).

117. Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bill of Rights*, 14 B.U. PUB. INT. L.J. 185, 185 (2005).

118. *Id.* at 186.

119. *Id.* at 185.

120. Fla. H.R. Bill 1, Reg. Sess. (2021).

In a direct response to widespread protesting,¹²¹ the Combatting Public Disorder Act¹²² increases penalties for a variety of offenses including assault and battery, and most notably, battery against a law enforcement officer during a riot.¹²³ It also created a new crime of “mob intimidation,” a felony charge for citizens who block roadways, push monuments over, or participate in a “violent” assembly of people where injuries or property damage occur.¹²⁴ The legislation also increases civil penalties for rioters by terminating all state benefits for people convicted of violent assembly. Perhaps most punitive, it statutorily prevents bail for anyone charged with riot-related crimes before their first court appearance and creates a presumption against bond or bail during the pendency of the proceedings. While Florida H.B. 1 was partially blocked by a federal judge, the appeal, as well as multiple other court challenges, are ongoing.¹²⁵

Beyond the consequences for Florida citizens, though, the corollary Law Enforcement Protection Act¹²⁶ expressly restricts the power of local governments in several ways.¹²⁷ First, it allows citizens to directly challenge a reduction in police budgets.¹²⁸ Targeted at the “defund the police movement,” this Florida statute essentially creates a right of appeal to the office of the governor.¹²⁹ The governor’s office will then hold a hearing to determine the acceptability of the local budget. This Act then vests control over local purse strings in the governor—they can approve, amend, or modify the local budget at their own discretion.¹³⁰ The Act also

121. “[Florida Governor] DeSantis, a Republican, touted the law in a news conference Monday as ‘the strongest, anti-rioting, pro-law enforcement piece of legislation in the country. We’re also putting an end to the bullying and intimidation tactics of the radical left by criminalizing doxing and requiring restitution for damaging memorials and monuments by rioters.’” Paul LeBlanc & Maria Cartaya, *Florida governor signs controversial ‘pro-law enforcement’ law cracking down on riots*, CNN NEWS (Apr. 19, 2021), <https://www.cnn.com/2021/04/19/politics/ron-desantis-signs-combating-public-disorder-act/index.html>.

122. Fla. H.R. Bill 1, Reg. Sess. (2021).

123. *Id.*

124. *Id.*

125. Curt Anderson, *Florida’s GOP-backed ‘anti-riot’ law blocked by judge*, A.P. NEWS (Sept. 9, 2021), <https://apnews.com/article/courts-george-floyd-florida-race-and-ethnicity-laws-bd110e1229212aa5345a039db2223325>; Megan Butler, *Florida governor asks 11th Circuit to reinstate anti-riot law*, COURTHOUSE NEWS SERV. (Mar. 17, 2022), <https://www.courthousenews.com/florida-governor-asks-11th-circuit-to-reinstate-anti-riot-law/>.

126. FLA. STAT. ANN. § 166.241 (2021).

127. *Id.*

128. *Id.*

129. FLA. STAT. ANN. § 166.241(5) (2021).

130. FLA. STAT. ANN. § 768.28(5)(b) (2021).

reduces qualified immunity, but only against a municipality that fails to stop rioting. Now, cities and counties are open to civil lawsuits if they don't adequately protect persons and property.¹³¹

The concept of state preemption of local control is not new but is expanding in a reactive way in areas other than policing. State governments have recently reacted to local COVID-19 restrictions, tolerance ordinances, and sanctuary cities; because the power of the state preempts local control, municipalities can often see their hard work on legislation nullified by a reactionary state government. Nevertheless, there are local solutions even in a state framework that can be restrictive—many of which have broad, bipartisan appeal.

III. LOCAL APPROACHES TO INCREASING POLICE ACCOUNTABILITY

A. *City Ordinances*

1. **Civilian Oversight of Law Enforcement**

Civilian oversight of the police is a relatively well-established concept. Civilian review of police actions first started through the efforts of progressive-era reformers in the 1920s through the 1960s.¹³² Review boards began actively investigating the actions of the police in the 1970s and 1980s,¹³³ and we now see even more striation in the ways such civilian boards operate. Unfortunately, in many instances, such efforts only begin after a tragedy. For instance, after the killing of Michael Brown in Ferguson, Missouri, in 2014, that city proposed an ordinance to create a civilian review board.¹³⁴ Regrettably, it took Brown's death after being shot six times—twice in the head—and a federal investigation to get to that point.

Likewise, on May 25, 2020, George Floyd was murdered by a police officer in Minneapolis, Minnesota.¹³⁵ In the intervening time, protests erupted across the country, and there has ultimately been some accountability for the officers involved in Floyd's death. In a policy response to his murder, municipalities nationwide have sought to change

131. FLA. STAT. ANN. § 768.28 (2021).

132. Joseph DeAngelis et al., *Civilian Oversight of Law Enforcement: Assessing the Evidence*, NCJRS (Sept. 2016), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/civilian-oversight-law-enforcement-assessing-evidence>.

133. *Id.*

134. Kevin King, *Effectively Implementing Civilian Oversight Boards to Ensure Police Accountability and Strengthen Police-Community Relations*, 12 HASTINGS RACE & POVERTY L.J. 91, 95 (2015).

135. *State v. Chauvin*, No. 27-CR-20-12646, 2021 Minn. Dist. LEXIS 39 (2021).

their own procedures to strengthen accountability.¹³⁶ “Civilian oversight has emerged at the front and center of reforms adopted in the months following Floyd’s killing. Dozens of cities have either established new forms of civilian oversight or enhanced the scope and powers of existing civilian oversight structures.”¹³⁷

A 2022 overview of civilian oversight of policing shows that most municipalities that task civilians with keeping the police accountable use a system that combines more than one of the typical types of oversight.¹³⁸ The most commonly used method is to “review” law enforcement, wherein an entity “reviews or monitors investigations of police incidents being conducted by the police department.”¹³⁹ Other types of civilian oversight involve the independent investigation of police actions, auditing police investigations, separately adjudicating allegations of police overreach, whether initially or on appeal, and advising the department on matters of concern.¹⁴⁰ As such, these differing approaches to civilian oversight can be tailored to the needs of a given community or to the political desires of those in decision making positions.

As of 2022, about 94% of the top-third largest cities in the U.S. have some kind of civilian oversight of policing, but only about 46% of the bottom-third do—it would be reasonable to assume that smaller cities are even less likely to currently engage civilian oversight of law enforcement.¹⁴¹ This makes expansion of this method of accountability not only viable for a significant portion of the U.S., but also gives thousands of American cities large and small a literal blueprint for improving transparency and oversight.

After Floyd’s murder, for example, some large cities expanded or otherwise changed their method of civilian oversight. At least six cities have created new civilian oversight boards since May 2020 (Colorado Springs, Colorado; Columbus, Ohio; Fort Worth, Texas; Madison, Wisconsin; Raleigh, North Carolina; and Stockton, California).¹⁴² Other cities, like Boston and Louisville, have completely overhauled their existing systems, and an overall review shows that even cities as small as Fort Wayne, Indiana (population approximately 260,000), are actively

136. Sharon R. Fairley, *Survey Says: The Development of Civilian Oversight of Law Enforcement Skyrockets in the Wake of George Floyd’s Killing*, 31 S. CAL. REV. L. & SOC. JUST. 283, 284 (2022).

137. *Id.* at 285.

138. *Id.* at 289.

139. *Id.* at 288.

140. *Id.* at 289.

141. *Id.* at 288.

142. *Id.* at 296–97.

improving how civilians monitor police action.¹⁴³ Other smaller cities like Albuquerque, New Mexico, established civilian oversight in 2014, and any of these laws could contribute helpful guidance for new such ordinances.¹⁴⁴

For smaller municipalities that wish to increase transparency in policing, civilian oversight can be not only effective, but straightforward in implementation. With hundreds of options in use in the United States, there are many blueprints to follow depending upon what is needed in a given area. In addition, the National Association for Civilian Oversight of Law Enforcement has put together a virtual toolbox for cities looking to establish civilian oversight or to strengthen the oversight they already have in place.¹⁴⁵ This national group issues reports on different types of oversight and the strengths and weaknesses of each kind.¹⁴⁶ Not only can cities look to other municipalities for specifics, but they can also access specific strategies from this national organization.

2. Ban-the-Box Initiatives

Many Americans are used to being asked about their criminal histories when applying for employment. We have come to expect that our pasts are open books when seeking a job, whether that past is from two decades ago or has little bearing on our ability to perform a job. Some municipalities have passed ordinances in response to this standard practice banning employers from asking about a prospective employee's criminal history. These "ban-the-box" ordinances typically seek to restrain both the length and substance of such inquiries, under the premise that employees should be able to prove their fitness for the job before the inquiry into their past.¹⁴⁷

"[B]an-the-box" laws, which generally prohibit employers from inquiring about a job applicant's criminal record until later in the hiring process, such as after an initial interview or once a conditional employment offer is made. The hope is that an employer will be more likely to hire an ex-offender if it evaluates a candidate's qualifications for the position before discovering the applicant's criminal record. Spearheaded largely by grassroots organizations, the number of states

143. *Id.* at 297–98.

144. *Id.* at 298.

145. See NAT'L ASS'N FOR CIVILIAN OVERSIGHT OF L. ENF'T (Nov. 9, 2022), www.NACOLE.org.

146. *Frequently Asked Questions*, NAT'L ASS'N FOR CIVILIAN OVERSIGHT OF L. ENF'T (Nov. 9, 2022), www.NACOLE.org.

147. Dallan F. Flake, *Do Ban-the-Box Laws Really Work?*, 104 IOWA L. REV. 1079, 1084 (2019).

banning the box in one form or another has grown from just one in 2004 to thirty-three by 2018. Additionally, more than 150 cities and counties have banned the box at the municipal level. Today, an estimated 249 million Americans—approximately three-fourths of the population—live in a state or city with some kind of ban-the-box law. Support for ban-the-box legislation reached new heights in late 2015 when President Barack Obama announced that the federal government, the nation’s largest employer, would remove criminal background questions from most of its job applications.¹⁴⁸

As these laws have grown in popularity across the country, at least some empirical evidence shows that they do make a difference.¹⁴⁹ In a 2017 field experiment in Chicago, fake applications were submitted to job openings to test the number of interviews and callbacks granted after a ban-the-box law was passed there.¹⁵⁰ Data showed that, when compared with Dallas, Texas, a city without such a ban, “the [ex-offender] applicant’s callback rate was 4.4% higher in Chicago than in Dallas, indicating that the ex-offender applicant had an easier time getting a callback (and presumably a job) in the jurisdiction that banned the box.”¹⁵¹ Studies also showed similar results both in Massachusetts and nationwide.¹⁵²

3. No No-Knocks

In most cases, when police serve a search warrant, they must “knock and announce” their presence. This rule is designed to protect civilians from injury and unreasonable searches.¹⁵³ No-knock warrants are legally permissible in some cases and allow police to forcibly enter a residence without announcing their presence first. They are often used in narcotics cases where there is risk of destruction of evidence, and one was used during the search that killed Breonna Taylor.¹⁵⁴ Put in place in the 1970s through drug legislation, “[a]t the federal level, no-knock warrants proved so ineffective and disruptive that Congress banned them in 1974—merely four years after they were codified into law. Unfortunately, state and local police still use no-knock warrants.”¹⁵⁵ Not only are they

148. *Id.*

149. *Id.* at 1086.

150. *Id.*

151. *Id.* at 1106.

152. *Id.* at 1093–94.

153. See *Wilson v. Arkansas*, 514 U.S. 927, 929 (1995).

154. Opper et al., *supra* note 2.

155. Sarah Chowdhury et al., *Young Lawyers Section: Building Bridge: No-Knock Warrants: Past, Present, and Future*, 36 CBA RECORD 43, 43 (2022).

more dangerous to civilians, but the Supreme Court of the United States in *Hudson v. Michigan*¹⁵⁶ made them, essentially, very attractive to law enforcement. Typically, when the police violate your rights with an unconstitutional search, the evidence is excluded from your trial pursuant to the exclusionary rule.¹⁵⁷ *Hudson* carves out an exception to that, determining that when the police violate the “knock and announce” protection, evidence subsequently seized is not excluded from trial.¹⁵⁸ As such, there is often little holding the police back from breaking down doors in the middle of the night, unannounced.¹⁵⁹ “When the police know both that they can ignore the knock-and-announce requirements without risking suppression of the evidence and that qualified immunity erects a very high barrier to police accountability, they lack incentive to follow the entry requirements.”¹⁶⁰

In addition, there are indications that judges sign no-knock warrants in a variety of cases that fall short of the requisite need.¹⁶¹ In *Wilson v. Arkansas*,¹⁶² the Supreme Court determined that the knock-and-announce requirement could give way “under circumstances presenting a threat of physical violence[.]” or “where police officers have reason to believe that evidence would likely be destroyed if advance notice were given.”¹⁶³ The Court has further clarified that “[t]he Fourth Amendment does not permit a blanket exception to the knock-and-announce requirement for felony drug investigations[.]” and that the court must have a reasonable basis to allow one.¹⁶⁴

However, some legal analyses indicate that, in practice, courts may be quick to authorize no-knock warrants, no matter the circumstances.¹⁶⁵

In 2018, legal commentator Radley Balko reviewed more than 105 no-knock warrants served by the police department of Little Rock, Arkansas. In ninety-seven of those warrants, police failed to provide

156. 547 U.S. 586 (2006).

157. *Id.* at 590.

158. *Id.* at 593. “Exclusion of the evidence obtained by a warrantless search vindicates [the] entitlement [of citizens to shield their persons, houses, papers, and effects, from the government’s scrutiny]. The interests protected by the knock-and-announce requirement are quite different—and do not include the shielding of potential evidence from the government’s eyes.” *Id.*

159. Blanche Bong Cook, *Something Rots in Law Enforcement and It’s the Search Warrant: The Breonna Taylor Case*, 102 B.U.L. REV. 1, 58 (2022).

160. *Id.* at 57–58; see also *Hudson*, 547 U.S. at 609.

161. Cook, *supra* note 159, at 57.

162. 514 U.S. 927 (1995).

163. *Id.* at 936.

164. *Richards v. Wisconsin*, 520 U.S. 385, 385 (1997).

165. Cook, *supra* note 159, at 54.

the level of specificity necessary to satisfy *Richards* and dispense with the knock-and-announce requirements. Despite that, judges signed those warrants. As of the time of writing, not one Little Rock officer has been held accountable for illegal no-knock warrants. Balko notes that “one of the judges who signed off on a large portion of those warrants is currently running for higher judicial office.” Although the detective who acquired many of those warrants “was caught lying in one” and there is “evidence that he lied in others,” he “is still in charge of the city’s drug investigations.” Lack of accountability indicates there is no incentive, at least in Little Rock, for police officers to stop pursuing no-knock warrants.¹⁶⁶

Further, in 2015, Julian Betton was killed under circumstances very similar to Breonna Taylor’s killing—in that case, a task force officer testified, “It’s not the law to knock and announce. You know, it’s just not.”¹⁶⁷

One response that municipalities have had to increase police accountability is to ban the use of no-knock warrants locally. One of the first actions Louisville, Kentucky, took after Breonna Taylor’s killing was to enact a total ban on no-knock warrants; in June of 2020, Louisville Metro Council unanimously voted to enact “Breonna’s Law,” an ordinance that codified the mayor’s temporary ban.¹⁶⁸ Since 2020, other states and municipalities have done the same.¹⁶⁹

Three states have banned no-knock warrants completely. In Oregon, police may execute a search warrant only within the period and at the times authorized by the warrant and after notifying occupants of their presence. In Virginia, under Breonna Taylor’s Law, police can execute warrants only if they give occupants audible notice during daytime hours and police are recognizable in uniform. In Florida, the supreme court recognized in 1994 that the common law presumed no-knock warrants were illegal and without legal effect in the state, unless there was express statutory authorization.¹⁷⁰

Other states, like Kentucky, Minnesota, and Illinois, have limited no-knock warrants.¹⁷¹ Limitations can include requiring body cameras at

166. *Id.*

167. *Id.*

168. Rebekah Riess & Theresa Waldrop, *Louisville council passes ‘Breonna’s Law’ banning no-knock warrants*, CNN NEWS (June 11, 2020), <https://www.cnn.com/2020/06/11/us/louisville-breonnas-law-no-knock-warrants-ban/index.html>.

169. Chowhurdy et al., *supra* note 155, at 44.

170. *Id.*

171. *Id.*

no-knock warrants, reporting requirements that exceed the warrant return, and prior review by police administration.¹⁷²

4. Cash Bail Reform

The movement to reform cash bail has become increasingly popular among elected officials and in the populace. This has resulted in the repeal of cash bail in some areas and the reduction of it in others.¹⁷³ “The last several years have seen dramatic legislative changes and significant constitutional amendments in states like Alaska, California, Colorado, Connecticut, Illinois, Kentucky, New Jersey, New Mexico, New York, and Oregon, although reforms in both California and New York have faced political backlash.”¹⁷⁴ For example, Illinois enacted the Safety, Accountability, Fairness and Equity-Today Act (SAFE-T Act)¹⁷⁵ that effectively ends cash bail in the state and goes into effect in January 2023.¹⁷⁶ The measure has seen considerable pushback from politicians predicting an increase in violent crime to some calling the bill “The Purge.”¹⁷⁷ Nevertheless, there is more political momentum in changing the law in this area than there ever has been. While the use of bail reform is arguably related to the criminal justice system as a whole and not solely an issue of policing, law enforcement is often the first arbiter of bail. When an officer responds to a crime, their discretion in arresting, releasing, and charging can make the difference in a defendant’s conditions and length of confinement, especially in states that strictly adhere to set bail schedules. As such, reforming cash bail also responds to the issue of police accountability.

Cash bail reforms can take several forms. In some places, like with the Illinois SAFE-T Act, cash bail is being removed altogether, and there is precedent for municipalities making this possible through ordinances. Currently in Albany, New York, local officials are reviewing how bail bonds are set for the undocumented community.¹⁷⁸ Arguing that the

172. *Id.*

173. Lauryn P. Gouldin, *Reforming Pretrial Decision-Making*, 55 WAKE FOREST L. REV. 857, 861 (2020).

174. *Id.*

175. CHILLICOTHE, ILL., CODE OF ORDINANCES § 2-2 (2021).

176. Craig Wall, *Illinois law eliminating cash bail faces criticism, but supporters say it makes system fairer*, ABC 7 NEWS (Sept. 15, 2022), <https://abc7chicago.com/cash-bail-illinois-safe-t-act-safety-criminal-justice-reform/12232413/>.

177. *No, the End of Cash Bail is Not a ‘Purge Law’ in Illinois. Here’s What We Know*, NBC 5 CHICAGO (Sept. 16, 2022), <https://www.nbcchicago.com/news/local/the-end-of-cash-bail-is-not-a-purge-law-in-illinois-heres-what-you-need-to-know/2981549/>.

178. Gabriel Sandoval et al., *Immigrant Bail Bond Industry Is ‘Wild West,’ State Lawmakers Say*, DOCUMENTED NY (May 27, 2022),

practice is largely unregulated, lawmakers note that “the [bail] contracts are egregiously lopsided . . . with the bond companies charging exorbitant fees and making clients wear invasive ankle monitors. Immigrants report paying as much \$450 a month for the devices—for years.”¹⁷⁹ Often, these undocumented people do not have pending charges but have been detained on immigration violations—which can take years to resolve. Because the practice of cash bail is prohibitively expensive, these presumed-innocent defendants can linger in jail or be saddled with inordinate debt or simply be unable to make ends meet outside prison.¹⁸⁰ Also,

In 2018, voters in Harris County, TX, elected a wave of Democratic judges to replace a mostly Republican judiciary. Then, in Jan. 2019, the new judges made significant changes to the county’s money bail system. Under the new rules, most defendants of misdemeanor charges qualify for automatic release from jail on cashless bonds. Rather than charge and hold bail up front, this system only charges [the] defendants when they don’t show up for court.¹⁸¹

In other places, jurisdictions are doing away with bail schedules, presumptions on what to set a criminal defendant’s bail at before judicial review that often depends solely on the level of charge.¹⁸²

Bail schedules are tables that set presumptive bail amounts based primarily on the charged offenses. For decades, they have been widely used around the country to accelerate and regularize pretrial decision-making in an attempt to ease the workload on overburdened courts and jails . . . the schedules rely exclusively on the charged offense with no individualized assessment of a defendant’s flight risk, public safety risk, and/or ability to pay, and only take into account the charged offense.¹⁸³

Reforming cash bail also doesn’t have to equate with letting the defendants out on their own recognizance pretrial. When New Jersey reformed their cash bail system, they replaced it with a statistical tool

<https://documentedny.com/2022/05/27/immigrant-bail-bond-industry-is-wild-west-state-lawmakers-say/>.

179. *Id.*

180. *Id.*

181. David Straughan, *Where we Stand on Cash Bail Reform in 2021*, INTERROGATING JUST. (Mar. 11, 2021), <https://interrogatingjustice.org/cash-bail/cash-bail-reform-2021/>.

182. Gouldin, *supra* note 173, at 883.

183. *Id.*

called the Public Safety Assessment.¹⁸⁴ This objective tool allows judges to assess a defendant's risk profile based on algorithms and calculations, and its implementation in New Jersey has been correlated with a decrease in both the pretrial jail population and in overall crime rate.¹⁸⁵

What cash bail reform can look like in a given locality can differ and be tailored to not only the needs of the city but what the political landscape will permit. Many cities may not have the political power to pass a bail reform ordinance, or they may be preempted by state law specifically disallowing such.¹⁸⁶ In a city where local legislative options are limited, collaboration with the bench and the prosecutor's office might accomplish the same ends. Most courts are concerned with the use of jail resources, and the bench often works in collaboration with the local prosecutor to reduce jail capacity. A proactive city might encourage this cooperation through an open dialogue; if a city official could draft something approximating New Jersey's Public Safety Assessment, or, even better, develop one collaboratively with law enforcement and the bench,¹⁸⁷ the system can see reform without a city council representative ever having to cast a ballot.

5. Use of Force

City ordinances that govern the use of force in policing are not new but are seeing an increase in popularity as cities address accountability. Recent updates to use of force ordinances often focus on four actions: banning certain law enforcement actions like chokeholds, requiring the use of de-escalation, creating a duty to assist civilians when other officers put them in peril,¹⁸⁸ and requiring the police to collect data on use of force incidents.¹⁸⁹ In July 2020, St. Louis passed a local ordinance requiring the police commissioner to revise the use of force policy to "ban officers from using chokeholds or strangleholds as a use of force method and require officers to use de-escalation tactics when appropriate and

184. David J. Reimel III, *Algorithms & Instruments: The Effective Elimination of New Jersey's Cash Bail System and Its Replacement*, 124 PENN ST. L. REV. 193 (2019).

185. *Id.* at 194.

186. Kentucky is one such state. In Kentucky, the bail schedule is set by state law, and cannot be deviated from except during judicial review. As such, municipalities are not free to automatically release low level offenders outside of the statute. KY. R. CR 4.16 (1999).

187. *See infra* Section III(c)(i).

188. There is federal precedent in the United States Court of Appeals for the Seventh Circuit supporting this duty. *Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994) (holding that an officer has a civil duty to protect a civilian from another officer's bad acts in a suit under 42 U.S.C. § 1983).

189. ST. LOUIS, MO., CITY CODE, 1-01 § III (2020).

possible in place of use of force tactics.”¹⁹⁰ Also in June of 2020, the City of Minneapolis and the Minneapolis Police Department amended their use of force policy in the same ways St. Louis did, but also changed the way the police respond to incidents at protests.¹⁹¹ The ordinance, passed as a response to a temporary court order, specifically forbids the police from interfering in lawful protests and requires the police chief to authorize the use of force during civil disturbances.¹⁹² More recently, the city of Akron, Ohio, passed a use of force ordinance that targets transparency in body camera footage.¹⁹³ As of June 2021, the City of Akron is required to publicly release all body camera footage within seven days of any police use of deadly force or force which causes serious bodily injury.¹⁹⁴ Violations of this ordinance can be initiated by any individual who alleges a violation and are subject to suit under the Ohio Public Records Act.¹⁹⁵

6. Body Cameras

Since the advent of the technology, and even more so since several highly publicized deaths of Black men at the hands of the police, some cities have reexamined the usage of body cameras by law enforcement. While many larger metropolitan areas have implemented these glasses-mounted or chest-mounted devices, they are not used in as many smaller cities, making this an issue that local governments might benefit from exploring.¹⁹⁶ As of 2016,

47% of general-purpose law enforcement agencies had acquired body-worn cameras; for large police departments, that number is 80%. Among agencies that had acquired body-worn cameras, 60% of local police departments and 49% of sheriffs’ offices had fully deployed their body-worn cameras. Overall, in agencies that had acquired body-worn cameras there were 29 body-worn cameras in service per 100 full time

190. *Id.*

191. *Temporary Court Order Changes Embedded in City Ordinance or in Police Department Policy & Procedure Manual*, MN. DEPT. OF HUM. RES. (Nov. 9, 2022), https://mn.gov/mdhr/assets/TRO%20Changes%20Embedded%20in%20City%20Ordinance%20or%20in%20Police%20Department%20Policy%20Final_tcm1061-526121.pdf.

192. *MPD Policy and Procedure Manual*, MN. GOV. (Feb. 19, 2023), <https://www.minneapolis.gov/media/-www-content-assets/documents/MPD-Policy-and-Procedure-Manual.pdf#page=276>.

193. AKRON, OHIO, CODE ORD., Title 3, Chapter 33, Article 3 (2021).

194. *Id.*

195. *Id.*

196. *Research on Body-Worn Cameras and Law Enforcement*, NAT’L INST. OF JUST. (Jan. 27, 2022), <https://nij.ojp.gov/topics/articles/research-body-worn-cameras-and-law-enforcement#national-toolkit>.

officers . . . About 86% of general-purpose law enforcement agencies that had acquired body-worn cameras had a formal body-worn camera policy. Agencies not using body-worn cameras stated cost (hardware acquisition, video storage, system maintenance) to be the primary disincentive.¹⁹⁷

The data analyzing the results of body camera usage is mixed, but most of it supports the efficacy of cameras using efficacy metrics like reductions in citizen injuries and complaints. A January 2022 report from the National Institute of Justice reviewed seven such mandates and found that five of them were rated as “promising,” while two merely showed no statistical differences in metrics.¹⁹⁸ Other studies show that the use of body cameras reduces police violence and citizen complaints.¹⁹⁹

In Orlando, researchers examined the effect of B.W.C.s on police and public behavior. They found use of force incidents halved among officers with cameras, while civilian complaints dropped by nearly two thirds. A similar study in 2015 showed that use of force incidents in Rialto, California, more than halved and citizen complaints fell by nearly nine tenths. In Birmingham, Alabama, complaints fell by more than two thirds and led to a drop of more than a third in the use of force by officers when they started adopting B.W.C.s. Similar advantages were shown by a study in Arizona.²⁰⁰

Breonna’s Law²⁰¹ also addressed the use of body cameras.²⁰² This city ordinance, passed three months after Breonna Taylor’s killing, not only bans no-knock warrants but requires the police to use body cameras during searches.²⁰³ Under the ordinance, they must be activated five minutes before the search, remain on until five minutes after the search concludes, and the data must be stored for a minimum of five years.²⁰⁴

While most scholars agree that more research is needed in this area, municipalities considering such a policy change need simply turn to their federal counterparts for issues of implementation should they decide to require cameras. The Bureau of Justice Assistance, a division of the Department of Justice, has created the Body-Worn Camera Toolkit to

197. *Id.*

198. *Id.* at 3.

199. Deborah Ramirez et al., *Policing the Police: Could Mandatory Professional Liability Insurance For Officers Provide a New Accountability Model?*, 45 AM. J. CRIM. L. 407 (2019).

200. *Id.* at 427.

201. Riess & Waldrop, *supra* note 168.

202. *Id.*

203. *Id.*

204. *Id.*

assist municipalities that want to implement such a policy.²⁰⁵ The program includes documentation, podcasts, and other resources designed to assist localities develop programs that suit their needs.²⁰⁶

7. Insurance

As discussed, law enforcement enjoys qualified immunity in many cases of overreach.²⁰⁷ This does not negate the value of liability insurance, and as states consider reducing immunity, it may become even more important over time. Local requirements for police to have individual liability insurance might be a way for municipalities to have direct oversight over the proverbial “bad apples,” and prohibitive pricing might remove a rotten one when the agency refuses to.²⁰⁸

In *Policing the Police: Could Mandatory Professional Liability Insurance For Officers Provide a New Accountability Model?*,²⁰⁹ the authors argue that cities should be most concerned with officers who represent the “worst of the worst” in policing—those who have a history of violations.²¹⁰ In 2016, researchers found a correlation between payouts and the level of civilian allegations, with the “worst” 1% of officers being responsible for five times more payouts than average.²¹¹ Insurers use empirical data like this all the time in assessing premiums, whether it be traffic tickets that increase car insurance or homeowner’s claims that do likewise.

The authors opine that insurance premiums on the most dangerous officers would rise, through market forces, to the point of being cost prohibitive.²¹²

[An insurance mandate] brings a new player into the scene, an independent third party with a financial stake in accurately and empirically assessing potential liability . . . [w]hile many disciplinary measures are “backward looking” in that they are responses to already documented misconduct, the risk prediction actuarial algorithms we anticipate insurance companies developing are oriented towards predicting future behavior. If the risk is concentrated in a small percentage of officers, insurance companies have strong financial

205. *Body-Worn Camera Toolkit*, BUREAU OF JUST. ASSISTANCE (Nov. 9, 2022), <https://bja.ojp.gov/program/bwc>.

206. *Id.*

207. Ramirez et al., *supra* note 199, at 447.

208. *Id.* at 459.

209. *Id.* at 407.

210. *Id.* at 437.

211. *Id.*

212. *Id.* at 436–37.

incentive to find those specific officers, to raise their premiums to reflect their actual risk, and perhaps, to push them into another line of work.²¹³

On the other hand, officers could be eligible for reduced premiums by taking additional trainings or programs.²¹⁴ “Carefully calculated premiums are both a fiscal carrot and a fiscal stick, encouraging all stakeholders to adopt policies, trainings, and reforms that reduce risk and along with it, liability.”²¹⁵

A separate but related justification for requiring officers to carry personal liability insurance is to reduce insurance costs for municipalities. Many lawsuits against the police involve Section 1983 claims for civil rights violations. In those cases, the Supreme Court has determined that vicarious liability does not apply to render the city liable for the officer’s conduct.²¹⁶ Nevertheless, many cities choose to indemnify their officers.²¹⁷ As most municipalities do not require individual insurance for officers, and instead rely on indemnification umbrella policies, these policies could be partially eliminated as a cost savings initiative. At the very least, an individual insurance mandate could be used to negotiate lower premium prices for the city. When the liability is shifted to the individual officer, their premiums can be directly affected by their conduct on the job—good or bad—allowing for the market to correct their behavior when other mechanisms cannot.²¹⁸

213. *Id.* at 450.

214. *Id.* at 437.

215. *Id.* at 451.

216. Teresa E. Ravenell & Armando Brigandi, *Norman J. Shacoy Symposium: Exploring Police Accountability in America: The Blurred Blue Line: Municipal Liability, Police Indemnification, And Financial Accountability In Section 1983 Litigation*, 62 VILL. L. REV. 839, 841 (2017).

217. *Id.* at 841–42.

218. *See also* Deborah Ramirez & Tamar Pinto, *Policing the Police: A Roadmap to Police Accountability Using Professional Liability Insurance*, 73 RUTGERS U. L. REV. 307, 310–12 (2021).

8. Municipal Prohibitions on Qualified Immunity

While most laws granting immunity to law enforcement are enacted statewide,²¹⁹ one municipality has recently reformed qualified immunity for the police at the local level.²²⁰

In March 2021, the New York City Council passed several bills and resolutions designed to increase police accountability, most notably, Introduction (Int.) 2220-A.²²¹ This Act, which went into effect in New York City in April 2021, effectively ended immunity for law enforcement by creating a local right to be free from unreasonable searches and seizures and from excessive force and creating a civil cause of action to enforce it.²²² Should an officer violate this right, a citizen may file suit against them and their employer within three years, and neither may assert qualified immunity or any substantially similar immunity as a defense.²²³ These civil lawsuits may also seek punitive damages or equitable relief, like the return of specific property that may have sentimental or historical value.²²⁴

Along with this restriction on immunity, New York also passed several bills requiring more transparency relative to police actions. Under Int. 2220-A, any civil action initiated by a civilian alleging excessive force or an unreasonable search and seizure must be posted publicly online.²²⁵ Int. 1671-A²²⁶ requires the police to make quarterly reports on all traffic stops, no doubt in an effort to rectify the NYPD's long history of inequities in vehicle stops.²²⁷ Finally, New York also approved a resolution asking the state to remove the New York City Police Commissioner's exclusive authority over police discipline and instead vest it in a Civilian Complaint Review Board.²²⁸

219. Julian R. Murphy, *Is It Recording?—Racial Bias, Police Accountability, and the Body-Worn Camera Activation Policies of the Ten Largest Metropolitan Police Departments in the USA*, 9 COLUM. J. RACE & L. 141 (2018).

220. James Craven, *New York City Council Passes Qualified Immunity Reform*, CATO INST. (Mar. 31, 2021), <https://www.cato.org/blog/nyc-council-passes-qualified-immunity-reform-bill-bolstering-citizens-fourth-amendment-rights>.

221. *Id.*; N.Y. City Council Int. 2220-2021 A, Reg. Sess. (2021).

222. *Council Votes To End Qualified Immunity and Seven Other Measures to Reform NYPD*, N.Y. CITY COUNCIL (Mar. 25, 2021), <https://council.nyc.gov/press/2021/03/25/2079/>.

223. *Id.*

224. Craven, *supra* note 220.

225. N.Y. City Council Int. 2220-2021 A, Reg. Sess. (2021).

226. N.Y. City Council Int. 1671-2019 A, Reg. Sess. (2019).

227. *Id.*

228. This was not the only resolution passed by the New York City Council asking the state legislature to act. Several bills were introduced in New York State subsequent to the passing of New York City's ordinance; they died in committee in June 2022. Zach Williams,

9. Municipal Decriminalization

Other cities have also simply chosen, through executive fiat or edict from the prosecuting attorney's office, not to pursue some crimes. This approach is generally specific to a type of crime that has fallen out of favor with the electorate. Back in 2012, the Obama administration had a policy not to enforce federal marijuana laws in states that had acted to legalize cannabis, whether for medical or recreational use.²²⁹ While that policy ended with the subsequent administration, municipalities have enacted similar measures relative to marijuana enforcement in states that have not yet legalized the drug. For example, the National Organization for the Reform of Marijuana Laws, or NORML, reports that since 2012 over 100 local municipalities have decriminalized the usage of marijuana in states where possession may still be illegal.²³⁰ Some of these initiatives, like that in Stonecrest, Georgia, have been accomplished through local ordinance.²³¹ Meanwhile, city officials in Denton, Texas, proposed an ordinance decriminalizing marijuana.²³² On November 8, 2022, it was "overwhelmingly" passed by voters with over 71% approval, receiving "more votes than any council member or mayor in the history of Denton."²³³ This ordinance not only decriminalizes possession in small amounts, but specifically prohibits the police from stopping and frisking people when they smell the drug; city funds will also no longer be spent on THC testing, and this is one of the first such decriminalization laws passed locally in the entire state.²³⁴

Larger cities have acted in similar measures relative both to decriminalizing marijuana and abortion. In Cincinnati, Ohio, the city council passed a new ordinance allowing law enforcement to issue a citation without criminal penalties or fines to people possessing less than

Tina Moore, Larry Celona, & Bruce Golding, *No 'moral compass': Hochul waffles on qualified immunity for NY cops*, N.Y. POST (July 12, 2022), <https://nypost.com/2022/07/12/hochul-waffles-on-qualified-immunity-for-new-york-cops/>.

229. Devin Dwyer, *Marijuana Not High Obama Priority*, ABC NEWS (Dec. 12, 2012), <https://abcnews.go.com/Politics/OTUS/president-obama-marijuana-users-high-priority-drug-war/story?id=17946783>.

230. *Local Decriminalization*, NORML (Nov. 9, 2022), <https://norml.org/laws/local-decriminalization/>.

231. Tyler Estep, *DeKalb's largest city decriminalizes an ounce or less of marijuana*, ATL J.-CONST. (Aug. 23, 2022), <https://www.ajc.com/neighborhoods/dekalb/dekalbs-largest-city-decriminalizes-an-ounce-or-less-of-marijuana/Z74LRJL7BZE6JMJB3F6SPNMHI/>.

232. Christian McPhate, *Denton passes one of Texas' first marijuana decriminalization ordinances*, DENTON RECORD-CHRONICLE (Nov. 8, 2022), https://dentonrc.com/news/election_2020/denton-passes-one-of-texas-first-marijuana-decriminalization-ordinances/article_6fca8087-50e8-54fa-b05f-a2ef452a963f.html.

233. *Id.*

234. *Id.*

100 grams of marijuana.²³⁵ Ordinance 175-2019²³⁶ does not replace the state law making all possession illegal statewide, but offers local law enforcement a different, non-criminal, option.²³⁷ After this ordinance was passed, the mayor's office announced the immediate dismissal of all pending charges for possession in small amounts.²³⁸ In the city's press release, the mayor's office noted that 86% of those charged were African American men, making this only marginally effective plan²³⁹ have a direct impact on racial equity in the city's criminal justice system. The mayor is further working on a city ordinance prioritizing expungement of covered offenses.²⁴⁰

Likewise, the City of Cincinnati also reviewed local ordinances in light of the overturning of *Roe v. Wade*²⁴¹ and Ohio's subsequent ban on abortions six weeks after conception.²⁴² In that instance, the mayor commissioned a full report on how the city could decriminalize abortion; the first response to his efforts was that the city repealed a 2001 ordinance prohibiting the municipality from covering the procedure under city health insurance policies.²⁴³ Consequently, city employees can now seek reimbursement for these restricted health care services if they are not available within 150 miles.²⁴⁴ The City of Austin, Texas, passed a similar resolution to "deprioritize" investigations into criminal offenses related to abortion.²⁴⁵ Unanimously approved on July 21, 2022, the

235. Christopher E. C. Smitherman, *Marijuana Decriminalization in the City of Cincinnati*, CITY OF CINCINNATI (Nov. 9, 2022), <https://www.cincinnati-oh.gov/council/council-members/council-member-christopher-smitherman/marijuana-decriminalization-in-the-city-of-cincinnati/>.

236. CINCINNATI, OH., MUNICIPAL ORDINANCE 175-2019 (2019).

237. CINCINNATI, OH., MUNICIPAL CODE § 910-23 (2019).

238. Smitherman, *supra* note 235.

239. *Id.* While the chief of police was quoted as saying the police will "follow city law," there's no prohibition against the police filing charges under the state law. Sharon Coolidge & Maia Anderson, *New marijuana law takes effect Friday in Cincinnati: What to know*, CINCINNATI ENQUIRER (July 10, 2019), <https://www.cincinnati.com/story/news/politics/2019/07/10/marijuana-decriminalization-cincinnati-what-means/1681899001/>.

240. Smitherman, *supra* note 235.

241. 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

242. *Id.*; OHIO REV. CODE ANN. § 2919.193 (2019).

243. Natalya Daoud, *Cincinnati mayor announces new legislation following Roe v. Wade ruling*, FOX 19 NEWS (June 27, 2022), <https://www.fox19.com/2022/06/27/cincinnati-mayor-announce-legislation-following-roe-v-wade-ruling/>.

244. *Id.*

245. Mary Tuma, *How One Progressive City Is Fighting to Decriminalize Abortion*, THE NATION (Aug. 15, 2022), <https://www.thenation.com/article/society/austin-texas-decriminalize-abortion/>.

resolution prevents the city from making it a priority to devote its resources and personnel to support the prosecution of those who perform or receive abortions.²⁴⁶

Decriminalization measures have involved other crimes across the country. Kansas City has effectively decriminalized crimes related to walking and bike travel, which disproportionately affected Black citizens.²⁴⁷ There, someone could be stopped for something as trivial as having dirty bike tires, which could lead to a cascade of criminal involvement after the police effectuate a stop.²⁴⁸ The decriminalization effort in Kansas City was the result of a 2021 request by the mayor to “repeal city laws and policies that subject Black and Brown people to over-policing and to police violence” and has resulted in removal of problematic ordinances.²⁴⁹ Meanwhile, San Francisco City Council is considering an ordinance decriminalizing “natural psychedelics,”²⁵⁰ and Port Townsend, Washington, has already done so.²⁵¹

A related issue is how local law enforcement interacts with, or does the job of, state and federal agencies. In many places, local law enforcement works hand-in-hand with the FBI in executing federal laws like narcotics violations and immigration offenses. A local policy of specific non-cooperation relative to certain offenses might allow for transparency, if not a reduction in police encounters.²⁵² For example, many cities across the country have passed resolutions designating themselves as “sanctuary cit[ies],” where they legislatively refuse to help enforce federal immigration policy.²⁵³ In some such cities, local policy includes not enforcing laws of another jurisdiction and penalizing officers who choose to do so on their own.²⁵⁴ Such a policy could reasonably apply to decriminalize and actively stop the local investigation of any extra-jurisdictional crime.

246. *Id.*; Austin City Resolution No. 20210930-11, Reg. Sess. (2021).

247. *Decriminalizing Walking and Biking*, BIKE WALK KC (Feb. 19, 2023), <https://bikewalkkc.org/advocacy/decriminalizing/>.

248. *Id.*

249. *Id.*

250. SAN FRANCISCO, CALIF. CITY ORDINANCE, File No. 220896, <https://sfgov.legistar.com/View.ashx?M=F&ID=11253021&GUID=3BE9445B-7D15-495D-A720-4713B724C43D>.

251. A.J. Herrington, *Washington City Votes To Decriminalize Psychedelics*, FORBES (Dec. 22, 2021), <https://www.forbes.com/sites/ajherrington/2021/12/22/washington-city-votes-to-decriminalize-psychedelics/?sh=6b7db8501f42>.

252. Peter Mancina, *Investigating and (Not) Disciplining Violations of Sanctuary City Laws*, 28 S. CAL. INTERDIS. L.J. 641, 659. (2019).

253. *Id.* at 641.

254. *Id.* (explaining the example of San Francisco’s policy).

While they are not perfect and are often overshadowed by the specter of state prosecution, decriminalization efforts often have at least some positive effects on police accountability and in reducing the number of citizens being incarcerated for minor offenses. Many such ordinances are aimed directly at the conduct of law enforcement, with language specifying that decriminalized offenses are “of low” or “among the lowest” of priorities for enforcement, giving the police direct guidance on expenditures, which could then be implicated in contract negotiations should the police be over-enforcing low priority infractions.

B. Data Collection

1. The Police

Data collection should be one of the first steps in winning bipartisan support for any police reform legislation, and localities are in a great position to initiate such efforts. The Southern Poverty Law Center (SPLC) discusses the importance of data collection in a report made after a civil award in the case of Lakitha Wright.²⁵⁵ Wright was eight months pregnant when police officers pushed her over a porch railing, threw her to the ground, and pepper sprayed her while shouting racial epithets.²⁵⁶ Wright’s \$41,000 award against the Iberia Parish police was just a drop in the bucket relative to the department’s total payouts of \$2.8 million over ten years.²⁵⁷ In its report, the SPLC stated, “[t]he case of Lakitha Wright illustrates the need for better data on policing It is possible that law enforcement officers have used force against other pregnant women in the past several years, but no data are publicly available to determine the prevalence of such incidents.”²⁵⁸ As a result,

Without better data, Louisiana will not be able to evaluate whether or how its law enforcement officers contribute to the state’s astronomical incarceration rate²⁵⁹ and what reforms should be prioritized. Police

255. *Louisiana judge rules deputies used excessive force on pregnant woman*, CBS NEWS (May 7, 2018), <https://www.cbsnews.com/news/lakitha-wright-judge-rules-deputies-used-excessive-force-on-pregnant-woman-2018-05-07/>.

256. *Id.* The officers also confiscated her cell phone and erased the video of the confrontation. Such conduct, while reprehensible, is arguably not a violation of law. While most often the subject of statewide statutes, if any, it seems like such behavior could rightly be addressed through a local ordinance.

257. *Id.*

258. *Police and Data Collection: Why Louisiana Needs Reform*, S. POVERTY L. CTR. (Nov. 15, 2018), <https://www.splcenter.org/20181115/police-and-data-collection-why-louisiana-needs-reform#data>.

259. Louisiana is second only to Oklahoma in its incarceration rate nationwide. *Id.*

will not be able to improve their performance or refute criticisms that their practices unfairly target certain groups or that misconduct persists across an entire department. And communities will remain in the dark about how public servants who are licensed to use force carry out their duties.²⁶⁰

Wright might not be the only pregnant woman brutalized by the Iberia Parish police, but, as is relatively typical, no one really knows. For that matter, little, if any, data exists nationwide on police encounters that do not end in death.²⁶¹ The SPLC has examined how data collection generally has bipartisan support even if it isn't widely utilized.²⁶²

People from across the political spectrum support increased data collection and public reporting. One poll from 2015 found that 67% of California voters who identified as Republicans, 78% of voters who identified as independents, and 87% of voters who identified as Democrats favored requiring police departments to release the results of investigations into misconduct. On the other side of the country, the Republican-majority Florida Legislature enacted a groundbreaking law in 2018 that will vastly increase the availability of public data on all aspects of the state's criminal justice system—from arrest to bail to sentencing to time spent in prison. The House Judiciary Committee chairman, a Republican and former prosecutor, explained that, without data, Florida was “flying blind. We didn't have access to the data, because it was in so many different places, it was virtually unusable.” But with the new law, Florida will be able to establish “a more fair, accountable and transparent system.” Several other conservative-leaning states, including Kansas, Missouri, North Carolina, and Texas, have embraced data collection and mandated it for several police activities.²⁶³

There is some nationwide movement on data collection, but much of it is at the federal level. In 2021, the Congressional Research Service published an overview on data collection and law enforcement that discussed a recent federal attempt to improve data collection on routine stops that ultimately failed.²⁶⁴ The George Floyd Justice in Policing Act

260. *Id.*

261. The SPLC details a number of local press outlets that collect policing data such as the Washington Post, The Guardian, and Reuters, but explains that this collection is limited to cases where citizens die at the hands of police. *Id.*

262. *Id.*

263. *Id.*

264. *Agency Report: Programs to Collect Data on Law Enforcement Activities: Overview and Issues*, CONG. RSCH. SERV. (Mar. 11, 2021), <https://crsreports.congress.gov/product/pdf/R/R46443>.

of 2021 (JIPA)²⁶⁵ passed the House but was not taken up by the Senate; this act would have established robust data collection relative to police agencies nationwide.²⁶⁶ As introduced, JIPA would have required:

[F]ederal, state, tribal, and local law enforcement agencies to report data to DOJ on traffic violation stops, pedestrian stops, frisks and body searches, and the use of deadly force by their law enforcement officers. Reporting agencies would be required to include in these data the race, ethnicity, age, and gender of the officers and members of the public involved.²⁶⁷

Much of this is precisely the kind of data that largely goes untracked yet represents the vast majority of civilian encounters with the police.

Being that they represent such a large subset of encounters, local agencies collecting data on the routine interactions JIPA would have required could obtain a veritable treasure trove of information through which to influence policy. For example, such data was crucial in the federal court's overview of "stop and frisk"²⁶⁸ policies in New York City in a 2013 case. In *Floyd v. City of New York*,²⁶⁹ the United States District Court for the Southern District of New York reviewed the constitutionality of New York City's stop and frisk policy in a class action lawsuit.²⁷⁰ There, the NYPD stopped and frisked 4.4 million people between January 2004 and June 2012 under a newly implemented police policy intended to combat street crime.²⁷¹ This massive number of

265. H.R. 1280, 117th Cong. (2021).

266. *Id.*

267. *Agency Report: Programs to Collect Data on Law Enforcement Activities: Overview and Issues*, *supra* note 264, at 2.

268. A "stop and frisk," otherwise known as a *Terry* stop, is a constitutionally authorized search of a citizen while in the presence of the police, even when that citizen is not under arrest. *Terry v. Ohio*, 392 U.S. 1, 10 (1968). *Terry* stops are limited in their scope; police may not initiate a stop without "reasonable suspicion" of criminal activity, and even then, they are only allowed to conduct an exterior pat down of a person, not into pockets or clothing, and only to search for weapons to ensure officer safety. *Id.* at 37. One supplemental issue is that the "plain feel" exception to the warrant requirement can be triggered in a *Terry* stop, leading to potential abuses of this limited doctrine. It is also the legal basis for the confiscation of drugs in such a search. *Minnesota v. Dickerson*, 508 U.S. 366, 370–71 (1993).

269. 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

270. *Id.* at 557–58.

271. *Id.* at 556. The court poignantly opined, "I emphasize at the outset, as I have throughout the litigation, that this case is not about the effectiveness of stop and frisk in deterring or combating crime. This Court's mandate is solely to judge the *constitutionality* of police behavior, *not* its effectiveness as a law enforcement tool. Many police practices may be useful for fighting crime—preventive detention or coerced confessions, for example—but

searches showed a distinct increase over time—more than doubling from 2004 to 2011. The legal claim in the case was that these searches were not only unsupported by reasonable suspicion, but they were both racially motivated and ineffective at finding weapons or other contraband. Factually, the parties agreed that 52% of the stops were of Black New Yorkers, 31% were Hispanic, and 10% were white. This showed a vastly disproportionate rate of stopping people of color, yet only 1.5% of all searches resulted in the confiscation of a weapon, which was (and remains) the only legal reason for the stop at the outset.²⁷²

In opining that the NYPD policy was “racially skewed,”²⁷³ the court detailed that NYPD superiors had “adopted an attitude of willful blindness toward statistical evidence of racial disparities in stops and stop outcomes.”²⁷⁴ This opinion was chiefly based on a statistical analysis of data collected by the police themselves on a form called a Unified Form 250.²⁷⁵ Per NYPD policy, officers were required to use a checklist to gather data on their *Terry* stops; data included the location and reason for the stop, the demographics of the citizen involved, and other routine information.²⁷⁶ This data was entered into a database which was then the subject of analysis by competing experts.²⁷⁷ The data gathered by the NYPD on the UF-250 forms (which is still gathered today, although getting a copy of such a form seems to be difficult for journalists)²⁷⁸ was the single largest area of discussion in the *Floyd* opinion. Without it, the court could not have made the determination that the stop and frisk policy was unconstitutional. This data was collected by the police themselves, and the checklist involved was short, merely one page. It could not reasonably have taken more than a minute or so to complete and ended up being the cornerstone of a wide-ranging decision.

Data collection is crucial to any local government efforts to improve policing, and arguably, one at which we are failing miserably. In *Why Do*

because they are unconstitutional, they cannot be used, no matter how effective.” *Id.* Local agencies might be well served to remember this opening salvo.

272. *Id.* at 558. Not for nothing, while white New Yorkers represented a disproportionately small number of people stopped under this policy, their stops ended in a disproportionately large portion of weapons being confiscated. *Id.* at 559.

273. *Id.* at 560.

274. *Id.* at 666.

275. *Id.* at 578.

276. *Id.* at 572.

277. *Id.*

278. Dan Nguyen, *NYPD Stop, Question, and Frisk Worksheet (UF-250); My attempt at getting the latest version as ‘just a researcher,’* DAN NGUYEN’S BLOG (Nov. 28, 2019), <http://blog.danwin.com/request-nypd-form-uf250/>.

We (Still) Lack Data On Policing?,²⁷⁹ Professor Rachel Harmon argues that voters need data about crime rates, police responses, and costs and benefits of alternative policing practices in order to make informed decisions.²⁸⁰ Further, she argues,

If data about crime rates and the costs and benefits of policing practices are crucial to voters, they are equally important to police chiefs and other high-ranking department officials who develop and implement law enforcement strategies and procedures. In every department, for example, a chief must decide whether to assign patrol officers to traditional foot beats or to put them in cars. That allocation depends in part on an assessment of the extent of local street crime and how effective foot and mobile patrols are at stopping and deterring that crime.²⁸¹

She goes on to further detail the importance of policing data on agency decisions, state, and federal actors, and argues that data is crucial to any assessment of efficacy, safety, and cost.²⁸²

Harmon argues that the primary deficit in data collection has historically been not the officers themselves, but local departments.²⁸³

In practice, police chiefs and other local government actors often limit rather than promote information availability. Cities and police departments sometimes actively inhibit the collection of information about police by, for example, requiring secrecy when they settle civil suits for police misconduct or discouraging citizens from filing complaints about officer conduct. Other times, police departments simply fail to produce records that could improve political and regulatory decision-making about intrusive police activities.²⁸⁴

If this truly is the case, collecting data seems a smaller hill to climb than that of officer reticence. In most cases, a police commissioner serves at the pleasure of a mayor, another city official, or a city board. For cities that truly want to increase the data collection in their police agencies in an effort to support legislative change, they need look no farther than the official whom they appointed. In this aspect, working collaboratively with a police chief might be enough to encourage the enforcement of data collection among the rank and file. To address the specific challenges in

279. Rachel Harmon, *Why Do We (Still) Lack Data on Policing?*, 96 MARQ. L. REV. 1119 (2013).

280. *Id.* at 1124.

281. *Id.*

282. *Id.* at 1128.

283. *Id.* at 1129.

284. *Id.*

a given city, collaboration might be necessary to avoid misuse or waste of data collection that is already in place. And, as a last resort in the case of an obfuscating police head, the city is always free to install a new one more open to working with them voluntarily.

Louisville has been a good example of municipal data collection for at least the past two decades. Starting in 2004, the police have collected data on traffic stops and analyzed the information in order to assess bias in policing, including data on racial profiling.²⁸⁵ Historical reports on the data appear online and are freely available for civilian review.²⁸⁶ These reports are frequently the subject of local news reports, which seek to analyze the data relative to race and publicly report their findings.²⁸⁷ Additionally, after Breonna Taylor's murder, the city contracted with a private firm to objectively assess the LMPD's "policies, practices, procedures" and community engagement.²⁸⁸ While the entire report is available online, it did review data collected through the traffic reports among other sources, concluding:

[T]he LMPD and communities across the Louisville Metro area are in crisis. The Department needs to make major changes—some immediately. Acting on our key findings will require renewed commitment and holistic follow-through from the LMPD and City leaders during the next few years. We hope the community can be open to remediation and reconciliation as the Department demonstrates a willingness to improve and change.²⁸⁹

While many residents might not yet be satisfied with the city's response in light of the 2021 report, Louisville at least has some recommendations that can be followed in other jurisdictions to increase accountability. Other cities might take a similar approach and collect data to support new initiatives, ordinances, administrative regulations, or police policies.

285. Deborah G. Keeling & Angela Schwendau, *Annual Vehicle Stops Data Analysis*, UNIV. OF LOUISVILLE (Feb. 19, 2023), <https://louisville.edu/justice/pdfs/AnnualVehicleStopsAnalyses.pdf>.

286. *Id.* at 2. This data used to be centrally searchable on the LMPD's website in a section entitled "transparency." Currently, historical traffic stop data is a veritable hodgepodge of websites and news reports, but it does appear that the data is still being kept.

287. Hillard Heintze, *Louisville Metro Police Department, An Independent and Objective Assessment of the Department's, Policies, Practices and Procedures, as well as Community Engagement*, LOUISVILLE KY GOV. (Jan. 27, 2021), <https://louisvilleky.gov/sites/default/files/2021-01/hillard-heintze-report.pdf>.

288. *Id.* at 2.

289. *Id.*

Cities do not need the Justice in Policing Act to pass to affect change on a smaller, more local level.

Municipal governments could utilize the same data collection methods as in *Floyd* to begin the process of data collection with local law enforcement agencies. Either through collaborative data collection or ordinance, a carefully-drafted, easy to complete checklist for officers would be a good start. Presumably, much like with body cameras, data “is what it is;” the collection of information on routine stops and other interactions can serve as both a sword and a shield. Not only would it show patterns like that in *Floyd*, but in jurisdictions where law enforcement officers have routinely appropriate interactions with citizens, the data would bear that out as well.

2. The Bench

While perhaps a daunting task in many jurisdictions, data collection in and by the court can be an option for localities in determining how to increase accountability, especially in light of a bench willing to be involved in the process. The importance of understanding local procedures can be a place for this collection to begin. For example, the process for obtaining a search warrant can vary by locale. Warrants may only issue on probable cause that the place to be searched will contain evidence of criminal activity. In practice, a law enforcement officer (typically a detective) will swear out an affidavit of the probable cause they believe exists for the search. This affidavit is then presented to a judge or a magistrate who independently determines probable cause and either signs or rejects the warrant.²⁹⁰

However, whether a prosecutor is involved in the application for a search warrant is often a question of local process. In Breonna Taylor’s case, the officers in question appear to have obtained that warrant without the supervision or approval of a prosecutor.²⁹¹ This is standard operating procedure in some locales; in other jurisdictions, however, prosecutors are involved in all applications for search warrants. For

290. See, e.g., *Groh v. Ramirez*, 540 U.S. 551 (2004); *Coolidge v. N.H.*, 403 U.S. 443 (1971); U.S. CONST. amend. IV.

291. Office of Public Affairs, *Former Louisville, Kentucky, Police Detective Pleads Guilty to a Federal Crime Related to the Death of Breonna Taylor*, DEP’T OF JUST. (Aug. 23, 2022), <https://www.justice.gov/opa/pr/former-louisville-kentucky-police-detective-pleads-guilty-federal-crime-related-death-breonna>. While a review of source material did not specifically state that no prosecutor was involved, there are no sources this author could find to indicate that any prosecutor was part of the warrant application process.

example, the National Center for State Courts discusses the potential for this process to be more stringently overseen by an attorney.²⁹²

The prosecutor may play two roles in the warrants process. In some instances, the prosecutor may take on the role of law enforcement and have a need to have a warrant issued. The prosecutor may also take on the role of warrant reviewer. In this role, the prosecutor reviews the contents of the warrant request prior to submission to the warrant issuer, which is typically a judicial body.²⁹³

Arguably, the prosecutor can act as a separate check on the police in terms of searches and warrants. This process could, of course, come at the behest of a prosecutor's office, but could also be the edict of a local bench. Should a court become convinced that the local process is ineffective or inequitable, there is nothing keeping them from requiring the intervention of a prosecutor for the issuance of all search warrants. Perhaps the bench could be convinced to do so when faced with local data on how often searches either fail to result in relevant evidence or how many civilians file complaints of being searched inappropriately.

To that end, convincing a court to undertake its own data collection could easily be grounded in the desire to improve the effectiveness of search warrants. No court wants to issue a warrant predicated on incomplete, inaccurate, or misleading evidence, and putting a prosecutor in between the judge and a detective bent on making an arrest, come what may, is a rational way to increase this accountability. A locality can start collecting such data using the guidance provided by the Bureau of Justice Statistics. Not only does this federal agency have survey data applicable to jails and policing, but they once operated the Court Statistics Project, which utilized tools localities can draw from for their own data collection.²⁹⁴ This project is now inactive through the Bureau but is still used by the National Center for State Courts (NCSC), which produces the periodically updated Guide to Statistical Reporting.²⁹⁵

The data currently gathered through state courts using these tools chiefly examines public records that are often already easily accessible. The examination focuses significantly on incoming caseloads—an issue that state trial courts are often interested in as budgets change with the

292. *Warrant & Disposition Toolkit: Prosecutor*, NAT'L CTR. FOR STATE CTS. (Oct. 29, 2022), <https://www.wdmtoolkit.org/disciplines/prosecutor>.

293. *Id.*

294. *Court Statistics Project*, BUREAU OF JUST. STAT. (Oct. 29, 2022), <https://bjs.ojp.gov/data-collection/court-statistics-project-csp#methodology-0>.

295. *Guide to Statistical Reporting*, CT. STAT. PROJECT (Jan. 5, 2023), <https://www.courtstatistics.org/pub-and-def-second-row-cards/guide-to-statistical-reporting>.

political winds. The NCSC tracks overall caseloads and publishes aggregate reports—and jurisdictions eager to ease overcrowded dockets can use this data to appropriately allocate resources.²⁹⁶ This data could also be used to track police investigations in a particular locality or even in a zip code or neighborhood. Typically, data on incoming caseloads is gathered by a local court administrator or clerk.²⁹⁷ This data is then uploaded to the NCSC, which issues periodical reports comparing jurisdictions and reviewing overall trends. In a given jurisdiction, this data which is already being collected could be examined by local governmental officials in order to act as a check on police accountability. The data being collected involves incoming cases in terms of raw numbers and types of cases. It tracks case types like civil cases, domestic violence cases, and juvenile cases. These data sets are compared nationwide by the NCSC, and we see patterns like a significantly high number of total cases brought in Texas, along with the nation's highest percentage of jury trials.²⁹⁸ We can also see a disproportionately high number of juvenile cases in Alabama and Kentucky, with lower rates in Vermont and Maine.²⁹⁹

Why do these numbers differ so drastically? Why does Ohio, the seventh most populated state, lock up more juveniles than New York and Texas, eclipsing every other state but California?³⁰⁰ Why does a less-populated state like Alabama have such a high number of juvenile cases when we compare it to other states? The NCSC looks at these national comparisons, but what about looking county-by-county or neighborhood-by-neighborhood? If this data is already being collected by local clerks and court administrators, could a city examine the pattern of something like juvenile arrests to determine how heavily a given area is policed, then look at that in terms of race or income rates? Crimes like domestic violence happen everywhere, but if a city sees double the arrests in a poor, underrepresented section of town, perhaps that could be a function of police discretion and not properly reflective of crime rates.

Finally, could a given jurisdiction go one step further in collecting data from the bench when local judges are willing to accommodate them?

296. *Id.*

297. *Id.*

298. *CSP STAT Overview*, CT. STAT. PROJECT (Oct. 29, 2022), <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-overview>.

299. *Id.*

300. *Id.* This data is based on raw numbers of cases, not percentages, and paints a relatively grim picture for juveniles in the system. Ohio had 62,861 total juvenile cases in 2020, behind only California with 70,164. Texas and New York had 34,092 and 41,956, respectively. *Id.*

Suppose a jurisdiction wanted to specifically investigate the search warrant process locally, with the goal of collecting data to argue for prosecutorial oversight of all applications. Should the bench be involved in collecting data on the issue, the city attorney or city council could create a checklist that the clerk's office could fill out for every criminal case. Each case involving a search warrant could be identified when cases are concluded as this information appears in the case file and in the electronic record of court proceedings. The form could also contain a checkbox for whether the warrant was litigated in a motion to suppress. Over time, trends in warrants and motions could be examined by neighborhood, by type of case, and even by officer. Trends might support the implementation of prosecutorial oversight, which could convince the court to require it in the warrant process.

3. The Jail

One area in which municipalities can exercise more control over law enforcement accountability is in corrections—by having more oversight over local correctional facilities like jails, juvenile detention centers, and halfway houses. While the prison system is often controlled by state officials, city and county officials are typically responsible for the oversight of local facilities. Depending on the locality, a sheriff, a police chief, or a local administrator might oversee a given facility, and all might be subject to control by local government. Aside from passing ordinances that seek more accountability and transparency in corrections, localities can also enact data collection policies that can respond to or further examine what is happening in a local correctional facility.

Localities can look to a federal agency, the Bureau of Justice Statistics (BJS), for data collection in corrections.³⁰¹

BJS collects information on jail inmates and jail facilities from administrative records maintained by local jails and through periodic personal interviews with inmates held in local jails. Reports and statistical tables are published regularly on a number of jail-related topics, including the number of persons held in jails, inmate and facility characteristics, and deaths that occur in jails. Jail statistics are also available on medical problems experienced by jail inmates, substance abuse and treatment, physical and sexual abuse reported by

301. *Correctional Institutions*, BUREAU OF JUST. STAT. (Nov. 9, 2022), <https://bjs.ojp.gov/topics/corrections/correctional-institutions>.

jail inmates, incarcerated parents, and the impact of the COVID-19 pandemic on jails, among other special topics.³⁰²

The Bureau then uses this data to draft legislation and publications on the state of the system, all of which can be found on its website.³⁰³

Not only can municipalities collect data from jails on things like the number of charges that arise from within the facility and how frequent inmates are written up on violations,³⁰⁴ but they can also implement surveys the Bureau has already created. The Prison Rape Elimination Act of 2003³⁰⁵ requires the Bureau to investigate sexual assault in prisons and jails statewide, including using a representative sample of not less than 10% of all facilities nationwide.³⁰⁶ Pursuant to this federal law, the Bureau developed the National Prison Rape Statistics Program, consisting of four separate data collecting efforts. Chief among the Program's tools is the National Inmate Survey, which gathers data from inmates on a variety of topics and its value includes sexual assault interdiction and much more.³⁰⁷

Surveys like the ones the Bureau of Justice Statistics has created could be implemented at a local level at the behest of city or county government. A recent case of abuses in a local jail illustrates the importance of local control over corrections. In July 2022, a federal lawsuit was filed against the Clark County, Indiana, sheriff based on an October 2021 incident where a jailer allegedly sold a key to the women's lockup to a male inmate.³⁰⁸ The twenty-eight women plaintiffs alleged that they were subjected to hours of torture including multiple rapes

302. *Id.*

303. *National Prisoner Statistics (NPS) Program*, BUREAU OF JUST. STAT. (Feb. 19, 2023), <https://bjs.ojp.gov/>.

304. In many states, an inmate's behavior can directly impact the length of their sentence. Often called "good time" credit, states like Indiana give a prisoner two days of credit for every one day of "good time," that is, for every day with no infractions. When infractions are meted out unfairly, they can result in extended time even when no basis for infractions exists. In some states, this may be an area ripe for localities to investigate. *Problem-Solving Courts Practice Guidelines: Credit Time*, IND. OFF. OF CT. SERVS. (Mar. 19, 2019), <https://www.in.gov/courts/iocs/files/pscourts-credit-time.pdf>; *see also*, IND. CODE ANN. § 35-50-6-5 (2015).

305. Pub. L. 108-79, 117 Stat. 972.

306. Emily D. Buehler, *Substantiated Incidents of Sexual Victimization Reported by Adult Correctional Authorities, 2016–2018*, BUREAU OF JUST. STAT. (June 2, 2021), <https://bjs.ojp.gov/library/publications/sexual-victimization-reported-adult-correctional-authorities-2016-2018>; Prison Rape Elimination Act of 2003, Pub. L. 108-79, 117 Stat. 972.

307. Prison Rape Elimination Act of 2003, Pub. L. 108-79, 117 Stat. 972, 975–76.

308. *Coomer v. Noel*, No. 4:22-cv-00079-TWP-KMB, 2023 U.S. Dist. LEXIS 27144 (S.D. Ind. Feb. 17, 2023).

which resulted in the transmission of herpes and a pregnancy.³⁰⁹ The local sheriff denied the allegations and local prosecutors contended they don't have enough evidence to charge any of the assailants. If women were victimized en masse that night and are too afraid to come forward due to retaliation,³¹⁰ perhaps they would be encouraged to disclose more details in an anonymous survey. If local government officials want answers independent of the prosecutor and sheriff, the Bureau of Justice Statistics might have a ready-made tool to assist in that process.

4. Victims

In addition to jail surveys, local governments need only look again to their federal counterparts for examples of data collection efforts among victims. The National Crime Victimization Survey is a well-established tool that the Bureau of Justice Statistics has used for decades to gather data on victims of crime.³¹¹ The survey "is the nation's primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of about 240,000 persons in about 150,000 households. Persons are interviewed on the frequency, characteristics, and consequences of criminal victimization in the United States."³¹² Both the survey itself and the data collected from it are available online, and local jurisdictions could use these tools in various ways. Because the questions are readily available, a given jurisdiction could adapt them to the locality's needs. For instance, if a city is grappling with an influx of property crime, it could assess unreported crimes in retail areas by using a telephone or email survey targeted at businesses.

By comparing local data to the data on nationwide victimization, localities might see either similar or differing trends, and pass responsive policies. Cities could also utilize local surveys to address criminal activity in different geographical areas of a given locality. While governments already look at some of this data, much of it is collected by law enforcement agencies. The chief means of this collection is through the Uniform Crime Reports; administered by the Federal Bureau of

309. Jonathan Edwards, *Female inmates raped after guard sold key to their cells, lawsuit says*, WASH. POST (July 28, 2022), <https://www.washingtonpost.com/nation/2022/07/28/indiana-jail-inmate-rape-attack/>.

310. *Id.* The women allege that after reporting the abuses they were subject to punitive action including having the lights on for seventy-two straight hours, loss of blankets and confiscation of hygiene items, and being put on lockdown.

311. *National Crime Victimization Survey (NCVS)*, BUREAU OF JUST. STAT. (Feb. 19, 2023), <https://bjs.ojp.gov/data-collection/ncvs>.

312. *Id.*

Investigations, this tool only gathers information on reported crimes, and does not capture anything unreported as it relies on officers' records of arrests.³¹³ Consequently, it rarely, if ever, reports issues like perceived victimization at the hands of law enforcement officers. If a city truly wants more information on such incidents, especially those that do not get reported, a victimization survey can accomplish that.

C. Cross-Agency Cooperation

1. Cash Bail Reform

While most recent bail reform movements have been on the state level via statute, they are also possible locally. When that option is impractical by ordinance,³¹⁴ localities can accomplish the same thing by agreement.³¹⁵

Prosecutors have . . . been the catalysts for reform by changing office-wide policies for requesting bail. In January 2018, more than a year before New York adopted statewide legislative reforms, the District Attorneys in both Manhattan and Brooklyn announced that they would stop requesting bail in nonviolent misdemeanor cases. The Philadelphia District Attorney followed suit one month later, ending cash bail for low level offenses. That same month, the California Attorney General announced “his office would not defend future bail determinations that do not take into account what the defendant cannot afford to pay and whether there are alternatives to holding them in jail before trial.” Even prosecutors in smaller jurisdictions like Middlesex County, Massachusetts, have announced similar policy changes: they will no longer seek cash bail for offenses that are unlikely to result in a jail sentence.³¹⁶

A local example of cooperation in bail reform is seen in Shelby County, Tennessee, where, in August 2022, local officials created a new system of bail.³¹⁷ Called “one of the fairest in the nation” by the ACLU, “[t]he new system includes creation of a new bail hearing courtroom; individualized bail hearings with counsel no later than three days after a person’s arrest; examination of a person’s financial circumstances prior to any

313. *Crime/Law Enforcement Stats (Uniform Crime Reporting Program)*, FBI (Feb. 19, 2023), <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/ucr>.

314. See Section III(A)(iv).

315. Gouldin, *supra* note 173, at 879–80.

316. *Id.*

317. *Shelby County Reforms Bail System*, ACLU (Aug. 25, 2022), <https://www.aclu.org/press-releases/shelby-county-reforms-bail-system>.

decision; court reminders; and imposition of secured money bail only as a last resort.³¹⁸ This system was created through negotiations with county judicial and governmental officials and is expected to go into full effect in February 2023.³¹⁹

While a local prosecutor can always agree to reduce a bond, the police often are the first to assign one, and the court also signs off on reductions and increases. The local jail is another bail reform stakeholder as staff often seek help from other agencies when it becomes overcrowded. An agreement between all of these stakeholders allows them all to have input into bail and its alternatives. Counties need not be bound by state action on bail reform—they can follow Shelby County’s lead and make such reforms on their own by agreement, and the reforms can be tailored to the needs of the community.

2. Diversion

Diversion is a process by which a criminal defendant enters into an agreement with the state, and if they fulfill their end of the agreement, their charges are reduced or dismissed.³²⁰ Defendants typically are required to remain arrest-free and can often be required to pay a fine or complete community service as a part of the agreement.³²¹

Pretrial diversion programs have the potential to prevent future criminal behavior through intervention and community-based services. This may be particularly true for specific populations of offenders such as those with mental illness, substance abuse disorder, and those with co-occurring disorders. Pretrial diversion programs take low-level offenders out of the jail population, both reducing system overpopulation and costs of incarceration. The programs also provide speedy case processing for minor crimes resulting in savings to the court system and personnel. Pretrial diversion can help an offender avoid a criminal conviction and potentially avoid future criminal violations.³²²

Diversion programs can not only benefit offenders, but they can end up saving cities money on trials and incarceration. In 2014, the Alaska legislature looked at criminal justice reform with an eye towards

318. *Id.*

319. *Id.*

320. Cory R. LePage & Jeff D. May, *The Anchorage, Alaska Municipal Pretrial Diversion Program: An Initial Assessment*, 34 ALASKA L. REV. 1, 4 (2017).

321. *Id.*

322. *Id.* at 1.

reducing overall costs.³²³ As a result, a municipal pretrial diversion program was enacted in Anchorage, and in 2017, it was studied for efficacy.³²⁴ While the study itself discussed the details of Anchorage's program in terms of length and requirements, it also concluded that it saved time and money and benefitted defendants.³²⁵ Overall, prosecutors spent less than one hour on each case, as little discretion was required of them in diversion cases.³²⁶ Eighty-three percent of cases were resolved in two court hearings or fewer, and as the agreements were entered into during arraignment, no public defenders were appointed, saving more money.³²⁷ Further, the vast majority of defendants successfully completed their requirements without jail time or a conviction.³²⁸

Most states have statutes allowing for such municipal pretrial diversion programs, but not all cities have instituted them. Diversion programs can take many forms; pretrial diversion programs divert charges, but others can divert cases before they are charged or extend a sentencing period in exchange for concessions by the defendant.³²⁹ As most states allow some form of these programs, cities have the ability to craft the kind of program that works best for them, including diverting only certain kinds of crimes, only first offenses, or only misdemeanors. Supervision can be strict or non-existent, and some only require that the defendant not be arrested again during the pendency of his case. The options are vast, which allows cities to respond to the political desires of local councils while still reducing jail intakes and active court cases.

3. Problem-Solving Courts

One novel, interdisciplinary approach to accountability in the system is the use of mental health and other problem-solving court systems. Problem-solving court systems have been used across the country for decades; many people may be familiar with the drug court model, as many counties use it.³³⁰ Problem-solving courts are

[C]ourts that offer alternative case processing to certain groups of defendants, generally based on: a) their status, such as veterans;

323. *Id.* at 3.

324. *Id.* at 11–12.

325. *Id.* at 24–25.

326. *Id.* at 21.

327. *Id.*

328. *Id.* at 22.

329. *Id.* at 4.

330. Christine S. Scott-Hayward, *Rethinking Federal Diversion: The Rise of Specialized Criminal Courts*, 22 BERKELEY J. CRIM. L. 47, 49 (2017).

b) the crime with which they are charged, such as domestic violence; or c) a “problem” they have that may contribute to the criminal conduct, usually drug addiction or mental illness. These courts can include both “front-end” courts, operating before a defendant has been sentenced, and “back-end” or reentry courts, which operate after an individual has been released from prison or while they are on probation.³³¹

The problem-solving court model allows criminal defendants to access wrap-around services with significant court involvement and if they successfully complete the program, are eligible for reduction or dismissal of their charges. Most programs utilize cooperation between the bench (usually in the form of one judge who is assigned all appropriate cases), the prosecutor’s office, the probation department, and the defense bar, who all collaborate on what kind of cases to take and how many times defendants will appear in court over time.³³² In addition, participants must show progress not only in staying sober, but in remaining arrest-free, housed, and employed. Typically, drug courts also enlist treatment, housing, and employment professionals to help participants access services and be successful.³³³ According to the Center for Court Innovation, “[r]esearch suggested that problem-solving courts, such as drug courts and community courts, had helped decrease recidivism, reduce crime, improve coordination among justice agencies, enhance services to victims, and increase trust in the justice system.”³³⁴

While drug court models seem relatively ubiquitous nationwide, mental health courts are less popular. Cities might consider adding such a program to its court dockets and can look to several examples that have been working well for decades for implementation. The U.S. Department of Human Services keeps a nationwide database of mental health courts, and local officials can find details on a variety of local programs there.³³⁵ Funding can also be sought from the federal government; the Bureau of Justice Assistance has a grant program to fund local mental health courts and keeps a variety of resources available on their website to assist

331. *Id.*

332. *Id.* at 72.

333. *Id.*

334. Robert V. Wolf, *Expanding the Use of Problem Solving: The U.S. Department of Justice’s Community-Based Problem-Solving Criminal Justice Initiative*, CTR. FOR CT. INNOVATION (2007), <https://www.innovatingjustice.org/sites/default/files/Expanding%20PS.pdf>.

335. *Treatment Court Locators*, SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN. (SAMHSA) (Feb. 19, 2023), <https://www.samhsa.gov/gains-center/treatment-court-locators>.

cities in creating these options.³³⁶ Other problem-solving courts are also an option, provided that cross-agency cooperation allows for them, and the specific type of court can be tailored to a jurisdiction's needs.

D. Mental Health Initiatives

Part of the nationwide protests after Breonna Taylor and George Floyd's deaths centered around an argument first made by Black Lives Matter: Defund The Police.³³⁷ The title, though initially jarring, refers not to a total ban on police funding but to a reallocation of some funding away from policing in favor of social programs, most specifically to mental health support.³³⁸ But before the argument was made in the context of protesting police brutality, some police agencies added a mental health component to their response, and in some programs, deploy civilians instead of officers. The approaches vary, but examining the mental health response of the police is a robust option for localities.

1. Crisis Intervention Teams

The Crisis Intervention Team (CIT) approach is one that involves specifically trained police officers who respond to a variety of incidents in a community.³³⁹ Created as a response to the fatal shooting of a mentally ill man by police in Memphis, Tennessee, in 1988, CIT teams have increased in number across the country.³⁴⁰ “The primary goals of the

336. *Mental Health Courts Program: Overview*, BUREAU OF JUST. ASSISTANCE (Feb. 19, 2023), <https://bja.ojp.gov/program/mental-health-courts-program/overview>.

337. See Jamillah Bowman Williams et al., *The Largest Social Movement: Legal Lessons From The Black Lives Matter Movement: #blacklivesmatter: From Protest to Policy*, 28 WM. & MARY J. RACE, GENDER & SOC. JUST. 103, 121 (2021).

338. See Rashawn Ray, *What does 'defund the police' mean and does it have merit?*, BROOKINGS (June 19, 2020), <https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/>.

339. Amy Watson & Anjali Fulambarker, *The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners*, 8 BEST PRACT. MENTAL HEALTH 71, 71 (2012).

340. Michael S. Rogers et al., *Effectiveness of Police Crisis Intervention Training Programs*, 47 J. AM. ACAD. OF PSYCH. & L. 414 (Dec. 2019).

In 2019, the University of Memphis CIT Center reports 2,700 CIT programs within the United States. This national figure of 2,700 CIT programs, while representing only around 15 to 17 percent of the total number of police agencies, probably underestimates the absolute number of people interacting with CIT-trained officers because of CIT's relative ease of adoption within larger, urban agencies (compared with smaller, rural, or more dispersed agencies). The form of CIT deployment is also variable, and some may conform more or less closely to the elements of the Memphis model.

Id. at 417.

model are to increase safety in encounters and when appropriate, divert persons with mental illnesses from the criminal justice system to mental health treatment.”³⁴¹ The Memphis model, most often used nationwide, centers around officers who voluntarily take a week-long training program.³⁴²

According to the model, officers volunteer to receive 40 hours of training provided by mental health clinicians, consumer and family advocates, and police trainers. Training includes information on signs and symptoms of mental illnesses; mental health treatment; co-occurring disorders; legal issues and de-escalation techniques. CIT curriculums may also include content on developmental disabilities, older adult issues, trauma and excited delirium. Information is presented in didactic, experiential and practical skills/scenario based training formats. The training week may include panels of providers, family members and persons with mental illnesses as well as site visits to agencies in the community.³⁴³

The Memphis model is also the most widely studied version of CIT structures. For communities considering this approach to police accountability and improving interactions with community members, the evidence shows limited success.³⁴⁴ One large review of data in 2017 attempted to determine whether the practice could fairly be called “evidence-based.”³⁴⁵ The outcome of that research was that CIT was an evidence-based practice only for “officer-level cognitive and attitudinal outcomes.”³⁴⁶ Other research also indicates that the only documented benefit to this approach is in the minds of the officers themselves. A 2019 article from the *Journal of the American Academy of Psychiatry and the Law* looked at all potential positive outcomes from CIT programs nationwide.³⁴⁷ While the authors noted that “the original, primary goal of CIT was to reduce officer and citizen injuries[,] . . . [n]one of the

341. Watson & Fulambarker, *supra* note 339.

342. *Id.* “CIT International is a 501(c)(3) nonprofit corporation. CIT International formed to assist communities worldwide with crisis response system reform by developing CIT programs at the state/province level, regional level, and local level.” Their leadership is chiefly, but not exclusively, made up of law enforcement officers both current and retired. *What is CIT?*, CIT INT’L (Nov. 9, 2022), <https://www.citinternational.org/What-is-CIT>.

343. Watson & Fulambarker, *supra* note 339.

344. Amy C. Watson et al., *The crisis intervention team (CIT) model: An evidence-based policing practice?*, 35 BEHAV. SCI. L. 431 (2017).

345. *Id.* at 431.

346. *Id.* at 438.

347. Rogers et al., *supra* note 340, at 414.

analyzed studies showed a positive benefit of CIT on use-of-force outcomes.”³⁴⁸

However, the data does show some other positive outcomes, albeit limited ones.³⁴⁹

Much research has shown an improvement in attitudes and a reduction of stigma in police officers who received mental health training. There is good evidence for benefit in officer-level outcomes, such as officer satisfaction and self-perception of a reduction in the use of force. A survey of police officers indicated that CIT-trained officers perceived themselves as less likely to escalate to the use of force in a hypothetical mental health crisis encounter.³⁵⁰

In addition, “modest” cost savings have also been shown in some studies. An analysis of costs in Louisville, Kentucky, in 2014 showed a net savings of just over one million dollars annually.³⁵¹ Perhaps most importantly, CIT training has been correlated with lower arrest rates regardless of the use of force. A 2014 study looked at police encounters in Georgia from March to November 2010 and analyzed them for use of force, arrest, and the level of force used in encounters with the mentally ill.³⁵² While CIT officers were just as likely to use force on mentally ill citizens, they were significantly less likely to arrest them.³⁵³ Instead, they were more likely to refer citizens for treatment or transport them to a mental health facility.³⁵⁴

If municipalities are to use CIT as a way to ensure some level of accountability when officers interact with the mentally ill, they have the option to customize such a program to their community’s needs.³⁵⁵ While the Memphis model is the most widely used, “[a]s there are innumerable variations in police jurisdictions, so are the variations in CIT program implementation.”³⁵⁶ While some jurisdictions simply don’t have the

348. *Id.*

349. *Id.* at 417.

350. *Id.*

351. Peggy L. El-Mallakh et al., *Costs and savings associated with implementation of a police crisis intervention team*, 107 S. MED. J. 391 (2014).

352. Michael Compton et al., *The police-based crisis intervention team (CIT) model: II. Effects on level of force and resolution, referral, and arrest*, 65 PSYCH. SERV. 523, 523–24 (2014).

353. *Id.* at 525.

354. *Id.*

355. Watson & Fulambarker, *supra* note 339.

356. *Id.*

resources to fully implement CIT, other variations are purposefully responsive to the needs of the community.³⁵⁷

For example, in Chicago, the police department maintains memorandums of understanding (MOUs) with designated emergency facilities across the city for each police district. MOUs provide for officer transports to be given priority. The City of Philadelphia has crisis centers that police can utilize for emergency transports. The centers can also assist individuals who do not meet criteria for emergency psychiatric evaluation, but are in need of other assistance such as medication refills and linkage to community providers.³⁵⁸

Some programs require mandatory yearly retraining while others require 100% of the force to be CIT trained.³⁵⁹ In a given jurisdiction, a unique approach to CIT might end up reducing arrests, improving officer morale, and still have enough political palatability to have positive effects.

2. Co-Responder Programs

Another law enforcement-based approach to policing the mentally ill is the Embedded Mental Health Co-Responder Model—sometimes called the “street triage.”³⁶⁰ These models:

[V]ary in practice, but generally involve law enforcement and clinicians working together in response to calls for service involving a person experiencing a behavioral health crisis. The model provides law enforcement with appropriate alternatives to arrest as well as additional options to respond to non-criminal calls. Communities and local leaders can use the model to develop a crisis continuum of care that results in the reduction of harm, arrests, and use of jails and emergency departments and that promotes the development of and

357. Eddie Kane et al., *Effectiveness of current policing-related mental health interventions: A systematic review*, 28 CRIM. BEHAV. & MENTAL HEALTH 108 (2018).

358. Watson & Fulambarker, *supra* note 339.

359. Melissa Reuland et al., *Improving responses to people with mental illnesses: Tailoring law enforcement initiatives to individual jurisdictions*, BUREAU OF JUST. ASSISTANCE (2010), https://csgjusticecenter.org/wp-content/uploads/2020/02/Tailoring_LE_Initiatives.pdf.

360. Ashley Krider et al., *Responding to Individuals in Behavioral Health Crisis Via Co-responder Models: The Roles of Cities, Counties, Law Enforcement, and Providers*, POLY RSCH., INC. & NAT'L LEAGUE OF CITIES (Jan. 2020), <https://www.theiacp.org/sites/default/files/SJCResponding%20to%20Individuals.pdf>; Kane et al., *supra* note 357, at 110.

access to quality mental and substance use disorder treatment and services.³⁶¹

A January 2020 brief from Policy Research, Inc. and the National League of Cities examined the use and efficacy of these co-responder models across the country.³⁶² These models pair a trained law enforcement officer with a certified mental health professional, and they are dispatched to suspected mental health related calls together, often arriving in the same vehicle.³⁶³ After arriving on scene, the clinician has the ability to assess the situation and the individual, assess and screen them, and refer them for treatment.³⁶⁴ Variations on this model involve contacting clinicians only after law enforcement assesses a call, the use of virtual clinicians for police support, and cooperation with other entities like fire departments, emergency medical services, and substance abuse treatment professionals.³⁶⁵

The co-responder model has been implemented in a limited number of cities across the country, such as Los Angeles and Chicago. Others, like Tucson, Arizona, are starting similar programs with the help of grants from the federal government. The Bureau of Justice Assistance reported in fiscal year 2021 giving Tucson over half a million dollars to establish a co-responder program.³⁶⁶ This program intends to imbed a bachelor's level clinician with the Tucson Police Department who will manage the program and oversee two case navigators.³⁶⁷ Called the Community Assessment Response and Engagement (CARE) team, the clinicians "will respond to real-time crisis events, provide community stabilization, conduct follow-up/wrap around case management, address complex medical issues, and train law enforcement personnel across Pima county in de-escalation techniques, crisis intervention, and trauma informed care."³⁶⁸ They anticipate serving 500 adults and juveniles in 2023.³⁶⁹

361. Krider et al., *supra* note 360, at 1.

362. *Id.*

363. *Id.* at 4.

364. *Id.*

365. *Id.* at 5–6.

366. *Connect and Protect: Law Enforcement Behavioral Health Responses Tucson Police Department in Collaboration With Community Bridges, Inc, a mental health agency, to establish a co-responder program*, BUREAU OF JUST. ASSISTANCE (Dec. 16, 2021), <https://bja.ojp.gov/funding/awards/15pbja-21-gg-04309-ment>.

367. *Id.*

368. *Id.*

369. *Id.*

For its part, CIT International does not support the embedding of civilians, even mental health professionals, with the police.³⁷⁰ Its July 2021 position paper on the issue stated that:

CIT International believes that a mental health crisis requires a mental health response. Embedding mental health clinicians with law enforcement officers means that officers respond and remain with mental health professionals, even in situations where there is no danger that requires the presence of officers. Law enforcement should only be engaged in situations where there is a clear threat to public safety.³⁷¹

This position, by its nature, assumes that mental health and police intervention are two distinct scenarios—in reality, the situation is far more complex. A 2016 review of eighty-five unique studies estimated that between 6%–10% of all police calls involve someone with a mental illness.³⁷² Twenty-one of those studies determined that one in four people with mental disorders have an arrest history, forty-eight of them showed that one in ten mentally ill persons have police involvement in their mental health treatment plans, and thirteen indicated one in every one hundred police calls nationwide involve interactions with a mentally ill individual.³⁷³

In addition, the corrections system in the United States is arguably the country's largest mental health provider³⁷⁴—a 2012 review of 33,000

370. *Why doesn't CIT International promote the embedded co-responder model?*, CIT INT'L, INC. (July 6, 2021), <https://www.citinternational.org/resources/Documents/Position%20Papers/CIT%20Int%20Embedded%20Co-response%20Position%20Paper.pdf>.

371. *Id.*

372. James D. Livingston, *Contact Between Police and People With Mental Disorders: A Review of Rates*, 67:8 PSYCH. SERV. 850, 851–52 (2016).

373. *Id.* at 851; See also Amy C. Watson & Jennifer D. Wood, *Everyday police work during mental health encounters: A study of call resolutions in Chicago and their implications for diversion*, 35 BEHAV. SCI. L. 442 (2017).

374. Arguably, the precise rate of mental illness in the inmate population is difficult to determine. Not only does the carceral experience contribute to a decline in mental health, but different measurement metrics yield vastly different results. Looking at ADHD in particular, “[o]ne systematic review reported that 26% of adult prisoners have an ADHD diagnosis, in contrast to two recent high quality studies using self-report measures and diagnostic instruments with reported prevalence rates of 17% and 11%, respectively.” Seena Fazel et al., *The mental health of prisoners: a review of prevalence, adverse outcomes and interventions*, 3 LANCET PSYCHIATRY 871, 872 (2016). “Some prevalence studies of personality disorders in prisoners are problematic for similar reasons. Large high quality studies using clinically-based diagnoses have reported prevalences between 7–10% compared to the 65% found in reviews of studies that have used diagnostic instruments.” *Id.* at 873. However, in all studies irrespective of metrics, the incarcerated suffer from statistically higher rates of mental illness than does the non-incarcerated population.

American prisoners found as many as one in seven of them had major depression or psychosis over the preceding three decades.³⁷⁵ A 2021 Bureau of Justice Statistics article reviewed the 2016 Survey of Prison Inmates and found that 41% of all state and federal prisoners had a history of mental health problems.³⁷⁶ An estimated 13% of such inmates “reported experiences that met the threshold for serious psychological distress (SPD) in the 30 days prior to their interview.”³⁷⁷

The reluctance of bodies like CIT International to acknowledge the full picture of policing the mentally ill perhaps best encapsulates the overall efficacy of police-based programs, whether the use of a CIT or a co-responder model; empirically, they do not do much but make officers feel better about their jobs. Nevertheless, they might serve as a more politically-palatable option and a bridge to more progressive future responses.

3. Civilian Response Teams

While there are differences between the structure of CIT teams and co-responder models, they are similar in efficacy. A 2021 study compared CIT models, co-responder models, and CIT-type models that trained police officers for two to eight hours instead of the standard forty hours.³⁷⁸

Findings from the meta-analysis revealed that the three main types of [models] noted in the scholarly literature . . . were effective in improving “self-reported changes in officer perception” or “self-reported changes in PWMI [persons with mental illness] perception” outcomes (e.g., attitudes toward PWMI and perceived procedural justice of PWMI) related to police encounters with the mentally ill. However, the [models] seemed to have little impact on official, “observed officer behavior” outcomes, including reducing arrests and excessive use-of-force.³⁷⁹

375. *Id.* at 873.

376. Laura M. Mauruschak et al., *Indicators of Mental Health Problems Reported by Prisoners*, BUREAU OF JUST. STAT. (last visited June 2, 2021), <https://bjs.ojp.gov/library/publications/indicators-mental-health-problems-reported-prisoners-survey-prison-inmates>.

377. *Id.* at 1.

378. These alternatives varied in structure, but the main difference between them and traditional CIT models was in this reduction in hours. In many states, civilian mental health response often requires a master’s degree, begging the question whether two hours of officer-led training is at all responsive to the mental health needs of any community. Chunghyeon Seo et al., *Variation across police response models for handling encounters with people with mental illness: A systematic review and meta-analysis*, 72 J. OF CRIM. JUST. 101752 (2021).

379. *Id.*

In light of the limited effectiveness of these programs, some jurisdictions are implementing a completely different model. At the other end of the spectrum from crisis intervention teams is an integrated 911 response involving deploying civilians instead of law enforcement to a limited number of calls. These relatively new initiatives are often based on the Crisis Assistance Helping Out On The Streets (CAHOOTS) program in Eugene, Oregon.³⁸⁰ This program is staffed by clinicians and uses city vehicles to respond to calls that are pre-screened by 911 dispatchers.³⁸¹ CAHOOTS is funded through the police department, and the program runs twenty-four hours a day, sending both a medic and an experienced crisis worker to each call.³⁸² Between 2014 and 2021, demand for CAHOOTS calls increased from 9,646 calls to 16,479 calls each year, diverting 3%–8% of all calls to police.³⁸³

Empirically comparing the three different types of mental health response systems proves to be difficult for a variety of reasons. In September 2022, a study funded by the Mental Health Commission of Canada and the Centre for Addiction and Mental Health completed a systematic review of sixty-two articles which looked at the efficacy of CIT, co-responder, and civilian response systems.³⁸⁴ The researchers noted that most current research is largely observational, and that the examination of civilian response was largely limited to youth and home treatment models.³⁸⁵ Nevertheless, they concluded that “[o]verall, there is little evidence to suggest that the CIT model impacts crisis outcomes. Co-responder models evidenced improved outcomes compared to police only models, however, evidence was often mixed.”³⁸⁶

However, the study also determined that the civilian response models, even with evidence being limited by the small sample of programs, showed the most promise.³⁸⁷ The study did note that “[g]ood quality research on non-police models overall was lacking, and non-police models varied from crisis resolution home treatment (CRHT) to civilian-led mobile crisis interventions, indicating high variation in structure of

380. CAHOOTS, EUGENE POLICE DEP’T. (Nov. 3, 2022), <https://www.eugene-or.gov/4508/CAHOOTS>.

381. *Id.*

382. *Id.*

383. *Id.*

384. Natiana Marcus & Vicky Stergiopoulos, *Re-examining mental health crisis intervention: A rapid review comparing outcomes across police, co-responder and non-police models*, 30 HEALTH SOC. CARE CMTY., 1665, 1668 (2021).

385. *Id.* at 1665.

386. *Id.*

387. *Id.*

services and variation across the crisis continuum.”³⁸⁸ Nevertheless, “[t]here is some evidence from systematic reviews and meta-analyses to suggest that non-police models such as CRHT are effective in reducing hospital admission,” though the evidence is, again, mixed.³⁸⁹ An examination of patient satisfaction resulted in better rates for the civilian response models, noting that CIT made patients feel like “criminals,” but non-police models saw a reduction in hospital stays and an increase in follow up care.³⁹⁰

While civilian response models show promise, there is more work to be done. These models are not organized in a cohesive fashion nationwide, and implementation differs drastically. We have little information on efficacy relative to CIT and co-responder models. More research is needed to study outcomes, specifically, research that looks at metrics like admissions and reduction in the use of force instead of observational data. Nevertheless, the information we do have suggests that all models might have some benefit locally.

4. Assisted Outpatient Treatment (AOT) Laws

Another tool in a city’s toolbox might be expanding the use of outpatient treatment for offenders in the criminal justice system in need of mental health services.³⁹¹

Forty-seven states permit the use of assisted outpatient treatment (AOT), also called outpatient commitment. AOT is court-ordered treatment (including medication) for individuals who have a history of medication noncompliance, as a condition of their remaining in the community. Studies and data from states using AOT prove that it is effective in reducing the incidence and duration of hospitalization, homelessness, arrests and incarcerations, victimization, and violent episodes. AOT also increases treatment compliance and promotes long-term voluntary compliance, while reducing caregiver stress.³⁹²

Some state laws allow the use of AOT in court settings more effectively than others do, but implementation is up to localities.³⁹³ “The Treatment Advocacy Center is a national 501(c)(3) nonprofit organization dedicated to eliminating barriers to the timely and effective treatment of severe

388. *Id.* at 1674.

389. *Id.* at 1675.

390. *Id.* at 1674.

391. *Assistant Outpatient Treatment Laws*, TREATMENT ADVOC. CTR. (Feb. 19, 2023), <https://www.treatmentadvocacycenter.org/component/content/article/39>.

392. *Id.*

393. *Id.*

mental illness.”³⁹⁴ In September 2020, the Treatment Advocacy Center analyzed all the AOT laws across the country and graded states on how they were being used.³⁹⁵ Many states have effective laws, but are jurisdictions making use of them? The Treatment Advocacy Center has a detailed program through which cities or counties can implement such a program. They recommend first getting buy-in from stakeholders like the bench, the bar, and local health care providers.³⁹⁶ Once there is community support, any city can tailor such a program to its own needs. For cities looking to increase their response to mental health issues in the criminal justice system, increasing use of court-mandated AOT might be a good option.

E. Supporting Civilian Options

While civilian oversight into policing has been a municipal option for many years, there has been a more recent effort by some activists for communities to have even more control over what happens in their neighborhoods.³⁹⁷ “[T]he current push for community control over policing has a more direct focus on shifting power over policing policies down to the people most affected by everyday policing.”³⁹⁸ An example of such community-based efforts is in the Movement 4 Black Lives (M4BL).³⁹⁹ This “grassroots coalition of more than fifty organizations from across the United States” focuses on a structural view of inequity in the system and seeks to drive economic and social policy in an attempt to change policing (among other systems of oppression).⁴⁰⁰ “This movement’s focus on the interaction between structural inequality and political power echoes a rich tradition in legal and public policy scholarship.”⁴⁰¹ While movements like M4BL might seek significant systemic changes in multiple institutions, other, smaller

394. *Our History*, TREATMENT ADVOC. CTR. (Feb. 20, 2023), <https://www.treatmentadvocacycenter.org/about-us/our-history>.

395. *Grading the States: An Analysis of Involuntary Psychiatric Treatment Laws*, TREATMENT ADVOC. CTR. (Sept. 2020), <https://www.treatmentadvocacycenter.org/grading-the-states>.

396. *AOT Implementers—Start Out Right*, TREATMENT ADVOC. CTR. (Feb. 20, 2023), <https://www.treatmentadvocacycenter.org/aot/aot-implementers/aot-implementers-start-out-right>.

397. K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 681–82 (2020).

398. *Id.*

399. *Id.* at 694.

400. *Id.* at 694–95.

401. *Id.* at 696.

community-based movements have been options in localities wishing to increase accountability within the system. Until an area can put more systemic options in place, these civilian-led programs might be an option within the same movement for change.

1. Save Our Streets

The Center for Justice Innovation, not unlike M4BL, seeks systemic change in the justice system.⁴⁰² A New York non-profit established in 1996, the Center exists to achieve a justice system that is fair, effective, and humane.⁴⁰³

Originally founded as a public/private partnership between the New York State Unified Court System and the Fund for the City of New York, the Center for Court Innovation creates operating programs to test new ideas and solve problems, performs original research to determine what works (and what doesn't), and provides assistance to justice reformers around the world.⁴⁰⁴

The center creates initiatives and studies projects involving community-based violence prevention, incarceration alternatives, reentry initiatives, and court-based programs like problem solving and community courts. Their goal is to reduce the use of unnecessary incarceration and promote positive individual and family change.⁴⁰⁵

The Center's programming is innovative, community-based, and allows for more local control over how the criminal justice system impacts people.⁴⁰⁶ The Center has been instrumental in developing multiple different local approaches to police accountability, any number of which might serve as a blueprint for local action. Their programming, run mostly by civilians with the support of the court system where needed, includes trauma support for children exposed to violence, civil alternatives to jail, and neighborhood safety initiatives. These initiatives have been implemented from New York to Los Angeles in courts, jails, community centers, and other parts of the system.⁴⁰⁷

402. *About*, CTR. FOR JUST. INNOVATION, <https://www.courtinnovation.org/about> (last visited Feb. 20, 2023).

403. The Center also is part of a long-running mental health court program, and their website has information on multiple programs that might be helpful to localities across the country.

404. *Id.*

405. *Id.*

406. *Id.*

407. *Id.*

One specific initiative the Center uses in New York combats gun violence on the local level.⁴⁰⁸ Modeled on the Cure Violence program in Chicago,⁴⁰⁹ Save Our Streets (S.O.S.):

[S]eeks to end gun violence at the neighborhood level by changing local norms around violence and creating opportunities for meaningful educational and employment opportunities within the community. The Center operates S.O.S. programs in Crown Heights and Bedford-Stuyvesant in Brooklyn, and the Bronx neighborhoods of the South Bronx (Mott Haven) and Morrisania. The core of the program consists of violence interrupters with first-hand knowledge of street and gang life who use their credibility and relationships to mediate conflicts before they escalate. In partnership with local organizations and faith leaders, S.O.S. holds frequent community events along with rapid responses to individual shootings, sending the message that the community will not tolerate violence.⁴¹⁰

Both Cure Violence and S.O.S. are examples of community-based solutions that need little to no governmental support to operate. In a given locale, a charitable organization like a church or a community center could potentially use the structure in one of these already successful programs and alter it to fit the needs of the community. Local approaches could be tailored to the type of crime that emerges or the community makeup.

2. Bail Projects

Municipalities seeking parity in the criminal justice system can also consider supporting local and national bail projects.⁴¹¹

The Bail Project, Inc. is a national nonprofit organization aimed at combatting mass incarceration by addressing the system of unaffordable cash bail. A person's inability to pay their bail leads directly to pretrial detention, where a person sits in jail accused of a crime but is presumed innocent. The prevalence of unaffordable cash

408. *Id.*

409. *See Mission, CURE VIOLENCE GLOBAL* (Feb. 20, 2023), <https://cvg.org/about/#mission>.

410. *Save Our Streets, CTR. FOR JUST. INNOVATION* (Apr. 7, 2023), <https://www.innovatingjustice.org/programs/save-our-streets-sos/more-info>.

411. Brittany Kelly & Diana White, *Community Level Intervention Strategies to Confront the Criminalization of Substance Abuse Disorder: Cross-Sector Collaboration Along the Sequential Intercept Model Applying a Critical Race Theory Lens*, 21 J.L. SOC'Y 31 (2021).

bail is a phenomenon that has single-handedly contributed to a drastic increase in incarceration nationwide.⁴¹²

Along with this national organization, municipalities can choose to support local bail projects, like the Bronx Freedom Fund or others. This not only mitigates costs for local correctional facilities but increases equity for minority defendants.⁴¹³

Black defendants are more than two times as likely to be held on bail than white defendants, and those bail amounts are set higher for Black men facing drug charges than their white counterparts. Pre-trial incarceration can mean loss of a job, a home, or even immigration status. People who are detained pretrial are more likely to plead guilty, are convicted more often, and are more likely to receive a prison sentence. Sixty-seven percent of The Bail Project's clients are Black.⁴¹⁴

Bail projects are also successful in getting defendants back to court.⁴¹⁵ The Bail Project, Inc. has twenty-five sites nationally, and they have a 95% return to court rate.⁴¹⁶ In order to achieve this high number, The Bail Project, Inc. “uses court reminders, provides transportation assistance, and makes voluntary referrals to community resources to support clients in coming back to court. The Bail Project Model, which they call ‘Community Release with Support,’ is a prime example of cross-sector collaboration aimed to divert criminal justice involvement.”⁴¹⁷ In some localities, politicians are openly hostile toward bail projects; for example, the resistance to The Bail Project, Inc. in Indianapolis, Indiana, was so strong that legislation was passed restricting their action.⁴¹⁸ Instead of resisting such work, cities could be involved in the process of bail reform and work with civilian projects in a way that benefits all stakeholders.

IV. ILLUSTRATING THE IMPORTANCE OF HOLDING THE POLICE ACCOUNTABLE

For municipalities across the country, now is the time to act to increase police accountability at the local level. While the nation has protested the

412. *Id.* at 48–49.

413. *Id.* at 51.

414. *Id.* at 49.

415. *Id.*

416. *Id.*

417. *Id.* at 49–50.

418. Katrina Pross, *The Bail Project sues state of Indiana over recent legislation*, WFYI INDIANAPOLIS (May 4, 2022), <https://www.wfyi.org/news/articles/the-bail-project-sues-state-of-indiana-over-recent-legislation>.

deaths of many people at the hands of the police, there have been at least some bipartisan efforts to hold rogue officers accountable, and some such cases have seen significant publicity. These cases stand as a representation of how long accountability can take, even in cases of seemingly obvious brutality.

Elijah McClain was a twenty-three-year-old massage therapist and violinist when he was approached by police on August 24, 2019, in Aurora, Colorado.⁴¹⁹ At the time, he was wearing a ski mask and dancing in the street, so a civilian called 911 with a concern. The civilian was clear that he did not believe Elijah to be armed, but the ensuing police encounter ended up with the officers injecting Elijah with ketamine. He died six days later, and a subsequent autopsy ruled the ketamine caused his death.⁴²⁰

It took over two years for those officers to face any repercussions for forcibly injecting Elijah—a grand jury finally indicted them in September 2021 along with the Emergency Medical Technicians who assisted them.⁴²¹ Elijah was, by all accounts, a kind and peaceful young man.⁴²² “One of his clients recalled him as ‘the sweetest, purest person I have ever met. He was definitely a light in a whole lot of darkness.’ An acquaintance said, ‘I don’t even think he would set a mousetrap if there was a rodent problem.’”⁴²³

George Floyd died on May 5, 2020; it also took over two years after he was murdered for most of the officers involved to be punished. After both a state and a federal investigation, multiple officers are now serving prison sentences. In April 2021, Derek Chauvin was found guilty of his murder and ultimately sentenced to twelve-and-a-half years in prison.⁴²⁴ The other three officers involved were also charged with state criminal charges and federal civil rights charges. In July 2022, the federal charges were resolved with the officers serving two-and-a-half to three-and-a-half

419. Lucy Tompkins, *Here’s What You Need to Know About Elijah McClain’s Death*, N.Y. TIMES (Jan. 18, 2022), <https://www.nytimes.com/article/who-was-elijah-mcclain.html>.

420. *Id.*

421. Derek Hawkins, *Elijah McClain died of ketamine shot from medics, amended autopsy says*, WASH. POST (Sept. 24, 2022), <https://www.washingtonpost.com/nation/2022/09/24/elijah-mcclain-autopsy-ketamine/>.

422. Grant Stringer, *UNLIKELY SUSPECT: Those who knew Elijah balk at Aurora police account of his death*, COLO. SENTINEL (Oct. 27, 2019), <https://sentinelcolorado.com/news/metro/unlikely-suspect-those-who-knew-elijah-balk-at-aurora-police-account-of-his-death/>.

423. *Id.*

424. Tim Arango et al., *Derek Chauvin is Found Guilty of Murdering George Floyd*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2021/04/20/us/chauvin-guilty-murder-george-floyd.html>.

year sentences; in the state charges, two of the three are serving similar sentences concurrent to the federal charges, and one is still pending charges at the time of this writing.⁴²⁵

Finally, in Breonna Taylor's case, the state government was bound and determined to do very little to hold the officers who killed her responsible.⁴²⁶ Attorney General Daniel Cameron is alleged to have "presented a biased view of the case that favored law enforcement."⁴²⁷ Cameron allegedly "did not present charges of homicide or explain the justification of self-defense."⁴²⁸ Three grand jurors subsequently filed a petition to impeach Cameron, "accusing him of committing 'misdemeanors in office' that include lying to them about the Taylor investigation."⁴²⁹ "The grand jurors, who are not identified in the petition, claim Cameron and his employees excluded information from jurors, and misled them and citizens in hopes of generating an outcome that would lead to political gain and 'satisfy' Cameron's political ambitions."⁴³⁰

It wasn't until August 2022, nearly two-and-a-half years after Breonna's death, that any involved officers saw significant repercussions for killing her.⁴³¹ The federal indictment charged not only Hankinson, the officer acquitted of the state misdemeanors, but three officers involved in obtaining the warrant.⁴³² In a press release on the charges, United States Attorney General Merrick Garland said,

Among other things, the federal charges announced today allege that members of LMPD's Place-Based Investigations Unit falsified the affidavit used to obtain the search warrant of Ms. Taylor's home, that

425. Kim Hyatt, *Kueng pleads guilty to state charges in George Floyd killing; Thao to let judge decide his case*, STAR TRIBUNE (Oct. 24, 2022), <https://www.startribune.com/in-about-face-one-of-two-ex-officers-pleads-guilty-to-his-role-in-killing-of-george-floyd/600218526/>.

426. *Justice Denied: An Overview of the Grand Jury Proceedings in the Breonna Taylor Case*, LEGAL DEF. FUND (Feb. 20, 2023), <https://www.naacpldf.org/justice-denied-a-call-for-a-new-grand-jury-investigation-into-the-police-shooting-of-breonna-taylor/>.

427. *Id.*

428. *Id.*

429. Jason Riley et al., *Three Breonna Taylor grand jurors file petition to impeach Attorney General Daniel Cameron*, WDRB NEWS (Jan. 23, 2021), https://www.wdrb.com/in-depth/three-breonna-taylor-grand-jurors-file-petition-to-impeach-attorney-general-daniel-cameron/article_855317de-5cdd-11eb-9291-6f5c939c5dbe.html.

430. *Id.*

431. Office of Public Affairs, *Current and Former Louisville, Kentucky Police Officers Charged with Federal Crimes Related to Death of Breonna Taylor*, DEP'T. OF JUST. (Aug. 4, 2022), <https://www.justice.gov/opa/pr/current-and-former-louisville-kentucky-police-officers-charged-federal-crimes-related-death>.

432. *Id.*

this act violated federal civil rights laws, and that those violations resulted in Ms. Taylor's death. Breonna Taylor should be alive today. The Justice Department is committed to defending and protecting the civil rights of every person in this country. That was this Department's founding purpose, and it remains our urgent mission.⁴³³

While it seems in this case the state's mission differed vastly from local sentiment, perhaps the federal position did not. It is not always an option for local governments to turn to a federal investigation for accountability, but in Breonna Taylor's case, it was the only substantive solution.

There are hundreds of smaller cities all over America; perhaps some of these cities are hoping for some kind of substantive change in police transparency and accountability. Cities where people die under arrest, or in a correctional facility, or at a random stop that escalates. Cities where the political will is vastly different from that of the controlling state government. Those cities have options irrespective of the state's attempts to curtail them. They need only select solutions that they can implement, even if they must hope that even more change is just beyond the horizon. Whatever they do, at least something, in some American city somewhere, might protect the next Breonna, George, Trayvon, or Philando. At least for some local representatives, it is worth a try.

433. *Id.*