

March 18, 2022

Via Electronic Delivery

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Vice Chair Rep. Cori Bush
House Judiciary Committee,
Subcommittee on Crime, Terrorism and Homeland Security
2138 Rayburn House Office Building
Washington, D.C. 20515

RE: March 8, 2022 Hearing in the House Judiciary Committee’s Subcommittee on Crime, Terrorism, and Homeland Security, “Reimagining Public Safety in the COVID-19 Era”

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we appreciate the opportunity to provide written testimony for the House Judiciary Committee’s Subcommittee on Crime, Terrorism, and Homeland Security March 8, 2022 hearing, titled “Reimagining Public Safety in the COVID-19 Era.” LDF¹ is the nation’s first and foremost civil rights and racial justice legal organization.² Founded in 1940 under the leadership of Thurgood Marshall, LDF was launched at a time when the nation’s aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. From that era to the present, LDF’s mission has been transformative—to achieve racial justice, equality, and an inclusive society, using the power of law, narrative, research, and people to defend and advance the full dignity and citizenship of Black people in America. LDF’s litigation, policy advocacy, organizing, and public education programs seek to ensure the fundamental rights of all people to quality education, economic opportunity, the right to vote and fully participate in democracy, and the right to a fair and just judicial system. For more than 80 years, LDF has fought to address unconstitutional and racially discriminatory law enforcement conduct,³ and racial bias throughout the criminal legal system.⁴

As a strategy to address violence in communities, increased policing risks harming the very communities officials aim to protect, and is counterproductive to achieving safety. Rather than increasing law enforcement presence, strategies that address the root causes of violence by promoting economic stability, housing, access to health care, and violence interruption programs, are promising avenues for promoting safety in our communities. These programs are particularly necessary because they produce stability without the harms that result from police interactions, incarceration, and the destabilizing and long-lasting consequences of incarceration. In addition to making investments in communities that produce stability, there remains an urgent need to address barriers in the law to achieve police accountability, such as qualified immunity, *Bivens* and its progeny, the standard for prosecutions of officers who violate people’s constitutional rights in 18 U.S.C. § 242, and the complete lack of basic data about law enforcement officers’ exercise of

authority in our communities. Law enforcement technologies that permit broad surveillance and exacerbate over-policing of Black and Brown communities are also concerning. We urge the subcommittee to address these continuing barriers to police accountability, lack of limits on law enforcement use of problematic technologies, and to work with relevant committees to secure investments in programs that create long-term stability for communities.

While some have blamed recent increases in homicides on the efforts of activists to reduce police budgets, the data does not support this, and the fate of Black communities should not rest on the popularity of a slogan. LDF's Thurgood Marshall Institute (TMI) recently conducted research analyzing homicide trends in 61 major U.S. Cities, drawing a sample from the 100 most populous cities in the U.S.⁵ According to TMI's research, cities with higher levels of economic inequality experienced the higher increases in homicides, and cities which had enacted criminal justice reforms – through bail reform or progressive prosecutors – did *not* experience a greater than average increase in homicides.

I. Economic insecurity, exacerbated by the pandemic, explains the recent increases in homicides in many cities across the U.S.

To identify appropriate solutions to recent increases in violence, we must first understand the underlying causes of the violence. And while acknowledging that there have been recent increases in violent crime, these short-term increases must be considered within overall rates across a broader period of time. Crime rates have minor variations in year over year rates. Overall, crime, including violent crime, has had a relatively consistent and steady decline over the past 30 years—there has been a sharp and continuous decrease since the 1990s, and rates today are much lower than in the 1970s, 80s, and 90s.⁶ Since 2000, increased incarceration has had an almost zero effect on crime, including violent crime.⁷

A. Cities with Markers of Higher Economic Inequity Also Show Greater Increases in Crime

When examining the cities with greater increases in crime, they correlate with markers of economic inequity such as higher eviction rates and income inequality, and other structural inequities that have caused higher death rates during the pandemic. Higher pre-pandemic eviction rates are associated with increased violent crime occurring during the COVID-19 pandemic.⁸ For instance, cities with the highest average eviction rate preceding the pandemic had the highest increases in homicide during the pandemic. Likewise, cities with the lowest average eviction rate before the pandemic also had the lowest increases in homicides during the pandemic.⁹ Other researchers evaluating the impact of eviction on crime rates in Philadelphia have found that after controlling for poverty, neighborhoods with higher eviction rates also had higher rates of homicide, robbery, and burglary.¹⁰

Income inequality is another reliable predictor of violence.¹¹ For example, cities with the highest income inequality in 2019 had the highest increase in homicides during the pandemic.¹² And research has shown that increasing government spending by \$10,000 per poor person decreases inequality and is associated with a 16% decrease in the homicide rate.¹³

Finally, cities with the highest year-to-date death rate from COVID-19 are also experiencing the highest increases in homicide during the pandemic.¹⁴ COVID-19 exacerbated pre-existing stressors in many communities – such as income inequality and employment insecurity – and also created new ones in the form of illness, loss of life, loss of community, and decreased person-to-person interactions. There is a strong correlation between the presence of these stressors and increased homicide rates. Importantly, in Black and Latinx communities, which have been disproportionately impacted by the pandemic, the death rates were highest among working age populations.¹⁵ The deaths of these individuals not only causes emotional grief, but often leaves families more financially and socially unstable from the loss of a worker and primary caretaker.¹⁶

B. Increases in Homicides Cannot be Attributed to Cash Bail or Progressive Prosecutorial Policies

The research conducted by TMI also demonstrates that whether cities require cash bail or have eliminated cash bail does not explain the variation in a city's 2020 homicide rate. In 2021, while cities with bail reform experienced a 47% increase in homicides compared to their 5-year pre-pandemic average, cities without bail reform experienced a 51% increase.¹⁷ In other words, localities with bail reform were slightly less likely to have an increase in homicide compared to pre-pandemic five-year averages.¹⁸ Thus, bail reform itself does not seem to be a strong predictor of whether a city experienced an increase in homicides.¹⁹ Additionally, research comparing crime rates before and after implementing bail reform within a locality has shown that there is no impact on crime rates after implementing bail reform.²⁰

Similarly, progressive prosecutorial policies seem to have little to no impact on homicides.²¹ Cities with a prosecutorial office ascribing to progressive policies²² experienced a 9% growth in homicides in 2021 compared to a 7% increase from those with more traditional prosecutors.²³ Additionally, our data documents cities experiencing small increases in homicide, large increases in homicide, and decreases in homicide have progressive prosecutors and traditional prosecutors in each of those categories.²⁴ Thus, our research indicates that progressive prosecutorial policies have not resulted in an increase in homicides.²⁵

C. Increases in Crime During the Pandemic Include Increases in Hate Crimes, and Threats by White Supremacists Must be Addressed

According to available FBI data, in 2020 during the covid-19 pandemic, reported hate crimes rose to their highest levels in nearly two decades, and a majority of these were motivated by race and ethnicity.²⁶ According to other research, hate crimes against Asians increased 124% between 2019 and 2020 and jumped another 342% from 2020 to 2021.²⁷ FBI data showed a 77% increase in anti-Asian hate crimes between 2019 and 2020.²⁸ There was a 32% increase in overall race, ethnicity, and ancestry-based incidents between 2019 and 2020, according to FBI data.²⁹ Anti-Black hate crimes continue to be the largest category of hate or bias incidents, and grew 49% between 2019 and 2020.³⁰ While this data is the best data available, hate crimes data collection does not accurately capture the volume of hate incidents that likely occur, and data collection processes must be improved.³¹

The FBI and intelligence community have also identified racially or ethnically motivated violence, particularly committed by people advocating for the superiority of the white race, as one of the most serious threats to our security.³² The Attorney General has acknowledged that white supremacists pose the greatest threat of domestic terror in the U.S.³³ Intelligence agencies have long warned that white supremacists seek to recruit members from law enforcement and the military.³⁴ A 2021 poll found that one in four troop members had seen examples of white nationalism amongst service members.³⁵ These dangerous threats must be addressed, given the power that law enforcement and military forces exert over communities.

Participation in anti-governmental violence, including by members of the military is a related threat that must be better addressed by military and law enforcement agencies. More than 15% of those charged thus far for attacking the Capitol on January 6, 2021 are military veterans.³⁶ Law enforcement officers have also been among those arrested for their violent conduct during the attack.³⁷ The administration has taken some positive steps to address these growing and dangerous threats, including developing a government-wide approach to these threats.³⁸ However, the steps taken thus far remain insufficient, and a recent report found “significant gaps” in DHS’ ability to comprehensively prevent, detect, and respond to potential threats related to violent extremism in its ranks.³⁹

While strategies such as screening of officers entering law enforcement and military forces are necessary, they are insufficient to identify and remove existing officers that pose a risk, where white supremacist groups target law enforcement to recruit and infiltrate.⁴⁰ Accordingly, barriers to officer accountability must be addressed to reduce the threat posed by white supremacist organizations, and law enforcement agencies must have a zero tolerance policy for racist and discriminatory behavior.⁴¹

D. Gun Control Measures and Unbiased Enforcement of Gun Laws Are Needed to Promote Safety

The effects of gun violence on Black Americans are particularly acute, as Black people are disproportionately likely to experience a gun injury or death.⁴² In the United States, Black people are ten times more likely than whites to die from gun homicides.⁴³ And Black children and teens are 14 times more likely to die from gun violence than their white counterparts.⁴⁴

At the same time, the enforcement of gun laws are also tainted by racial discrimination and fall disproportionately on Black and Brown people.⁴⁵ In New York City, virtually all — about 96% — of the people arrested by the NYPD for simple firearm possession are Black or Latinx.⁴⁶ Addressing the prevalence of guns, and the disparate enforcement of gun laws against Black and Brown people is critical to the safety of Black communities.

Recent increases in crime must be closely evaluated to understand the causes of violence so that strategies can be developed to address these root causes. Additionally, increases in hate crimes, the growth of white supremacist threats, and the role of the proliferation of guns in our communities must be considered when discussing increasing crimes. Importantly, prior criminal justice reforms are not the cause of any increases in crime. Rather, research demonstrates that economic instability is closely associated with increased homicides. Thus, the Subcommittee should explore strategies that promote economic stability to address recent increases in violence.

II. Because Increased Policing Causes Harm, Community-based Programs that Address the Root Causes of Violence are Essential for the Long-term Wellness of Communities, and Must be Prioritized in Legislative and Administrative Actions

When identifying strategies to improve public safety, the harms to communities caused by policing must be taken into consideration. Police encounters can cause mental trauma and more frequent contact with police leads to greater trauma and anxiety. In a 2014 survey of 1,200 young men in New York City, participants who reported more contact with law enforcement, also reported more symptoms of trauma and anxiety.⁴⁷ The severity of these symptoms were tied to the amount of stops they reported, the intrusiveness of the encounters, and their perceptions of fairness in policing.⁴⁸ Such adverse impacts on mental health are not limited to people who are actually sanctioned by law enforcement, but can result even from less intrusive contacts (e.g. being stopped without being searched or subjected to force) with police, which many people of color and individuals in urban areas experience on a regular basis.⁴⁹ Police stops are also associated with diminished psychological well-being and physical health for boys and young men of color.⁵⁰ And while we do not know the full extent of physical harm caused by law enforcement uses of force due to law enforcement agencies' lack of data collection and reporting,⁵¹ the known fatalities caused by law enforcement are substantial. From data collected based on public media reports, 2021 set a record with 1,055 fatal police shootings.⁵² And Black people are killed by law enforcement at more than twice the rate of White Americans, since reporting in 2015.⁵³

Additionally, qualitative and quantitative research shows that police stops of young boys of color, rather than promoting deterrence, are can actually be criminogenic, creating a greater likelihood that the youth stopped will be involved in criminal activity after they are stopped.⁵⁴ Researchers observed that the younger a boy was at the time of their first police stop, the greater the increase observed in subsequent delinquent behavior by the youth 6 months later.⁵⁵ This research demonstrates that police stops through proactive policing can be counter-productive for any goal of deterrence by being criminogenic, and alternative policy solutions are needed.

The inefficacy of policing is also apparent when examining clearance rates, which are the rates at which law enforcement agencies consider crimes solved because a suspect has been identified and arrested. In 2018, only 33.25% of all Part I (serious offenses) were cleared by arrest in the U.S.⁵⁶ From 1964-2018, reported clearance rates for Part I offenses decreased by 27.45%.⁵⁷ And while clearance rates are one measure of efficacy, many other questions about the efficacy of policing have not been well-studied, including evaluations of how many people are victims of crime but do not report (though we know the vast majority of sexual assault victims do not report)⁵⁸, and conviction rates following arrests.⁵⁹

While increased policing is harmful to communities and often counter-productive or ineffective in its goals, it also does not address the root causes of violence. Underlying conditions contributing to violence generally include economic insecurity, housing instability, and other threats to economic and social cohesion – things that by and large, law enforcement officers and agencies cannot resolve. To reduce violence, strategies and community-based solutions should be implemented to effectively decrease violence without causing the long-term harms associated with policing and criminal justice involvement.

A. Promoting Economic Security and Stability is Critical to Reducing Involvement in the Criminal Legal System and Promoting Long-term Community Safety and Wellness.

The link between economic instability and involvement in the criminal legal system has been well-documented.⁶⁰ Research also shows that increased spending on social and public health services is associated with significantly lower homicide rates at the state level.⁶¹ Thus, investments in programs that promote economic stability are critical to reducing violence and producing security within communities.

i. Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families

A study published in 2008 by a Harvard Business School professor has found that cities that pay Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI) benefits at the first of the month experience crime decreases at the beginning of the month when the city disburses benefits but rises as recipients exhaust their resources.⁶² Another study similarly found that spreading out financial assistance throughout the month led to decreases in crime and theft at grocery stores by 17.5% and 20.9%, respectively.⁶³ In addition, income shocks have been found to have a profoundly subversive effect on decision-making leading to involvement in unlawful behavior.⁶⁴

ii. Social Security Insurance Removal

Removal from social security insurance has also been shown to affect young peoples' criminal justice outcomes.⁶⁵ A study examined the impact of removing social security benefits from 18-year-olds following a 1996 welfare reform law. The study found that removing social security benefits increased the number of criminal charges filed against study participants by 20% and the annual likelihood of their incarceration increased by 60% over the following two decades.⁶⁶ This increase in criminal charges is concentrated in activities for which income generation is a primary motivation (e.g. theft, sale of controlled substances, sex work).⁶⁷ Furthermore, the incarceration effects of SSI removal are disproportionately higher for Black youth and youth with low parent earnings.⁶⁸ The removal of social security insurance, thus, exacerbates existing inequality.⁶⁹

iii. Temporary Financial Assistance and Earned Income Tax Credit

Public policy solutions which promote economic stability, such as temporary financial assistance, have been shown to reduce the rate of police interactions. For example, a 2018 study demonstrated that providing temporary financial assistance to people facing adverse income shocks can reduce violent crime up to 51%.⁷⁰ Another study found that higher earned income tax credits (EITC) increase employment and reduce poverty among people with low socioeconomic status.⁷¹ EITC are also associated with significant reductions in violent crime.⁷² Compared to having no EITC, implementing a state credit equal to at least 10% of the federal rate is associated with a 10% decline in violent crimes.⁷³ A high EITC rate is also associated with a 14.4% reduction in assaults.⁷⁴

iv. Guaranteed Income

A number of guaranteed income pilots and programs have also demonstrated positive outcomes in health and stability. The Stockton Economic Empowerment Demonstration evaluated the results of a guaranteed income program in Stockton, California and found that guaranteed income reduced income volatility which had positive impacts on health, well-being, and agency in goal-setting and risk-taking.⁷⁵ In a Washington D.C. pilot program, recipients of a basic income program reported improvements in mental health. The recipients reported that they were able to use the funds to cover everyday expenses, and therefore worried less about having enough food to feed their families. They also reported being able to cover transportation costs, pay down debt, invest in small businesses, and cover their children's medical expenses or childcare.⁷⁶

v. Summer Youth Employment Programs

In addition, summer youth employment programs have also been shown to improve social outcomes and dramatically reduce violent crime arrests.⁷⁷ Two field experiments that each offered different populations of Chicago youth a supported summer job reported a 42% and a 33% decline in violent crime arrests, and the reductions remained substantially large after two to three years.⁷⁸

Each of these studies demonstrate the impact that economic instability has on criminal justice outcomes. Consequently, it is essential that violence reduction efforts address economic deprivation as an underlying driver of crime. Doing so has the potential to promote security within marginalized communities, without the harms caused by increased police interactions and involvement in the criminal legal system.

B. Solutions that Increase Housing Stability and Security are Vital to Improving Community Safety

Along with economic instability, housing insecurity has destabilizing effects on communities.⁷⁹ Solutions that promote safe, affordable and supportive housing, particularly for individuals struggling economically or experiencing homelessness, are critical to long-term safety and wellness within communities, and crime prevention. Supportive housing combines affordable housing with intensive coordinated services, such as substance use support and assistance with applying for Social Security or gaining employment. Additionally, a lack of housing creates challenges for accessing medical care and may trigger or exacerbate mental illness which can also lead to police contacts.⁸⁰ Thus, for people with mental illness, chronic health conditions, histories of trauma and other struggles, supportive housing services can facilitate the process of obtaining adequate treatment, which in turn can reduce police interactions and involvement in the criminal legal system.⁸¹

For example, programs using a Housing First approach⁸² have been shown not only to increase housing stability for participants, but also increase the likelihood of mental health treatment, decrease hospitalization and shelter stays, and critically, reduce arrests and incarceration. For individuals with mental illness in particular, supportive housing “leads to more housing stability, improvement in mental health symptoms, reduced hospitalization and increased satisfaction with quality of life, including for participants with significant impairments, when compared to other types of housing for people with mental illnesses.”⁸³ When Denver provided

supportive housing to homeless individuals, arrests and police contacts dropped 40% and 35%, respectively.⁸⁴ The Denver Supportive Housing Social Impact Bond program (Denver SIB), which provided a permanent housing subsidy and “intensive services” to individuals experiencing chronic homelessness, demonstrated multiple positive effects on program participants and the Denver community. After three years in the program, 77% of participants remained in stable housing and there was a 155% and 29% increase in office-based visits (such as counseling and therapy) and “unique prescription medications,” respectively.⁸⁵ Importantly, they also experienced a 34% reduction in police contacts and a 40% reduction in arrests.⁸⁶ Finally, the program demonstrated an average reduction of 40% in shelter visits, 40% in emergency room visits, and 30% in unique jail stays.⁸⁷

Other programs providing supportive housing for people experiencing homelessness with mental health issues have also reduced involvement in the criminal legal system. Among program participants in New York, 30% fewer individuals were incarcerated after the program was initiated.⁸⁸ Additionally, residents of supportive housing were also more likely to secure voluntary or paid employment and to experience an overall improved quality of life.⁸⁹ Similarly, a Philadelphia program providing supportive housing to formerly unhoused people with serious mental illness and substance use disorders found that participants’ incarceration rates fell by 50 percent.⁹⁰ The program importantly noted a significant reduction in participants’ use of emergency services such as emergency psychiatric or medical care, indicating that supportive housing has the potential to introduce stability into participants’ lives so they no longer need to use emergency services.⁹¹

Other research has yielded similar conclusions about the importance of long-term, stable housing in promoting safety. For example, an Ohio study found that individuals in supportive housing who had been incarcerated were 40% less likely to be re-arrested and 61% less likely to be re-incarcerated.⁹² In New York, individuals who moved from shelter to shelter experienced such significant instability that they were more likely to be involved in violent crime than those who remained primarily on the street, leading researchers to conclude that moving individuals into stable, long-term housing would be more beneficial for reducing crime than relying on a short-term shelter-based system.⁹³

Each of these examples demonstrates the relationship between housing insecurity and interactions with the criminal justice system. It is vital that efforts aimed at reducing violence in our communities include efforts to increase the availability of long-term, stable and supportive housing.

C. Improving Physical Spaces Can Reduce Crime and Improve Community Wellness

Improving the physical spaces within neighborhoods by restoring blighted and vacant urban land affects people’s perceptions of safety and also has substantial impacts on violence and crime.⁹⁴ In one study, neighborhoods with cleaned-up lots experienced a 13% reduction in crime overall, 29% reduction in gun violence, 22% reduction in burglary and 30% reduction in nuisances after treating vacant lots in neighborhoods below the poverty line.⁹⁵ Other research demonstrates that significantly increasing green space significantly decreased feelings of depression and poor

mental health for those who lived nearby.⁹⁶ Thus, investing in the physical spaces of neighborhoods where residents experience poverty is a promising solution to promote safety.

D. Access to Healthcare through Medicaid Expansion and Services for People with Mental Illness Promote Stability

Increased access to affordable health care is also an effective tool to promote wellness and reduce involvement in the criminal justice system. Increased affordability of healthcare may be able to reduce crime by decreasing premiums and out-of-pocket expenses, thereby reducing the necessity of engaging in unlawful activity in order to afford medical services and procedures.⁹⁷ For example, Medicaid expansion that occurred as a result of the Affordable Care Act reduced the burglary rate by 3.6%, the motor vehicle theft rate by 10%, the criminal homicide rate by 7.7%, the robbery rate by 6.1%, and the aggravated assault rate by 2.7% nationwide.⁹⁸ Additionally, states that undertook Medicaid expansion experienced a 5.3% reduction in violent crime rates when compared with states that did not undertake Medicaid expansion.⁹⁹

Increased access to effective substance use treatment is also an effective way to reduce police interactions and arrests. For instance, Medicaid enrollees in both Oregon and Washington with higher access to methadone maintenance treatment (MMT) services are associated with much lower felony arrest rates than non-Medicaid counterparts.¹⁰⁰ And research suggests that increasing substance use disorder treatment rates has a “significant reduction effect on robbery, aggravated assault and larceny-theft.”¹⁰¹

Moreover, where expanded access to mental health services is available, individuals with mental illness who are re-entering society after incarceration will be more likely to receive helpful treatment, thus reducing the likelihood of recidivism and re-arrests.¹⁰² Higher enrollment in Medicaid before release from prison reduces the risk of re-arrest and re-incarceration among individuals with a severe mental disorder.¹⁰³ Community-based mental health services are particularly effective in reducing interactions between law enforcement and people with mental illness.¹⁰⁴ For example, Assertive Community Treatment (ACT) is a community-centered approach that assists people with serious mental illness in day-to-day activities, including staying in treatment, maintaining housing and employment, engaging in communities activities, and other actions that promote stability.¹⁰⁵ As a result, ACT is also very effective at “reducing criminal involvement,” demonstrating significantly lower arrests, jail bookings and days spent in jail for program participants compared to similarly situated non-program participants.¹⁰⁶ Similarly, Mobile Crisis Services, which send mental health professionals to respond to people with mental illness or in crisis reduce harmful police involvement and incarceration.¹⁰⁷

Thus, expanding access to healthcare, through expanding access to Medicaid, substance use treatment, and services for people with mental and behavioral health disabilities would all promote safety and reduce involvement in the criminal justice system.

E. Community-based Violence Interruption and Prevention Programs Promote Safety

Community-based violence interruption and prevention programs have consistently been linked to reducing social violence. Using relationship building, de-escalation and mediation

tactics, violence interrupters and credible messengers are uniquely able to serve as trusted ambassadors to prevent violence in communities at the highest risk of perpetuating or experiencing violence. Research shows that these programs, when led by community members, have been proven to decrease violent crime rates in both the short and long-term—without replicating the harms caused by law enforcement involvement.¹⁰⁸ For example, Baltimore’s community-centered violence prevention and interruption program, Safe Streets,¹⁰⁹ has led to significant reductions in gun violence in three of its four program areas in the city of Baltimore, including a 56% reduction and 26% reduction in homicides in two different neighborhoods.¹¹⁰ Similarly, a 2017 evaluation of New York’s Cure Violence programs, part of the City’s CMS, found “significant declines” in gun injuries (37% in the South Bronx and 50% in East New York) and shooting victimizations (63% decrease in the South Bronx).¹¹¹

Additionally, because these programs connect communities to much-needed supports—rather than punishment and incarceration—their successes go beyond temporary reductions in violence. Individuals in the programs are often provided the tools to increase their education, secure long-term housing and employment, access affordable childcare, and other key supports.¹¹² For example, Baltimore’s Safe Streets program noted above, employs a public health model to advance its violence prevention work. In one evaluation, 88% of clients reported receiving assistance finding employment, 95% reported receiving assistance getting into a school or GED program; and 100% reported receiving assistance resolving family conflicts.¹¹³ Similar successes are demonstrated in violence prevention programs in cities across the country, including Philadelphia, New Orleans, in New Jersey, Kansas City, and New York City.¹¹⁴

Unfortunately, violence prevention programs are often underfunded and under resourced,¹¹⁵ limited to supporting small sub-sections of communities at risk for violence, operating during limited hours, and unable to employ the staff needed to meet demand or pay dedicated staff fair wages.¹¹⁶ Fully funding these programs is critical to their continued efficacy.¹¹⁷

These violence interruption programs, along with other community-based solutions that prioritize economic stability, housing, physically improving neighborhoods, and access to healthcare, are promising strategies to reduce violence and create security within communities without the harms associated with increased policing and incarceration. Strategies to promote safety must prioritize investments in these areas.

III. There Remains an Urgent Need to Address Barriers to Accountability and the Lack of Limits on Law Enforcement Surveillance and Technology

In addition to expanding investments in programs such as the above that improve long-term safety and stability within communities, we urge the Subcommittee and the broader House Judiciary Committee to continue addressing legal barriers to achieving accountability for the misconduct of law enforcement officers. 2021 set a record for fatal police shootings, based on currently available data,¹¹⁸ thus our communities seek protection from not only community violence, but also police violence.

A. Barriers in the Law to Accountability for Officers when they Commit Misconduct and Lack of Data Remain Outstanding Issues that Must be Addressed

i. Qualified Immunity

The judge-made doctrine of qualified immunity remains a significant barrier to victims and their families who seek compensation after having been deprived of their constitutional rights by law enforcement officers. According to an investigative report by Reuters, from 2017 to 2019, appellate courts granted police qualified immunity in 57% of civil use of force cases.¹¹⁹ A growing number of states and localities across the country, including Colorado, New Mexico, and New York City, have recognized the barrier to accountability produced by qualified immunity and passed laws preventing its use as a defense in civil cases.¹²⁰ We urge Congress to pass legislation prohibiting the use of qualified immunity as a defense for local law enforcement officers.

ii. 18 U.S.C. § 242

The federal criminal civil rights statute 18 U.S.C. § 242 makes it a crime for a law enforcement officer, acting in their official capacity, to willfully deprive a person of their constitutional rights. However, as federal prosecutors have noted for years, the willfulness requirement – which requires proving that an officer “intended to engage in conduct that violated the Constitution or laws and did so knowing that such conduct was wrongful” – inhibits prosecutions of officers in many cases for violations of people’s constitutional rights.¹²¹ For example, federal prosecutors in New York declined to file criminal charges against the NYPD officer who killed Eric Garner in 2014 citing the willfulness standard as a primary barrier to proving guilt beyond a reasonable doubt.¹²² We urge amending 18 U.S.C. § 242 to make criminal prosecutions of law enforcement officers easier in cases of excessive force, sexual assaults, and other constitutional violations. Any amendment should also remove capital punishment as a penalty for violations of the section.

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

In *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the Supreme Court initially recognized an implied right of action to file suit under the Constitution for violations of rights committed by federal officials but subsequent cases have narrowed the doctrine, virtually eliminating the right. People whose rights are violated by federal officials, including law enforcement officers, lack recourse for these violations. These cases include when federal law enforcement officers conduct illegal searches and seizures in violation of the Fourth Amendment,¹²³ and federal prison officials subject inmates to punitive strip searches in violation of the Fourth and Fifth Amendment.¹²⁴ We urge passage of H.R. 6185, the Bivens Act of 2021, to authorize lawsuits by those who suffer constitutional injury at the hands of federal officers.¹²⁵

iv. Lack of Available Data about Law Enforcement Officers’ Basic Activities Impedes Accountability

Though more than \$186 million has been allocated to state and local law enforcement agencies through the federal Edward Byrne Memorial Justice Assistance Grant program in 2021,

there remains an astonishing lack of publicly available data on police encounters with the public—from pedestrian stops to data about interactions resulting in deadly force, or accountability for unconstitutional activity supported by these funds.¹²⁶ Lack of transparency and access to this information creates a gap in the public’s knowledge of policing practices and often leaves communities unable to hold the officers and agencies patrolling them accountable for their actions.¹²⁷ To promote accountability, law enforcement agencies should be required to collect and publish data regarding officers’ basic activities, including stops, searches, arrests, and uses of force, including information about the demographics of people subjected to law enforcement’s exercise of authority.

In order to help prevent serious harms to communities, strengthen policy making, and facilitate accountability for unlawful policing, we urge the Subcommittee to advance legislation to require collection, analysis and publication of data, disaggregated by protected classes, from law enforcement at all levels of government. The House passed George Floyd Justice in Policing Act contains provisions that direct such data to be submitted to the DOJ’s Civil Rights Division and Bureau of Justice Statistics (BJS) and the bill directs BJS to analyze data for statistical disparities and to be made publicly available.¹²⁸ We urge continued support for such provisions.

B. Legislative Oversight of Law Enforcement’s Use of Technology is Needed to Prevent It From Exacerbating Harms Caused by Over-policing of Black and Brown Communities

Rapidly expanding law enforcement use of technology risks exacerbating harm to Black and Brown communities that are frequently under-served and over-policed.¹²⁹ Law enforcement agencies deploy technology in ways that threaten the rights and safety of Black and Brown people through systems of mass surveillance which track and criminalize residents. For example, law enforcement agencies across the country have concentrated networks of sophisticated surveillance cameras in predominantly Black cities and neighborhoods, resulting in constant surveillance of public life in these communities.¹³⁰ The intricate aerial surveillance system in Baltimore, for example, “track[ed] every movement of every person outside in Baltimore,” and was akin to “attaching an ankle monitor’ to every person in the city.”¹³¹ Similarly, law enforcement agencies have filled digital databases with extensive lists of Black and Brown residents, their photos, and identifying information—often without their awareness.¹³² Placement in these databases is then used to justify increased police encounters, aggressive tactics, harsher sentences, and other intrusive law enforcement activities.¹³³ While more than 2 million people are currently incarcerated in the U.S., the Bureau of Justice Statistics estimates that over 100 million names are stored in criminal history databases, with *80 percent of the black male population registered in these databases* in some cities.¹³⁴

Further, law enforcement agencies consistently deploy technologies in ways that are wholly inconsistent with ethical scientific practices and good governance.¹³⁵ For example, despite repeated warnings that facial recognition systems exhibit racial bias and enhance racialized surveillance, a Government Accountability Office report revealed that at least 20 federal law enforcement agencies owned or used facial recognition technologies and face matching databases containing over 800 million images.¹³⁶ Another report revealed that over 1,800 agencies, including hundreds of law enforcement agencies, used Clearview AI’s facial recognition software¹³⁷ despite its controversial database encompassing more than 3 billion images collected without the

permission or awareness of the individuals pictured.¹³⁸ Notably, law enforcement agencies have used facial recognition technology on images of protestors involved in protests about biased policing and police brutality following the death of George Floyd,¹³⁹ and others have used forensic sketches as probes photos to search for a match, introducing the possibility of misidentification.¹⁴⁰ These troubling behaviors compound the already-high risk of Black communities being misidentified, create risks of wrongful arrests, and risk chilling First Amendment protected activity.¹⁴¹ Law enforcement agencies also disproportionately use predictive policing software,¹⁴² drones,¹⁴³ license plate readers,¹⁴⁴ and gunshot detection technology¹⁴⁵ in Black and Brown communities, again resulting in increased surveillance, harassment, arrests, and incarceration.¹⁴⁶

Law enforcement agencies' embrace of powerful technologies, often with unfettered discretion and minimal oversight, presents a true danger and risks causing irreversible harms to Black and Brown communities. Because of the threat posed to the safety and security of marginalized or vulnerable groups, some governments outside the United States and local governments within the U.S. have prohibited or created processes for oversight of law enforcement's use of certain technologies.¹⁴⁷ We urge the House Judiciary Committee's Civil Rights and Civil Liberties Subcommittee to hold a hearing to examine the threats and risks caused by law enforcement use of an array of problematic technology, and to begin to craft adequate public policy solutions to promote transparency, protect the public's data and digital rights from public actors, rein in law enforcement use of problematic technology, and to ensure law enforcement agencies' use of technologies does not exacerbate already existing racially discriminatory and harmful policing practices.

C. Conclusion

Our communities deserve protection from violence in all its forms – whether from other members of the community, law enforcement, or from lack of basic needs and resources for survival. Increased policing risks harming the very people that most need support and resources, is ineffective, and can be counterproductive to achieving safety. Strategies that promote economic stability, housing, access to health care, and violence interruption programs, are needed to promote community wellness. These programs produce stability without the harms attendant in policing and incarceration.

In addition to making investments in communities that produce stability, there remains an urgent need to address barriers to achieving police accountability such as qualified immunity, *Bivens*' progeny limiting suits against federal officials, the *mens rea* standard in 18 U.S.C. § 242, and the lack of data about law enforcement activity. Law enforcement technologies that permit broad surveillance and exacerbate over-policing of Black and Brown communities must also be addressed. We urge the subcommittee to address these continuing barriers to police accountability, lack of limits on law enforcement use of problematic technologies, and to work with relevant committees to secure investments in programs that create long-term stability for communities.

Thank you for considering our testimony. If you have any questions, please do not hesitate to contact Puneet Cheema, Manager of the Justice in Public Safety Project, at pcheema@naacpldf.org.

¹ In 2015, LDF launched its Policing Reform Campaign, now called the Justice in Public Safety Project, which works through litigation, policy, community organizing, research and communications to (1) ensure accountability for police brutality and misconduct; (2) promote public safety practices that eliminate the pernicious influence of racial bias; and (3) support a new paradigm of public safety that drastically reduces the presence of armed law enforcement in communities of color.

² LDF has been an entirely separate organization from the NAACP since 1957.

³ *Tennessee v. Garner*, 471 U.S. 1 (1985) (a seminal case that held, for the first time, that police officers cannot shoot “fleeing felons” who do not pose a threat to officers or members of the public); *see also Davis, et al. v. City of New York, et al.*, 902 F. Supp. 2d 405 (S.D.N.Y. 2012).

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⁶ *Id.* at 3.

⁷ Lauren Brooke-Eisen et al., Brennan Center for Justice, What Caused the Crime Decline? 79 (2015), <https://www.brennancenter.org/our-work/research-reports/what-caused-crime-decline> (“This report demonstrates that when other variables are controlled for, increasing incarceration had a minimal effect on reducing property crime in the 1990s and no effect on violent crime. In the 2000s, increased incarceration had no effect on violent crime and accounted for less than one-hundredth of the decade’s property crime drop.”) (“This report demonstrates that when other variables are controlled for, increasing incarceration had a minimal effect on reducing property crime in the 1990s and no effect on violent crime. In the 2000s, increased incarceration had no effect on violent crime and accounted for less than one-hundredth of the decade’s property crime drop.”).

⁸ *TMI Report*, *supra* note 5, at 9.

⁹ *Id.*

¹⁰ Daniel Semenza, *Evidence from Philadelphia Shows that Eviction Destabilizes Communities and May Lead to Increased Crime Rates in US Cities*, LSE Phelan US Centre: Daily Blog on American Politics and Policy (Sept. 10, 2021), <https://blogs.lse.ac.uk/usappblog/2021/09/10/evidence-from-philadelphia-shows-that-eviction-destabilizes-communities-and-may-lead-to-increased-crime-rates-in-us-cities/>.

¹¹ *TMI Report*, *supra* note 5, at 10.

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¹⁴ *TMI Report*, *supra* note 5, at 8.

¹⁵ *Id.* at 8-9.

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¹⁷ *Id.* at 4.

¹⁸ *Id.*

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²⁰ Tiana Herring, *Releasing People Pretrial Doesn’t Harm Public Safety*, Prison Policy Initiative (Nov. 17, 2020), <https://www.prisonpolicy.org/blog/2020/11/17/pretrial-releases/>.

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²² *Id.* at 11-14.

²³ *Id.* at 5.

²⁴ *Id.*

²⁵ *Id.* at 5-6.

²⁶ *See Hate Crime in the United States Incident Analysis*, Fed. Bureau of Investigation Crime Data Explorer, <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/hate-crime> (last visited March 15, 2022); *Combatting the Rise in Hate Crimes*, Hearing Before the S. Judiciary Comm., 117th Cong. (2022) (statement of Kristen Clarke, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice at 2), available at <https://www.judiciary.senate.gov/imo/media/doc/Clarke%20Testimony2.pdf>.

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- ³¹ Ken Schwenke, *Why America Fails at Gathering Hate Crime Statistics*, PROPUBLICA (Dec. 4, 2017), <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>; *Confronting Violent White Supremacy (Part II): Adequacy of the Federal Response: Hearing Before the Subcomm. on Civil Rights and Civil Liberties of the H. Committee on Oversight and Reform, 116th Cong. (2019)*, available at <https://www.govinfo.gov/content/pkg/CHRG-116hhrg36828/html/CHRG-116hhrg36828.htm> (“Every witness before the subcommittee, whether invited by the majority or the minority, agreed on one thing, the FBI’s hate crimes statistics are inaccurate and do not reflect the reality of hate-motivated violence in our country.”)
- ³² See Off. of the Dir. of Nat’l Intelligence, *Domestic Violent Extremism Poses Heightened Threat in 2021 2* (2021), https://www.dhs.gov/sites/default/files/publications/21_0301_odni_unclass-summary-of-dve-assessment-17_march-final_508.pdf (“US RMVEs who promote the superiority of the white race are the DVE actors with the most persistent and concerning transnational connections because individuals with similar ideological beliefs exist outside of the United States and these RMVEs frequently communicate with and seek to influence each other.”); see also Press Release, The White House, *Fact Sheet: National Strategy for Countering Domestic Terrorism* (June 15, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/15/fact-sheet-national-strategy-for-countering-domestic-terrorism/>.
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⁷⁸ See Jonathan M.V. Davis and Sara B. Heller, *supra* note 77, at 664-65.

⁷⁹ See generally Courtney Cronley et al., *Effects of Homelessness and Child Maltreatment on the Likelihood Of Engaging in Property and Violent Crime During Adulthood*, 25 *J. OF HUM. BEHAV. SOC. ENVIRON.*, no. 3, 192, 196 (2015) (finding that individuals experiencing homelessness before age 26 were more likely to commit violent and property crime than the general population); see generally Matthew Desmond, *Evicted: Poverty and Profit in the American City* (Broadway Books 2016) (finding that the threat of eviction can lead to interaction with the justice system by generating disputes with landlords about property damage, fomenting violence between tenants, affecting drug use, and so on); Matthew Desmond and Carl Gershenson, *Who gets evicted? Assessing individual, neighborhood, and network factors*, 62 *SOC. SCI. RSCH.* 362, 369 (2017) (finding that people experiencing shocks such as job loss are more likely to be evicted).

⁸⁰ See Lilanthi Balasuriya et al., *The Never-Ending Loop: Homelessness, Psychiatric Disorder, and Mortality*, *PSYCHIATRIC TIMES* (May 29, 2020), <https://www.psychiatristimes.com/view/never-ending-loop-homelessness-psychiatric-disorder-and-mortality>; see also Peter Tarr, *Homelessness and Mental Illness: A Challenge to Our Society*, *BRAIN AND BEHAVIOR RESEARCH FOUNDATION* (Nov. 19, 2018), <https://www.bbrfoundation.org/blog/homelessness-and-mental-illness-challenge-our-society> (Homelessness is related to higher levels of psychiatric distress, higher levels of alcohol use and lower levels of perceived recovery in people with previous mental illness; Homelessness can also exist in a positive feedback loop with mental health and substance abuse challenges, where such issues both exacerbate and are exacerbated by homelessness); see also Margot Kushel, *The First Step is the Hardest: Overcoming Barriers to Primary Care*, 30 *J. OF GEN. INTERNAL MEDICINE* 7, 868-869, 868 (2015) (“Individuals experiencing homelessness face numerous barriers to receiving primary care, including the lack of insurance or adequate funds to afford copayments, lack of transportation, and difficulty making (or receiving information about) appointments.”), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4471034/#:~:text=Individuals%20experiencing%20homelessness%20face%20numerous.or%20receiving%20information%20about%20appointments.>

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⁸³ Bazelon Center for Mental Health Law, *Diversion to What? Evidence-Based Mental Health Services That Prevent Needless Incarceration* 5 (2019), http://www.bazelon.org/wp-content/uploads/2019/09/Bazelon-Diversion-to-What-Essential-Services-Publication_September-2019.pdf [hereinafter “Diversion to What?”].

⁸⁴ Urban Institute, *Housing First Breaks the Homelessness-Jail Cycle* (2021), <https://www.urban.org/features/housing-first-breaks-homelessness-jail-cycle>.

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⁸⁸ Dennis Culhane, *The Impact of Supportive Housing for Homeless People with Severe Mental Illness on the Utilization of the Public Health, Corrections, and Emergency Shelter Systems: The New York-New York Initiative*, 13 HOUSING POLICY DEBATE, no. 1, 1, 23 (2001), available at https://www.researchgate.net/publication/228638508_The_Impact_of_Supportive_Housing_for_Homeless_People_with_Severe_Mental_Illness_on_the_Utilization_of_the_Public_Health_Corrections_and_Emergency_Shelter_Systems_The_New_York-New_York_Initiative.

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¹⁰³ *Id.* at 2 (citing Morrissey, et al., *The role of Medicaid enrollment and outpatient service use in jail recidivism among persons with severe mental illness*, 58 Psychiatric Services 6, 794-801 (2007)).

¹⁰⁴ See *Diversion to What?*, *supra* note 83, at 2.

¹⁰⁵ See *id.* at 3.

¹⁰⁶ See *id.* at 3-4 (“A 2017 study examining forensic ACT (FACT), which is specifically designed to serve people involved with the criminal justice system, found that participants receiving FACT over the course of a year spent significantly fewer days in jail than similar participants not receiving FACT (21.5 vs 43.5) and were less likely to incur new convictions.; An Illinois study found an 83% decrease in jail days over the course of a year for participants in Thresholds’ Jail Linkage ACT program, which reduced jail costs by \$157,000; A California study found that over 12 months, jail bookings for individuals enrolled in ACT were 36% lower than those for similarly situated individuals not enrolled in ACT, and the group not enrolled in ACT spent 48% more days in jail.; A New York study found that over the course of one year, individuals enrolled in ACT had fewer arrests and spent approximately half the number of days in jail as individuals in a control group receiving enhanced “treatment as usual.”; Individuals who received ACT for the first time in Oklahoma in 2007 spent 65% fewer days in jail and 71% fewer days in inpatient hospitals than they had during the prior year.”).

¹⁰⁷ See *id.* at 7 (“Studies have found that mobile crisis teams resulted in arrest rates ranging from 2% to 13% of clients, with an average of less than 7%, in contrast to an arrest rate of 21% for typical contacts between police officers and individuals with psychiatric disabilities”).

¹⁰⁸ See *Intervention Strategies*, Giffords Law Center to Prevent Gun Violence, <https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/intervention-strategies/> (identifying community-centered approaches such as connection to employment opportunities and other resources as effective methods of crime reduction).

¹⁰⁹ See *Safe Streets Baltimore*, Catholic Charities of Baltimore, <https://www.catholiccharities-md.org/services/safe-streets-baltimore/> (last visited March 17, 2022).

¹¹⁰ *Id.*; see also Daniel W. Webster, et al., *Evaluation of Baltimore’s Safe Streets Program: Effects on Attitudes, Participants’ Experiences, and Gun Violence*, Johns Hopkins Center for the Prevention of Youth Violence (Jan. 11, 2012), https://www.jhsph.edu/research/centers-and-institutes/center-for-prevention-of-youth-violence/field_reports/2012_01_11.Executive%20SummaryofSafeStreetsEval.pdf [hereinafter “Johns Hopkins”].

¹¹¹ *Violence Intervention Program Funding*, Everytown Research and Policy (Jan. 19, 2022), <https://everytownresearch.org/rankings/law/violence-intervention-program-funding/>.

¹¹² See Johns Hopkins, *supra* note 110, at 4 (noting that 80% of Safe Streets clients reported that their lives were better as the result of the program and most clients reported receiving assistance finding a job, getting into school or a GED program, resolving family conflicts, improving job interviewing skills, and obtaining job training); see also SNUG Violence Prevention, <https://eoc-suffolk.com/snug-violence-protection/> (last visited March 17, 2022) (describing NY state SNUG Outreach violence prevention program); John Klofas et al., Center for Public Safety Initiatives, SNUG Evaluation 73-75, 123 (2013), <https://www.rit.edu/liberalarts/sites/rit.edu.liberalarts/files/documents/our-work/2013-10.pdf>.

¹¹³ Johns Hopkins, *supra* note 110, at 4.

¹¹⁴ See Cure Violence Global, *The Evidence of Effectiveness* 12, 20-21 (Aug. 2021), (In Philadelphia, the Cure Violence program was associated with a 30% decrease in the rate of shootings in three areas. New Orleans’ Cure Violence program resulted in a 56% reduction in shooting victims for target population, 85% reduction in retaliation killings, 48% reduction in group-involved killings, successful mediation of 100% of identified violent conflicts and more. In Kansas City, the Cure Violence program yielded a 42.1% reduction in homicides and a 4% reduction in firearm aggravated assaults), <https://cvg.org/wp-content/uploads/2021/09/Cure-Violence-Evidence-Summary.pdf>. See also Jorja Leap, et al, *Newark Community Street Team Narrative Evaluatio*, UCLA Social Justice Research Partnership, 50-51 (2020) (Newark’s violence prevention program led to annual declines of 11-17% in [homicides] and a six-decade low in homicide in 2020), https://www.newarkcommunitystreetteam.org/wp-content/uploads/2021/02/NCST-Evaluation_FINAL.pdf.

¹¹⁵ See Victoria Chamberlin, *Without Reliable Funding, Violence Prevention Programs Are At Risk*, WAMU 88.5, (Aug. 31, 2020), <https://wamu.org/story/20/08/31/without-reliable-funding-violence-prevention-programs-are-at-risk/>, (finding that after announcing a \$4 million fund for organization-led gun violence reduction efforts in 2018, Maryland Gov. Larry Hogan only authorized funding for the program in “one out of three fiscal years” and in 2020, vetoed a bill that would guarantee \$3.6 million in annual funding of the violence prevention effort, while the Baltimore police received \$527.6 million.). See also John Jay Research and Evaluation Center, *Reducing Violence Without Police: A Review of Research Evidence*, (Nov. 9, 2020), (indicating that even though the Bureau of Justice Assistance provided millions of dollars in federal grants for community interventions across the nation, “most of [the grants] involved a policing partner,” which increased the examples of “police-driven or police affiliated strategies” that did not produce the same results as truly community-driven programs), <https://johnjayrec.nyc/2020/11/09/av2020/>.

¹¹⁶ See Victoria Chamberlin, *Without Reliable Funding, Violence Prevention Programs Are At Risk*, WAMU 88.5, (Aug. 31, 2020), (noting that COVID-19 has increased tension in many communities already impacted by the effects of systemic racism, and that “workers who are trying to address [gun violence] have more on their plate...working in some of the most challenging conditions you can imagine”), <https://wamu.org/story/20/08/31/without-reliable-funding-violence-prevention-programs-are-at-risk/>; Betsy Pearl, *Beyond Policing: Investing in Offices of Neighborhood Safety*, CENTER FOR AMERICAN PROGRESS, (Oct. 15, 2020), (finding that community-based intervention programs nationwide were particularly susceptible to “lapses in funding” resulting from short-term grants and political instability), <https://www.americanprogress.org/article/beyond-policing-investing-offices-neighborhood-safety/>.

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¹¹⁸ Marisa Iati, et al., *Fatal police shootings in 2021 set record since The Post began tracking, despite public outcry*, Wash. Post (Feb. 9, 2022), <https://www.washingtonpost.com/investigations/2022/02/09/fatal-police-shootings-record-2021/>.

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¹²⁴ *Farah v. Weyker*, 926 F.3d 492 (8th Cir. June 12, 2019).

¹²⁵ Bivens Act of 2021, H.R. 6185, 117th Cong. Sec. 2 (2021).

¹²⁶ State Edward Byrn Memorial Justice Assistance Grant (JAG) Program, FY 2021 Allocations. U.S. Department of Justice, Bureau of Justice Assistance. <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/FY21-State-JAG-Allocations.pdf> (visited on March 10, 2022); Connor Brooks, Kevin M. Scott, *Federal Deaths in Custody and During Arrest 2018 – 2019 – Statistical Tables*, U.S. Department of Justice, Bureau of Justice Statistics, Published September 2021. <https://bjs.ojp.gov/library/publications/federal-deaths-custody-and-during-arrest-2018-2019-statistical-tables>. (Despite 2014 reauthorization of the Death in Custody Reporting Act, which mandates local, state and federal law enforcement agencies report deaths in their custody, the only data publicly available are for federal deaths in custody and during arrest f2016 – 2019).

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¹²⁹ Robin Smyton, *How Racial Segregation and Policing Intersect in America*, TuftsNow (March 17, 2022) (describing a study that found “police reproduced historic patterns of institutional investment and protection in white neighborhoods, and neglect and suppression in Black neighborhoods.”), <https://now.tufts.edu/articles/how-racial-segregation-and-policing-intersect-america>.

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¹³³ See e.g., Testimony of NAACP Legal Defense & Edu'l Fund, Inc. and Center for Const'l. Rights before the NYC Council on the NYPD's Gang Takedown Efforts (June 13, 2018) https://web.archive.org/web/20181009111929/http://www.naacpldf.org/files/case_issue/City%20Council%20Testimony%20combined%206.13.18.pdf.

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¹⁴⁰ See Clair Garvey, *Garbage In, Garbage Out: Facial Recognition on Flawed Data*, GEORGETOWN CENTER ON LAW AND PRIVACY (2017) (highlighting additional examples of officer manipulation of facial recognition technology and citing NYPD, Real Time Crime Center FIS Presentation: Partial Face (Sept. 17, 2018)), <https://www.flawedfacedata.com>.

¹⁴¹ See e.g. Complaint at 1, *Williams v. City of Detroit*, No. 2:19-cv-12538 (E.D. Mich. Mar. 24, 2021), ECF No. 1 https://www.aclumich.org/sites/default/files/field_documents/001_complaint_1.pdf (lawsuit against the City of Detroit due to wrongful arrest of a Black man, using facial recognition technology); Kashmir Hill, *Another Arrest, and Jail Time, Due to a Bad Facial Recognition Match*, N.Y. TIMES (updated Jan. 6, 2021), <https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html>. See also Patrick Grother et al., *Face Recognition Vendor Test Part 3: Demographic Effects*, NATL. INST. STAND. TECHNOL. INTERAG. INTERN. REP. 8280, 2 (Dec. 2019), <https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf>; Nat'l Inst. of Standards & Tech., *NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software* (Dec. 19, 2019), <https://www.nist.gov/newsevents/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>.

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¹⁴⁴ George Joseph, *What Are License-Plate Readers Good For? Automatic plate-readers catch few terrorists or violent criminals, but do plenty of harm to low-income communities of color*, BLOOMBERG NEWS (Aug. 5, 2016), <https://www.bloomberg.com/news/articles/2016-08-05/license-plate-readers-catch-few-terrorists-but-lots-of-poorpeople-of-color>.

¹⁴⁵ Todd Feathers, *Gunshot-Detecting Tech Is Summoning Armed Police to Black Neighborhoods*, VICE (July 19, 2021), <https://www.vice.com/en/article/88nd3z/gunshot-detecting-tech-is-summoning-armed-police-to-black-neighborhoods?fbclid=IwAR3W9CjNa1QVLHk8JrutFG85RKIwHYcBAfuqTRVv5iSziwkh-uyC4sa43gg> (finding that ShotSpotter frequently generates false alerts and deployed almost exclusively in non-white neighborhoods).

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¹⁴⁷ See e.g., European Commission, *A European Approach to Artificial Intelligence* Wendy Lee, et al., *Garbage In, Gospel Out*, NACDL (Sept. 2021), <https://www.nacdl.org/getattachment/eb6a04b2-4887-4a46-a708-dbdaade82125/garbage-in-gospel-out-how-data-driven-policing-technologies-entrench-historic-racism-and-tech-wash-bias-in-the-criminal-legal-system-09142021.pdf> (appendix B lists overview of state and local legislation).

Appendix

DESCRIPTIVE ANALYSIS
OF HOMICIDE TRENDS IN
61 MAJOR U.S. CITIES,
2015-2021

LDF

**THURGOOD
MARSHALL
INSTITUTE**

Kesha Moore PhD, Ryan Tom, Jackie O'Neil

EXECUTIVE SUMMARY

While homicides in most U.S. cities increased in 2020, there is substantial variation in the size and direction of changes in homicides. Our findings demonstrate that neither bail reform practices nor changes in prosecutor policies can adequately explain the increase in homicides. Economic insecurity and income equality, both of which have been exacerbated by the COVID-19 pandemic, most clearly account for the different trajectories cities experienced following the homicide spike in 2020.

Our research analyzes homicide trends in 61 major U.S. cities. We drew our sample from the 100 most populous cities based on 2019 American Community Survey data. We collected homicide data from reports published by the local or state police department and supplemented when needed with data from Major Cities Chiefs Association (MCAA) reports. From the initial sample of 100 cities, we then selected cities with continuous annual reporting of homicide data from 2015 to 2021. This process resulted in a final sample of 61 U.S. cities for our analysis.

The 61 major cities were then examined for evidence of cash bail reform or the changes in prosecutor policies. Cities that took proactive steps to limit cash bail and reform the pretrial system were included in the “Bail Reform” sample. Jurisdictions that had elected a progressive prosecutor into office during the analysis’ timeframe were included in the “Progressive Prosecutor,” sample. To operationalize the term “Progressive Prosecutor,” we reviewed District Attorney candidate profiles for any of the following criteria: discussion of harms with the current criminal justice system; a campaign platform calling for decarceration; refusing to prosecute certain types of crimes as a form of harm reduction (e.g. sex work or marijuana possession), enhancing conviction integrity units, and/or refusing to prosecute cases associated with law enforcement officers that have a history of dishonesty or corruption. Prosecutors articulating any of these positions, were identified as “Progressive Prosecutors,” for the purposes of this analysis.

Addressing the root causes of violence by promoting housing and economic stability seem to be the most promising avenues for reducing the number of homicides, particularly within cities with higher levels of income inequality.

Descriptive Analysis of Homicide Trends in 61 Major U.S. Cities, 2015-2021

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National Crime Pattern

Crime, including violent crime, has had a relatively consistent and steady decline over the past 30 years. There has been a sharp and continuous decrease in crime since 1990's.¹ Social scientists do not have a clear explanation for what caused the decline in crime because factors influencing crime include a number of variables, and it is unlikely to have one singular cause. Yet, research suggests it cannot be attributed to increases in incarceration. A 2015 report found that ,since 2000, increased incarceration has had an almost zero effect on crime.² CA, MI, NJ, NY, TX have successfully reduced imprisonment while crime rates continue to fall.³

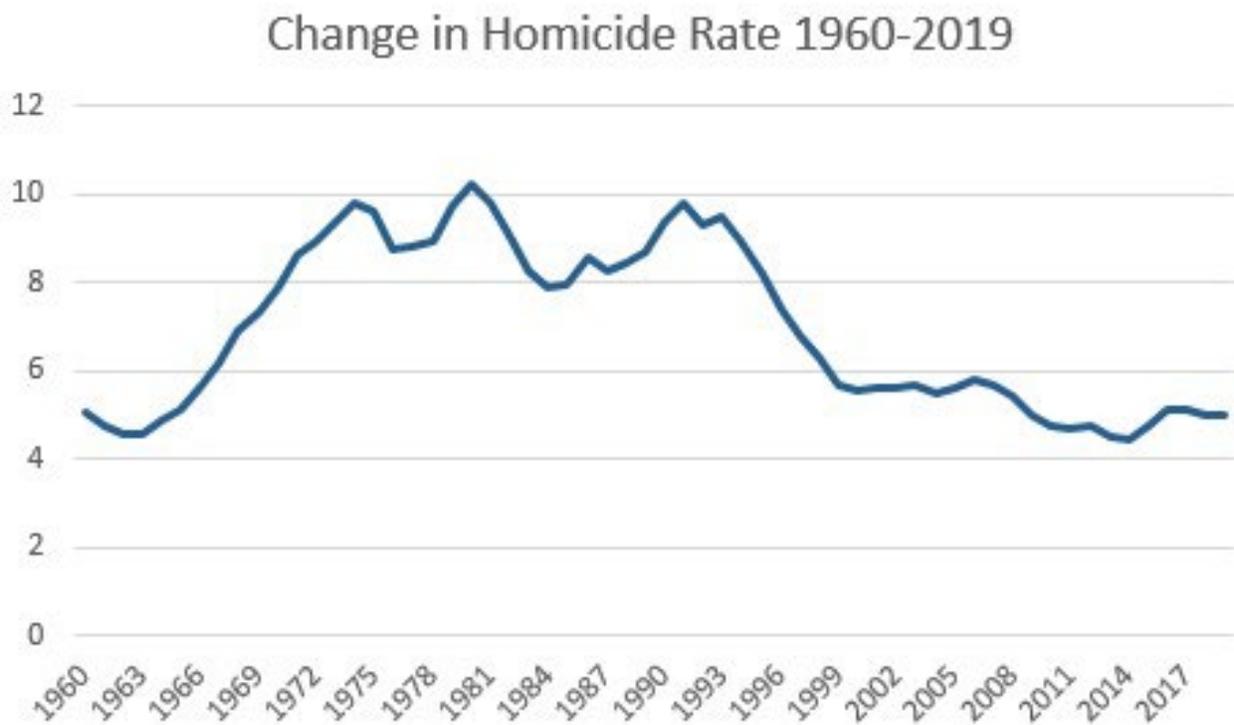


Figure 1. National homicide rate 1960-2018 based on research from [Dr. Rohman](#)⁴

The COVID-19 pandemic correlates with a spike in homicides across the nation, but the magnitude and consistency of that spike varies based on the local context¹. Our analysis reveals a spike in homicides in 2020 in all but one (Virginia Beach) of the cities in our sample. In this

¹ See Table 1 for a complete list of cities in the sample.

analysis we attempt to describe the magnitude of the 2020 spike in homicides and explain what it means for the future.

Is the 2020 spike in homicides a prediction of continual increases in homicides? Is the 2020 homicide spike followed by a more moderate increase that is consistent with variations in homicides during the pre-pandemic years? Is the 2020 spike in homicides followed by a decrease in homicides that approach the numbers of homicides during the pre-pandemic years? All three patterns are present in the data. Economic insecurity and income equality, both of which have been exacerbated by the COVID-19 pandemic, most clearly account for the different trajectories cities experience following the homicide spike in 2020.

Crime Wave and Criminal Justice Reform

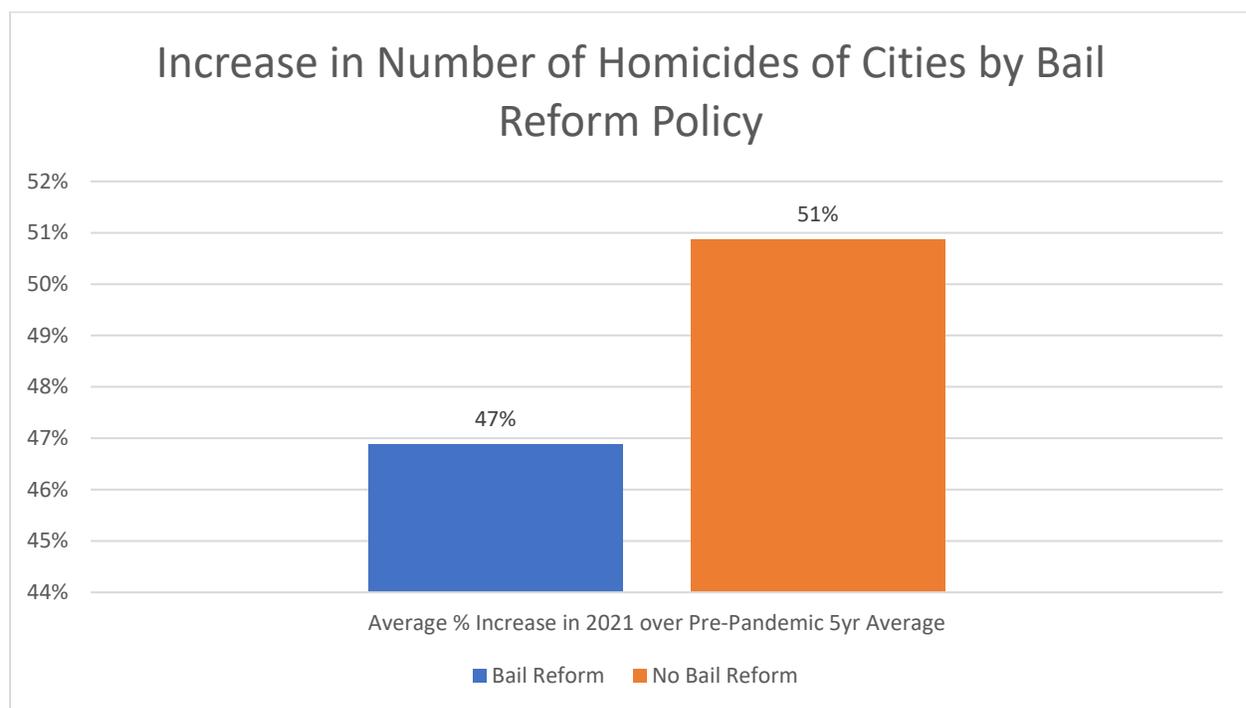


Figure 2. Changes in number of homicides for 5-year average (2015-2019) based on whether cities have experienced bail reform within the last 5 years; N=61

Whether a city requires cash bail or eliminates cash bail does not explain the variation in a city's 2020 homicide spike. In 2021, cities with bail reform experienced a 47% increase in homicides compared to their 5-year pre-pandemic average, and cities without bail reform experienced a 51% increase. Thus, localities with bail reform are slightly less likely to have an increase in homicide compared to pre-pandemic five-year averages. Bail reform itself does not seem to be a strong predictor or explanatory variable in understanding which cities are experiencing an

increase in homicides and which are not. Studies that compare crime rates before and after implementing bail reform within a locality have shown no impact on crime rates or an increase in public safety after implementing bail reform.⁵ The money bail system is an unjust, unsafe, and expensive system. Research shows that we can successfully decarcerate our jails without compromising public safety.

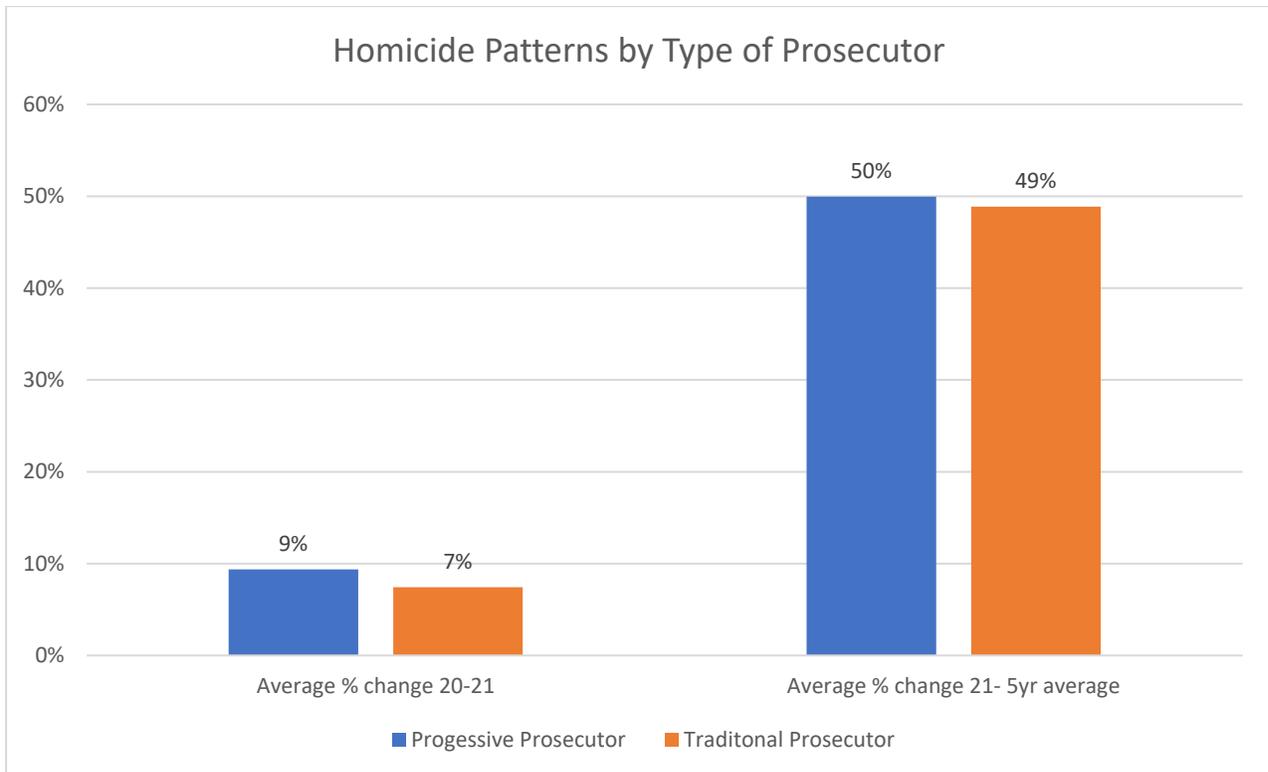


Figure 2. Changes in crime rate based on whether cities have progressive prosecutors, N=61

The impact of prosecutorial policies seems to have little to no impact on the increase in homicides. Cities with a prosecutor described as “progressive” experienced a 9% growth in homicides in 2021 compared to a 7% increase from those with more traditional prosecutors (see Table 1 in the Appendix for criteria of “progressive prosecutor”). These 2021 homicide rates reflect a 50% increase over the pre-pandemic 5-year average, compared to a 49% increase for traditional prosecutors. The data documents cities experiencing small increases in homicide, large increases in homicide, and decreases in homicide have progressive prosecutors and traditional prosecutors in each of those categories.

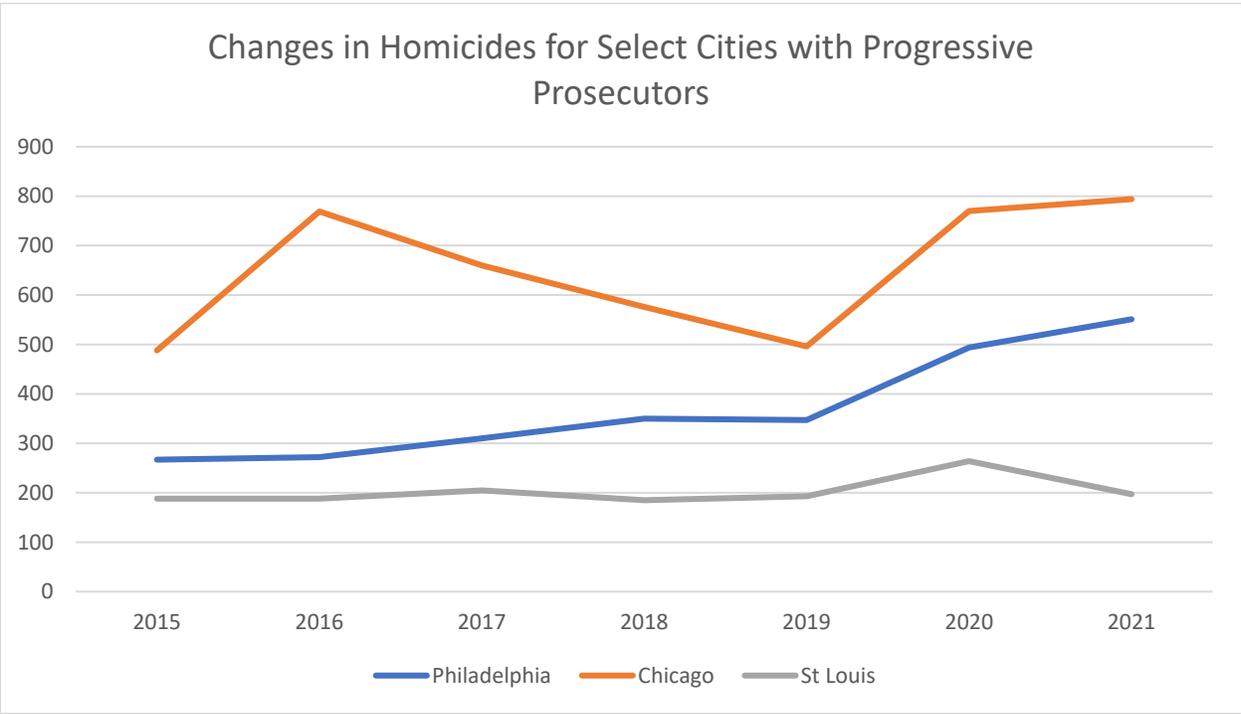


Figure 3. Homicide Pattern of Three Cities with Progressive Prosecutors, N=3.

Figure 4 provides a more in-depth examination on homicide trends in cities with progressive prosecutors. Cities with progressive prosecutors had homicide trends consistent with the three 2021 patterns we have described in this analysis: cities with small increases, large increases, and decreases in homicide. Note that there is a progressive prosecutive in each category of city: cities with small increases in 2021 (Chicago), cities with above average increases in 2021 (Philadelphia), cities with decreasing homicides in 2021 (St. Louis). Because all three cities have progressive prosecutors but varying homicide trends, it is incorrect to claim that the mere presence of progressive prosecutors results in increased homicides.

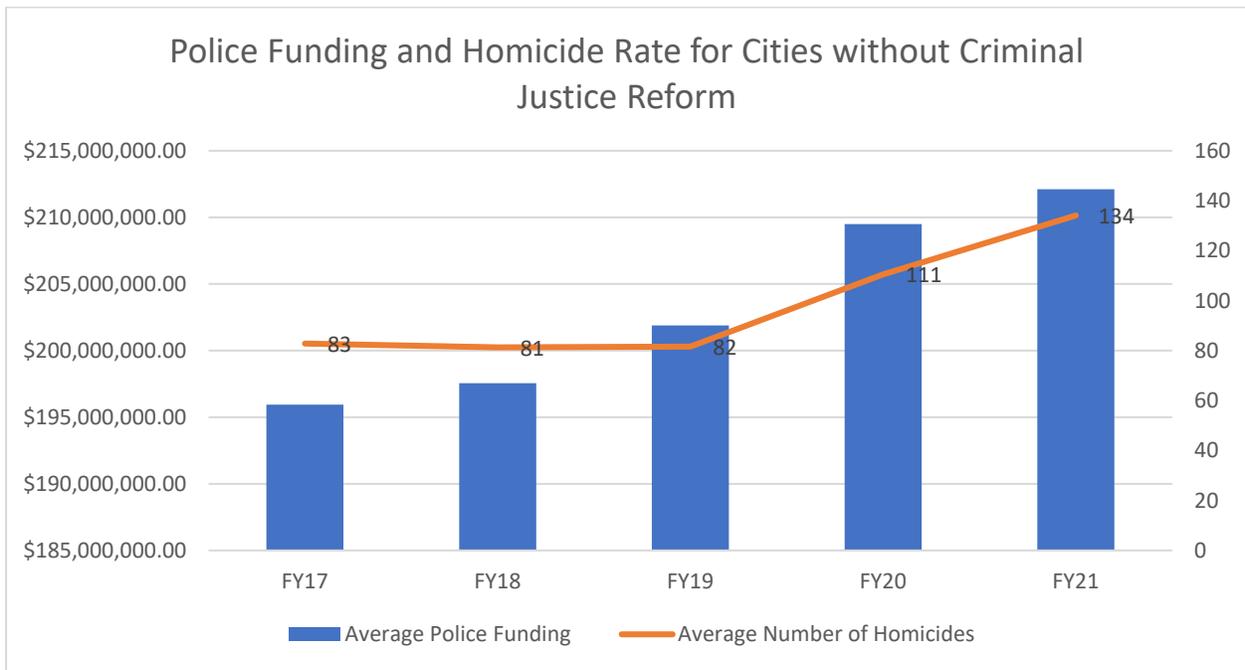


Figure 5. Number of Homicides and Police Funding for 10 Cities with Large Increases in 2021 Homicides without bail reform or progressive prosecutors. N=10

More law enforcement officers are not the answer to the 2020 spike in homicides. There are several cities experiencing substantial increases in homicide for 2020 and 2021 that continue to require cash bail and continue traditional prosecution policies. Figure 5 shows the pandemic increase in homicides for these cities despite rapid increases in police funding. According to the [National Police Funding Database](#), Little Rock, AR had more than twice the number of police per 1,000 people as other similarly sized cities and Richmond, VA had almost three times the number of police officers.⁶ Despite such an overrepresentation of police, Richmond’s 2021 homicides were 60% above the five-year pre-pandemic average and Little Rock’s homicide increase was 73% above the five-year pre-pandemic average. The 10 cities reflected in Figure 5 have traditional prosecutors, no bail reform, and spend an average of \$2.1 million annually in policing. Yet, their average number of homicides increased from 82 into 2019 to 111 in 2020, (representing a 35% increase) and to 134 in 2021 (representing an additional 21% increase).

Crime Wave and Pandemic Induced Instability

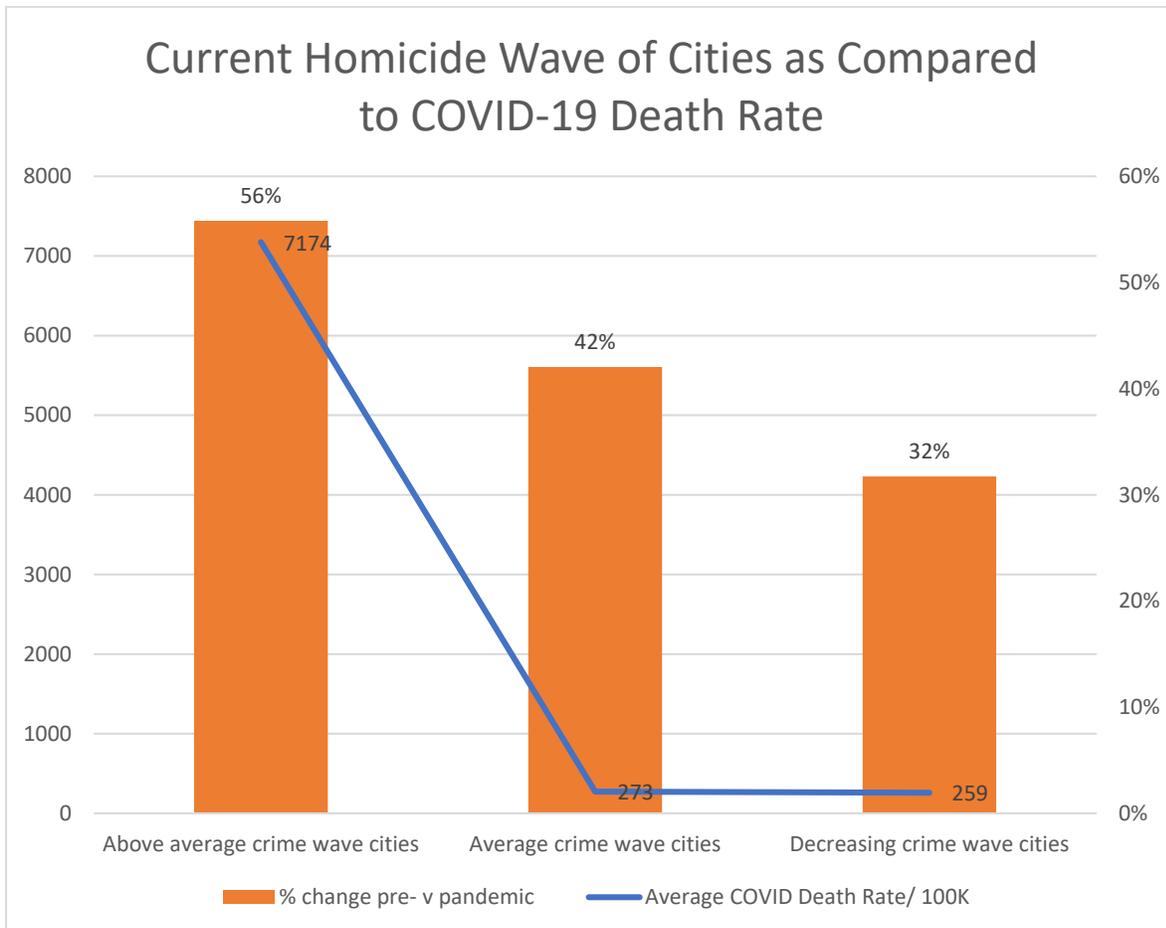


Figure 6. Changes in the two-year average number of homicides before the pandemic (2018 and 2019) and the two year-average number of homicides after the start of the pandemic (2020 and 2021) compared to the date death rate from COVID-19 (March 2020-December 2021).

Although the presence or absence of criminal justice reform does not explain the variation in a city's rate in the spike in homicides, social and economic destabilization measures associated with the pandemic do. In a study investigating the impact of eviction on crime rates in Philadelphia, researchers found that, while controlling for poverty, neighborhoods with higher eviction rates also had higher rates of homicide, robbery, and burglary.⁷ Figure 6 shows the strong relationship between pandemic-induced destabilization and homicide rates. Using CDC data from March 2020 through December 2021, cities with the highest year-to-date death rate from COVID-19 are also experiencing the highest increases in homicide during the pandemic. Particularly for Black and Latinx communities that were disproportionately impacted by the COVID-19 pandemic, the highest death rates were not only among the elderly but rather

working-age populations.⁸ This could be attributed to the high numbers of Black and Latinx workers in service jobs deemed “essential” and forced to work during the height of the pandemic.⁹ The death of these individuals is not only an emotional loss but often leaves families more financially and socially unstable from the loss of a worker and primary caretaker.

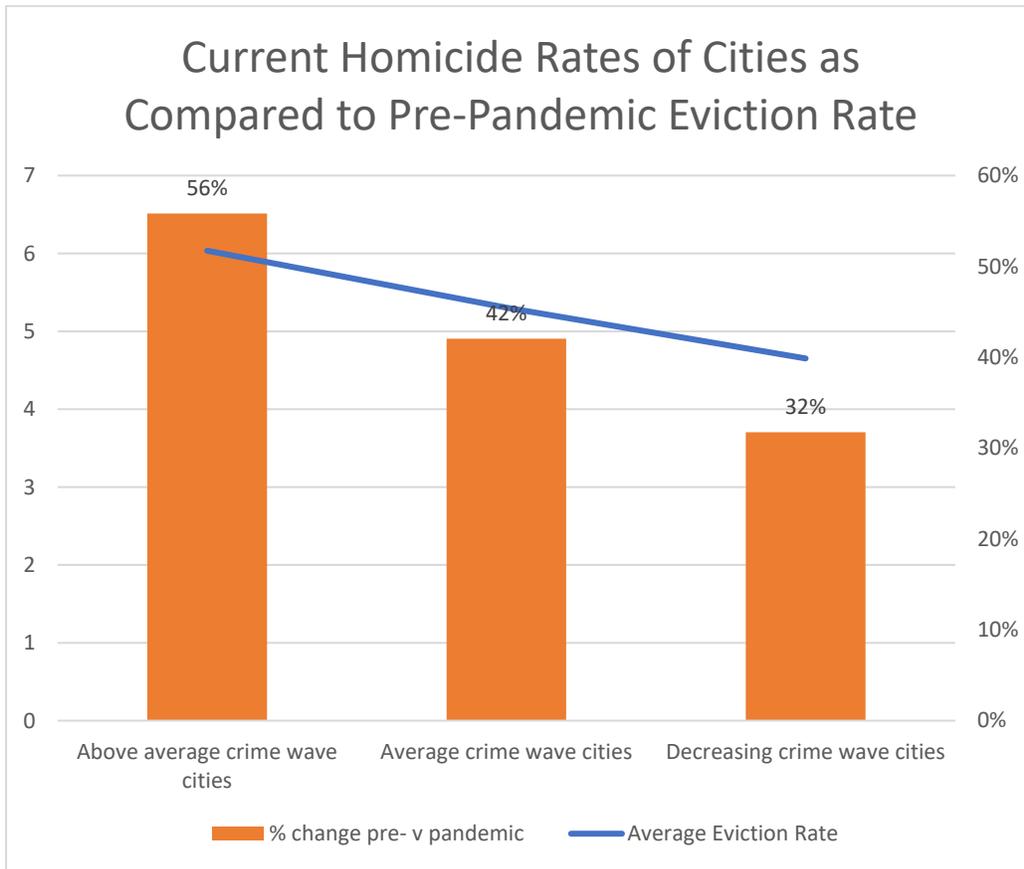


Figure 7. Changes in the two-year average number of homicides before the pandemic (2018 and 2019) and the two year-average number of homicides after the start of the pandemic (2020 and 2021) compared to 2019 eviction rates.

Housing instability is another form of economic and social instability aggravated by the pandemic. Although there were various federal, state, and local moratoria on evictions during the beginning of the pandemic, many households were still evicted, and this number continues to increase. According to data from Princeton’s Eviction Lab, cities with the highest increases in homicide during the pandemic also have the highest average eviction rate preceding the pandemic.¹⁰ Likewise, cities with the lowest increases in homicides during the pandemic have the lowest average eviction rate before the pandemic.

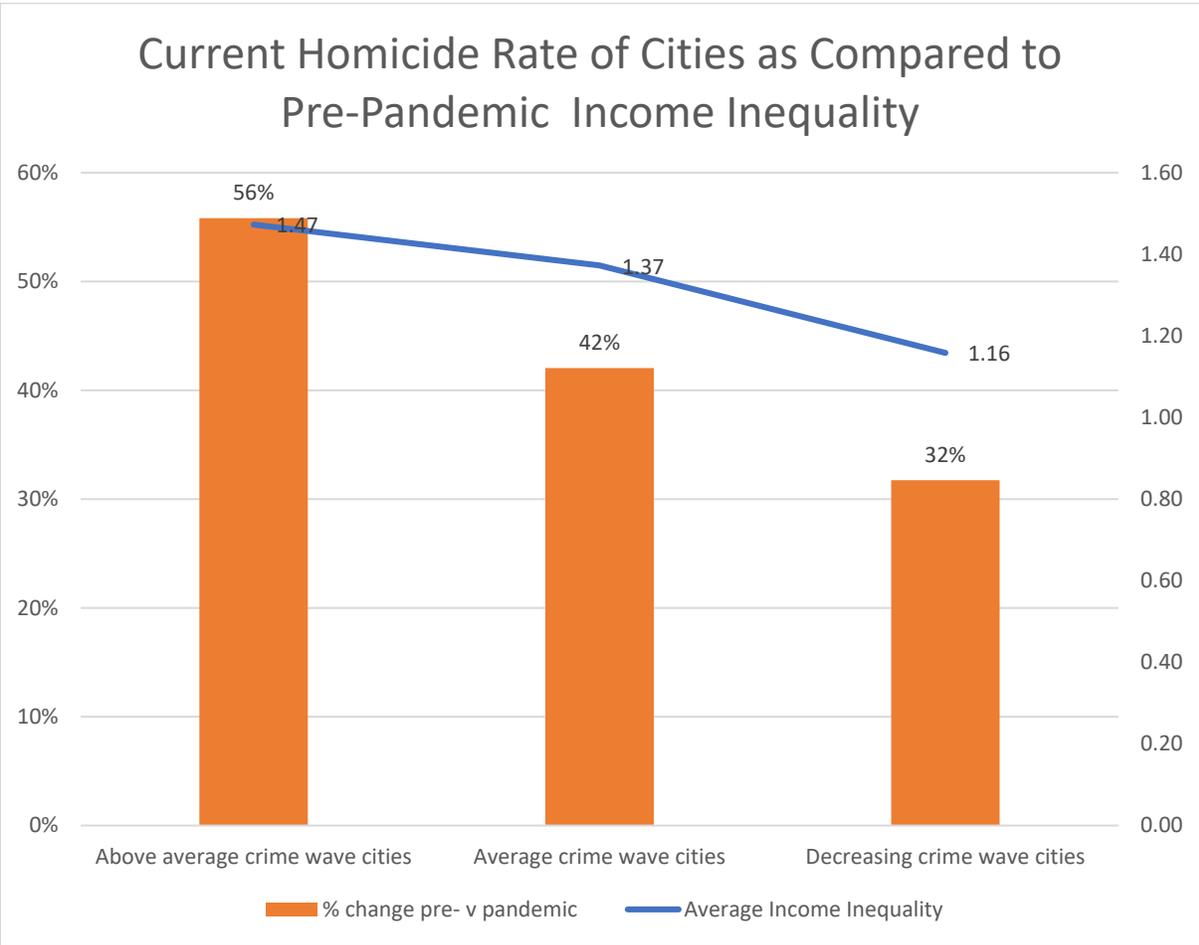


Figure 8. Changes in the two-year average number of homicides before the pandemic (2018 and 2019) and the two year-average number of homicides after the start of the pandemic (2020 and 2021) compared to the 2019 average income inequality of each group of cities.

Income inequality is another variable that helps us understand the divergent trajectories of cities in the most recent homicide spike. Income inequality is a robust predictor of crime above and beyond the influence of poverty.¹¹ Decreasing inequality by increasing government spending by \$10,000/poor person is associated with a 16% decrease in the homicide rate.¹² Figure 8 also shows a relationship between current homicide patterns and the degree of income inequality in specific localities. Cities with the highest increase in homicides during the pandemic also had the highest income inequality in 2019. Using the interquartile range divided by the median income as our measure of income inequality within cities, we see those cities with the highest increase in homicides during the pandemic had a degree of income inequality that is 1.47 times the median income. Likewise, cities with the lowest homicide spike have the lowest levels of income inequality- 1.16 times with median income.

Appendix. U.S. Cities in the Research Sample

Cities	Pandemic Homicide Average (2020 & 2021)	Pre-Pandemic Homicide Average (2019 & 2018)	Presence of Bail Reform	Presence of Progressive Prosecutor
Homicide Increases Above National Average				
Austin	63.5	33.5		X
Rochester	66	30	X	
Portland	72.5	31		X
Albuquerque	95	91	X	
Las Vegas	124.5	103		
Richmond	78	55.5		
Hartford	29.5	21.5	X	
Winston-Salem	33.5	25		
Tucson	74.5	50		X
Shreveport	74.5	43.5		
New Haven	22.5	11	X	
Louisville	165.5	81		
Oakland	112.5	71	X	
Virginia Beach	11	15		
Houston	442	284.5		
Toledo	66.5	38.5		
San Francisco	52	43.5	X	X

Little Rock	59.5	43		
Indianapolis	232	157.5		
Pittsburgh	49.5	45		
Minneapolis	90	41	X	
Washington	212	163	X	
Los Angeles	379	258.5	X	X
Aurora	41.5	23.5		
New Orleans	206.5	133		X
Philadelphia	522.5	348.5	X	X
Flint	64	38.5		
Lexington	35.5	26.5		
Homicide Increase Consistent with National Average				
Savannah	32	26		X
New York	478	307	X	X
Milwaukee	208	113		
Newark	57	66	X	
Chicago	782	536	X	X
Fort Wayne	38.5	33		
Fort Worth	116.5	64.5		
Denver	95.5	65		
Baltimore	336.5	329	X	X
Atlanta	157.5	94		X

Charleston	16	9		
Long Beach	37	32	X	
Salt Lake City	18	12.5		
Cities with Decreasing Homicides				
Memphis	285	191		
Cincinnati	92.5	67		
Cleveland	173.5	121.5		
Nashville	109.5	83.5		
Detroit	316.5	268		X
Albany, GA	16.5	13.5		
Syracuse	30	22	X	
Buffalo	62.5	50.5	X	
Wichita	56.5	44		
San Antonio	122.5	106		X
Kansas City	168	141.5		
Dallas	237	185		X
Omaha	34.5	22.5		
Charlotte	108	82.5		
Arlington	21	12		
San Jose	46.5	30	X	
Seattle	46.5	34		X
Jacksonville	146	137.5		

St Louis	230.5	189	X	X
Boston	48	46.5	X	X

Endnotes:

¹ *What Caused the Crime Decline?* Lauren-Brooke Eisen, Oliver Roeder, and Julia Bowling. The Brennan Center for Justice. (2/12/15). Link: <https://www.brennancenter.org/our-work/research-reports/what-caused-crime-decline>

² *Ibid.*

³ *Ibid.*

⁴ *The Great American Mystery Story: Why Did Crime Decline?* John Roman, PhD, External Processing. (2/20/21). Link: https://johnkroman.substack.com/p/the-great-american-mystery-story?utm_source=url&s=r

⁵ *Releasing people pretrial doesn't harm public safety*, Tiana Herring. Prison Policy Initiative. (11/17/20). Link: <https://www.prisonpolicy.org/blog/2020/11/17/pretrial-releases/>

⁶ National Police Funding Database, Little Rock, AK and Richmond, VA Pages. Links: <https://policefundingdatabase.org/explore-the-database/locations/arkansas/little-rock/> and <https://policefundingdatabase.org/explore-the-database/locations/virginia/richmond/>

⁷ *Evidence from Philadelphia shows that eviction destabilizes communities and may lead to increased crime rates in US cities*. Daniel Semenza. LSE Phelan US Centre. Link: <https://blogs.lse.ac.uk/usappblog/2021/09/10/evidence-from-philadelphia-shows-that- eviction-destabilizes-communities-and-may-lead-to-increased-crime-rates-in-us-cities/>

⁸ *Race gaps in COVID-19 deaths are even bigger than they appear*. Tiffany N. Ford, Sarah Reber, and Richard V. Reeves. The Brookings Institute. (06/16/2020). Link: <https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/>; *Working-age Hispanics at highest risk of dying from COVID-19, by far*. Leigh Hopper. USC News. (4/5/2021). Link: <https://news.usc.edu/184155/working-age-foreign-born-hispanic-covid-19-deaths-usc-study/>

⁹ *Structural Racism is a Public Health Crisis: Addressing Racial Disparities in COVID-19*. Kesha Moore. The Thurgood Marshall Institute. (06/2020). Link: <https://tminstituteldf.org/addressing-racial-disparities-in-covid-19/>

¹⁰ *Ibid.* at 7

¹¹ *Intra- and inter-neighborhood income inequality and crime*, Thomas D. Stucky, Seth B. Payton & John R. Ottensmann. *Journal of Crime and Justice*, 39:3, 345-362. DOI: 10.1080/0735648X.2015.1004551

¹² *Spending on social and public health services and its association with homicide in the USA: an ecological study*. Sipsma HL, Canavan ME, Rogan E, et al. *BMJ Open*. 2017;7:e016379. doi:10.1136/bmjopen-2017-016379