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Public Trust and Law Enforcement— A Discussion for Policymakers

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Public Trust and Law Enforcement— A Discussion for Policymakers

Several high-profile incidents where there have been complaints of the use of excessive force against individuals and subsequent backlash in the form of civil unrest have generated interest in what role Congress could play in facilitating efforts to build trust between the police and the people they serve. This report provides an overview of the federal government's role in local police-community relations.

According to polling conducted by Gallup, public confidence in the police declined in 2014 and 2015 after several high-profile incidents in which men of color were killed during confrontations with the police. Confidence in the police rebounded back to the historical average in 2017 before declining again in 2018 and 2019. (Gallup data are not yet available for 2020). However, certain groups, such as people of color, people age 34 or younger, and individuals who identify as liberal say they have less confidence in the police than whites, people over the age of 35, and people with conservative political leanings.

Some observers believe that a decline in public trust of the police is at least partially attributable to state and local police policies and practices. Federalism limits the amount of influence Congress can have over state and local law enforcement policy. General policing powers are the purview of states, but Congress can try to influence state and local policing policies by attaching conditions to grant funds.

The federal government might also choose to address issues related to police-community relations and accountability through (1) federal efforts to collect and disseminate data on the use of force by police, (2) statutes that allow the federal government to investigate instances of alleged police misconduct, and (3) the influence the Department of Justice (DOJ) has on state and local policing through its role as a public interest law enforcer, policy leader, and convener of representatives from law enforcement agencies and local communities to discuss policing issues.

There are several options policymakers might consider should they choose to play a role in facilitating better police-community relations, including the following:

- placing conditions on federal funding to encourage law enforcement agencies to adopt policies that promote better community relations;
- promoting efforts to collect data on the use of force by law enforcement, including evaluating potential overlap between DOJ programs that currently collect the data;
- providing grants to law enforcement agencies so they can purchase body-worn cameras for their officers;
- taking steps to facilitate investigations and prosecutions of excessive force by amending 18 U.S.C. Section 242 to reduce the mens rea standard in federal prosecution, enhance DOJ civil enforcement under 34 U.S.C. Section 12601, or place conditions on federal funds to promote the use of special prosecutors at the state level;
- funding Community Oriented Policing Services (COPS) grants so law enforcement agencies can hire more officers to engage in community policing activities; and
- using the influence of congressional authority to affect the direction of national criminal justice policy.

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Several high-profile incidents where police officers have been involved in the deaths of individuals have reinvigorated a discussion about how the police use force against minorities and the tension that exists between police officers¹ and minority communities. The national debate about how police use force and police-community relations might generate interest among policymakers about what role Congress could play in facilitating efforts to build trust between the police and the people they serve, as well as police accountability for any excessive use of force.

The report starts with an overview of data on public opinion of the police. It then provides a brief discussion of federalism and why Congress does not have the authority to directly change state and local law enforcement practices. Next, the report reviews federal efforts to collect data on law enforcement agencies' use of force and federal authority to investigate instances of police misconduct. This is followed by a review of what role DOJ might be able to play in facilitating improvements in police-community relations or making changes in state and local law enforcement agencies' policies. The report concludes with policy options for Congress to consider should policymakers decide to exert some influence on state and local law enforcement agencies' policy.

The Parameters of This Report

This report provides a brief overview of police-community relations and how policymakers might be able to promote improved relationships between the police and their constituents, especially people of color. The report focuses solely on the relationship between the police and the communities they serve. It does not include a discussion of the level of trust in or perceived bias by other parts of the criminal justice system (e.g., the grand jury system, prosecutions, or corrections). The report also focuses on issues related to state and local law enforcement agencies and not federal law enforcement agencies. It focuses on state and local law enforcement agencies because congressional interest in law enforcement reform has largely centered on what role Congress might play in promoting a better relationships between state and local law enforcement agencies and their communities and how Congress could promote more accountability for state and local law enforcement officers' use of excessive force.

Public Perception of the Police

Gallup, whose polling tracks confidence in a variety of institutions, found that 53% of Americans said they had a “great deal” or “quite a lot” of confidence in the police in 2019 (see **Figure 1**).² Only the military (73%) and small business (68%) had greater percentages of respondents voicing confidence in the respective institutions than the police in 2019.³

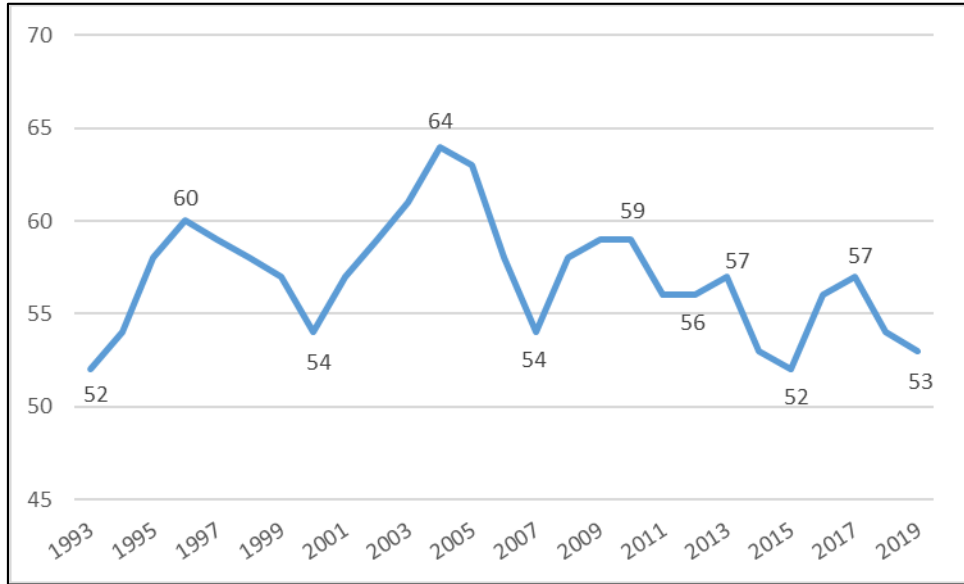
¹ Police departments and police officers are a subset of all law enforcement agencies, which include sheriff's offices, state law enforcement agencies (e.g., state troopers), and special-jurisdiction law enforcement agencies (e.g., transit police or university police departments). However, *police* and *law enforcement agencies* will be used interchangeably in this report.

² Polling data from 2019 is the most recent available. Justin McCarthy, “U.S. Confidence in Organized Religion Remains Low,” *Gallup*, July 8, 2019. Full data are linked in the article at <https://news.gallup.com/file/poll/260033/190708ConfidenceInstitutions.pdf>.

³ *Ibid.*

Figure 1. Overall Confidence in the Police, 1993-2019

Percentage who report a “great deal” or “quite a lot” of confidence in the police



Source: Justin McCarthy, “U.S. Confidence in Organized Religion Remains Low,” *Gallup*, July 8, 2019. Full data are linked in the article at <https://news.gallup.com/file/poll/260033/190708ConfidenceInstitutions.pdf>.

Notes: Data markers in the figure indicate points at which the reported confidence levels switch directions.

Confidence in the police varies by race, gender, political ideology/party affiliation, age, and education level (see **Table 1**). For example, whites were more likely to say that they have a “great deal” or “quite a lot” of confidence in the police than non-whites. Variability in confidence is also evidenced among people who identify as conservative, moderate, or liberal. Conservatives are more likely than liberals and moderates to have confidence in the police. In addition, a smaller proportion of people ages 18-34 said they were confident in the police compared to people ages 35-54 and people 55 and older, with the 55 and older group having the greatest proportion of people saying that they had a “great deal” or “quite a lot” of confidence in the police.

Table 1. Confidence in the Police, by Demographic Group, 2019

Percentage who report a “great deal” or “quite a lot” of confidence in the police

Demographic Group	
Race	
White	59%
Non-white	40%
Gender	
Male	56%
Female	49%
Political Ideology	
Liberal	33%
Moderate	46%
Conservative	75%

Demographic Group	
Age	
18-34	39%
35-54	53%
55 or older	63%
Education	
High school grad or less	48%
Some college	54%
College grad	55%

Source: CRS presentation of data from Justin McCarthy, “U.S. Confidence in Organized Religion Remains Low,” *Gallup*, July 8, 2019; full data are linked in the article at <https://news.gallup.com/file/poll/260033/190708ConfidenceInstitutions.pdf>.

A poll conducted by National Public Radio, the Public Broadcasting Service, and the Marist Institute for Public Opinion from June 2 to June 3, 2020 (which was after George Floyd’s death in Minneapolis) found that 63% of respondents have a great deal or a fair amount of confidence that the police treat blacks and whites equally.⁴ In comparison, 71% of respondents had a great deal or fair amount of confidence that the police treat blacks and whites equally when they were asked a similar question in December 2014. Perceptions of how the police treat blacks and whites varies by race/ethnicity. In the June 2020 poll, 70% of white respondents had a great deal or fair amount of confidence that the police treat blacks and whites equally while 31% of African Americans and 63% of Latinos had the same amount of confidence that the police treat blacks and whites similarly.

Federalism and Congressional Influence over State and Local Law Enforcement Policy

Policymakers may have an interest in legislation that aims to help increase trust between state and local police and certain communities. However, federalism principles limit the influence Congress has over state and local law enforcement policies.

Overview of Federalism

Federalism describes the intergovernmental relationships between and among federal, state, and local governments, with the federal government having primary authority in some areas and state and local governments having primary authority in other areas.⁵ The Constitution establishes a “system of dual sovereignty between the States and the Federal Government.”⁶ Under the Tenth Amendment, “[t]he powers not delegated to the United States by the Constitution, nor prohibited

⁴ Polling data available at http://maristpoll.marist.edu/wp-content/uploads/2020/06/NPR_PBS-NewsHour_Marist-Poll_USA-NOS-and-Tables_2006041039.pdf.

⁵ James Q. Wilson and John J. Dilulio, Jr, *American Government Institutions and Policies* (Lexington, MA: D.C. Heath and Company, 1995), p. A-49.

⁶ *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991).

by it to the States, are reserved to the States respectively, or to the people.”⁷ Thus, a state generally has broad authority to enact legislation, including to regulate the state’s and its localities’ law enforcement approaches.⁸ In contrast, Congress may only enact legislation under a specific power that is enumerated in the Constitution and cannot use its power to intrude impermissibly on the sovereign powers of the states.⁹ In this vein, the Supreme Court has recognized that there are certain subjects that are largely of a local concern where states “historically have been sovereign,” such as issues related to the family, crime, and education.¹⁰

Because of these principles, the Supreme Court has recognized various limitations on Congress’s power to legislate in areas that fall within a state’s purview, observing that congressional power is “subject to outer limits,” and that Congress must take care not to “effectually obliterate the distinction between what is national and what is local.”¹¹ In addition, under the anti-commandeering doctrine, Congress is prohibited from passing laws requiring states or localities to adopt or enforce federal policies.¹² Although these principles constrain Congress’s power, it can rely on its enumerated powers to regulate in areas it could not otherwise reach.¹³ The spending power and Section 5 of the Fourteenth Amendment are two of the most relevant authorities that Congress has used in the past to address local law enforcement issues.

Spending Power and Regulating Law Enforcement Activities

The Spending Clause empowers Congress to “lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.”¹⁴ The Supreme Court has held that incident to the spending power, Congress may further its policy objectives by attaching conditions on the receipt of federal funds.¹⁵ These conditions often involve compliance with statutory or administrative directives and can apply to any entity receiving federal funds, including states and localities. In *South Dakota v. Dole*, for example, the Supreme Court upheld as a valid exercise of Congress’s spending power a statute that conditioned the grant of federal highway funds to any state upon that state prohibiting the legal purchase or possession of alcohol by individuals less than 21 years old.¹⁶

There are, however, four limitations on Congress’s authority to attach conditions to federal funds.¹⁷ First, a funding condition must be “in pursuit of the general welfare.”¹⁸ However, courts afford Congress substantial deference in determining what expenditures are “intended to serve

⁷ U.S. CONST. amend. X.

⁸ See *Bond v. United States*, 572 U.S. 844, 854 (2014).

⁹ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S.Ct. 1461, 1467 (2018) (“The Constitution confers on Congress not plenary legislative power but only certain enumerated powers.”); *United States v. Morrison*, 529 U.S. 598, 607 (2000) (“Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution.”).

¹⁰ *United States v. Lopez*, 514 U.S. 549, 564 (1995).

¹¹ *Ibid.* at 557.

¹² *New York v. United States*, 505 U.S. 144, 188 (1992).

¹³ *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (“[O]bjectives not thought to be within Article I’s enumerated legislative fields ... may nevertheless be attained through the use of the spending power and the conditional grant of federal funds.”) (internal citations and quotations omitted).

¹⁴ U.S. CONST. art. I, §8, cl. 1.

¹⁵ *Dole*, 483 U.S. at 206.

¹⁶ *Ibid.* at 211-212.

¹⁷ See CRS Report R45323, *Federalism-Based Limitations on Congressional Power: An Overview*, pp. 28-35.

¹⁸ *Dole*, 483 U.S. at 207.

general public purposes.”¹⁹ Second, if Congress intends to place conditions on federal funds, it must do so “unambiguously” so that states can knowingly choose whether or not to accept the funds.²⁰ Third, conditions on federal funding must be related or “germane” to “the federal interest in particular national projects or programs.”²¹ Fourth, other constitutional provisions may bar the conditions placed on the grant of federal funds. For instance, Congress may not condition a monetary grant on “discriminatory state action or the infliction of cruel and unusual punishment.”²² Relatedly, conditions on federal funding are unconstitutional when they become coercive to the point that “pressure turns into compulsion” or commandeering.²³ For example, in *National Federation of Independent Business (NFIB) v. Sebelius*, the Supreme Court held that a provision in the Affordable Care Act that withheld all Medicaid grants from any state that refused to accept expanded Medicaid funding was unconstitutionally coercive because it threatened to terminate “significant independent grants” that were already provided to the states.²⁴

Courts have rarely used these spending power limitations to invalidate conditions placed on the receipt of federal funds.²⁵ *NFIB* remains the only instance in the modern era of the Supreme Court invalidating an exercise of the congressional spending power.²⁶ Post-*NFIB* Spending Clause challenges have largely been unsuccessful in the lower courts.²⁷ As a result, in practice Congress has faced relatively few limitations on its use of the spending power to impose conditions on federal funds to further its policy objectives.

Section 5 of the Fourteenth Amendment and Regulating Law Enforcement Activities

The Fourteenth Amendment, in relevant part, provides that no state shall “deprive any person of life, liberty, or property, without due process of law” or “deny to any person within its jurisdiction the equal protection of the laws.”²⁸ The Supreme Court has interpreted the substantive component of the Due Process Clause as incorporating against state actors nearly all the rights found in the

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.* at 210.

²³ *Ibid.* at 211.

²⁴ *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 580 (2012).

²⁵ Aziz Z. Huq, *Tiers of Scrutiny in Enumerated Powers Jurisprudence*, 80 U. CHI. L. REV. 575, 599 (2013) (observing that the Supreme Court has generally “declined to enforce ‘direct’ limits on the Spending Power”); see also Jonathan H. Adler and Nathaniel Stewart, *Is the Clean Air Act Unconstitutional? Coercion, Cooperative Federalism and Conditional Spending After NFIB v. Sebelius*, 43 *ECOLOGICAL Q.* 671, 700 (2016); (arguing that the “*NFIB* plurality did not open a new line of attack against spending power statutes.”).

²⁶ Andrew B. Coan, *Judicial Capacity and the Conditional Spending Paradox*, 2013 *WIS. L. REV.* 339, 346 (2013) (“Prior to *NFIB*, *Butler* was the only time the Supreme Court ever invalidated an exercise of the congressional spending power.”).

²⁷ See, for example, *Miss. Comm’n on Env’tl. Quality v. EPA*, 790 F.3d 138, 175 (D.C. Cir. 2015) (rejecting the plaintiff’s position that the “Clean Air Act’s sanctions for noncompliant states impose such a steep price that State officials effectively have no choice but to comply”); *Texas v. EPA*, 726 F.3d 180, 197 (D.C. Cir. 2013) (rejecting the argument that the challenged federal law was of the “same magnitude and nature as the Medicaid expansion provision [at issue in *NFIB*] that would strip over 10 percent of a State’s overall budget”) (internal citations and quotations omitted); *Tennessee v. United States Dep’t of State*, 329 F. Supp. 3d 597, 626-29 (W.D. Tenn. 2018) (rejecting the argument that the threatened loss of federal Medicaid funding to coerce support of the federal refugee program was comparable to the program at issue in *NFIB*).

²⁸ U.S. CONST. amend. XIV.

Bill of Rights, including those that pertain to criminal procedure and regulate the conduct of the police.²⁹ In turn, Section 5 of the Fourteenth Amendment grants Congress the power to enforce the Amendment through “appropriate legislation.”³⁰ Section 5’s “positive grant of legislative power” authorizes Congress to both deter and remedy constitutional violations; and in doing so, Congress may prohibit otherwise constitutional conduct that intrudes into “legislative spheres of autonomy previously reserved to the States.”³¹ The Section 5 enforcement power (and the enforcement powers found in the Thirteenth³² and Fifteenth³³ Amendments) has been used to, for example, ban the use of literacy tests³⁴ in state and national elections and abolish “all badges and incidents of slavery”³⁵ by banning racial discrimination in the acquisition of real and personal property. Congress has also used its Section 5 power³⁶ to provide remedies for the deprivation of constitutional rights. For example, 42 U.S.C. Section 1983 provides a private cause of action for individuals claiming that their constitutional rights were violated by state actors acting pursuant to state law. And 18 U.S.C. Section 242—the current version of which is a product of Congress’s Section 5 power³⁷—imposes criminal liability on state actors who deprive individuals of their constitutional rights.

While Congress’s Section 5 enforcement power is broad, it is not unlimited.³⁸ Section 5 allows Congress to directly enforce constitutional rights through laws like Section 1983 and Section 242; however, the power does not allow Congress to supplement those rights through prophylactic legislation that regulates state and local matters without evidence of a history and pattern of past constitutional violations by the state.³⁹ And, according to the Supreme Court, when Congress exercises its Section 5 authority, its response must be congruent and proportional to a demonstrated harm.⁴⁰ Congress may justify the need for Section 5 legislation by establishing a legislative record that shows “evidence . . . of a constitutional wrong.”⁴¹ For example, in holding that Congress exceeded its Section 5 authority in enacting the Religious Freedom Restoration Act (RFRA)—which, in relevant part, supplanted normal First Amendment standards to impose a heightened standard of review for state government actions that substantially burdened a person’s religious exercise—the Supreme Court determined that Congress had failed to establish a widespread pattern of religious discrimination by the states.⁴² As a result, RFRA could not be justified as a remedial measure designed to prevent unconstitutional conduct and was outside of

²⁹ *Timbs v. Indiana*, 139 S.Ct. 682, 687 (2019).

³⁰ U.S. CONST. amend. XIV, §8.

³¹ *City of Boerne v. Flores*, 521 US 507, 517–18 (1997).

³² U.S. CONST. amend. XII, §2.

³³ *Ibid.* amend. XV, §3.

³⁴ *Oregon v. Mitchell*, 400 U.S. 112, 118 (1970).

³⁵ *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439 (1968).

³⁶ *Monroe v. Pape*, 365 U.S. 167, 171 (1961).

³⁷ *Screws v. United States*, 325 U.S. 91, 98 (1945).

³⁸ *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997).

³⁹ *Northwest Austin Mun. Utility Dist. v. Holder*, 557 US 193, 225 (2009).

⁴⁰ *City of Boerne*, 521 U.S. at 510.

⁴¹ *Allen v. Cooper*, 140 S.Ct. 994, 1004 (2020).

⁴² *City of Boerne*, 521 U.S. at 532.

Congress's power over the states.⁴³ Thus, the Court struck down the law in so far as it applied to the states.⁴⁴

As a consequence of this case law, the scope of Congress's Section 5 power hinges in part on the scope of the constitutional right that a given law aims to protect. With respect to regulating state and local police forces, one constitutional right that may be particularly relevant to Congress's use of its Section 5 power is the Fourth Amendment, which prohibits unreasonable searches and seizures by the government.⁴⁵ The Fourth Amendment applies to many situations involving law enforcement, including when police stop an individual on the street for questioning,⁴⁶ conduct traffic stops,⁴⁷ or make an arrest.⁴⁸ Police violate the Fourth Amendment, for example, if they use excessive force during an investigatory stop or arrest.⁴⁹ According to the Supreme Court, the force used by law enforcement during an investigatory stop or arrest violates the constitution when it is unreasonable considering the facts and circumstances of the case.⁵⁰ This analysis requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion."⁵¹ For example, the Supreme Court has held that police use of deadly force against a fleeing suspect who poses no immediate safety threat is unreasonable in violation of the Fourth Amendment.⁵² Determining whether an act of force is excessive in violation of the Constitution, however, requires a fact-specific analysis—a certain act may be reasonable under some facts, while in a different case the same act may amount to excessive force. For example, some courts have ruled that police use of a chokehold is objectively unreasonable when used against individuals who are already under restraint and not a danger to others.⁵³ In other circumstances, courts have upheld police use of a chokehold as reasonable in instances where an individual was unrestrained and continued to pose a threat of serious harm.⁵⁴

Notwithstanding the limits on how much influence the federal government can have on state and local law enforcement policy, the federal government does have various tools that might be used to promote better police-community relations and accountability. These include (1) federal efforts to collect and disseminate data on the use of force by law enforcement officers; (2) statutes that allow the federal government to investigate instances of police misconduct; and (3) the influence DOJ has on state and local law enforcement policies through its role as a public interest law enforcer, policy leader, and convener of law enforcement agencies.

⁴³ *Ibid.*

⁴⁴ *Ibid.* at 536.

⁴⁵ U.S. CONST. amend. IV.

⁴⁶ *Terry v. Ohio*, 392 U.S. 1, 9 (1968).

⁴⁷ *Rodriguez v. United States*, 575 U.S. 348, 354 (2015).

⁴⁸ *United States v. Watson*, 423 U.S. 411, 417 (1976).

⁴⁹ *Graham v. Connor*, 490 U.S. 386, 394 (1989).

⁵⁰ *Ibid.* at 396.

⁵¹ *Tennessee v. Garner*, 471 U.S. 1, 7–8 (1985).

⁵² *Ibid.* at 11.

⁵³ *Coley v. Lucas County, Ohio*, 799 F. 3d 530, 540 (6th Cir. 2015).

⁵⁴ *Williams v. City of Cleveland, Miss.*, 736 F. 3d 684, 688 (4th Cir. 2013).

Federal Efforts to Collect Data on Law Enforcement Officers' Use of Force

The high-profile deaths of several members of the public at the hands of police officers has generated questions about why the federal government does not collect and publish data on the use of force by law enforcement officers. Former Philadelphia Police Chief Charles Ramsey, one of the co-chairs of the Obama Administration's Task Force on 21st Century Policing, stated "personally, I think [how data on civilian and law enforcement officers' deaths are collected] ought to be pretty much the same. If you don't have the data, people think you are hiding something.... This is something that comes under the header of establishing trust."⁵⁵ It may be that the lack of reliable data on how often police use force and who is the subject of the use of force fuels the public's mistrust of the police. Without more comprehensive data to provide context in this area, the public is left to rely on media accounts of excessive force cases for information. The lack of comprehensive federal data on police-involved deaths led the *Washington Post* in 2015 to start its own database of people who have been shot and killed by the police nationally.⁵⁶

The federal government has several data collection efforts that could be used to provide insight into how the police use force, but these programs are limited by either not collecting data on all instances where police use force, or by still being in their infancy. The FBI has undertaken an effort to collect and report more comprehensive data on the use of force by law enforcement officers through its Use of Force Data Collection program. The Bureau of Justice Assistance (BJA)⁵⁷ also started requiring states to submit data to them that is required by the Death in Custody Reporting Act of 2013 (P.L. 113-242). The Bureau of Justice Statistics (BJS) continues to periodically collect and report data on non-fatal contacts between the police and the public through its Police Public Contact Survey, and the Centers for Disease Control and Prevention (CDC) collects data on violent deaths due to legal interventions through its National Vital Statistics and National Violent Death Reporting Systems.

The Federal Bureau of Investigation's Use of Force Data Collection

The FBI launched its Use of Force Data Collection program on January 1, 2019. The bureau notes,

Law enforcement use of force has long been a topic of national discussion, but a number of high-profile cases involving law enforcement use of force have heightened awareness of these incidents in recent years. However, the opportunity to analyze information related to use-of-force incidents and to have an informed dialogue is hindered by the lack of nationwide statistics. To address the topic, representatives from major law enforcement

⁵⁵ Kevin Johnson, "Panel to Consider Tracking of Civilians Killed by Police," *USA Today*, December 12, 2014.

⁵⁶ The *Washington Post* has collected and reported data on police-involved shootings that resulted in death by "culling local news reports, law enforcement websites and social media, and by monitoring independent databases such as Killed by Police and Fatal Encounters." Data on police shooting deaths for the years 2015-2020 can be accessed at <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>. The *Washington Post* describes its methodology for collecting these data at https://www.washingtonpost.com/national/how-the-washington-post-is-examining-police-shootings-in-the-united-states/2016/07/07/d9c52238-43ad-11e6-8856-f26de2537a9d_story.html.

⁵⁷ BJA, a bureau in the Office of Justice Programs of the U.S. Department of Justice, provides leadership and assistance to local criminal justice programs that improve and reinforce the nation's criminal justice system. BJA's goals are to reduce and prevent crime, violence, and drug abuse and to improve the way in which the criminal justice system functions.

organizations are working in collaboration with the FBI to develop the National Use-of-Force Data Collection.⁵⁸

The stated goal of the program is “is not to offer insight into single use-of-force incidents but to provide an aggregate view of the incidents reported and the circumstances, subjects, and officers involved.”⁵⁹ Also, the data will not assess whether the officers involved in use of force incidents acted lawfully or within the bounds of department policy.

The program collects data on use of force incidents that result in the death or serious bodily injury⁶⁰ of a person and incidents where a law enforcement officer discharges a firearm at or in the direction of a person. For each incident, the FBI collects data on the circumstances surrounding it (e.g., date and time, the reason for the initial contact between the officer and the subject, the number of officers who applied force, type of force used), subject information (e.g., demographic information, injuries sustained, whether the subject was armed), and officer information (e.g., demographic information, whether the officer discharged a firearm, whether the officer was injured).⁶¹ Local law enforcement agencies are responsible for submitting use of force data to the FBI, though participation is voluntary. The FBI is working with major law enforcement organizations and the FBI’s Criminal Justice Information Services’ Advisory Policy Board to increase participation.⁶²

Some law enforcement agencies started submitting use-of-force data to the FBI at the beginning of 2019 and the FBI indicated that data would be released “on a regular basis of no less than two times a year.”⁶³ The FBI has yet to release any use-of-force data. It has been reported that more than 6,700 law enforcement agencies are participating in the program; these agencies account for approximately 40% of all state and local law enforcement officers in the United States.⁶⁴ The FBI is planning to release its first round of use-of-force data in the summer of 2020 through its online crime data explorer.⁶⁵

Death in Custody Reporting Program

DOJ also collected data on arrest-related deaths pursuant to the Death in Custody Reporting Act of 2000 (DCRA 2000, P.L. 106-297). The act required recipients of Violent Offender Incarceration/Truth-in-Sentencing Incentive grants⁶⁶ to submit data to DOJ on the death of any

⁵⁸ U.S. Department of Justice, Federal Bureau of Investigation, *National Use-of-Force Data Collection*, <https://www.fbi.gov/services/cjis/ucr/use-of-force> (hereinafter, “FBI’s Use of Force Data website”).

⁵⁹ Ibid.

⁶⁰ The FBI defines *serious bodily injury* as “bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” Ibid.

⁶¹ More information on the specific data the FBI will collect on each use of force incident can be found on the FBI’s Use of Force Data website.

⁶² The Advisory Policy Board is responsible for reviewing policy, technical, and operational issues related to the Criminal Justice Information Services Division programs. It is comprised of 35 representatives from criminal justice agencies and national security agencies and organizations throughout the United States.

⁶³ FBI’s Use of Force Data website.

⁶⁴ Kimberly Adams, “FBI Says New Data on Police Use of Force is Coming This Summer,” *Marketplace*, June 1, 2020, <https://www.marketplace.org/2020/06/01/fbi-police-use-of-force-database/>.

⁶⁵ The FBI’s crime data explorer is available online at <https://crime-data-explorer.fr.cloud.gov/>.

⁶⁶ The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) authorized funding for grants to states for building or expanding correctional facilities. To be eligible for funding under the program, a state had to demonstrate it had increased the number of violent offenders who were arrested and sentenced to incarceration along

person who is in the process of arrest; en route to be incarcerated; or incarcerated at a municipal or county jail, state prison, or other local or state correctional facility (including juvenile facilities). The provisions of the act expired in 2006.⁶⁷ Congress reauthorized the act by passing the Death in Custody Reporting Act of 2013 (DCRA 2013, P.L. 113-242). This act requires states to submit data to DOJ regarding the death of any person who is detained, under arrest, in the process of being arrested, en route to be incarcerated, or incarcerated at a municipal or county jail, a state prison, a state-run boot camp prison, a boot camp prison that is contracted out by the state, any state or local contract facility, or any other local or state correctional facility (including juvenile facilities). States face up to a 10% reduction in their funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program if they do not provide the data.⁶⁸ The act also extends the reporting requirement to federal agencies.

BJS, DOJ's primary statistical agency, established the Death in Custody Reporting Program (DCRP) as a way to collect the data required by DCRA 2000, and it continued to collect data even though the initial authorization expired in 2006. DCRP collected data on both deaths that occurred in correctional institutions and arrest-related deaths, though BJS suspended collection of arrest-related deaths in 2014. BJS acknowledged problems with arrest-related deaths data before suspending the data collection effort. In a report on arrest-related deaths for 2003-2009, BJS noted that "arrest-related deaths are under-reported" and that the data are "more representative of the nature of arrest-related deaths than the volume at which they occur."⁶⁹

BJS has replaced the DCRP with the Mortality in Correctional Institutions (MCI) program, which collects data on deaths that occur while inmates are in the custody of local jails, state prisons (including private prisons), or the Bureau of Prisons. BJS notes that MCI collects "many, but not all, of the elements outlined in the DCRA reauthorization (P.L. 113-242), but because MCI is collected for statistical purposes only, it cannot be used for DCRA enforcement."⁷⁰

A 2018 review conducted by DOJ's Office of the Inspector General (OIG) found several issues with DOJ's implementation of the requirements of DCRA 2013.⁷¹ According to the OIG:

- There were delays in implementing requirements to collect data on arrest-related deaths as DOJ considered different methodologies to collect these data from states and debated which agency in DOJ would be responsible for doing so. BJS was testing a new methodology to collect data on arrest-related deaths (discussed below) to implement the requirements of DCRA 2013, but DOJ eventually decided to have BJA administer the program. This was done because determining whether states are complying with the requirements of the act is a policy decision, and "it would be inadvisable for BJS to collect state DCRA data on

with increasing the average length of violent offenders' sentences, or that it had implemented truth-in-sentencing laws that would require violent offenders to serve at least 85% of their sentences.

⁶⁷ H.Rept. 113-285.

⁶⁸ For more information on the JAG program, see CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*.

⁶⁹ Andrea M. Burch, *Arrest-Related Deaths, 2003-2009—Statistical Tables*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 235385, Washington, DC, November 2011, p. 1.

⁷⁰ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Mortality In Correctional Institutions (MCI) (Formerly Deaths In Custody Reporting Program (DCRP))*, <https://www.bjs.gov/index.cfm?ty=tp&tid=19>.

⁷¹ U.S. Department of Justice, Office of the Inspector General, *Review of the Department of Justice's Implementation of the Death in Custody Reporting Act of 2013*, December 2018, <https://oig.justice.gov/reports/2018/e1901.pdf> (hereinafter, "OIG's report on DOJ's implementation of the Death in Custody Reporting Act").

behalf of another entity that would perform the compliance assessment because even such limited involvement could undermine BJS's position as an objective statistical collection agency and could cause survey respondents to withhold future data."⁷²

- Data collected by BJA is duplicative of data collected by BJS through the MCI program. Both programs collect data on deaths in state and local correctional institutions. BJS plans to continue to collect data through the MCI program because the data "compliment BJS's overall correctional research."⁷³ Data collected by BJA are also potentially duplicative of data the FBI collects through its Use of Force Data Collection program. Both programs collect data on incidents where the use of force results in death, though the FBI is also collecting data on other use of force incidents. The OIG notes that duplicative data collection efforts can "confuse and fatigue data respondents, who in turn may submit low-quality data."⁷⁴
- There is concern that the data collection methodology employed by BJA does not capture all deaths that should be reported pursuant to DCRA 2013. The OIG noted that BJA's methodology is similar to that used by BJS in the past to collect data on arrest-related deaths, which BJS eventually discarded because deaths were underreported. The OIG raised concerns that DOJ is not using a methodology pilot tested by BJS where data on arrest-related deaths were collected through open sources (e.g., media accounts) and served as a potential universe of arrest-related deaths. BJS contacted law enforcement agencies to confirm the deaths and collect data on any other arrest-related deaths. BJS also surveyed a sample of law enforcement agencies where searches of open source information did not reveal any reports of arrest-related deaths to confirm that they did not have any reportable deaths. The methodology used by BJA requires states to establish their own systems for collecting and reporting data required by DCRA 2013. The OIG noted that these systems might not capture complete data on arrest-related deaths because (1) state-level agencies are generally less aware of and less knowledgeable about deaths that occurred in their states than are the local jurisdictions where the deaths occurred and (2) many state governments cannot compel subordinate levels of government to report crime data without state laws that require it.

Starting with FY2019 JAG awards, states have been required to submit DCRA 2013 data to BJA. States are responsible for establishing their own policies and procedures to ensure that they collect and submit complete data.⁷⁵ DCRA 2013 does not require DOJ to publish data submitted by states pursuant to the act, and BJA has noted that it will maintain the information internally, though it may be subject to Freedom of Information Act requests.⁷⁶

⁷² Ibid., p. 11.

⁷³ Ibid., p. 14.

⁷⁴ Ibid., p. 13.

⁷⁵ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Death in Custody Reporting Act, Performance Measurement Tool, Frequently Asked Questions*, February 2020, p. 2, https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/DCRA-FAQ_508.pdf.

⁷⁶ Ibid., p. 3.

Contacts between the Police and the Public

Section 210402 of the Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) requires the Attorney General to “acquire data about the use of excessive force by law enforcement officers” and publish an annual summary of the data. In April 1996, BJS and the National Institute of Justice (NIJ) published a status report on their efforts to fulfill the requirements of the act.⁷⁷ This report summarized the results of studies that examined police use of force. The report also highlighted difficulties in collecting use of force data, including defining terms such as *use of force*, *use of excessive force*, and *excessive use of force*; reluctance by police agencies to provide reliable data; concerns about the misapplication of reported data; the lack of attention to provocation in the incident leading to the use of force; and the degree of detail needed to adequately describe individual incidents.

In November 1997, BJS released a second report about its efforts.⁷⁸ This report described a pilot project: a survey of approximately 6,400 people who in the past year had initiated an interaction with a law enforcement officer. The survey asked respondents about the types of interactions they had with officers, both positive and negative. The pilot project eventually led to BJS’s Police Public Contact Survey (PPCS). The report also noted that both BJS and NIJ had funded a National Police Use-of-Force Database Project. The project was administered by the International Association of Chiefs of Police (IACP), and it was developed as a pilot effort to collect incident-based use of force information from local law enforcement agencies. The IACP published a report in 2001 using the data it collected through the project.⁷⁹ Critics of the study argue that because the data were submitted voluntarily, the results are incomplete and inconclusive.⁸⁰

Even though DOJ does not publish annual data on the use of excessive force by law enforcement officers, it has attempted to implement the requirements of Section 210402 by collecting data on citizens’ interactions with police—including whether the police threatened to use or did use force, and whether the respondent thought the force was excessive. BJS collected PPCS data every three years from 1996 to 2011 and then again in 2015, but BJS has not collected these data since. One limitation of the PPCS is that it is administered to a sample of law enforcement agencies, so while it might be able to generate a reliable estimate of when citizens report law enforcement officers using force against them, it is not a census of all such incidents.

Data from the Centers for Disease Control and Prevention

CDC, in the Department of Health and Human Services (HHS), compiles mortality data provided voluntarily by all 50 states, the District of Columbia, and the territories (jurisdictions). These data are coded to include information about *manner of death*, including whether the death was caused by legal intervention. *Legal intervention* is defined as “injuries inflicted by the police or other law-enforcing agents, including military on duty [excluding operations of war], in the course of arresting or attempting to arrest lawbreakers, suppressing disturbances, maintaining order, and

⁷⁷ Tom McEwen, *National Data Collection on Police Use of Force*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 160113, Washington, DC, April 1996.

⁷⁸ Lawrence A. Greenfield, Patrick A. Langan, and Steven K. Smith, *Police Use of Force: Collection of National Data*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 156040, Washington, DC, November 1997.

⁷⁹ The International Association of Chiefs of Police, *Police Use of Force in America, 2001*, <https://www.theiacp.org/sites/default/files/2018-08/2001useofforce.pdf>.

⁸⁰ Human Rights Watch, “Shielded From Justice: Police Brutality and Accountability in the United States of America,” <http://www.hrw.org/legacy/reports98/police/toc.htm>.

other legal action.”⁸¹ These data are compiled as a part of two different CDC surveillance (i.e., data collection) systems: (1) the National Vital Statistics System (NVSS) and (2) the National Violent Death Reporting System (NVDRS).⁸²

NVSS mortality data are based solely on de-identified death certificate records submitted to CDC by the jurisdictions. There are known issues with the completeness and accuracy of data in this system, which are attributable to many factors, including jurisdictional differences in requirements for death certification, training of individuals responsible for completing death certificates, and availability of information at the time of death certification.⁸³ An analysis compared vital statistics data and a news media-based dataset, finding that for 2015 the media-based data reported more than twice as many law enforcement-related deaths as the vital statistics data.⁸⁴

In part because of the aforementioned issues with NVSS violent death data, in 2002 CDC launched NVDRS, a state-based surveillance system specifically for violent deaths, with six initial grants to states.⁸⁵ As of FY2018, NVDRS is funded to operate in all 50 states, the District of Columbia, and Puerto Rico.⁸⁶ Personnel in these jurisdictions gather and link records from law enforcement sources, coroners and medical examiners, death records, and crime laboratories to report violent deaths to NVDRS, providing better quality information about the causes of and means to prevent violent deaths than is available from death certificates alone.⁸⁷ NVDRS data have been used in research publications on the use of lethal force by law enforcement.⁸⁸

Currently, CDC data capture lethal uses of force by law enforcement, but the data do not capture non-lethal uses of force. Other CDC violence-related data collection efforts focus on issues such as interpersonal violence (e.g., intimate partner and sexual violence).⁸⁹ With new specified CDC appropriations of \$12.5 million for “Firearm Injury and Mortality Prevention Research” in

⁸¹ Based on World Health Organization (WHO), International Classification of Diseases, 10th Revision (ICD-10), Y35(.0-.4), Y35(.6-.7), and Y89.0, <http://www.who.int/classifications/en/>. CDC excludes legal executions from the definition of *legal intervention*. Also, the term does not denote the lawfulness of the intervention.

⁸² Centers for Disease Control and Prevention (CDC), “National Vital Statistics System,” <https://www.cdc.gov/nchs/nvss/index.htm> and CDC, “National Violent Death Reporting System,” <https://www.cdc.gov/violenceprevention/nvdrs/index.html>.

⁸³ National Committee on Vital and Health Statistics, *Next Generation Vital Statistics: A Hearing on Current Status, Issues, and Future Possibilities*, May 2018, <https://ncvhs.hhs.gov/wp-content/uploads/2018/05/Summary-Report-Next-Generation-Vitals-Sept-2017-Hearing-Final.pdf>.

⁸⁴ JM Feldman et al., “Quantifying Underreporting of Law-Enforcement-Related Deaths in United States Vital Statistics and News-Media-Based Data Sources: A Capture-Recapture Analysis,” *PLoS Med*, vol. 14, October 10, 2017, <https://www.ncbi.nlm.nih.gov/pubmed/29016598>.

⁸⁵ Communication to Congressional Research Service from CDC Washington Office, May 9, 2014.

⁸⁶ Centers for Disease Control and Prevention (CDC), “CDC’s National Violent Death Reporting System now includes all 50 states,” press release, September 5, 2018, <https://www.cdc.gov/media/releases/2018/p0905-national-violent-reporting-system.html>.

⁸⁷ Centers for Disease Control and Prevention (CDC), “National Violent Death Reporting System,” <https://www.cdc.gov/violenceprevention/nvdrs/index.html>.

⁸⁸ See, for example, Sarah DeGue and Katherine A Fowler, “Deaths Due to Use of Lethal Force by Law Enforcement: Findings From the National Violent Death Reporting System, 17 U.S. States, 2009–2012,” *American Journal of Preventive Medicine*, vol. 51, no. 5 (November 1, 2016). Authored by both CDC and non-CDC authors.

⁸⁹ See, for example, Centers for Disease Control and Prevention (CDC), The National Intimate Partner and Sexual Violence Survey, <https://www.cdc.gov/violenceprevention/datasources/nisvs/materials.html>.

FY2020,⁹⁰ CDC issued a grant announcement for a new surveillance system on firearm injuries.⁹¹ It is unclear at this time if this system will collect data on non-lethal firearm injuries attributable to law enforcement, though the funding announcement specifies that “intent” of the firearm injury should be captured in the system.⁹²

Authority for DOJ to Investigate Law Enforcement Misconduct

The federal government has several legal tools at its disposal to ensure that state and local law enforcement practices and procedures adhere to constitutional norms.⁹³ The first is *criminal* enforcement brought directly against an offending officer under federal civil rights statutes. One such statute, 18 U.S.C. Section 242, makes it a crime for a person acting “under color of any law, statute, ordinance, regulation, or custom” to willfully deprive another person of any “rights, privileges, or immunities secured or protected by the Constitution or laws of the United States[.]”⁹⁴ Section 242 also prohibits a person acting under color of law from subjecting another person to “different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens[.]”⁹⁵ A related provision, Section 241 of Title 18, makes it a crime for two or more persons to “conspire to injure, oppress, threaten, or intimidate any person ... in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States[.]”⁹⁶ The modern versions of Section 241 and Section 242 originate from the Reconstruction Era following the Civil War,⁹⁷ when Congress sought to safeguard rights newly bestowed on African Americans under the Fourteenth and Fifteenth Amendments.⁹⁸

DOJ enforces Section 241 and Section 242 by bringing criminal charges against individuals accused of violating those statutes.⁹⁹ A defendant may violate Section 242 either by depriving

⁹⁰ U.S. Congress, House Committee on Appropriations, Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies, *Division A-Department of Labor, Health and Human Services, and Education, and Related Agencies*, committee print, 116th Cong., 2nd sess., 2020, p. 42.

⁹¹ Centers for Disease Control and Prevention (CDC), “Firearm Injury Surveillance Through Emergency Rooms (FASTER), CDC-RFA-CE20-2005,” May 8, 2020, *Grants.gov*, <https://www.grants.gov/web/grants/view-opportunity.html?oppId=325523>.

⁹² *Ibid.*

⁹³ In addition to legal enforcement by government actors, 42 U.S.C. Section 1983 provides a cause of action for private actors to vindicate violations of constitutional rights such as police use of unreasonable force. See *Graham v. Connor*, 490 U.S. 386 (1989).

⁹⁴ 18 U.S.C. §242.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.* §241.

⁹⁷ See *United States v. Price*, 383 U.S. 787, 801 (1966).

⁹⁸ See Edward F. Malone, *Legacy of Reconstruction: The Vagueness of the Criminal Civil Rights Statutes*, 38 UCLA L. Rev. 163, 164 (1990). Section 242 was first enacted before the Fourteenth Amendment was ratified, and originally protected a narrower class of statutory rights. Congress amended the provision in 1874 using its authority to enforce the Fourteenth Amendment and expanded the scope of the statute to protect both constitutional and statutory rights. See *Price*, 383 U.S. at 802-03.

⁹⁹ The statutes provide no private right of enforcement, meaning that victims of official misconduct cannot sue under Section 241 or Section 242. A victim of conduct that violates Section 242 may be able to bring a separate civil suit under 42 U.S.C. Section 1983 or, for federal officers, under the *Bivens* doctrine. See *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). However, the doctrine of qualified immunity may limit officials’ liability. See CRS Legal

another person of rights under federal law or the Constitution or by subjecting a person to different punishments by reason of the victim’s race or other covered characteristics. In practice, though, Section 242 charges generally allege constitutional violations.¹⁰⁰ In recent years, Section 241 and Section 242 have formed the basis of police excessive force criminal cases¹⁰¹ and provided the legal basis for DOJ investigations into several police killings across the country.¹⁰²

Section 242 applies only to persons acting *under color of law*, meaning “under ‘pretense’ of law.”¹⁰³ Essentially, a person acts under color of law when he or she acts with either actual or apparent federal, state, or local government authority.¹⁰⁴ Officers and employees of the government generally fall within this category.¹⁰⁵ Government officials act under color of law if they derive their *perceived authority* from state or local law, even if their conduct *was not actually authorized* under state or local law—for example, because they abused their official position.¹⁰⁶ Off-duty law enforcement officers may also be subject to Section 242 if they act or claim to act in their official capacity.¹⁰⁷ Moreover, a person need not actually be a government employee or official to act under color of law, as long as he or she participates in activity “attributable to the State.”¹⁰⁸ However, a person acting purely in a private capacity is not subject to Section 242, even if the person is a government employee.¹⁰⁹

Section 242 applies only to violations that are committed *willfully*. The Supreme Court stringently construed the willfulness standard in the 1945 case *Screws v. United States*.¹¹⁰ In *Screws*, a defendant convicted of violating the statute now codified as Section 242 argued that the law was void for vagueness—that is, it violated the Fifth Amendment’s Due Process Clause because it did

Sidebar LSB10492, *Policing the Police: Qualified Immunity and Considerations for Congress*, by Whitney K. Novak.

¹⁰⁰ For discussion of the possible constitutional limits on using Section 242 to enforce statutory rights and the practical hurdles that may impede prosecutions under the “punishments, pains, or penalties” provision of Section 242, see CRS Legal Sidebar LSB10495, *Federal Police Oversight: Criminal Civil Rights Violations Under 18 U.S.C. § 242*.

¹⁰¹ See, for example, *United States v. Bradley*, 196 F.3d 762, 764 (7th Cir. 1999); *United States v. Reese*, 2 F.3d 870, 880 (9th Cir. 1993).

¹⁰² Paul Lewis, *Federal Officials May Use Little-Known Civil Rights Statute in Police Shooting Cases*, *The Guardian*, December 24, 2014, <http://www.theguardian.com/us-news/2014/dec/24/federal-review-michael-brown-eric-garner-crawford-hamilton>.

¹⁰³ See *Screws v. United States*, 325 U.S. 91, 111 (1945). The phrase *under color of law* originates from the Reconstruction Era, and variations of it appear in multiple federal hate crime and civil rights statutes. See, for example, 18 U.S.C. §§245, 249; 42 U.S.C. §§1981, 1983.

¹⁰⁴ Department of Justice, Civil Rights Division, *Addressing Police Misconduct Laws Enforced by the Department of Justice*, <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice>.

¹⁰⁵ See *Screws*, 325 U.S. at 110 (holding that “officers of the State ... performing official duties,” including public safety officers, act under color of law for purposes of Section 242).

¹⁰⁶ For instance, in one leading case, a Georgia sheriff who arrested a black man on suspicion of theft and then beat him to death argued that he did not act under color of state law because the killing was illegal under Georgia law. The Supreme Court rejected that argument, explaining that “[a]cts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it.” *Screws*, 325 U.S. at 111.

¹⁰⁷ Department of Justice, Civil Rights Division, *Law Enforcement Misconduct*, <https://www.justice.gov/crt/law-enforcement-misconduct>.

¹⁰⁸ For example, in *United States v. Price*, the Supreme Court held that private individuals who conspired with law enforcement to murder three civil rights workers could be charged under Section 242. 383 U.S. 787, 794 (1966).

¹⁰⁹ See, for example, *Screws*, 325 U.S. at 111 (stating that “acts of [law enforcement] officers in the ambit of their personal pursuits are plainly excluded”).

¹¹⁰ The main opinion in *Screws* was joined by only four justices, but binding opinions of the Supreme Court have since adopted its analysis. See, for example, *United States v. Lanier*, 520 U.S. 259, 267 (1997).

not give potential defendants clear notice of the conduct it proscribed.¹¹¹ A plurality of the Supreme Court rejected that argument by interpreting *willfully* to require the government to show that a defendant acted with a “specific intent to deprive a person” of constitutional rights or with “open defiance or in reckless disregard of a constitutional requirement.”¹¹²

Much of the analysis in *Screws* indicates that Section 242 requires proof that a government official intended to violate a specific federal right of which the officer either knew or had notice. However, other portions of the *Screws* plurality opinion could suggest a less stringent mental state requirement. For instance, the plurality opined that Section 242 defendants must “at least act in reckless disregard of constitutional prohibitions or guarantees”—indicating it might suffice for a defendant to ignore rather than deliberately violate a constitutional right.¹¹³ Lower federal courts vary in how they apply the willfulness analysis in *Screws*. The U.S. Court of Appeals for the Fifth Circuit requires that a violation of Section 242 be “committed voluntarily and purposely with the specific intent to do something the law forbids. That is to say, with a bad purpose either to disobey or to disregard the law.”¹¹⁴ By contrast, the U.S. Court of Appeals for the Third Circuit, while remarking that “*Screws* is not a model of clarity,”¹¹⁵ has held that it is sufficient if a defendant “exhibited reckless disregard for a constitutional or federal right.”¹¹⁶ Overall, however, the Supreme Court’s interpretation of the willfulness requirement has resulted in what some view as a significant hurdle to bringing Section 242 claims.¹¹⁷

The second major legal tool that DOJ uses to investigate and remedy law enforcement misconduct is a federal statute that imposes *civil* liability on law enforcement agencies as a whole, rather than on individual officers. Enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, and codified at 34 U.S.C. Section 12601, this statute prohibits government authorities or agents acting on their behalf from engaging in a “pattern or practice of conduct by law enforcement officers ... that deprives persons of rights ... secured or protected by the Constitution or laws of the United States.”¹¹⁸ It authorizes the Attorney General to sue for equitable or declaratory relief when there is “reasonable cause to believe” that such a pattern of constitutional violations has occurred.¹¹⁹ The statute does not create a private right of action (i.e., a right for individuals harmed by violations to sue).¹²⁰ Moreover, because the law applies only to a “pattern or practice of conduct,” it cannot remedy isolated instances of misconduct.¹²¹ Finally,

¹¹¹ *Screws*, 325 U.S. at 94.

¹¹² *Ibid.* at 105.

¹¹³ *Ibid.* at 106. The plurality also stated that “[t]he fact that the defendants may not have been thinking in constitutional terms is not material where their aim was ... to deprive a citizen of a right and that right was protected by the Constitution.” *Ibid.*

¹¹⁴ *United States v. Garza*, 754 F. 2d 1202, 1210 (5th Cir. 1985).

¹¹⁵ *United States v. Johnstone*, 107 F. 3d 200, 208 (3d Cir. 1997).

¹¹⁶ *Ibid.* at 209. In *Johnstone*, the Third Circuit upheld a jury instruction stating both that “an act is done willfully if it is done voluntarily and intentionally, and with a specific intent to do something the law forbids,” and that the jury could “find that a defendant acted with the required specific intent even if you find that he had no real familiarity with the Constitution or with the particular constitutional right involved.” *Ibid.* at 209-210.

¹¹⁷ Michael J. Pastor, *A Tragedy and a Crime?: Amadou Diallo, Specific Intent, and the Federal Prosecution of Civil Rights Violations*, 6 N.Y.U. J. LEGIS. & PUB. POL’Y 171 (2002).

¹¹⁸ 34 U.S.C. §12601. Section 12601 was previously codified at 42 U.S.C. §14141.

¹¹⁹ 34 U.S.C. §12601.

¹²⁰ Department of Justice, Civil Rights Division, *Addressing Police Misconduct Laws Enforced by the Department of Justice*, <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice>.

¹²¹ See, for example, *United States v. Johnson*, 122 F. Supp. 3d 272, 348 (M.D.N.C. 2015).

the statute does not provide for monetary penalties. If DOJ successfully sues under the provision, it may “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.”¹²²

Once they constitute a pattern or practice of police misconduct, violations of any constitutional right can support Section 12601 enforcement. DOJ’s cases typically address multiple constitutional harms, and the scope of investigations has ranged from racial and ethnic biases¹²³ to deprivations of due process¹²⁴ to violations of the First Amendment.¹²⁵ Perhaps the most frequent focus of Section 12601 cases is a potential pattern of Fourth Amendment violations, including improper searches, seizures, detentions, and use of force.¹²⁶ Investigations under Section 12601 are primarily conducted by the Special Litigation Section of DOJ’s Civil Rights Division.¹²⁷ Traditionally, these investigations are resolved by consent decree—a judicially enforceable settlement between DOJ and the local police department that outlines the various measures the local agency must take to remedy its unconstitutional police practices. For instance, after two years of extensive investigation into the New Orleans Police Department’s policies and practices, in which DOJ found numerous instances of unconstitutional conduct, DOJ entered into a consent decree with the City of New Orleans requiring the city to implement new policies and training to remedy these constitutional violations.¹²⁸ The content of each consent decree can differ, but many include provisions concerning use-of-force reporting systems, citizen complaint systems, and early warning systems to identify problem officers.¹²⁹

The use of consent decrees as a mechanism to reform policing practices is subject to the priorities of a given administration. For example, during the Obama Administration, DOJ used its authority under Section 12601 to open pattern and practice investigations of several police departments.¹³⁰ However, in 2017 then-Attorney General Sessions announced that DOJ would be limiting the use of consent decrees to force changes in local police departments.¹³¹ This has generally been the

¹²² 34 U.S.C. §12601.

¹²³ See, for example, Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department* 47, August 10, 2014, <https://www.justice.gov/crt/file/883296/download>.

¹²⁴ See, for example, Department of Justice, Civil Rights Division, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present* 47, January 2017, <https://www.justice.gov/crt/file/922421/download>.

¹²⁵ See, for example, Department of Justice, Civil Rights Division, *Investigation of the Baltimore City Police Department* 119, August 10, 2014, <https://www.justice.gov/crt/file/883296/download>. See generally Police Executive Research Forum, *Civil Rights Investigations of Local Police: Lessons Learned*, (2013), http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

¹²⁶ See, for example, Department of Justice, Civil Rights Division, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present* 46-47, January 2017, <https://www.justice.gov/crt/file/922421/download>.

¹²⁷ See, for example, Department of Justice, “Justice Department Reaches Agreements with the Ville Platte Police Department and the Evangeline Parish Sheriff’s Office,” press release, June 4, 2018, <https://www.justice.gov/opa/pr/justice-department-reaches-agreements-ville-platte-police-department-and-evangeline-parish>.

¹²⁸ *United States v. City of New Orleans*, No. 12-1924 (E.D. La. July 24, 2012) (consent decree regarding the New Orleans Police Department), available at https://www.justice.gov/sites/default/files/crt/legacy/2013/01/11/nopd_agreement_1-11-13.pdf.

¹²⁹ Samuel Walker, *The New Paradigm of Police Accountability: The U.S. Justice Department “Pattern or Practice” Suits In Context*, 22 ST. LOUIS U PUB. L. REV. 3, 6 (2003). See also U.S. Department of Justice, Civil Rights Division, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present*, January 2017.

¹³⁰ DOJ noted in a January 4, 2017, press release that since 2009 the Civil Rights Division Civil Rights Division had opened 25 investigations into law enforcement agencies. U.S. Department of Justice, “Justice Department Releases Report on Civil Rights Division’s Pattern and Practice Police Reform Work,” press release, January 4, 2017.

¹³¹ Katie Benner, “Sessions, in Last-Minute Act, Sharply Limits Use of Consent Decrees to Curb Police Abuses,” *New York Times*, November 8, 2018.

case, but on April 13, 2018, DOJ initiated a pattern and practice investigation of the Springfield (MA) Police Department’s Narcotics Bureau.¹³²

What Roles Can the Department of Justice Play in Improving Police-Community Relations?

DOJ and its component agencies such as the FBI can help shape policing in the United States. Such influence can be seen in at least three roles that DOJ and its components play:

- *Policy leader*—setting standards on law enforcement issues.
- *Law enforcer*—investigating and prosecuting violations of federal law related to police abuse of power.
- *Convener*—bringing together key parties on sensitive, relevant, and important issues.

DOJ as Policy Leader

DOJ can serve as a model for state and local law enforcement agencies. For example, it issues guidance for U.S. police work; sets policies for its own agencies that can resonate broadly in federal, state, and local law enforcement agencies; sponsors studies that examine policing practices; and provides training.

- *Issuing guidance.* One relevant illustration of DOJ’s dissemination of guidance is a December 2014 report offering direction on the use of race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity in police work. This guidance is directed at federal policing agencies as well as state and local police active on federal task forces.¹³³ In issuing this guidance, DOJ noted its belief that “law enforcement practices free from inappropriate considerations ... strengthen trust in law enforcement agencies and foster collaborative efforts between law enforcement and communities to fight crime and keep the Nation safe.”¹³⁴ The 2014 document expanded on guidance issued by DOJ in 2003.
- *Setting policies for DOJ agencies.* DOJ sets policies for its own agencies that may also be used by state and local law enforcement agencies. For example, domestic investigations at the FBI are governed by principles articulated by DOJ.¹³⁵ These purportedly “make the FBI’s operations in the United States more effective by providing simpler, clearer, and more uniform standards and procedures.”¹³⁶ Such principles set the investigative standards for task forces that the FBI leads. These

¹³² U.S. Department of Justice, Civil Rights Division, and U.S. Attorney’s Office for the District of Massachusetts, *Investigation of the Springfield, Massachusetts, Police Department’s Narcotics Bureau*, July 8, 2020.

¹³³ Department of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity*, December 2014.

¹³⁴ *Ibid.*, p. 1.

¹³⁵ Available at <http://www.justice.gov/ag/readingroom/guidelines.pdf>. See also U.S. Department of Justice, “Memorandum for the Heads of Department Components: The Attorney General’s Guidelines for Domestic FBI Operations,” press release, September 29, 2008. For a broader discussion, see Emily Berman, *Domestic Intelligence: New Powers, New Risks*, Brennan Center for Justice at New York University School of Law, 2011, pp. 8-9, 11.

¹³⁶ U.S. Department of Justice, “Memorandum for the Heads of Department Components: The Attorney General’s Guidelines for Domestic FBI Operations,” press release, September 29, 2008.

task forces often include state and local officers and follow DOJ standards in their task force casework.

- *Sponsoring studies on policing practices.* DOJ agencies, such as NIJ and the Community Oriented Policing Services (COPS) Office, sponsor studies that are intended to help state and local law enforcement agencies address policing challenges. One such product sponsored by the COPS Office, a report focused on the use of body-worn cameras by police, was published in 2014.¹³⁷ In 2017, DOJ released a report on how police departments can change policies and improve training to help build their relationships with members of the lesbian, gay, bisexual, transgender, and queer or questioning community.¹³⁸ Through the COPS Office, in conjunction with CNA (not an acronym) in 2020, DOJ released a report on lessons learned and promising practices in community policing based on results from its 2015 Microgrant Initiative funding community policing initiatives in nine sites around the country.¹³⁹
- *Providing training.* In 2014, responding to circumstances in Ferguson, MO, DOJ developed a national initiative to enhance trust between the police and public. According to DOJ, among other things, the initiative involves a “substantial investment in training.”¹⁴⁰ NIJ also offers training to state and local law enforcement agencies on a wide variety of topics.¹⁴¹ Also, in 2017 DOJ awarded a grant to the International Association of Chiefs of Police (IACP) to fund the Collaborative Reform Initiative Technical Assistance Center. The IACP partners with other national law enforcement organizations, such as the Fraternal Order of Police and the Major Cities Chiefs Association, to provide training and technical assistance to local law enforcement agencies on a wide variety of topics, including community engagement and de-escalation. According to their 2020 annual report, during the first two years the center provided training for campus, local, county, tribal, and state law enforcement agencies on school safety, active shooter response, de-escalation, crisis intervention, and intelligence and information sharing.

DOJ sets policies for its own agencies that can be binding, but guidance issued by DOJ to police forces around the country is typically just that—guidance. As such, some may be skeptical as to the true impact of DOJ as a policy setter for nationwide policing.

¹³⁷ The report was supported by cooperative agreement number 2012-CK-WX-K028, awarded by the Office of Community Oriented Policing Services at the U.S. Department of Justice. Lindsay Miller, Jessica Toliver, and Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, (Washington, DC: Office of Community Oriented Policing Services, 2014).

¹³⁸ James E. Copple and Patricia M. Dunn, *Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community*, U.S. Department of Justice, Office of Community Oriented Policing Services, Washington, DC, 2017.

¹³⁹ Office of Community Oriented Policing Services and CNA (not an acronym), *Lessons to Advance Community Policing: Final Report for 2015 Microgrant Sites*, 2020, <https://cops.usdoj.gov/RIC/Publications/cops-w0880-pub.pdf>.

¹⁴⁰ Department of Justice, “Justice Department Announces National Effort to Build Trust Between Law Enforcement and the Communities They Serve,” press release, September 18, 2014.

¹⁴¹ For more information, see <http://www.nij.gov/training/pages/welcome.aspx>.

DOJ as Law Enforcer

As noted elsewhere in this report, DOJ has a hand in shaping the way state and local police operate by enforcing federal laws covering the conduct of such agencies.¹⁴² Success in these efforts could enhance public confidence in the oversight of the police. To this end, DOJ’s Civil Rights Division and the FBI rely on their authority to pursue officials or agencies depriving persons of their constitutionally protected rights. Such actions can be broken down into *under color of law*¹⁴³ cases and *pattern or practice*¹⁴⁴ investigations (discussed above).

The FBI is the lead federal agency for investigating under color of law abuses and can initiate criminal cases involving official misconduct, which DOJ can prosecute.¹⁴⁵ Such cases may involve excessive force, sexual assault, theft, false arrests, and fabrication of evidence.¹⁴⁶

Additionally, DOJ has the authority to investigate entire law enforcement agencies, and not just individual officers, for civil rights violations, though these cases, referred to as *pattern and practice investigations*, do not result in criminal charges. DOJ’s Civil Rights Division can review the patterns or practices “of law enforcement agencies that may be violating people’s federal rights”¹⁴⁷ and seek civil remedies when “law enforcement agencies have policies or practices that foster a pattern of misconduct by employees.”¹⁴⁸ Such remedies target agencies, not individual officers. DOJ reviews can be initiated when agencies are suspected of

- lack of supervision/monitoring of officers’ actions;
- lack of justification or reporting by officers on incidents involving the use of force;
- lack of, or improper training of, officers; and
- citizen complaint processes that treat complainants as adversaries.¹⁴⁹

DOJ relies on media reports, complaints, private litigation, and advocacy groups for leads on potential Section 12601 cases. The Civil Rights Division takes complaints directly from community members, judges, police officers, and advocacy groups, but has explained that it is “not a complaint-driven agency.”¹⁵⁰ At times, jurisdictions invite DOJ to investigate, but DOJ

¹⁴² Department of Justice, Civil Rights Division, *Addressing Police Misconduct Laws Enforced by the Department of Justice*, <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice>.

¹⁴³ *Ibid.*

¹⁴⁴ These are not investigations of isolated incidents, but rather recurring activities by agencies. *Ibid.*

¹⁴⁵ See 18 U.S.C. §§241, 242.

¹⁴⁶ Department of Justice, Civil Rights Division, *Addressing Police Misconduct Laws Enforced by the Department of Justice*, <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice>.

¹⁴⁷ Under 34 U.S.C. Section 12601, “[i]f a law enforcement agency receives federal funding, [DOJ] can also use the anti-discrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968, and Title VI of the Civil Rights Act of 1964, which forbid discrimination on the basis of race, color, sex or national origin by agencies receiving federal funds. [DOJ] may act if [it] find[s] a pattern or practice by the law enforcement agency that systemically violates people’s rights. Harm to a single person, or isolated action, is usually not enough to show a pattern or practice that violates these laws.” See <http://www.justice.gov/crt/about/spl/police.php>.

¹⁴⁸ For more information, see <https://www.fbi.gov/investigate/civil-rights>.

¹⁴⁹ *Ibid.*

¹⁵⁰ U.S. Department of Justice, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present*, 2017, p. 5.

does not always do so.¹⁵¹ As with other law enforcement matters, DOJ may use its discretion in deciding whether to pursue a Section 12601 matter, even if facts would support a case.

In criminal enforcement, some have suggested that the burden of proof is on DOJ to “prove a defendant’s specific intent to deprive a victim of constitutional rights,”¹⁵² and this may make it difficult to convict someone of misconduct. In addition, even with a successful prosecution some are skeptical as to whether such an outcome incentivizes sweeping institutional changes to prevent future misconduct.¹⁵³ Regardless, it has been said that “the Civil Rights Division is not the most direct mechanism of police oversight in the nation, nor is it the primary mechanism on which the people of any single jurisdiction rely; but ... it has been the most steady and longest lasting instrument of police accountability in the United States.”¹⁵⁴

DOJ as Convener

DOJ’s Community Relations Service (the Service) brings together representatives from law enforcement agencies and local communities to discuss policing issues. For example, the Service was sent to Ferguson, MO, after the shooting of Michael Brown.¹⁵⁵ In 2019, responding to an invitation from the state equal rights commission in Alaska, the Service conducted a hate crimes forum in Anchorage to address perceived underreporting of hate crimes in the state.¹⁵⁶ The Service describes itself as “‘America’s Peacemaker’ for communities facing conflict based on actual or perceived race, color, national origin, gender, gender identity, sexual orientation, religion and disability.”¹⁵⁷ Geared toward conflict resolution strategies, it does not investigate or prosecute crimes, but rather participates in discussions among community stakeholders such as police, government officials, residents, and a wide variety of community-based organizations. It offers services geared toward the following:

- *Mediation.* Relying on structured in-person negotiations led by conflict resolution specialists, this process involves dialogue and negotiation. The goal of mediation is “empowering local communities to develop solutions that work for them, while offering an alternative to litigation or violence.”¹⁵⁸ Conflict resolution specialists do not advocate for any particular party or stakeholder.
- *Facilitation.* Conflict resolution specialists facilitate discussion among stakeholders within particular communities. Such discussions “frequently include race, police-community relations, perceived hate crimes, bias incidents, tribal conflicts, and protests and demonstrations.”¹⁵⁹ In 2019, the Service created the Southern California Network of Law Enforcement Community Relations

¹⁵¹ Stephen Rushin, *Federal Enforcement of Police Reform*, 82 *FORDHAM L. REV.* 3189, 3194 (2014) (hereinafter, Rushin, *Federal Enforcement of Police Reform*).

¹⁵² Christopher E. Stone, Introduction to *Prosecuting Police Misconduct: Reflections on the Role of the U.S. Civil Rights Division*, Vera Institute of Justice, p. 10.

¹⁵³ *Ibid.*, p. 9.

¹⁵⁴ *Ibid.*, p. 3.

¹⁵⁵ Department of Justice, “Statement by Attorney General Holder on the Ongoing Situation in Ferguson, Missouri,” press release, November 25, 2014.

¹⁵⁶ For more information, see <https://www.justice.gov/crs/highlights/hate-crimes-forum-anchorage>.

¹⁵⁷ For more information, see <http://www.justice.gov/crs/about>.

¹⁵⁸ For more information, see <https://www.justice.gov/crs/our-work/mediation>.

¹⁵⁹ For more information, see <https://www.justice.gov/crs/our-work/facilitation>.

Professionals to improve cooperation between law enforcement agencies and strengthen law enforcement-community relations in the area.¹⁶⁰

- *Training.* The Service provides programs to “improve local capacity to address conflicts, deescalate tensions, and prevent disputes.”¹⁶¹ Examples include trainings on interacting with the transgender or certain religious communities as well as reducing risk and maintaining safety during public events.
- *Consulting.* The Service helps “educate and empower communities, as well as to refine conflict resolution strategies and improve their ability to address underlying sources of tension.”¹⁶² It provides insight, advice, and resources on a range of topics such as communication and dispute resolution.

At the national level, DOJ can also convene law enforcement, policy, and academic experts to discuss issues of local importance. For example, the COPS Office and the Police Executive Research Forum (PERF) brought together “police executives, DOJ officials, academics and other experts to discuss constitutional policing as a cornerstone of community policing” in December 2014.¹⁶³ COPS and PERF published the proceedings of the one day session as a resource for law enforcement agencies.¹⁶⁴ In 2015, DOJ convened a task force on 21st Century Policing, which was tasked with identifying best practices and offering recommendations on how law enforcement agencies can both promote crime reduction and build public trust.¹⁶⁵ In 2017, DOJ released two reports that summarized the discussions held at two forums convened by DOJ that focused on police recruiting and hiring in the 21st century.¹⁶⁶ DOJ also released resources in 2018 for law enforcement and community partners to support the Not In Our Town effort to reduce hate in community across the country.¹⁶⁷

Policy Options for Congress

Policymakers might consider several options if they want to help promote better police-community relations or increase law enforcement agencies’ accountability. These include (1) placing conditions on federal funding to encourage state and local governments to adopt policy changes, (2) expanding efforts to collect data on the use of force by law enforcement officers, (3) promoting the use of body-worn cameras, (4) taking steps to facilitate more investigations and prosecutions of deaths that result from excessive force, (5) promoting community policing activities through COPS grants, and (6) using the influence of congressional authority to affect the direction of national criminal justice policy.

¹⁶⁰ For more information, see <https://www.justice.gov/crs/highlights/southern-california-network-of-law-enforcement-community>.

¹⁶¹ For more information, see <https://www.justice.gov/crs/our-work/training>.

¹⁶² For more information, see <https://www.justice.gov/crs/our-work/consultation>.

¹⁶³ Department of Justice, “U.S. Department of Justice Convenes Constitutional Policing Session With Law Enforcement Leaders,” press release, December 11, 2014.

¹⁶⁴ Police Executive Research Forum, “Constitutional Policing as a Cornerstone of Community Policing,” April 2015.

¹⁶⁵ Obama Administration, Executive Order 13684, “Establishment of the President’s Task Force on 21st Century,” 79 *Federal Register* 76865-76866, December 23, 2014.

¹⁶⁶ U.S. Department of Justice, Office of Community Oriented Policing Services, “Department of Justice Releases Two Reports on Law Enforcement Recruitment and Hiring in the 21st Century,” press release, January 11, 2017.

¹⁶⁷ Department of Justice, Office of Community Oriented Policing Services, *Stop Hate and Build Inclusion: Resources for Law Enforcement and Community Partners*, August 14, 2018. For more information about Not In Our Town, see <https://www.niot.org/>.

Conditions on Federal Funding

As discussed previously, Congress does not have direct control over state and local law enforcement policies. However, Congress can attempt to influence these policies by placing conditions on grant programs that provide assistance to state and local law enforcement agencies. The JAG program is frequently considered for these conditions because it is a formula grant program that provides funding to state and local governments for law enforcement purposes.¹⁶⁸ Congress might consider reducing a state or local law enforcement agency's JAG allocation or making receipt of JAG funding contingent upon adopting a certain policy change. While the majority of JAG funding for FY2016 (the most recent year for which detailed data are available) was used for law enforcement programs, state and local governments also used their funding for other programs such as "prosecution, courts, and public defense"; "planning and evaluation"; "prevention and education"; "corrections and community corrections"; "crime victims and witness services"; and "drug treatment and courts."¹⁶⁹

The broad nature of the criminal justice system activities that can be funded under the JAG program means that if Congress were to reduce a state or local government's allocation for not adopting a certain policy change, the reduction could result in the state or locality doing without the activities funded by the grant, or having to cut funding for non-law enforcement purposes and shift that money to law enforcement in order to compensate for reduced federal funding. On the one hand, it could be argued that this would provide a strong inducement for states and local governments to adopt the policy change (e.g., state and local governments would comply with the requirement because they would not want to lose funding for law enforcement and other important programs). On the other hand, it could penalize other agencies (e.g., corrections, prosecutors, courts, public defenders offices) that have no control over whether law enforcement agencies adopt the policy change. Also, some allocations (e.g., for law enforcement agencies serving small jurisdictions) might not be large enough to convince law enforcement agencies to comply with the requirement, especially if the cost of complying would exceed the agency's allocation.

Policymakers might also consider making state and local law enforcement agencies ineligible to apply for funding under competitive grant programs that provide funding for law enforcement personnel, equipment, or programs unless they adopt a certain policy. This option might be effective for bringing about changes in state and local law enforcement policy because law enforcement agencies would lose access to federal funding unless they comply with the condition(s). Also, unlike a formula grant program where each law enforcement agency can only apply for its allocated amount, law enforcement agencies can apply for an amount of funding from a competitive grant program that is equal to its needs. For example, a small law enforcement agency might only be eligible to receive \$15,000 under the JAG program, but under the COPS hiring program it could apply for up to \$125,000 to hire a new officer. However, making some law enforcement agencies ineligible to apply for funding under a specific grant program would

¹⁶⁸ For more information on how allocations are calculated under the JAG program, see CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*.

¹⁶⁹ The Bureau of Justice Assistance reported that 64% of JAG funding was used for law enforcement programs in FY2016. The remaining funds were used for prosecution, court, and public defense (9%); prevention and education (4%); corrections and community corrections (7%); drug treatment and courts (2%); planning and evaluation (3%); crime victim and witness services (2%); and "other" (8%). U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Justice Assistance Grant (JAG) Program, Activity Report, Fiscal Year 2016*, p. 2, https://www.bja.gov/programs/jag/jag-fy2016-activity-report_508.pdf.

not provide an incentive to change for those agencies that do not seek to apply for a grant under the program.

Data on Police Use of Force

As discussed previously, there is a lack of comprehensive and reliable data on law enforcement officers' use of force, though DOJ is trying to address this issue through the FBI's use of force data collection efforts and by requiring states to submit data to BJA on in-custody deaths as required by DCRA 2013. Collecting data on how the police use force that is more detailed could provide insight into whether the use of excessive force is the result of a few bad apples or is more of a systemic issue. More complete data could also help law enforcement agencies develop best practices about when to use force and how much force is necessary in specific circumstances.

DOJ's OIG noted several issues with the department's use of force data collection efforts that policymakers might choose to address. The OIG also found that the methodology used by BJA, whereby it is the responsibility of the state to develop its own methods for collecting and reporting the data required by DCRA, might not capture all in-custody deaths. BJS tested a methodology that collected more complete data on arrest-related deaths, but it is not being used because BJS is not the DOJ agency collecting DCRA data. This is because DCRA 2013 requires DOJ to withhold up to 10% of a state's JAG funds if they do not comply with the act's requirements and DOJ does not believe BJS should be making compliance decisions.¹⁷⁰ The OIG reported that BJA is not utilizing the methodology tested by BJS because BJA does not have the resources to manage it. Congress could consider amending DCRA 2013 to require BJA to use the methodology developed by BJS and provide additional resources to BJA to help the agency develop the capacity to manage the program.

Another potential issue is the possible duplicative nature of the two programs and the data DOJ collects under DCRA 2013 and the FBI's Use of Force Data Collection program. The OIG noted that "duplicative reporting requirements can confuse respondents and increase the risk of respondent fatigue, which can diminish data quality."¹⁷¹ The FBI and BJA are both collecting data on deaths resulting from the use of force by police officers. Congress could consider authorizing and expanding DCRA 2013 to capture data collected through the FBI's Use of Force Data Collection program and also to require BJA to collect data on arrest-related deaths from local governments rather than the state. This might result in arrest-related deaths data that is more accurate because local governments might be more knowledgeable than the state about deaths that occur in their jurisdictions, but it would be a significant effort to manage because there are thousands of local law enforcement agencies.¹⁷²

DCRA 2013 does not require DOJ to publish data it collects from states pursuant to the act. DCRA 2013 requires DOJ to conduct a study that examines how data collected pursuant to the act can be used to help reduce the number of deaths in custody and examine the relationship, if any, between the number of deaths and the management of correctional facilities. DOJ submitted a report to Congress in December 2016 that detailed the plan to implement DCRA 2013.¹⁷³ In

¹⁷⁰ OIG's report on DOJ's implementation of the Death in Custody Reporting Act, p. 11.

¹⁷¹ *Ibid.*, p. 14.

¹⁷² According to data published by BJS, in 2016 there were 12,261 local police departments and 3,012 sheriff's offices. Shelley S. Hyland and Elizabeth Davis, *Local Police Departments, 2016: Personnel*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 252835, Washington, DC, October 2019, p. 2.

¹⁷³ U.S. Department of Justice, *Report of the Attorney General to Congress Pursuant to the Death in Custody Reporting Act*, December 16, 2016, <https://www.justice.gov/archives/page/file/918846/download>.

response to questions posed by the OIG, OJP believes that the December 2016 report fulfills the reporting requirement of DCRA 2013.¹⁷⁴ OJP responded that it has no plans to produce another report, nor to report state data collected under the act.¹⁷⁵ OJP stated that “once data collection has begun the Department will assess what kinds of reporting would be appropriate based on the available data.”¹⁷⁶ Policymakers might consider amending DCRA 2013 to require DOJ to either publish an annual report on in-custody deaths using data submitted by states or require DOJ to make the data available on its website.

Promoting the Use of Body-Worn Cameras

Body-worn cameras (BWCs) are mobile cameras that allow law enforcement officers to record what they see and hear. They can be attached to a helmet, a pair of glasses, or an officer’s shirt or badge. From FY2016 to FY2020, Congress appropriated \$112.5 million for a grant program under DOJ to help law enforcement agencies purchase BWCs.

BWCs are viewed as a potential remedy for resolving issues of community trust and as a way to increase police accountability. Many law enforcement agencies started to adopt BWC programs in the wake of high-profile police use-of-force incidents and growing demands for more police accountability. It is likely that the number of law enforcement agencies with BWC programs more than doubled from 2013 to 2018.¹⁷⁷ The growing popularity of BWCs programs has contributed to an increase in the amount of research available on the effects of the cameras. A review published in 2019 synthesized the findings of 70 studies of BWC programs.¹⁷⁸ The researchers note that while early studies suggested that BWCs decreased the use of force by police officers, more recent studies have found mixed results, though this could be the result of differences in agencies’ policies about when officers have to use their cameras (e.g., BWCs might have less effect on the use of force if officers have discretion about when they can turn on their cameras). Research suggests that BWCs reduce complaints against officers, but “questions [remain], then, as to whether and to what degree these changes reflect citizens’ reporting behaviors or improvements in officers’ behavior or their interactions with citizens.”¹⁷⁹

Congress could consider authorizing a new grant program that would provide funding for law enforcement agencies to purchase BWCs.¹⁸⁰ One potential model for such a program would be the Matching Grant Program for Armor Vests. This program provides grants to state, local, and tribal governments to help purchase armor vests for use by law enforcement officers and court officers. Grants under the program cannot pay for more than 50% of the cost of purchasing a new armor vest. Before authorizing a BWCs funding program, policymakers may consider the following issues:

- How much would it cost to supply BWCs to all law enforcement agencies to ensure that all their sworn officers have the cameras? BJS reports that 47% of all

¹⁷⁴ OIG’s report on DOJ’s implementation of the Death in Custody Reporting Act, p. 20.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Cynthia Lum, Megan Stoltz, and Christopher S. Coper et al., “Research on Body-Worn Cameras: What We Know, What We Need to Know,” *Criminology and Public Policy*, vol. 18, no. 1 (2019), pp. 93-118 (hereinafter, “Lum et al., ‘Research on Body-Worn Cameras’”).

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ The \$112.5 million Congress has appropriated since FY2016 to help law enforcement agencies purchase BWCs was not appropriated pursuant to a currently authorized program.

police departments and sheriff's offices have acquired BWCs and 45% of police departments and sheriff's offices have at least some BWCs in service.¹⁸¹ A market survey conducted by NIJ shows that the cameras can cost anywhere from \$120 to \$1,000.¹⁸² The median price of a BWC included in the survey was \$499.

- Should all law enforcement officers be required to wear BWCs? For example, should officers in law enforcement agencies that serve small jurisdictions or those with relatively low crime rates be required to wear them? Would it be more effective to allocate funding to outfit officers in larger jurisdictions or those with higher crime rates with the cameras?
- There are costs to law enforcement agencies beyond the cost of purchasing BWCs. For example, there would be maintenance and replacement costs for BWCs and law enforcement agencies would have to pay to store and manage the data generated by the cameras. Would Congress provide grant funding to cover these costs? If not, would this discourage law enforcement agencies from purchasing BWCs for their officers? A story in the *Washington Post* highlighted how some law enforcement agencies, especially small agencies, have shuttered their BWC programs due to the high cost of storing the footage generated by their officers' cameras.¹⁸³
- There may also be concerns about whether BWCs could invade citizens' privacy. BWCs could potentially record what officers see when they enter someone's home as well as their interactions with bystanders, suspects, and victims in sometimes stressful situations. The American Civil Liberties Union, which supports the use of BWCs, believes that it is necessary to establish strong policies regarding the use of the cameras so that they do not become another form of public surveillance.¹⁸⁴ Law enforcement agencies that outfit their officers with BWCs might also have to conduct a privacy impact assessment of whether the cameras affect privacy and develop policies about, among other things, which interactions with the public will be recorded, as well as how long videos will be stored, who would have access to them, and whether they would be distributed to the public.
- Is there a need to fund more research into BWCs? Even though there has been an increase in the number of studies of BWC programs over the past several years, researchers noted, "although the number of BWC studies is large overall, the number available to evaluate any particular outcome is still often small, and findings are thus subject to change."¹⁸⁵ They also note that there is still a lack of research on other significant questions related to BWCs, such as what effect they have on police processes and investigations, whether they affect citizens'

¹⁸¹ Shelly S. Hyland, *Body-Worn Cameras in Law Enforcement Agencies, 2016*, NCJ 251775, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, November 2018, p. 2.

¹⁸² U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Body-Worn Cameras for Criminal Justice: Market Survey*, version 1.0, March 2014.

¹⁸³ Kimberly Kindy, "Some U.S. Police Departments Dump Body-Camera Programs Amid High Costs," *Washington Post*, January 21, 2019.

¹⁸⁴ Jay Stanley, *Police Body-Mounted Cameras: With the Right Policies in Place, A Win for All*, American Civil Liberties Union, October 2013, p. 1.

¹⁸⁵ Lum et al., "Research on Body-Worn Cameras."

willingness to report crime and cooperate in police investigations, or whether they have different effects on different groups of people or officers.¹⁸⁶

Facilitating the Investigation and Prosecution of Excessive Force

The discussion of whether to charge the officers involved in the death of George Floyd and past decisions of grand juries in Missouri and New York not to indict the police officers responsible for the deaths of Michael Brown and Eric Garner have raised questions about whether the grand jury system favors police and if it can hold officers accountable for civilian deaths.¹⁸⁷ Some have raised concerns that because local prosecutors work closely with local police officers on cases, they might not be able to evaluate police-involved shootings objectively.¹⁸⁸ Policymakers might want to consider ways to use federal authority to promote more accountability for deaths resulting from police officers' actions.

One option Congress could consider is amending 18 U.S.C. Section 242 to remove the requirement that federal prosecutors show that an officer *willfully* deprived someone of his or her civil rights. This could be done by amending Section 242 to employ a *reckless disregard* standard.¹⁸⁹ Such an amendment could allow DOJ to prosecute not only officers who intentionally violated an individual's constitutional rights, but also those who ignored the constitutional prohibition of excessive force. This option might help promote a sense of greater police accountability by expanding DOJ investigation and prosecution of police-involved shootings. An increase in federal enforcement might also help counteract the perception that police officers are being investigated by their friends and colleagues.¹⁹⁰ As an alternative to expanding federal criminal prosecution of law enforcement misconduct, Congress could also enact legislation to enhance DOJ civil enforcement under 34 U.S.C. Section 12601.¹⁹¹ Proposals for enhancing civil enforcement include accrediting law enforcement agencies, registering police misconduct incidents, and giving DOJ administrative subpoena power.¹⁹² State attorneys general or even private litigants, some propose, might be given authority to bring pattern-or-practice cases.¹⁹³ To address potential concerns about federal overreach, that right could be limited to those cases when state law also authorizes suit although such a limitation may not be constitutionally

¹⁸⁶ *Ibid.*

¹⁸⁷ Ed Kilgore, "All 4 Officers in George Floyd Case Now Face Charges," *New York Intelligencer*, June 3, 2020, available at <https://nymag.com/intelligencer/2020/06/george-floyd-case-chauvin-other-officers-face-new-charges.html> (explaining that a charge of first degree murder would require a grand jury indictment, "an iffy proposition" in police misconduct cases); James C. McKinley Jr. and Al Baker, "Grand Jury System, With Exceptions, Favors the Police in Fatalities," *The New York Times*, December 7, 2014.

¹⁸⁸ *Ibid.*

¹⁸⁹ Justice in Policing Act of 2020, H.R. 7120 (116th Cong., 2020). Other proposals currently before Congress would amend Section 242 to criminalize the use of specific tactics by law enforcement officers. For discussion of those proposals and potential legal issues related to amendments to Section 242, see CRS Legal Sidebar LSB10495, *Federal Police Oversight: Criminal Civil Rights Violations Under 18 U.S.C. § 242*, by Joanna R. Lampe.

¹⁹⁰ Kate Levine, *Who Shouldn't Prosecute the Police?*, 101 IOWA L. REV. 1447 (2016).

¹⁹¹ For example, the Justice in Policing Act of 2020 would enhance data collection on police use of force, register police misconduct to reveal patterns, and grant the Department of Justice administrative subpoena power in Section 12601 investigations. See Justice in Policing Act of 2020, H.R. 7120, §§103, 201-27 (116th Cong., 2020).

¹⁹² See Justice in Policing Act of 2020, H.R. 7120 (116th Cong., 2020)

¹⁹³ See June 4, 2020 Letter of New York and Illinois Attorneys General to Congressional Leaders, available at <https://www.politico.com/f/?id=00000172-808d-d3d2-ab7a-b78d69050000>; Todd Ruger, "Lawmakers dust off old proposals on police overhauls," *Rollcall*, June 2, 2020, available at <https://www.rollcall.com/2020/06/02/lawmakers-dust-off-old-proposals-on-police-overhauls/>.

required.¹⁹⁴ However, some of these options may also raise concerns about state sovereignty, and whether Congress would want to shift more responsibility for maintaining police accountability from state and local agencies to the federal government?

Another option would be to promote the use of special or independent prosecutors to investigate cases of police-related fatalities. Congress could make it a condition of receiving federal funding that states have a procedure in place whereby the state or local government can appoint a special or independent prosecutor in instances of police-involved shootings.¹⁹⁵ If Congress chooses to pursue this option, it may consider several related policy questions:

- What event would trigger the appointment of a special prosecutor? Because many excessive force cases are initially investigated internally by the local police department, it could be useful to have a clear mechanism in place to determine when a special prosecutor would be appointed.
- Should such a policy require states to appoint a special prosecutor in all police-involved shooting cases or should the appointing authority have the discretion to decide when to appoint a special prosecutor? Requiring states to appoint a special prosecutor in all cases might reassure the public that an impartial investigation is being conducted; however, it might also be viewed as an undue financial burden on the states.
- How would special prosecutors be chosen: by the governor, the state attorney general, the presiding judge, or someone else?
- From which office would special prosecutors be chosen? They might be appointed from a different locality in the state, the state attorney general's office, or the private sector.

Promoting Community Policing

Community policing is viewed as one potential avenue to repairing relationships between law enforcement agencies and the communities they serve. Congress has already established the COPS program to promote community policing. Under it, Congress can appropriate funding for grants to state, local, and tribal law enforcement agencies to “hire and train new, additional career law enforcement officers for deployment in community-oriented policing.”¹⁹⁶

Community policing may be a common suggestion for addressing concerns about law enforcement, but it is not always clear what actually constitutes *community policing*. Two scholars, in their review of trends in policing, note that community policing is “a catchphrase that has been used to describe a potpourri of different strategies” and that “one complication in determining the extent to which [community policing] has transformed policing is determining exactly what it is.”¹⁹⁷ The COPS Office states community policing is a “philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues

¹⁹⁴ Rushin, *Federal Enforcement of Police Reform*, p. 3241.

¹⁹⁵ *Ibid.* Section 104.

¹⁹⁶ 34 U.S.C. §10381(b)(2).

¹⁹⁷ Edward R. Maguire and William R. King, “Trends in the Policing Industry,” *Annals of the American Academy of Political and Social Science*, vol. 593 (May 2004), p. 23.

such as crime, social disorder, and fear of crime.”¹⁹⁸ However, some critics argue that if community policing is only a philosophy, it is nothing more than an “empty shell.”¹⁹⁹

While there are different conceptualizations of community policing, some common elements of what many argue may constitute it emerge from the literature.²⁰⁰

- *An emphasis on partnerships:* Community policing posits that the police can rarely solve public safety problems alone; therefore, law enforcement should develop partnerships with community stakeholders (e.g., other government agencies, community members, nonprofit organizations/service providers, businesses, and the media) to develop solutions to problems and promote trust in police.
- *Citizen input:* Under community policing, law enforcement should engage the public in making decisions about public safety priorities, addressing identified problems, and making decisions about how each community should be policed. In addition, the police should carefully consider citizen input when making policy decisions that affect the community.
- *A focus on prevention and problem solving:* Community policing promotes proactive efforts to address conditions that are contributing to public safety problems rather than responding to crime after it occurs. One of the more commonly cited problem-solving models in the community policing literature is SARA (scanning, analysis, response, and assessment). *Scanning* involves identifying and prioritizing problems. *Analysis* involves researching what is known about the problems. *Response* includes developing solutions to permanently reduce the number and extent of the problems. *Assessment* involves evaluating the success of the response to the identified problems.
- *Changing officer assignments:* One of the key tenets of community policing is a focus on long-term geographic assignments. This means assigning officers to a place (i.e., a specific beat) for an extended period of time to facilitate interactions between the officers and residents and foster a sense of mutual accountability for what happens in the neighborhood.
- *Fostering positive interactions:* Policing involves some negative or coercive interactions with members of the public, such as making arrests, issuing tickets, stopping people based on suspicion, or ordering people to desist with disruptive behavior. As such, under community policing law enforcement works to develop ways to have positive interactions with the public. The theory is that positive interactions can help offset the negative interactions, foster a sense of familiarity

¹⁹⁸ U.S. Department of Justice, Office of Community Oriented Policing Services, *Community Policing Defined*, 2014, <https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>.

¹⁹⁹ Gary W. Cordner, “Community Policing: Elements and Effects,” in *Critical Issues in Policing*, eds. Roger G. Dunham and Geoffrey P. Alpert, 6th ed. (Long Grove, IL: Waveland Press, 2010), p. 433.

²⁰⁰ See, for example, U.S. Department of Justice, Community Oriented Policing Services Office, *Community Policing Defined*, 2014, <https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>; Gary W. Cordner, “Community Policing: Elements and Effects,” in *Critical Issues in Policing*, eds. Roger G. Dunham and Geoffrey P. Alpert, 6th ed. (Long Grove, IL: Waveland Press, 2010), pp. 432-449; U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Understanding Community Policing: A Framework for Action*, NCJ 148457, August 1994, <https://www.ncjrs.gov/pdffiles/commmp.pdf>; and Sarah Lawrence and Bobby McCarthy, *What Works in Community Policing? A Best Practices Context for Measure Y Efforts*, University of California Berkeley School of Law, The Chief Justice Earl Warren Institute on Law and Social Policy, November 2013, https://www.law.berkeley.edu/files/What_Works_in_Community_Policing.pdf.

and trust, and allow police officers to become more knowledgeable about people and conditions on their beat.

- *Organizational change:* Community policing emphasizes the need for flatter organizations (i.e., reduced layers of hierarchy) and decentralized authority. These changes are necessary so that officers can act more independently, be more responsive to their communities, and take responsibility for their roles in community policing. In addition, management should empower officers to be proactive and creative in solving public safety problems and developing relationships with the community. Community policing also places an emphasis on organizational culture, mission, and values, and less emphasis on rules and policies, with the idea that if officers are instilled with a sense of values they will generally make good decisions. Evaluations of officers' performances should be based on the quality of their community policing and problem solving activities instead of traditional performance indicators (e.g., tickets issued, arrests made, calls handled).
- *Access to information:* Community policing relies on collecting and producing data on a range of police functions—not just enforcement and call-handling activities—as a means to developing solutions to community problems and providing citizen-focused services. Community policing also emphasizes the need for police to conduct crime analysis at a more localized level (e.g., a neighborhood) so that officers can identify and respond to problem hotspots.

There may be some questions about whether COPS grants move law enforcement agencies to embrace community policing agency-wide. During the mid- to late 1990s, the COPS Office awarded billions of dollars in grants for law enforcement agencies to hire officers to engage in community policing.²⁰¹ However, over this same period there was continued growth in use of Special Weapons and Tactics (SWAT) teams by law enforcement agencies nationwide.²⁰² Research on SWAT teams indicates that many law enforcement agencies believe they play an important role in community policing strategies.²⁰³ In addition, some scholars argue that the concept of community policing is just a way for law enforcement agencies to present their old ways in a new package. Two scholars note, “[law enforcement agencies] are managing to reconstitute their image away from the citizen-controller paradigm based in the autonomous legal order and towards a more comforting Normal Rockwell image—police as kind, community caretakers.”²⁰⁴ They contend that community policing is more about police transforming their image rather than the substance of their work.

²⁰¹ Between FY1995 and FY1999, Congress appropriated approximately \$6 billion for the COPS hiring program. See CRS In Focus IF10922, *Community Oriented Policing Services (COPS) Program*.

²⁰² Peter B. Kraska, “Militarization and Policing—Its Relevance to 21st Century Police,” *Policing: A Journal of Policy and Practice*, vol. 1, no. 4 (December 2007), p. 6.

²⁰³ Peter B. Kraska and Victor E. Kappeler, “Militarizing American Police: the Rise and Normalization of Paramilitary Units,” *Social Problems*, vol. 44, no. 1 (February 1997), p. 13. See also the mission statement for the Los Angeles Police Department’s Metropolitan Division, which houses the SWAT team: “The mission of Metropolitan Division is to support the Department’s community-based policing efforts to reduce the incidence and the fear of crime on a Citywide basis. This is accomplished by developing and deploying a reserve force of the most highly trained and disciplined personnel possible. The effectiveness of the Department’s incident commanders in realizing the long-term goals of the Department is enhanced by Metropolitan Division’s controlled application of specialized tactics/equipment and the ongoing training and leadership provided by Metropolitan Division to the Department.” [Emphasis added.]

²⁰⁴ Victor E. Kappeler and Peter B. Kraska, “A Textual Critique of Community Policing: Police Adaptation to High Modernity,” *Policing: An International Journal of Policing Strategies & Management*, vol. 21, no. 2 (1998), p. 306.

Some research suggests that community policing might help improve the perception of the legitimacy of the police, but it has a limited effect on reducing crime and citizens' fear of crime. Experts at George Mason's Center for Evidence-Based Crime Policy note:

Evidence for the effectiveness of community policing is mixed. Several systematic and narrative reviews find that its impact on crime prevention is limited and that it has little impact on reducing citizens' fear of crime []. However, community policing was originally intended to emphasize the non-crime-fighting roles of the police, such as building community trust, and to increase citizen satisfaction with and confidence in the police []. [A 2014 study found] that community policing is associated with significant increases in citizen ratings of satisfaction with the police and also has positive benefits for police legitimacy and citizen perceptions of disorder.²⁰⁵

At the same time, and consistent with the debate over what is community policing, these experts also note:

As with many areas of policing, research guidance on implementing community-oriented policing is limited. A key challenge is the diversity of strategies that have been deployed under the umbrella of community policing over time and across different agencies. The extent to which departments who claim to be doing community policing engage in community partnerships, systematic problem-solving, and organizational transformation varies substantially, and there is not always a formal process for citizen engagement in identifying and responding to problems.²⁰⁶

Congress could promote community policing by continuing to provide funding for COPS hiring grants. However, as the discussion above illustrates, there appear to be some limitations to how much influence COPS grants can have on re-orienting law enforcement agencies toward community policing. Before allocating more funding for COPS hiring grants, policymakers might consider whether there need to be clearer expectations for how law enforcement agencies use the officers hired with the grants, or at least some limitations on COPS-funded officers' activities. Congress could also consider providing funding to the COPS Office to do more training and host seminars on the importance of using community policing practices to try to engender trust between the police and citizens.

Non-legislative Measures

In addition to the legislative measures outlined above, policymakers may also consider ways to use Congress's soft power (i.e., non-legislative influence) to bring about improvements in police-community relations. For example, Congress might continue to hold hearings on issues related to police-community relations, racial disparity in the criminal justice system, DOJ's role in assisting law enforcement agencies with adopting more effective policing strategies, or how law enforcement officers use force. Policymakers could continue to give speeches about the importance of improving trust in police and meet with local officials to discuss what they are doing to improve law enforcement services. Policymakers might also consider meeting with community groups to get their views on what, if any, reforms need to take place and to keep them engaged in promoting efforts to reform law enforcement practices.

Non-legislative congressional influence could serve to keep police-community relations in the national spotlight and keep pressure on state and local law enforcement agencies to improve their

²⁰⁵ Cynthia Lum, Christopher S. Koper, and Charlotte Gill et al., *An Evidence Assessment of the Recommendations of the President's Task Force on 21st Century Policing—Implementation and Research Priorities*, Center for Evidence-Based Crime Policy, George Mason University, Fairfax, VA, 2016, p. 28.

²⁰⁶ *Ibid.*, p. 29.

relationships with the public. To some extent, efforts to change the way that law enforcement officers interact with citizens must come from changes within law enforcement agencies, and these changes might only be brought about through grassroots movements. Congress might be able to support these movements by keeping the issue of citizens' trust in the police in the national consciousness.

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