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## BETTER POLICING CAN IMPROVE LEGITIMACY AND REDUCE MASS INCARCERATION

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Recent events in Ferguson, New York City, Chicago, and elsewhere in the United States have exposed rifts in the relationships between the police and the communities they protect and serve. These incidents have damaged police legitimacy by promoting perceptions among community members that police do not play an appropriate role in making and implementing rules governing community conduct.<sup>1</sup> To restore this legitimacy, police must renew their efforts to develop, implement, and sustain crime control policies that are both fair and effective. As suggested by the National Research Council's Committee to Review Research on Police Policy and Practices, "policing that is perceived as just is more effective in fostering a law-abiding society, and that success in reducing crime enhances police legitimacy."<sup>2</sup> More recently, the President's Task Force on 21st Century Policing noted that "law enforcement's obligation is not only to reduce crime but also to do so fairly while protecting the rights of citizens."<sup>3</sup>

In their review of three recent books that highlight the need for criminal justice reform, Dr. Kathryn Young and Professor Joan Petersilia describe how too many police departments engage in excessive surveillance and enforcement practices in urban neighborhoods suffering from serious violent crime problems — and how those practices contribute to mass incarceration and diminished police legitima-

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<sup>1</sup> See, e.g., TAMMY R. KOCHER, ASSESSING THE INITIAL IMPACT OF THE MICHAEL BROWN SHOOTING AND POLICE AND PUBLIC RESPONSES TO IT ON ST. LOUIS COUNTY RESIDENTS' VIEWS ABOUT POLICE 4–6 (2015), [http://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1001&context=ccj\\_reports](http://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1001&context=ccj_reports) [<http://perma.cc/RK99-DVLW>]; Jeffrey M. Jones, *In U.S., Confidence in Police Lowest in 22 Years*, GALLUP (June 19, 2015), <http://www.gallup.com/poll/183704/confidence-police-lowest-years.aspx>. For discussions of the relationship between police behavior and perceived legitimacy, see Anthony Bottoms & Justice Tankebe, *Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice*, 102 J. CRIM. L. & CRIMINOLOGY 119, 132–49 (2012); and Tom R. Tyler, *Enhancing Police Legitimacy*, 593 ANNALS AM. ACAD. POL. & SOC. SCI. 84, 85 (2004).

<sup>2</sup> COMM. TO REVIEW RESEARCH ON POLICE POLICY & PRACTICES & COMM. ON LAW & JUSTICE, NAT'L RESEARCH COUNCIL, FAIRNESS AND EFFECTIVENESS IN POLICING 2 (Wesley Skogan & Kathleen Frydl eds., 2004).

<sup>3</sup> PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 42 (2015).

cy.<sup>4</sup> Among a number of policing reforms that they propose in the review, Young and Petersilia encourage police executives and policymakers to “think carefully” about policing tactics that focus on specific people and places.<sup>5</sup> I concur with the authors’ conclusion that one-dimensional and overly broad police surveillance and enforcement strategies do little to change the underlying dynamics that drive serious urban violence. An inappropriate police focus on particular people and places — one where the police, in isolation from the community, identify the areas of focus, and where entire neighborhoods are defined as trouble zones — can contribute to racial disparity and mass incarceration problems that harm disadvantaged neighborhoods. These consequences are particularly acute when an overly broad approach is coupled with a “crime numbers game” managerial mindset<sup>6</sup> that promotes yearly increases in arrests, summonses, and investigatory stops as key performance measures.

A growing body of research evidence, however, suggests that “high-risk places, high-risk people” strategies can actually improve police legitimacy when they are coupled with a strong commitment to community partnership. Such strategies can simultaneously reduce crime and imprisonment by increasing potential offenders’ perceived risk of apprehension and by reducing their opportunities to commit crimes.<sup>7</sup> In this essay, I briefly describe the concentrated nature of serious urban violence, review the problems of overly aggressive and unfocused policing, and discuss how the community policing philosophy can frame focused policing initiatives in ways that can improve legitimacy and reduce mass incarceration.

#### THE NATURE OF SERIOUS URBAN VIOLENCE

Police departments are often called on to quell outbreaks of serious violence such as sudden increases in homicides, aggravated assaults, and robberies. Research has long documented that most violence occurs within racial groups and that black Americans, often victimized by black offenders, experience disproportionately high levels of violent crime.<sup>8</sup> Although whites represent the majority of suspects arrested for

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<sup>4</sup> Kathyne M. Young & Joan Petersilia, *Keeping Track: Surveillance, Control, and the Expansion of the Carceral State*, 129 HARV. L. REV. 1318 (2016) (book review).

<sup>5</sup> *Id.* at 1350–51.

<sup>6</sup> See generally JOHN A. ETERNO & ELI B. SILVERMAN, *THE CRIME NUMBERS GAME* 57–80 (2012) (describing this mindset).

<sup>7</sup> See Steven N. Durlauf & Daniel S. Nagin, *Imprisonment and Crime: Can Both Be Reduced?*, 10 CRIMINOLOGY & PUB. POL’Y 13, 37–38 (2011).

<sup>8</sup> See ERIKA HARRELL, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *BLACK VICTIMS OF VIOLENT CRIME* 5 tbl.5 (2007), <http://www.bjs.gov/content/pub/pdf/bvvc.pdf> [<http://perma.cc/CEM5-L3S4>]; JENNIFER L. TRUMAN & LYNN LANGTON, BUREAU OF

all crimes, blacks are disproportionately more likely to be arrested for violent crimes, especially homicide, relative to their share of the U.S. population.<sup>9</sup>

An important diagnostic approach to understanding racial disparities in violent crime involves identifying the neighborhood characteristics that lead to high rates of violence. Empirical evidence suggests that the capacity of neighborhood residents to achieve a common set of goals and exert control over youth and public spaces — termed “collective efficacy” — protects against serious violence.<sup>10</sup> Concentrated disadvantage<sup>11</sup> in urban neighborhoods undermines local collective efficacy and gravely limits the ability of residents to address serious violent crime problems.<sup>12</sup> Unfortunately, due to a long history of exclusion from important economic and social opportunities, residents of disadvantaged urban neighborhoods are primarily minorities and often black.<sup>13</sup> As a result, urban homicides, largely committed with guns and perpetrated by and against young black men, tend to concentrate in disadvantaged black neighborhoods.

Careful within-city research facilitates a deeper understanding of the situations, dynamics, and relationships associated with elevated rates of violent crimes committed by black offenders against black victims. For instance, in Boston, gun violence is driven by gang conflicts and is highly concentrated among a small number of high-risk places and high-risk people.<sup>14</sup> Roughly five percent of Boston’s street segments and intersections generated about seventy-four percent of fatal and non-fatal shooting incidents between 1980 and 2008.<sup>15</sup> These gun violence hot spots were in and around gang turf and drug-market areas and occupied very small geographies within disadvantaged neigh-

JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, CRIMINAL VICTIMIZATION, 2014, at 6 & tbl.5 (2015), <http://www.bjs.gov/content/pub/pdf/cv14.pdf> [<http://perma.cc/DES5-MPMS>].

<sup>9</sup> U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 2014, at tbl.43 (2015), <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-43> [<http://perma.cc/XXY6-GJTR>]; *State & County QuickFacts*, U.S. CENSUS BUREAU (Dec. 2, 2015, 3:44 PM), <http://quickfacts.census.gov/qfd/states/00000.html> [<http://perma.cc/MW5A-23Y4>].

<sup>10</sup> See Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCIENCE 918, 918 (1997).

<sup>11</sup> Concentrated disadvantage is calculated by weighting the proportion of households that are below the poverty line, on public assistance, and female-headed, and the proportion of the population that is unemployed, under eighteen years of age, and black. *Id.* at 920 tbl.2.

<sup>12</sup> See generally Robert J. Sampson & William Julius Wilson, *Toward a Theory of Race, Crime, and Urban Inequality*, in CRIME AND INEQUALITY 37, 37–54 (John Hagan & Ruth D. Peterson eds., 1995).

<sup>13</sup> WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED 109–24 (1987).

<sup>14</sup> Anthony A. Braga, *Serious Youth Gun Offenders and the Epidemic of Youth Violence in Boston*, 19 J. QUANTITATIVE CRIMINOLOGY 33, 33 (2003).

<sup>15</sup> Anthony A. Braga et al., *The Concentration and Stability of Gun Violence at Micro Places in Boston, 1980–2008*, 26 J. QUANTITATIVE CRIMINOLOGY 33, 34 (2010).

borhoods.<sup>16</sup> In 2006, only one percent of Boston's population between the ages of fifteen and twenty-four were members of street gangs involved in gun violence; however, gang-related disputes generated half of all homicides and gang members were involved as offenders, victims, or both in nearly seventy percent of nonfatal shootings.<sup>17</sup> In a recent study of gang members and their associates in one disadvantaged Boston community, roughly eighty-five percent of all gunshot victims were in a single social network where every handshake away from a gunshot victim reduced one's odds of gun victimization by twenty-five percent.<sup>18</sup>

The patterns observed in Boston parallel distributions seen in many other cities. Criminological research has long documented that crime is highly concentrated among a small number of people<sup>19</sup> and at a small number of places in cities.<sup>20</sup> Even within high-crime neighborhoods, a series of studies suggests that crime clusters at a few discrete locations, leaving many blocks in those areas relatively crime-free.<sup>21</sup> Further, very small proportions of youth report participating in street gangs.<sup>22</sup> However, relative to non-gang delinquent youth, gang members have much higher rates of violent offending and violent vic-

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<sup>16</sup> See *id.* at 48–50.

<sup>17</sup> Anthony A. Braga et al., *Losing Faith? Police, Black Churches, and the Resurgence of Youth Violence in Boston*, 6 OHIO ST. J. CRIM. L. 141, 153–55 (2008).

<sup>18</sup> Andrew V. Papachristos et al., *Social Networks and the Risk of Gunshot Injury*, 89 J. URB. HEALTH 992, 992 (2012).

<sup>19</sup> In a classic study of a birth cohort of nearly 10,000 boys born in 1945 and living in Philadelphia, University of Pennsylvania researchers found that only six percent accounted for more than half of all offenses committed by the entire cohort. MARVIN E. WOLFGANG ET AL., *DELINQUENCY IN A BIRTH COHORT* 88–90, 89 tpls.6.1 & 6.2 (1972); see also JOHN H. LAUB & ROBERT J. SAMPSON, *SHARED BEGINNINGS, DIVERGENT LIVES* 83–85 (2003) (discussing the Philadelphia Birth Cohort data).

<sup>20</sup> Beginning in the early 1800s, European geographers first noted the uneven distribution of crime in urban environments. See DAVID WEISBURD ET AL., *THE CRIMINOLOGY OF PLACE* 29–33 (2012). With the advent of powerful microcomputers and mapping software over the course of the 1980s, more sophisticated spatial analyses of crime were conducted that confirmed these skewed distributions in cities. For instance, in Minneapolis, an analysis revealed that only three percent of city addresses generated more than half of all citizen calls for service to the police. Lawrence W. Sherman et al., *Hot Spots of Predatory Crime: Routine Activities and the Criminology of Place*, 27 CRIMINOLOGY 27, 37 (1989).

<sup>21</sup> Reflecting on the larger body of empirical evidence and his own analyses of crime in five larger cities and three smaller cities, Professor David Weisburd suggests a “law of crime concentration,” which posits “that for a defined measure of crime at a specific microgeographic unit, the concentration of crime will fall within a narrow bandwidth of percentages for a defined cumulative proportion of crime.” David Weisburd, *The Law of Crime Concentration and the Criminology of Place*, 53 CRIMINOLOGY 133, 138 (2015) (emphasis omitted).

<sup>22</sup> See MALCOLM W. KLEIN & CHERYL L. MAXSON, *STREET GANG PATTERNS AND POLICIES* 19–48 (2006).

timization,<sup>23</sup> and gang conflicts generate disproportionate shares of homicides in many cities.<sup>24</sup>

#### THE PROBLEM OF OVERLY AGGRESSIVE AND UNFOCUSED POLICING

The above research demonstrates that effective policing may require a focus on particular people and places. Thus, police departments should pursue strategies artfully tailored to specific risks such as hot spots, repeat victims, high-rate offenders, or gang hostilities.<sup>25</sup> However, *how* police departments choose to address these recurring problems may either improve or further damage their relationships with minority residents. Police departments can adopt crime prevention strategies that seek to engage the community in changing the underlying conditions, situations, and dynamics that cause violence to recur. Alternatively, police departments can simply “put cops on dots” through directed patrols or carry out enforcement blitzes aimed at potential offenders in high-violence areas. Unfortunately, these kinds of enforcement initiatives sometimes become unfocused in practice as entire neighborhoods can be defined as hot-spot locations and young minority males simply using public spaces can be regarded as potential high-risk offenders.

Citizens’ appraisals of the police are influenced by the style of policing in their communities. Policing strategies that emphasize increased investigative stops, criminal summonses, and misdemeanor arrests have been shown, across jurisdictions, to generate concerning racial disparities in enforcement.<sup>26</sup> Intervening in matters that to everyday citizens seemingly do not warrant law enforcement action is known as over-policing and, combined with occasional disrespectful treatment at the hands of officers, intensifies black citizens’ overall negative views of the police.<sup>27</sup> In highly disadvantaged neighborhoods, the police also disproportionately use force when attempting to control or to apprehend suspects.<sup>28</sup> Hence, aggressive policing strate-

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<sup>23</sup> See TERENCE P. THORNBERRY ET AL., GANGS AND DELINQUENCY IN DEVELOPMENTAL PERSPECTIVE 97–121 (2003).

<sup>24</sup> JAMES C. HOWELL & ELIZABETH GRIFFITHS, GANGS IN AMERICA’S COMMUNITIES 176–81 (2016).

<sup>25</sup> ANTHONY A. BRAGA, PROBLEM-ORIENTED POLICING AND CRIME PREVENTION 3–4 (2008).

<sup>26</sup> Jeffrey A. Fagan et al., *Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City*, in RACE, ETHNICITY, AND POLICING 309, 312–14 (Stephen K. Rice & Michael D. White eds., 2010).

<sup>27</sup> See VICTOR M. RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS 54–57, 86 (2011).

<sup>28</sup> See Robert J. Kane, *The Social Ecology of Police Misconduct*, 40 CRIMINOLOGY 867, 867 (2002).

gies set the stage for increased acrimony between the police and disadvantaged blacks. Moreover, under-policing can occur at the same time police officers are saturating neighborhoods with resources to control outbreaks of violence.<sup>29</sup> Specifically, urban blacks frequently express dissatisfaction regarding delayed response times, uncertain prioritization of calls for service, and the overall perception that police are not committed to solving reported crimes.<sup>30</sup>

It is not surprising that residents of distressed, high-crime neighborhoods consistently report higher levels of dissatisfaction with the police and often blame the police for persistent crime and disorder problems.<sup>31</sup> The vast majority of urban residents, though, are not anti-police and fully recognize that officers are critical to public safety.<sup>32</sup> Much like their white counterparts, minority citizens understand the need for improved police effectiveness. However, routine eruptions of neighborhood violence often cause poor minorities to doubt that they are receiving equal police protection, reducing their overall confidence in and satisfaction with police.

#### HOW THE POLICE SHOULD BE FOCUSED ON HIGH-RISK PLACES AND PEOPLE

Community policing should be the foundation of any focused violence-prevention approach. While community policing programs have not been found to be effective in reducing crime, they have been found to generate positive effects on citizen satisfaction, perceptions of disorder, and police legitimacy.<sup>33</sup> Moreover, community engagement strategies implemented as part of community policing initiatives can provide important input to help focus problem-oriented policing, hot-spot policing, and focused-deterrence approaches, which do seem to reduce violence.<sup>34</sup> Developing close relationships with community members would help the police gather information about crime and disorder

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<sup>29</sup> See David A. Klinger, *Negotiating Order in Police Work: An Ecological Theory of Police Response to Deviance*, 35 CRIMINOLOGY 277, 298 (1997).

<sup>30</sup> Rod K. Brunson, "Police Don't Like Black People": African-American Young Men's Accumulated Police Experiences, 6 CRIMINOLOGY & PUB. POL'Y 71, 81 (2007).

<sup>31</sup> RONALD WEITZER & STEVEN A. TUCH, RACE AND POLICING IN AMERICA 182 (2006).

<sup>32</sup> See *id.* at 41 (showing that only twenty-seven percent of black residents, twenty percent of Hispanic residents, and fourteen percent of white residents are dissatisfied with the police department in their city); *id.* at 150–51 (showing the support of black residents for community policing and some forms of intensified policing to control crime).

<sup>33</sup> Charlotte Gill et al., *Community-Oriented Policing to Reduce Crime, Disorder and Fear and Increase Satisfaction and Legitimacy Among Citizens: A Systematic Review*, 10 J. EXPERIMENTAL CRIMINOLOGY 399, 399 (2014).

<sup>34</sup> Anthony A. Braga, *Crime and Policing Revisited*, NEW PERSPECTIVES IN POLICING BULL., Sept. 2015, at 17–19, <https://www.ncjrs.gov/pdffiles1/nij/248888.pdf> [http://perma.cc/M3CH-C9XW].

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problems, understand the nature of these problems, and solve specific crimes. Community members can also help with key components of strategies tailored to specific problems by making improvements to the physical environment and through informal social control of high-risk people. In this way, police strategies focusing on particular people and places would cease to be a form of profiling and become a generator of community engagement projects. Indeed, a central idea in community policing is to engage residents so they can exert more control over situations and dynamics that contribute to their own potential for victimization and, by doing so, influence neighborhood levels of violence. Preventing violence by addressing underlying violent crime-producing situations and dynamics reduces harm to potential victims as well as harm to would-be offenders by not relying solely on arrest and prosecution actions.

Community engagement in developing appropriately focused strategies would help to safeguard against indiscriminate and overly aggressive enforcement tactics and other inappropriate policing activities, which erode the community's trust and confidence in the police and inhibit cooperation. Collaborative partnerships between police and community members improve the transparency of law enforcement actions and provide residents with a much-needed voice in crime prevention work. Ongoing conversations with the community can ensure that day-to-day police-citizen interactions are conducted in a procedurally just manner that enhances community trust and compliance with the law.

Communities expect the police to control violence. Ineffective strategies will undoubtedly undermine police legitimacy. Effective crime-prevention efforts are characterized by increasing potential offenders' risk of apprehension and by reducing their opportunities to commit crimes.<sup>35</sup> While arrests are inevitable, police should be oriented toward preventing crimes from happening in the first place. Following the focused deterrence model, high-risk people such as gang members can be warned of the enforcement consequences associated with continued violent behavior and be advised to take advantage of services and opportunities being offered to them.<sup>36</sup> In the eyes of community members, there is an inherent fairness in offering targeted offenders a choice and providing resources to support their transition away from violent behavior rather than simply arresting and prosecuting them.

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<sup>35</sup> Daniel S. Nagin et al., *Deterrence, Criminal Opportunities, and Police*, 53 *CRIMINOLOGY* 74, 74 (2015).

<sup>36</sup> See DAVID M. KENNEDY, *DON'T SHOOT* 267–83 (2011).

Police presence in crime hot spots can change offender perceptions of risk without generating mass arrests or subjecting large numbers of people to investigative stops. While in these places, police can change the physical and spatial characteristics, such as poor lighting, abandoned buildings, disorderly bars, and the like, that attract potential offenders. These kinds of preventive strategies can reduce the number of young minority men caught up in the criminal justice system and, in turn, could diminish the harms associated with mass incarceration in these vulnerable communities.

The ideals of community policing have been around for a long time. Unfortunately, many police departments do not seem to be embracing these approaches with fidelity to the original principles.<sup>37</sup> The available research evidence “suggests that community policing has been unevenly implemented within police departments, with responsibility for community-based initiatives sometimes relegated to specialized units composed of a small number of officers rather than spread across police departments.”<sup>38</sup> Further, the vitality of existing policing efforts have been threatened by the use of crime control management strategies that privilege numerical targets for increased arrests, summonses, and stops over problem-solving work.<sup>39</sup> It is perhaps not surprising that even though community policing has been widely adopted at least in principle, substantial conflict continues to occur between police and the communities they serve. It is high time that police departments reinvest in implementing community policing with a much more meaningful commitment to problem-solving and prevention-oriented approaches that emphasize the role of the public in helping set police priorities.

#### CONCLUDING THOUGHTS

Young and Petersilia rightly observe that community policing programs are vulnerable to misuse and, if not implemented properly, “[g]etting to know the community” could open the door to more surveillance and information gathering on residents.<sup>40</sup> Indeed, community problem-solving efforts have been noted to rely upon traditional enforcement actions rather than situational crime-prevention strategies

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<sup>37</sup> Braga, *supra* note 34, at 17.

<sup>38</sup> *Id.* (citing COMM. TO REVIEW RESEARCH ON POLICE POLICY & PRACTICES & COMM. ON LAW & JUSTICE, NAT’L RESEARCH COUNCIL, *supra* note 2, at 105–06).

<sup>39</sup> Malcolm K. Sparrow, *Measuring Performance in a Modern Police Organization*, NEW PERSPECTIVES IN POLICING BULL., Mar. 2015, at 20–27, <http://permanent.access.gpo.gov/gp057173/248476.pdf> [<http://perma.cc/TNW7-2R6D>].

<sup>40</sup> Young & Petersilia, *supra* note 4, at 1345.

that reduce the vulnerability of criminal targets.<sup>41</sup> To some observers, police departments have drifted away from a community co-production model of public safety and toward a zero-tolerance model that emphasizes enforcement over prevention. As suggested by the President's Task Force on 21st Century Policing, "[a]ny prevention strategy that unintentionally violates civil rights, compromises police legitimacy, or undermines trust is counterproductive."<sup>42</sup> This is precisely why the task force recommended that law enforcement agencies develop and adopt policies and strategies that reinforce the importance of community engagement in managing public safety.

Community policing requires intensive cooperation between the community and the police, as community leaders assist in the identification of troubled areas and high-risk individuals and provide that information to law enforcement. In a community like Ferguson, where mistrust of the police is deep-seated, it may be very difficult to establish strong relationships between the police and community leaders necessary for much-needed improvements in police legitimacy. In their book review, Young and Petersilia suggest some interesting reforms, such as a short-term unilateral reduction in investigatory stops, which could be used to smooth the transition to community policing. I would encourage police executives to consider these approaches as possible means to initiate better working relationships in communities characterized by persistently low levels of trust and confidence in the police.

There is some promising evidence that police departments are beginning to implement the kinds of changes discussed here that can improve police legitimacy and reduce mass incarceration. For instance, the New York Police Department was recently credited with producing a "peace dividend" by dramatically reducing the number of enforcement actions (arrests, criminal summonses, and reported stops) taken between 2011 and 2014 while continuing to reduce crime.<sup>43</sup> Whether these kinds of reforms improve frayed police-community relations in New York City and elsewhere still needs to be proven. However, from ethical and cost-benefit perspectives, such changes to police crime control strategy are mandatory.

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<sup>41</sup> Anthony A. Braga & David Weisburd, *Problem-Oriented Policing: The Disconnect Between Principles and Practice*, in POLICE INNOVATION 133, 140 (David Weisburd & Anthony A. Braga eds., 2006).

<sup>42</sup> PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 3, at 42.

<sup>43</sup> PREETI CHAUHAN ET AL., MISDEMEANOR JUSTICE PROJECT, TRACKING ENFORCEMENT RATES IN NEW YORK CITY, 2003–2014, at 6–7 (2015).