

# Race and the New Policing

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*Several observers credit nearly 25 years of declining crime rates to the “New Policing” and its emphasis on advanced statistical metrics, new forms of organizational accountability, and aggressive tactical enforcement of minor crimes. This model has been adopted in large and small cities, and has been institutionalized in everyday police-citizen interactions, especially among residents of poorer, often minority, and higher-crime areas. Citizens exposed to these regimes have frequent contact with police through investigative stops, arrests for minor misdemeanors, and non-custody citations or summons for code violations or vehicle infractions. Two case studies show surprising and troubling similarities in the racial disparities in the new policing in vastly different areas, including more frequent police contact and new forms of monetary punishment. Low-level “public order” crimes and misdemeanors are the starting point for legal proceedings that over time evolve into punishments leading to criminal records with lasting consequences. In these regimes, warrants provide the entry point for processes that move from civil fines to criminal punishment. The chapter concludes with a menu of reforms to disincentivize the new policing while creating new forms of accountability to mitigate its harms.*

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## INTRODUCTION

In popular and political culture, many observers credit nearly 25 years of declining crime rates to the “New Policing.”<sup>1</sup> Breaking with a past tradition of “reactive policing,” the New Policing emphasizes advanced statistical metrics, new forms of organizational accountability, and aggressive tactical enforcement of public-order crimes or violations.<sup>2</sup> The existing scholarship on the new policing has focused mainly on the nation’s major cities, where high population density, elevated crime rates, and sizable police forces provide pressurized laboratories for police experimentation, often in the spotlight of political scrutiny.

This scholarship has generally overlooked how the New Policing has been woven into the social, political, and legal fabrics of smaller, less densely populated areas. These areas are characterized by more intimate and individualized relationships among citizens, courts, and police, as well as closely spaced local boundaries with a considerable flow of persons through small administrative entities such as villages and towns. Crime rates rarely approach those of urban centers, although these places are hardly strangers to violence or other crime.<sup>3</sup> New attention to crime in the smaller areas followed the 2014 Department of Justice investigation into policing in Ferguson, Missouri, which revealed how the New Policing unfolds in these less densely populated areas.<sup>4</sup>

These two policing contexts showed that the differences are far less than one might imagine. Residents of cities have frequent contact with police in the form of stop-and-frisk encounters—investigative stops or field interrogations based on low levels of suspicion.<sup>5</sup> High rates of citations (summons) and

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1. See, e.g., Philip B. Heymann, *The New Policing*, 28 *FORDHAM URB. L.J.* 407, 413–14 (2000); see also FRANKLIN E. ZIMRING, *THE CITY THAT BECAME SAFE: NEW YORK’S LESSONS FOR URBAN CRIME AND ITS CONTROL* x–xi (2011). For a review, see Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not*, 18 *J. ECON. PERSP.* 163, 171–81 (2004).

2. See WILLIAM BRATTON & PETER KNOBLER, *THE TURNAROUND: HOW AMERICA’S TOP COP REVERSED THE CRIME EPIDEMIC* 239 (1998); CHRISTOPHER DICKEY, *SECURING THE CITY: INSIDE AMERICA’S BEST COUNTERTERROR FORCE—THE NYPD* 106 (2010); GEORGE L. KELLING & CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 188–91 (1996).

3. See generally Allen E. Liska, John R. Logan & Paul E. Bellair, *Race and Violent Crime in the Suburbs* 63 *AMER. SOC. REV.* 27 (1998).

4. See U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., *INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT* 2–6 (2015) [hereinafter *FERGUSON REPORT*].

5. See Henry F. Fradella & Michael D. White, “Stop-and-Frisk,” in the present Volume; Tracey L. Meares, *Programming Errors: Understanding the Constitutionality of Stop-and-Frisk as a Program, Not an Incident*, 82 *U. CHI. L. REV.* 159, 168–69, 175–76 (2015).

misdeemeanor arrests also draw people into systems of legal sanctions and control, often for low-level, nonviolent offenses or administrative codes.<sup>6</sup> Arrests require court appearances, even if a summons is issued in lieu of custody. Failure to appear in court or pay a fine can result in an arrest warrant. For those taken into custody, arrest requires posting bail for those not granted release on their own recognizance, or stays of varying length in pretrial detention for those unable to make bail.<sup>7</sup> Summons for violations of administrative codes, vehicular violations, and other civil ordinances also are a staple of these police practices, resulting in fines or repetitive court appearances.<sup>8</sup>

An additional line of scholarship has looked more closely at how the tactics of the New Policing have become institutionalized in police-citizen interactions in the everyday lives of residents of poorer, predominantly minority, and higher-crime areas of the nation's cities. The internalization of harsh policing into everyday social interactions can produce cynicism toward law and legal actors, and a withdrawal of citizens from cooperation with the police to control crime.<sup>9</sup>

Residents of smaller areas face parallel issues. In these areas, despite generally lower crime rates, policing takes a different form: widespread pretextual traffic stops, extensive use of citations for vehicle defects,<sup>10</sup> and citations for traffic violations (usually speeding) or administrative codes (high weeds on the property).<sup>11</sup> This policing model can and often does result in fines, arrests and summonses requiring multiple court appearances. Few of these contacts result

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6. See Alexandra Natapoff, "Misdemeanors," in Volume 1 of the present Report [hereinafter Natapoff Chapter]; Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611, 639, 668 (2014); Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1358–59 (2012).

7. See Megan Stevenson & Sandra G. Mayson, "Pretrial Detention and Bail," in Volume 3 of the present Report.

8. See Beth A. Colgan, "Fines, Fees, and Forfeitures," in Volume 4 of the present Report; JACK MAPLE & CHRIS MITCHELL, *THE CRIME FIGHTER: PUTTING THE BAD GUYS OUT OF BUSINESS* 214 (2000).

9. See David A. Harris, *The Dangers of Racialized Perceptions and Thinking by Law Enforcement*, in DEADLY INJUSTICE: TRAYVON MARTIN, RACE, AND THE CRIMINAL JUSTICE SYSTEM 146, 155–56 (Devon Johnson et al. eds., 2015). See generally CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD P. HAIDER-MARKEL, *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* (2014); Monica C. Bell, *Police Reform and the Dismantling of Legal Cynicism*, 126 YALE L.J. (forthcoming 2017); Mark T. Berg et al., *Cynical Streets: Neighborhood Social Processes and Perceptions of Criminal Injustice*, 54 CRIMINOLOGY 520 (2016); Matthew Desmond, Andrew V. Papachristos & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AMER. SOC. REV. 857 (2016).

10. Such as broken taillights or expired registrations. For a discussion of pretextual stops and racial profiling, see David A. Harris, "Racial Profiling," in the present Volume.

11. FERGUSON REPORT, *supra* note 4.

in jail time, but many result in monetary costs for fees as well as fines and other financial sanctions.<sup>12</sup> These financial burdens can metastasize from simple fines to warrants, from warrants to criminal arrests, and further to more severe penalties and a criminal conviction. In turn, exposure to criminal punishment imposes social and economic burdens with both near- and long-term impacts on employment, housing, and other social assets.

This chapter explores the design of these regimes and their impacts on citizens' lives. In both cities and small places, policing has evolved from discretionary enforcement of civil and criminal codes to programmatic efforts to use legal sanctions that entangle citizens in an administrative regime with punitive consequences. These regimes of investigative stops, misdemeanor arrests and civil summonses are influenced by, and draw justifying ideology from, practices common to "Broken Windows" models of policing that are now common in cities across the United States.<sup>13</sup> Broken Windows policing, with its focus on controlling social disorder, overlaps with proactive tactics such as stop-and-frisk, and the regimes of intensive use of misdemeanor arrests. In this design, the adjudication of guilt or innocence is replaced by a system that imposes social controls on the one hand, and a latent fiscal and social tax on the other.<sup>14</sup> That these taxes fall most heavily on poor, non-White people is a significant feature of the New Policing.

Part I of the chapter provides case studies of New York and Ferguson, illustrating how the New Policing works in these two different contexts, especially the racial disenfranchisement that seems an inevitable outcome of these regimes. Part II discusses the consequences that citizens are assessed, including potential long-term consequences. Part III concludes the chapter with proposals for reform that can cabin these tactics and redirect police attention to more serious forms of crime.

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12. See Colgan, *supra* note 8; Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1186–1189. See generally ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS A PUNISHMENT FOR THE POOR 26–46 (2016); Jeffrey Fagan & Elliott Ash, *New Policing, New Segregation*, 106 GEO. L. J. ONLINE (forthcoming 2017).

13. BRATTON & KNOBLER, *supra* note 2, at 239; DICKEY, *supra* note 2, at 106; KELLING & COLES, *supra* note 2, at 188–91.

14. Kohler-Hausmann, *supra* note 6.

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## I. THE NEW POLICING

### A. NEW YORK

In both popular and political culture, New York City epitomizes the New Policing. The city's policing regime in fact sustained much of the policy and empirical literature on the nationwide crime decline throughout the second half of the 1990s and for years after. The theory of "Broken Windows" and policing disorder animated the New Policing,<sup>15</sup> and was put into practice in the early 1990s. The theory suggested that the appearance of social or physical disorder signaled vulnerability to would-be criminal offenders and in turn increased crime rates. The practical application of the theory was a broad-based program of investigative stops (stop-question-and-frisk, or SQF), misdemeanor arrests, and summons for non-criminal violations of administrative codes. Officers were deployed strategically based on crime mapping and metrics, and managers were closely monitored by police executives for their impacts on crime.

"Proactivity" in the form of *Terry* stops<sup>16</sup> and "vigorous enforcement of laws against relatively minor [misdemeanor] offenses"<sup>17</sup> became core elements of the New Policing.<sup>18</sup> Other research portrayed proactivity as a mixture of drug enforcement and community policing.<sup>19</sup> Empirical research showed mixed support for the theory.<sup>20</sup> Early research showed that aggressive enforcement of minor crimes—usually through arrest—deterred crime by signaling the risks

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15. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, THE ATLANTIC (Mar. 1982), <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

16. See *Terry v. Ohio*, 392 U.S. 1 (1968). *Terry* permitted temporary stops and detentions based on reasonable suspicion that crime was "afoot," supplanting the more demanding probable cause standard and memorializing police discretion as the gateway to street stops. *Id.* at 30.

17. Charis E. Kubrin et al., *Proactive Policing and Robbery Rates Across U.S. Cities*, 48 CRIMINOLOGY 57, 57 (2010).

18. The original Broken Windows essay, whose ideas informed the New Policing and its proactive prong, argued that arrest should be a last resort when other efforts failed to ameliorate the disorderly conditions that invite crime. Kelling & Wilson, *supra* note 15. By 2000, Kelling had embraced the notion of using arrest authority systematically and aggressively to stop minor crime from growing into more serious crime patterns and problems. See KELLING & COLES, *supra* note 2, at 108–56.

19. See, e.g., Jon B. Gould & Stephen D. Mastrofski, *Suspect Searches: Assessing Police Behavior Under the U.S. Constitution*, 3 CRIMINOLOGY & PUB. POL'Y 315, 318 (2004).

20. See, e.g., WESLEY G. SKOGAN, *DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS* 73–75 (1992).

of detection and punishment to criminal offenders.<sup>21</sup> However, reanalyses of those data undermined Broken Windows' claims.<sup>22</sup> One study showed a sharp decline in gun violence in New York City in the early 1990s and gave partial credit to new police tactics, but emphasized the epidemic nature of the crime increase and decline.<sup>23</sup> Other work credited aggressive policing in the form of drug-related misdemeanor arrests for the reduction in murder and other violence in New York City in the 1990s.<sup>24</sup> Others found very small effects of misdemeanor arrests on crime,<sup>25</sup> while some studies simply rejected the causal claims of New Policing advocates.<sup>26</sup> Other research challenged the core notions

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21. See Jacqueline Cohen & Jens Ludwig, *Policing Crime Guns*, in *EVALUATING GUN POLICY: EFFECTS ON CRIME AND VIOLENCE* 217, 238–39 (Jens Ludwig & Philip J. Cook eds., 2003); Robert J. Sampson & Jacqueline Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*, 22 *LAW & SOC'Y REV.* 163, 183–85 (1988). See generally Daniel S. Nagin, “Deterrence,” in Volume 4 of the present Report; Daniel S. Nagin, *Deterrence in the 21st Century: A Review of the Evidence*, 42 *CRIME & JUSTICE* 199–263 (2013).

22. See Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 *MICH. L. REV.* 291, 312–27 (1998).

23. Jeffrey Fagan et al., *Declining Homicide in New York City: A Tale of Two Trends*, 88 *J. CRIM. L. & CRIMINOLOGY* 1277, 1297–98, 1313–16 (1998).

24. Hope Corman & Naci Mocan, *Carrots, Sticks, and Broken Windows*, 48 *J.L. & ECON.* 235, 261–63 (2005).

25. See, e.g., Richard Rosenfeld & Robert Fornango, *The Impact of Economic Conditions on Robbery and Property Crime: The Role of Consumer Sentiment*, 45 *CRIMINOLOGY* 735, 750 (2007).

26. BERNARD HARCOURT, *ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* 8–11 (2001); ANDREW KARMEN, *NEW YORK MURDER MYSTERY* 117–21 (2000); Judith A. Greene, *Zero Tolerance: A Case Study of Police Policies and Practices in New York City*, 45 *CRIME & DELINQ.* 171, 177–78 (1999); Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 *U. CHI. L. REV.* 271, 317–20 (2006); Ana Joanes, *Does the New York City Police Department Deserve Credit for the Decline in New York City's Homicide Rates? A Cross-City Comparison of Policing Strategies and Homicide Rates*, 33 *COLUM. J.L. & SOC. PROBS.* 265, 303–304 (1999); Richard Rosenfeld et al., *The Impact of Order-Maintenance Policing on New York City Homicide and Robbery Rates: 1988-2001*, 45 *CRIMINOLOGY* 355, 377 (2007). But see ZIMRING, *supra* note 1, at 149; FRANKLIN E. ZIMRING, *THE GREAT AMERICAN CRIME DECLINE* 155–56 (2006).

of the disorder-crime relationship, showing that the connections between crime and disorder are uncertain.<sup>27</sup>

### B. RACE AND THE NEW POLICING IN NEW YORK

Race is one of two components of these policing regimes that expose its fault lines.<sup>28</sup>

In New York, proactivity resulted in very high rates of street stops, misdemeanor arrests, and court summonses, all of which potentially swept up neighborhood residents into legal controls, disproportionately to both racial composition and local crime rates, and with little to show for it.<sup>29</sup> From 2004 to 2014, police in New York recorded 4,811,769 stops.<sup>30</sup> Stops were concentrated in police precincts and census tracts with high proportions of Black, Black Hispanic and White Hispanic population, after controlling for local crime rates.<sup>31</sup> In other words, rather than allocating stops according to local crime rates, as theory would dictate, there were more officers per crime and more stops per crime in areas with higher concentrations of Black and Latino populations. Compounding the unequal distribution of policing, stops rarely

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27. HARCOURT, ILLUSION OF ORDER, *supra* note 26, at 309; RALPH B. TAYLOR, BREAKING AWAY FROM BROKEN WINDOWS 18 (2000) (finding no evidence that crime is related to disorder); Bernard E. Harcourt & Jens Ludwig, *Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests In New York City, 1989-2000*, 6 CRIMINOLOGY & PUB. POL'Y 165, 176 (2007); Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 637–38 (1999) (finding no direct link between disorder and crime). *But see* GEORGE L. KELLING & WILLIAM H. SOUSA, JR., DO POLICE MATTER? AN ANALYSIS OF THE IMPACT OF NEW YORK CITY'S POLICE REFORMS 18 (2001) (finding evidence that crime is related to disorder); SKOGAN, *supra* note 20, at 10, Corman & Mocan, *supra* note 24, at 262; Rosenfeld et al., *supra* note 26, at 366–67.

28. The other is the imposition of transactional costs both monetary and legal. I discuss that next.

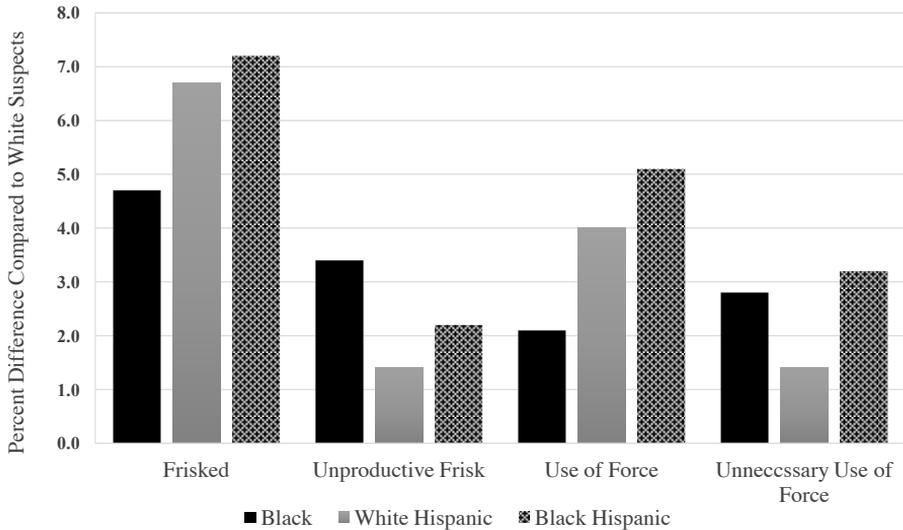
29. *Floyd v. City of New York*, 959 F. Supp. 2d. 540 (S.D.N.Y. 2013). *See* Report of Jeffrey Fagan, Ph.D., at tbls. 5–9, *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (No. 08 Civ. 01034 (SAS)); Sharad Goel et al., *Combatting Police Discrimination in an Age of Big Data*, 20 NEW CRIM. L. REV. 181-232 (2017); *see also* Fradella & White, *supra* note 5.

30. *Stop, Question and Frisk Database*, N.Y.C. POLICE DEP'T, [http://www.nyc.gov/html/nypd/html/analysis\\_and\\_planning/stop\\_question\\_and\\_frisk\\_report.shtml](http://www.nyc.gov/html/nypd/html/analysis_and_planning/stop_question_and_frisk_report.shtml) (last visited Mar. 23, 2017).

31. *See, e.g.*, 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, 309–10 (Stephen K. Rice & Michael D. White eds., 2010). *See also* *Floyd*, 959 F. Supp. 2d. at 560, 587, 589, 661.

resulted in arrests or seizures of contraband.<sup>32</sup> The few stops that did result in arrests rarely involved serious crimes, and few resulted in convictions or punishment.<sup>33</sup>

Figure 1. Percent Differences in Stop Outcomes by Suspect Race, New York City, 2004-14



Note: Bars represent average difference in rates of stop outcomes by race, relative to the average for Whites and other races. Standard errors in parentheses, clustered by precinct. Regressions include controls for year, the suspected crime and the basis of suspicion for the stop.

What takes place during the stop is another dimension of the New Policing. Aggressive stops were a hallmark of the New Policing, suggesting that stops not only were aimed at detecting contraband or perhaps those with outstanding warrants, but were a form of rough justice that signaled a deterrent component of police contact.<sup>34</sup> Figure 1 and Appendix Table 1 show evidence of racial disparities in the use of frisks and force in interactions between officers and suspects. Relative to White suspects who have been stopped, all three non-White groups were more likely to be frisked. For example, Blacks were frisked

32. See *Floyd*, 959 F. Supp. 2d. at 558–59; see also Sharad Goel, Justin M. Rao & Ravi Shroff, *Precinct or Prejudice? Understanding Racial Disparities in New York City’s Stop-and-Frisk Policy*, 10 ANNALS APPLIED STAT. 365 (2016).

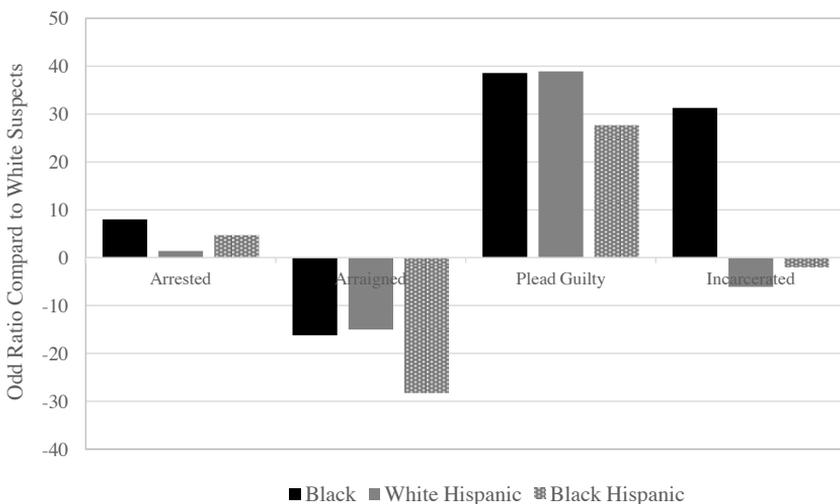
33. See ERIC T. SCHNEIDERMAN, N.Y. STATE OFFICE OF THE ATT’Y GEN., A REPORT ON ARRESTS ARISING FROM THE NEW YORK CITY POLICE DEPARTMENT’S STOP-AND-FRISK PRACTICES 8–9 app. G (2013).

34. See, e.g., Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321, 2323–25 (2014); Stephen J. Schulhofer, Tom R. Tyler & Aziz Z. Huq, *American Policing at a Crossroads: Unsustainable Policies and the Procedural Justice Alternative*, 10 J. CRIM. L. & CRIMINOLOGY 335, 343 (2011).

4.7% more often than Whites, White Hispanics 6.7% more often than Whites, and Black Hispanics 7.2% more often than Whites. These differences all were statistically significant. But police also conduct many frisks where there was no indication of the presence of a weapon or violent behavior either in the suspected crime or in the suspicion bases of the stop. The second set of bars in Figure 1 describes these as *unproductive frisks*. Again, police conducted these frisks significantly more likely for three non-White racial or ethnic groups compared to Whites.

Two additional sets of comparisons show differences by race in the use of force during a stop, and also for the “unnecessary” use of force: that is, force used in the absence of either weapons or violent behavior in the reason for the stop.<sup>35</sup> Force was used 2.8% more often for Black suspects compared to Whites, 4.0% for White Hispanics, and 5.1% for Black Hispanics. Unnecessary force rates were consistently higher for non-White suspects compared to White suspects. These difference in both force and unnecessary force also were statistically significant. One implication of these analyses of the outcomes of frequent and racially skewed stops is that a resident of—or visitor to—minority neighborhoods under the New Policing moves about in their everyday social interactions knowing that they face nonconsensual police contact that is procedurally punitive even though there often is at best weak evidence of criminal wrongdoing.

Figure 2. Odds Ratios of Sanction Rates by Suspect Race, New York City, 2004-12



35. See generally L. Song Richardson, “Police Use of Force,” in the present Volume.

The fate of stops in these cases is another dimension to assess the impacts of the New Policing. Figure 2 and Appendix Table 2 show the odds ratio of racial disparities in the outcomes of street stops from 2009 to 2012 from the decision to arrest through sentencing for those cases that survive into court, comparing non-White to White suspects. An odds ratio of 0 indicates no difference, and a negative value indicates that the outcome is less likely for that group compared to Whites. In 12 of 15 analyses in Appendix Table 2 testing for disparate treatment by race or ethnicity, we observe significant effects that suggest harsher treatment of Black, Black Hispanic, and White Hispanic suspects.

Whether the stop resulted in an arrest, indicative of probable cause and a higher standard for the contact than the *Terry* standards of reasonable suspicion,<sup>36</sup> is the first dimension of sanction outcomes. Figure 2 shows that relative to White suspects, all three groups of non-White suspects were more likely to be arrested if stopped but less likely to be arraigned if arrested. Details of the reasons for the attrition of nearly 18% of the arrests were not available. Generally, cases may drop out if quashed at the precinct by police supervisors, or if they were declined for prosecution due to legal insufficiency or other evidentiary concerns.<sup>37</sup> The lower arraignment rate suggests the legal insufficiency of these arrests. The fact of an arrest that is dropped transforms the arrest process into a form of front-end punishment for non-White suspects, yet another expression of the managerialism<sup>38</sup> that characterizes the New Policing.

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36. Jeffrey Fagan, *Terry's Original Sin*, 2016 U. CHI. LEGAL F. 101, 111–13.

37. Josh Bowers, *Legal Guilt, Normative Innocence, and the Equitable Decision Not to Prosecute*, 110 COLUM. L. REV. 1655, 1655–56, 1656 n.1 (2010). Bowers suggests that prosecutors inherently have the power not to charge and do so for three possible reasons: legal reasons (such as insufficient evidence); administrative reasons (such as prioritizing case assignments, inability to produce complaining witnesses); and equitable reasons (such as moral-judgment-based assessments of the seriousness of the crime, the culpability of the suspect, or the character of actors). *Id.* at 1656–57.

38. Kohler-Hausmann, *supra* note 6, at 648–49

Once arraigned, non-White suspects are 27.7% to 38.6% more likely to be convicted, but for less serious crimes. Appendix Table 2 shows that if convicted, non-White suspects are 45.3% to 87.8% more likely to be convicted of a less serious charge with a lower sentencing tariff. But, Figure 2 shows that even with lower convictions charges, Black defendants relative to Whites are more likely (31.2%) to serve time in jail or be sentenced to prison.<sup>39</sup>

This duality for Black and other non-White suspects—arrests that lead to no charges or non-serious charges, coupled with a greater risk of a criminal sanction and incarceration—seem to be present in tandem in this part of the New Policing. We observe much the same for Black Hispanic suspects, although their incarceration risks at the end of the process are not significantly greater than White suspects. The results are similar for White Hispanic suspects, with the exception of arrests conditional on stops. These events form a grinding process of accumulating arrest records that may increase in number over time to produce at some tipping point a spell of incarceration. The consequences are severe, though. Even if there is low risk of jail time, the effect of imposing a criminal conviction becomes nearly indelible. A criminal conviction is a permanent mark, one that is not easily removed through sealing or expunging of records, and that can be a negative asset when seeking employment in the private sector or several types of housing.<sup>40</sup>

### C. FERGUSON

Long before the protests erupted in Ferguson over the shooting of unarmed Black teenager Michael Brown by White officer Darren Wilson, the Ferguson Police Department (FPD) practiced its own version of New Policing.<sup>41</sup> But unlike the high-crime urban laboratories of the New Policing, Ferguson was not plagued by high rates of violent crime; in fact, violent crime rates were declining

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39. Results show odds ratio is compared to White suspects. N=2,396,314 stops. The total arrests recorded were 148,880; 7,500 cases were eliminated because of duplicate or incomplete arrest identifiers. In addition, 146,323 cases resulted in issuance of a summons. Logistic regressions for arrest and arraignment were estimated with controls for suspect age and gender, and controls effects for year and arrest charge. Models for arraignment were estimated conditional on probability of any sanction (arrest or summons). Models for conviction (plea) were ordered probits estimated conditional on arraignment. Models for incarceration were order probit regressions based on probability of conviction. Robust standard errors in all models were clustered by police precinct. For a discussion of the impact of race on sentencing, see Cassia Spohn, "Race and Sentencing Disparity," in Volume 4 of the present Report.

40. Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOC. 937, 959–60 (2003); see also James Jacobs & Tamara Crepet, *The Expanding Scope, Use, and Availability of Criminal Records*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 177, 207–10 (2008).

41. FERGUSON REPORT, *supra* note 4, at 3–5.

in Ferguson for several years preceding the Michael Brown shooting and the protests.<sup>42</sup> Instead, small towns like Ferguson turned to a model based on the saturation of misdemeanor enforcement, traffic and other vehicular codes, and enforcement of civil codes. In this way, the policing model in Ferguson reflected a variation of New Policing that closely resembles the type of managerial justice that characterized misdemeanor enforcement in urban areas. The reliance on code enforcement, traffic enforcement, and misdemeanor arrests suggests a thread connecting the order-maintenance prong of New Policing in cities with New Policing in less urban locales such as Ferguson.

What made Ferguson unique was the profit motive that had been injected into the policing regime.<sup>43</sup> The policing regime was designed to extract revenue not only from Ferguson residents, but also from people passing through Ferguson from nearby municipalities. The proximity of Ferguson to its surrounding areas created a spatial concentration that broadened the reach of FPD policing to non-residents.<sup>44</sup> FPD enforcement was tailored to this revenue-generating goal. The offenses cited by FPD officers in traffic stops and other citizen contacts generated a volume of fees and fines that were integrated into the municipal budget.<sup>45</sup> When persons failed to pay these financial penalties, further fees and interest followed, compounding debt. These non-criminal court actions often grew into criminal matters when failures to pay led to criminal warrants. Once arrested for the outstanding warrants, the compounding of LFOs described earlier sank these individuals, already poor, deeper into poverty.<sup>46</sup> The racial component of these policing dynamics compounded the historical racial inequalities in Ferguson.<sup>47</sup>

#### D. RACE AND POLICING IN FERGUSON

The Ferguson Report not only documented extraordinary racial disparities in both traffic enforcement but also in enforcement of civil codes.<sup>48</sup> Several measures of discretionary police behavior more closely show the role of race in traffic enforcement. The implications of stops, tickets, arrests, and seizures are evident not only in the generation of revenue, but also in the creation of criminal liability.

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42. *Id.* at 7 n.7 (indicating that the records of the FPD and the FBI “show[ed] a downward trend in serious crime” from 2004–2014).

43. *Id.* at 2; *see also Developments in the Law: Policing and Profit*, 128 HARV. L. REV. 1723, 1734–35 (2015).

44. Fagan & Ash, *supra* note 12, fig.2.

45. FERGUSON REPORT, *supra* note 4, at 2.

46. *Id.* at 4.

47. *Id.* at 76–78.

48. *Id.* at 7.

The regression results in Figure 3 and Appendix Table 3 tested for racial differences in police decisions during these stops.<sup>49</sup> The results are conditioned at predicate stages of each case: whether contraband is seized depends on whether the driver or vehicle is searched, and whether a warrant arrest is the reason for the arrest compared to other reasons. These regressions, like those in previous tables, provide controls for several non-race factors—in particular the stated reason for the stop—that may be correlated both with race and policing choices.

Controlling for the reason for the stop, the first column in Figure 3 shows that Black drivers were 35% more likely than Whites to be ticketed pursuant to a stop. The second column shows that Blacks are 93% more likely, or nearly twice as likely, to be arrested.<sup>50</sup> These statistically significant results suggest that these patterns are unlikely to occur by chance alone. The search results in the third column show that Blacks are 67% more likely than Whites to have their vehicle searched once stopped, again a statistically significant effect. But the fourth column shows that seizures of contraband are *less* likely for vehicles operated by Blacks, conditional on being searched. In this case, the 26% lower odds of a “hit” (seizure) for Blacks (not statistically significant) suggests that stops and searches are a form of preference-based rather than statistical discrimination.<sup>51</sup>

Why bother to continue stopping and searching Black motorists if there is no greater likelihood that those searches will pay off, other than a preference to stop Blacks? This is the essence of preference-based discrimination under the New Policing. Statistical discrimination would reflect a tendency to stop one group at a higher rate than another group based on observable characteristics such as known crime rates. But preference-based discrimination would reflect a tendency to prefer one group for stops over others based on factors unrelated to observable differences in the targeted behavior, such as race. Preference-based discrimination suggests that the purpose of stops is to select a particular group for criminal justice attention, independent of the likelihood of a positive result. If police in Ferguson are stopping Blacks more often without finding

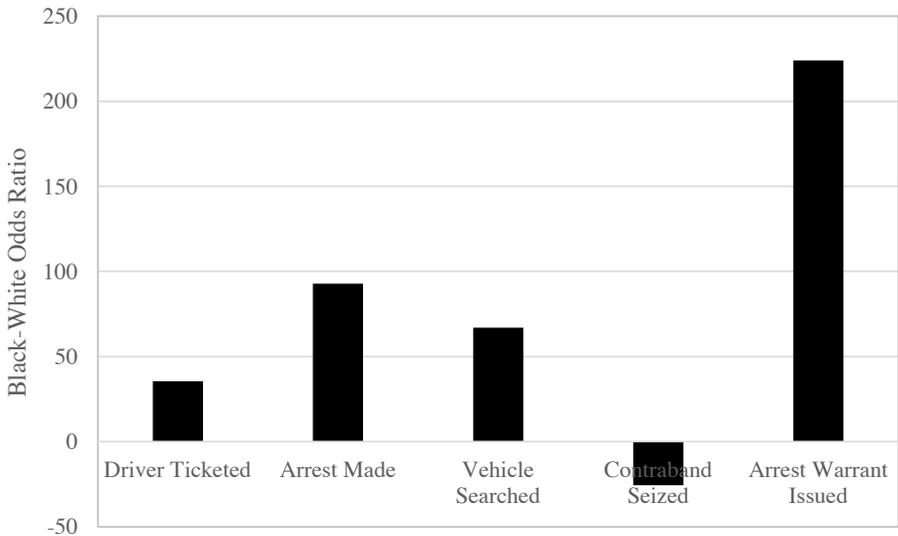
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49. Table 3 compares the probability of each of several outcomes of a police encounter by race as a percentage of the number of stops, and then comparing the rates by race to those of Whites. See Fagan & Ash, *supra* note 12, tbl.4 & fig.3.

50. It is possible that drivers exhibit unreported behaviors that might lead to a decision to sanction them. If there are such differences in suspect behavior leading to tickets or arrests, those behaviors are not described by the officers in official reports.

51. Jeff Dominitz & John Knowles, *Crime Minimization and Racial Bias: What Can We Learn from Police Search Data?*, 116 *ECON. J.* F368, F379 (2006); see also Kate Antonovics & Brian G. Knight, *A New Look at Racial Profiling: Evidence from the Boston Police Department*, 91 *REV. ECON. & STAT.* 163 (2009).

Figure 3. Odds Ratio by Race Effects on Stop Outcomes, Ferguson, 2010–2013



more drugs or weapons, it suggests that these are punitive searches, further evidence of disparate racial treatment before the law.

Column 5 in Figure 3 shows that for Black defendants, an arrest warrant is more than twice as likely to result from a traffic stop or other citation compared to White defendants. Enforcement in Ferguson produced an astonishing volume of warrants: the municipal court in Ferguson issued 32,975 warrants in 2013,<sup>52</sup> more than one per resident and most likely, more than one for every motorist passing through Ferguson,<sup>53</sup> and nearly all for nonviolent offenses.<sup>54</sup> Recall that the median per capita income in Ferguson in 2013 was \$40,660, and that nearly one in four persons lived below the poverty line.<sup>55</sup> That this is racially skewed suggests again a racial tax against those who can least afford it.

This pattern is consistent with the emphasis that FPD officers and municipal executives place on enforcement of warrants, and the motivating role of outstanding warrants in determining the outcomes of stops. Warrant arrests lead to criminal punishment, in turn leading to LFOs that add monetary

52. MISSOURI SUPREME COURT, MISSOURI JUDICIAL REPORT SUPPLEMENT: FISCAL YEAR 2013, at 302–03, <http://www.courts.mo.gov/file.jsp?id=68905>.

53. See FERGUSON REPORT, *supra* note 4, at 6.

54. MISSOURI SUPREME COURT, *supra* note 52, at 173–94.

55. *American FactFinder*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (search Community Facts field for “Ferguson, MO”; then select “Show All”).

costs to the liberty costs of warrant arrests. Here, if the goal of policing is to detect persons with outstanding warrants and continue the economic drain on those defendants, then the police are in fact maximizing on that goal—a form of statistical discrimination. But it is the predicate processes of stops, citations, and searches that lead to the issuance of a warrant that is infected with race-based and preferential discrimination. In other words, if police are stopping Black motorists with the hope of getting a warrant arrest, the ocean of outstanding warrants among Black drivers makes this a good bet by the FPD.

Once these cases get to court, the pattern of racially disparate policing continues. An important mechanism for the proliferation of warrants and subsequent warrant arrests is the operation of the municipal court system in Ferguson, and elsewhere in the northeastern corner of St. Louis County.<sup>56</sup> The processes described in Figure 3 and Appendix Table 3 result in a racially skewed population in the Municipal Court, where most of these cases are resolved. Although Blacks are 67% of the Ferguson population, they are 74% of Municipal Court defendants. Within that court population, they are 81% of the population receiving summonses, 91% of those with warrants issued for their arrest, and 95% of the persons arrested.<sup>57</sup> Black defendants in the Municipal Court average 3.5 citations per appearance, about 50% more than the rate of 2.3 summonses per White defendants. Black defendants average 4.7 warrants per defendant, compared to 1.4 warrants per White defendant. They have 2.25 arrests each (relative to just 0.3 for Whites). Finally, as shown earlier, Blacks have more warrants and arrests when controlling for the number of summonses.

Figure 4 summarizes a series of regressions showing outcomes of cases by race once they enter the Municipal Court.<sup>58</sup> The figure reports the average percent difference in each outcome between Black and White defendants, providing simple measures of racial disparities in misdemeanor justice. By using percentages, the results are comparable on the same scale.

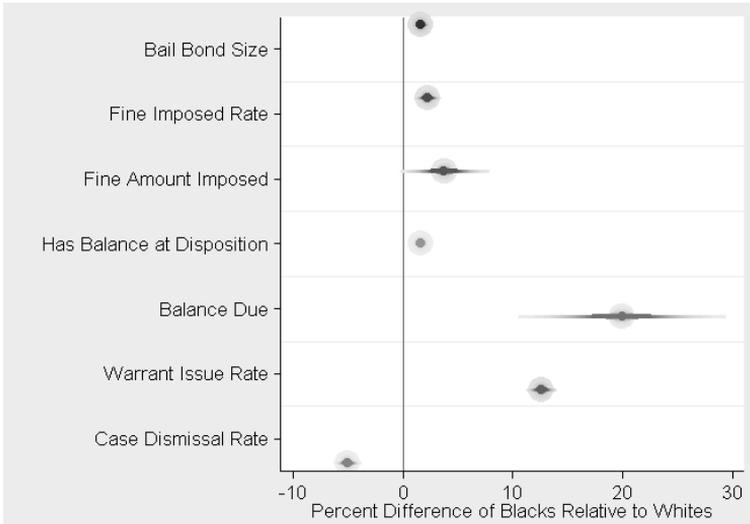
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56. See THOMAS HARVEY ET AL., ARCH CITY DEFENDERS: MUNICIPAL COURTS WHITE PAPER 27–37 (2014), <https://www.courts.mo.gov/file.jsp?id=98433>.

57. Fagan & Ash, *supra* note 12.

58. The full results are shown in Fagan & Ash, *supra* note 12, tbl. 6. The regressions include several covariates that measure non-race factors, both legal and demographic. We also include fixed effects for the range of offenses that bring people into the Municipal Court and that one would expect to affect penalties and other outcomes. The standard errors in the regressions are clustered by the defendant's resident zip code, to adjust the significance estimates for local crime and social conditions.

**Figure 4. Effect Sizes of Black-White Differences in Case Outcomes, Ferguson (Mean, 95% CI)**



Race has a substantial impact on each outcome after controlling for potential non-racial influences on court outcomes. The results in the first row can be translated into dollar amounts. For bail bond size, Figure 4 shows that conditional on the same offense, bail bond amounts imposed on Black defendants are more than \$400 higher, creating barriers for those defendants to make bail. As noted earlier, a spell of pretrial detention adversely affects the disposition and sentence in criminal cases, and creates personal hardships for defendants with work or school commitments or child-care duties. These hardships are skewed heavily toward Blacks. Once adjudicated, usually via plea agreement, Blacks are 2.5% more likely to have a fine imposed than Whites for the same offense. In contrast, Black defendants are 5.8% less likely to have their cases dismissed than White defendants, suggesting more formal adjudication and the likelihood of an LFO or a criminal record, or both.

Conditional on receiving a fine, the fine for the same offense is 4% larger on average for Blacks. These stricter penalties are further reflected in worse outcomes following the fine levy. Blacks are 2% more likely to have a positive financial obligation at the end of the case, meaning they have been unable—compared to Whites—to pay the full fine amount by the time the court case nears its conclusion. Conditional on having any balance at all, that balance is 22% larger. These impacts are statistically significant. And remember once again that the Ferguson population is often poor and otherwise earns a

median household income of barely more than \$40,000.<sup>59</sup> Finally, Blacks are significantly more likely to have a warrant issued and more likely to be arrested. Strikingly, Blacks are 15% more likely to have a warrant issued than Whites. This may reflect the stricter monetary penalties resulting in more delinquency, or it may again reflect an independent source of racially based treatment.

## II. THE NEW POLICING AS A LATENT RACIAL TAX

The New Policing exacts two types of latent taxes on persons who are brought into the criminal justice system, whether by stops and arrests, as in New York, or through a program of saturated traffic enforcement in Ferguson. One regime starts with the imposition of monetary taxes that morph into criminal liability, while the other starts with panvasive and intrusive street stops that sweep suspects into the police gaze and for some, into the courts and jails.<sup>60</sup> Each has a monetary component and each can end with a stigmatizing criminal conviction.

Monetary penalties have proven to be quite popular in state legislatures and in criminal legal institutions.<sup>61</sup> Fines are seen both as a legitimate deterrent to wrongdoing and a means of transferring the costs of criminal justice administration (courts, police, prisons, etc.) to the prisoner, costs that would otherwise fall on ostensibly law-abiding taxpayers. Further, administrative fees allow state and local legislators to get around tough rules limiting local tax increases. Fines and administrative fees therefore provide a path to budgetary relief with limited legislative or court oversight. Much of this is administrative, not statutory, rule-making, a tax that is not called a tax.

But the impetus for this form of taxation runs deeper into the culture of criminal justice. Professor Alexes Harris shows that it is not simply fiscal interests in recuperating costs from poor defendants that seemed to animate the institutional postures; rather, Professor Harris shows how these fines are shaped by perceptions of criminal defendants—regardless of crime severity—

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59. Fagan & Ash, *supra* note 12, tbl. 1.

60. See Christopher Slobogin, *Panvasive Surveillance, Political Process Theory and the Nondelegation Doctrine*, 102 GEO. L. J. 1721, 1723 (2014) (characterizing “panvasive” surveillance as large scale police mobilization to surveil and contact citizens without reasonable suspicion, most of whom are innocent of any wrongdoing).

61. *Policing and Profit*, *supra* note 43.

as deserving of this extra burden beyond formal punishments.<sup>62</sup> In effect, this view of defendants reflects a justifying ideology about the undeserving offender that links money to crime and punishment.<sup>63</sup>

#### A. CRIMINAL JUSTICE TAXES

The expansion of misdemeanor justice, driven in part by the New Policing, commonly imposes non-trivial fines and fees at each stage of the process, from arrest to efforts to expunge criminal records.<sup>64</sup> Ferguson illustrates this newly expanded system of fee-based criminal justice that taxes defendants. Disparate racial treatment at each stage of processing in Ferguson skews the tax toward minorities, whose economic position often is more tenuous than that of their White counterparts. Traffic stops lead to tickets and fines, and the inability to pay those fines can lead to criminal arrests. Once arrested, the inability to post bail raises issues both before and after adjudication. Defendants charged with minor misdemeanors or outstanding warrants may have difficulty retaining counsel if required to pay a fee to establish indigency, or the assignment of counsel may be delayed during the scramble to post bond in the interim between arrest and first appearance.<sup>65</sup>

The risk of fee default at that stage leading to pretrial delay or—worse—pretrial detention in turn leads to the risk of an adverse court outcome in terms of charging and sentencing. Empirical studies confirm that defendants who are detained pretrial are more likely to be convicted by plea or trial, and also receive

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62. HARRIS, *supra* note 12, at 14–15; *see also* Alan T. Harland, *Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts*, 30 UCLA L. REV. 52 (1982). Having offenders pay for pre-adjudication costs, including filing fees, and vetting their eligibility for indigent defense, presumes that they are in fact guilty of a criminal offense or a civil violation. Given the high rates of plea bargaining in the lower criminal courts in misdemeanor cases, as well as the high rates of prosecutorial declination and court dismissal, this is an assumption fraught with risk and potentially error.

63. *See, e.g.*, John T. Jost & Orsolya Hunyady, *Antecedents and Consequences of System-Justifying Ideologies*, 14 CURRENT DIRECTIONS PSYCHOL. SCI. 260, 260 (2005).

64. Logan & Wright, *supra* note 12, at 1185; *see also* HARRIS, *supra* note 12, at 18, 42. Although there are monetary burdens associated with felony case processing, such as taxing offenders to pay for probation or drug treatment or electronic monitoring in lieu of jail, these measures affect a smaller population facing prison.

65. *See generally* Eve Brensike Primus, “Defense Counsel and Public Defense,” in Volume 3 of the present Report.

harsher sentences.<sup>66</sup> Failure to pay the latent taxes of fees, in effect, prejudices court outcomes and all the burdens that come with either a monetary fine or a criminal conviction. In effect, these regimes require defendants—assuming they can afford them—to pay fees and costs for the very court processes that lead to their punishment.<sup>67</sup> It seems that the municipality of Ferguson was cloaking its taxing power in the exercise of police power by functionally equating the power of taxation with the power to punish.

Criminal justice taxation in New York had features similar to Ferguson, but also distinct to the managerialism that characterized the New Policing there. In this setting, transactional costs exact a different tax on defendants, but a tax that still can lead to criminal conviction and associated stigma and burdens. Black and Latino suspects face stops with no arrests, and often, arrests with either no charges or trivial charges. Still, these cases require repeated court appearances over several months before they reach a conclusion. Monetary costs follow, whether in the form of processing fees for cases or for lost time and wages from the disruption of repeat court appearances.

If convicted, usually for the least serious grades of misdemeanors, the stigma of a criminal conviction attaches, creating social and economic burdens and deficits.<sup>68</sup> At the same time, for the few cases that proceed to court, most plead out after long delays and multiple court appearances, coupled with a greater risk of a criminal sanction and incarceration. Overall, summonses are as often dismissed as they are sustained, if not more often, but are more likely to be dismissed when issued in neighborhoods with higher proportions of Black residents.<sup>69</sup> Those that are sustained often result in monetary costs, an example of the burdens of legal financial obligations.<sup>70</sup> But whether dismissed or sustained, there are costs (beyond the fine) attached to court appearances

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66. Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Pretrial Detention*, 69 *STAN. L. REV.* (forthcoming 2017) (showing evidence detained defendants are 25% more likely than similarly situated releasees to plead guilty, 43% more likely to be sentenced to jail, and receive jail sentences that are more than twice the average sentence); see also Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* 1, 18 (2016) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2777615](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2777615) (showing that that pretrial detention leads to a 13% increase in the likelihood of being convicted compared to similarly situated persons who were released before adjudication). See generally Stevenson & Mayson, *supra* note 7.

67. Logan & Wright, *supra* note 12, at 1190–92. See Fagan & Ash, *supra* note 12.

68. See, e.g., Natapoff Chapter, *supra* note 6.

69. Fagan & Ash, *supra* note 12, tbl.10.

70. For an example of the burdens of pretrial bail, see Arpit Gupta, Christopher Hansman & Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization* 45 *J. LEGAL STUD.* 471, 472 (2016).

simply to answer the summons. If these processing fees—taxes, in effect—are skewed racially by selective enforcement targeting Black or Latino persons—or neighborhoods with high concentrations of Black and Latino residents—the Sixth Amendment concerns multiply, raising both due process and equal protection claims under the Fourteenth Amendment.<sup>71</sup> Costs to the defendant, usually Black or Latino, are exacted through court appearances.

Because these pre-adjudication processing fees are not technically punishment, their status exempts them from constitutional scrutiny under the Eighth Amendment. They may, however, interfere with a defendant's rights under the Sixth Amendment.<sup>72</sup> For example, poor defendants may be unable to pay for filing fees to determine their eligibility for indigent defense. Exercising the right to obtain a lawyer at the state's expense cannot constitutionally be conditioned on ability to pay.<sup>73</sup> In arguing their case, poor defendants may be unable to pay fees to obtain documents such as medical, employment, or housing records. The cost of this tax is a disadvantage at adjudication and a greater risk of conviction and its associated burdens.

#### B. A POVERTY TAX

The onset of New Policing reached deeply into the lives and the pockets of mostly poor and predominantly minority citizens,<sup>74</sup> potentially deepening any pre-existing impoverishment<sup>75</sup> while aggravating racial disparities in criminal justice.<sup>76</sup> The expansion of misdemeanor justice collided with the new forms of taxation on criminal offenders to multiply the reach of New Policing to penetrate minority communities significantly more often and more intensively than in predominantly White communities. For example, an analysis of 27 independent datasets showed that non-Whites were nearly one-third more likely (26% as compared to 20%) than Whites to be arrested.<sup>77</sup> Other empirical

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71. See, e.g., HARRIS, *supra* note 12.

72. Logan & Wright, *supra* note 12, at 1224.

73. Gideon v. Wainwright, 372 U.S. 335, 343–44 (1963).

74. HARRIS, *supra* note 12, at 11–12; see also Logan & Wright, *supra* note 12, at 1177.

75. AM. CIVIL LIBERTIES UNION, IN FOR A PENNY: THE RISE OF AMERICA'S NEW DEBTORS' PRISONS 6–10 (2010), [https://www.aclu.org/files/assets/InForAPenny\\_web.pdf](https://www.aclu.org/files/assets/InForAPenny_web.pdf).

76. HARRIS, *supra* note 12, at 14–15, 156; see also Logan & Wright, *supra* note 12, at 1177.

77. Tammy Rinehart Kochel, David B. Wilson & Stephen D. Mastrofski, *Effect of Suspect Race on Officers' Arrest Decisions*, 49 CRIMINOLOGY 473, 490–91 (2011).

studies confirm racial or community influences on the decision to arrest.<sup>78</sup> Stops and arrests also spill over to bias in the form of exclusions from serving on juries,<sup>79</sup> or college enrollment, attendance and achievement.<sup>80</sup> In other words, stops and arrests will beget stops and arrests and “spillover discrimination,” simply by stigmatizing a neighborhood or smaller area as a “high-crime area.”

A connecting thread between large and small cities is the expanding net of legal, social, and economic consequences of misdemeanor arrests and convictions: a criminal record; an immigration hold and detention leading perhaps to deportation; eviction from public housing or failure to meet rent obligations; suspension of driving privileges; disruptions in employment or schooling; and child-custody disruption.<sup>81</sup> For those unable to post bond, a pretrial spell in jail can bias later proceedings toward harsher dispositions and sentences.<sup>82</sup> Failure to be present at any of a sequence of court dates can lead to a warrant and criminal arrest. In the wider community, harsh enforcement of minor disorder violations takes a psychological toll. Persistent “crackdowns”

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78. See, e.g., David S. Kirk, *The Neighborhood Context of Racial and Ethnic Disparities in Arrest*, 45 *DEMOGRAPHY* 55 (2008); Karen F. Parker, Brian J. Stults & Stephen K. Rice, *Racial Threat, Concentrated Disadvantage and Social Control: Considering the Macro-Level Sources of Variation in Arrests*, 43 *CRIMINOLOGY* 1111 (2005); Douglas A. Smith, Christy A. Visher & Laura A. Davidson, *Equity and Discretionary Justice: The Influence of Race on Police Arrest Decisions*, 75 *J. CRIM. L. & CRIMINOLOGY* 234 (1984).

79. Vida B. Johnson, *Arresting Batson: How Striking Jurors Based on Arrest Records Violates Batson*, 34 *YALE L. & POL'Y REV.* 387, 412-14 (2016) (showing how prosecutors use prior arrests of prospective jurors as race-neutral explanations to justify peremptory strikes of Blacks during voir dire).

80. Alex O. Widdowson, Sonja E. Siennick & Carther Hay, *The Implications of Arrest for College Enrollment: An Analysis of Long-Term Effects and Mediating Mechanisms*, 54 *CRIMINOLOGY* 621, 624-26 (2016) (showing that arrested youth were 9% less likely than non-arrested youth to enroll in a four-year college within a decade after high school graduation).

81. See K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 *N.Y.U. REV. L. & SOC. CHANGE* 271, 300-06 (2009); see also Eisha Jain, *Arrests as Regulation*, 67 *STAN. L. REV.* 809, 820-44 (2015) (discussing the consequences of arrests); Gabriel J. Chin, “Collateral Consequences of Criminal Conviction,” in Volume 4 of the present Report.

82. Cassia Spohn, *Race, Sex, and Pretrial Detention in Federal Court: Indirect Effects and Cumulative Disadvantage*, 57 *KAN. L. REV.* 879, 880, 895 (2008); Marian R. Williams, *The Effect of Pretrial Detention on Imprisonment Decisions*, 28 *CRIM. JUST. REV.* 299, 313 (2003).

on the day-to-day activities of neighborhood residents in public spaces insert police into the developmental landscape of children living in those areas, leading to tensions and cynicism between citizens and police, even among neighborhood children.<sup>83</sup>

In cities, as in suburbs and exurbs, movements of citizens are affected by police tactics. When police routinely intervene in the everyday lives of citizens, they impose social interaction costs that inevitably deter residents from moving freely. And when these police actions produce legal and economic consequences for those already in disadvantaged social positions, those consequences effectively lock them in already disadvantaged places by constraining choices of neighborhood selection.<sup>84</sup> Even when a neighborhood changes for the better, it retains its status relative to other neighborhoods that are changing simultaneously.<sup>85</sup> Since police deployments and actions are racialized and focused in poor and segregated places, police in effect reproduce inequality, racial stratification and segregation through criminal legal enforcement actions that can constrain mobility.

Linking policing to the reinforcement of racial boundaries is not new; indeed, defense of property has been cited often in explaining police actions.<sup>86</sup> One consequence of the New Policing, then, is to reinforce racial residential segregation by deterring movement and burdening non-Whites with criminal cases. This in turn leads to additional types of taxation. First, the blocking effects of segregation on mobility serve to consign those living in segregated neighborhoods to long-term exposure to a set of social and psychological toxins that reinforce the individual and collective disadvantages of these

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83. Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 Soc. JUST. RES. 217, 229–31 (2005); see also PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* 150, 157 (2013) (showing that the presence of police is part of a spectrum of persistent disadvantages facing residents in Black poor minority neighborhoods).

84. Robert J. Sampson & Patrick Sharkey, *Neighborhood Selection and the Social Reproduction of Concentrated Inequality*, 45 DEMOGRAPHY 1, 20–21 tbl.4 (2008) (showing the intergenerational reproduction of racial inequality through constrained mobility pathways that vary by race and ethnicity).

85. Robert J. Sampson & Jeffrey D. Morenoff, *Durable Inequality: Spatial Dynamics, Social Processes, and the Persistence of Poverty in Chicago Neighborhoods*, in *POVERTY TRAPS* 176, 199 (Samuel Bowles et al. eds., 2006).

86. Raising the costs for Black residents or visitors to move freely through either mixed or predominantly White social spaces would ward off encroachments that might diminish property value, or protect against property loss. Those motives, together with personal safety fears, were drivers of the move toward segregation in early twentieth century St. Louis. See RICHARD ROTHSTEIN, *THE MAKING OF FERGUSON* 3 (2014), <https://perma.cc/2N27-CTHB>.

poverty traps.<sup>87</sup> Perhaps most important is subsequent exposure to crime and victimization. Across studies, there is a robust and persistent link between racial residential segregation and neighborhood rates of violent crime.<sup>88</sup>

Second, racial segregation and inequality impacts the economic lives of Black persons in their access to capital and their ability to multiply it. Limited access to capital reduces the ability of Black and other minority business borrowers to invest and multiply their capital. One study of borrowing for home mortgages showed that Black borrowers are 30% more likely to have their business-loan applications rejected compared to White borrowers, after controlling for a rich set of alternative factors including the borrower, the firm and the characteristics of the lender.<sup>89</sup>

If the New Policing is reinforcing and deepening segregation, these empirical studies suggest that it also is contributing to health disparities, higher risks of mortality and crime victimization, and attenuated access to educational and employment and economic opportunities, effects that are produced by segregation.<sup>90</sup> These deficits compound the direct economic burdens imposed by New Policing and the regimes of legal financial obligations that can deepen segregation. Together with poor housing conditions and limited access to basic neighborhood amenities, segregation appears to have a churning effect on the processes and structures that contribute to sustained economic disadvantage, or the perpetuation of poverty traps through downward socioeconomic mobility.<sup>91</sup> In other words, New Policing contributes to being “stuck in place,” or the cross-generational legacy of urban disadvantage.<sup>92</sup>

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87. Sampson & Morenoff, *supra* note 85, at 199 (“[N]eighborhoods remain remarkably stable in their relative economic standing ... which means that the overall pattern of neighborhood inequality did not change much over time [and that] further change is invariably in the direction of greater racial homogeneity and more poverty.”).

88. John R. Logan & Steven F. Messner, *Racial Residential Segregation and Suburban Violent Crime*, 68 SOC. SCI. Q. 510, 510 (1987) (arguing for the consideration of “racial residential segregation as an independent variable with important consequences for metropolitan communities”); Ruth D. Peterson & Lauren J. Krivo, *Racial Segregation and Black Urban Homicide*, 71 SOC. FORCES 1001, 1001, 1006 (1993) (showing evidence from 125 central cities that “social isolation ... is the mechanism by which segregation leads to higher levels of homicide among African Americans.”).

89. Darius Palia, *Differential Access to Capital from Financial Institutions by Minority Entrepreneurs*, 13 J. EMPIRICAL LEGAL STUD. 756, 777–78 (2016).

90. For a detailed review, see Fagan & Ash, *supra* note 12.

91. SHARKEY, *supra* note 83, at 114–15.

92. *Id.* at 117.

### III. A REFORM AGENDA

The balance of costs and benefits from the New Policing suggests the necessity for rethinking of these regimes. A program of reform can be designed to link institutional and statutory design to the strengths of these models but more important to mitigate their adverse effects. Some of the proposed reforms suggest a regulatory design, whether through internal audits and collaboration from within, or by regulation through political oversight. Some may lead to other democratic processes with multiple stakeholders. In extreme cases, reform may come through the last resort of litigation. Some of the proposed reforms require activating available oversight mechanisms, while other reforms suggest the creation either of new entities or methods to integrate the missions and activities of existing ones. Some reforms will require statute, others administrative regulation. Some will require the involvement of professional oversight groups. Most will be cost-free, although for cities like Ferguson, there are important measures to limit revenue derived from fines and fees, requiring some hard choices in municipal budgets. These tradeoffs are necessary to mitigate harms.

#### A. CAP REVENUE FROM TRAFFIC AND NON-TRAFFIC FINES

Missouri passed SB 5 in 2015, legislation that mitigated harms to motorists in two ways. The first was aimed at persons who received tickets or summons. The bill limits fines imposed when combined with court costs to \$300 for minor traffic violations.<sup>93</sup> The bill also creates a provision for taxpayers to request an income-tax offset for the amounts of unpaid court costs, fines, fees and other amounts ordered by a municipality in excess of \$25.<sup>94</sup> These provisions are aimed at minimizing the criminal justice “tax” on persons resulting from the excesses of the New Policing. A second provision of the bill, called *Mack’s Creek Law*, lowers the cap on municipal revenue from traffic fines from 30% to 20%, effective in 2016, and lowering the cap in St. Louis County to 12.5%.<sup>95</sup>

The downside of these measures is a potential shift in taxpayer burden to homeowners and business owners, to make up the shortfall and ensure continuity in police services. To avoid that shift in tax burden, a new bill, SB 572, was introduced and approved in 2016 that applies the same limits to fees and fines imposed for non-traffic violations<sup>96</sup> in Missouri SB 5. These measures reduce the incentives for local government through its police to pursue the

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93. MO. REV. STAT. § 479.353.

94. *Id.* § 479.356.

95. *Id.* § 479.359 (repealing § 302.341).

96. Such as high weeds or peeling house paint.

revenue-generating “taxation” prong of the New Policing, and are a model for other jurisdictions that may abuse their discretionary policing authority to create revenue streams that benefit the municipality as well as the police officers and courts imposing those fines.

### B. ADJUDICATION OF GUILT AND SENTENCING

Managerialism in the criminal courts diminishes incentives for adjudicating guilt or innocence and replaces those incentives with calendar management and expedited court resolution.<sup>97</sup> Court reforms that strengthen the ability of defendants to defend against the charges and reduce the reliance on pleas are important to reduce the criminal justice and poverty taxes imposed by the New Policing on those arrested. Several measures are needed to realize this goal.

1. Strengthen indigent defense to avoid reliance on pleas to close cases.
2. Develop race-neutral, risk-based instruments to determine pretrial release eligibility and, failing to secure release, to determine bail amounts.
3. Take speedy trial rules seriously.<sup>98</sup>
4. Limit the number of non-appearances by police to two before dismissal of charges.
5. Cap bail amounts within defendant means to pay.
6. Introduce means tests for fines to avoid default and subsequent criminal arrest warrants.
7. Provide assistance for expungement of arrest records.
8. Provide advisory counsel for persons responding to summons for ordinance and civil violations.

These measures are structural reforms that require policy levers more than statutory change, as well as court rules that judges can impose in the interest of justice for indigent defendants facing fines or jail. Their goal is to reduce reliance

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97. Stephen Bright & Sia Sanneh, *Fifty Years of Defiance and Resistance after Gideon v. Wainwright*, 122 YALE L.J. 100, 102 (2013) (critiquing the current state of courts as “plea mills: courts of profit that impose fines without any inquiry into the ability of defendants to pay, thus setting them up for failure and return to jail”); see also Kohler-Hausmann, *supra* note 6, at 643 (citing the flood of dismissals and heavily discounted sentences issued by judges “simply to secure quick and easy pleas”).

98. William Glaberson, *In Misdemeanor Cases, Long Waits for Elusive Trials*, N.Y. TIMES (April 30, 2013), <http://www.nytimes.com/2013/05/01/nyregion/justice-denied-for-misdemeanor-cases-trials-are-elusive.html?smid=tw-share> (citing the abuse by prosecutors of “increasingly elastic speedy-trial rules of the Bronx were finally stretched too far by delay after delay, prosecutors would sometimes drop the cases as if they were never quite worth their time anyway”).

on pleas and the piling up of the secondary costs of a criminal conviction, costs that can create impediments to social and economic stability and mobility. In the case of summons, advisory counsel can assist respondents who may seek to challenge the validity of a summons, or who can advise respondents of their procedural rights with respect to payment.

### C. INSTITUTIONAL REFORM

A number of mechanisms to mass data can be implemented to create internal mechanisms to audit and regulate police activity. It is ironic that the emphasis on metrics in the New Policing has not been redirected to measure the performance and impacts of these policies on the lives of the policed. A few common-sense steps, borrowing from education and medicine, can shed light on the production of criminal convictions for the least serious crimes.

1. Require audits and reporting by state attorneys general.<sup>99</sup>
2. Ensure transparency and public access to data on the progression and outcomes of cases, with details on the benchmarks.
3. Mandate a duty of responsible administration of policing as a matter of due process, with remedies for violations.<sup>100</sup>

### D. LITIGATION

Development of state-level statutes providing the remedies and relief available under 42 U.S.C. § 14141, including civil-rights actions by states when police are found to have engaged in a pattern and practice of violations.<sup>101</sup>

Litigation—whether through § 14141 or instead through claims brought by individuals under 42 U.S.C. § 1983—is a last resort when democratic and political oversight fails to remedy recurring civil-rights violations. But the shifting political landscape in the U.S. Department of Justice suggests that federal civil-rights litigation may by necessity give way to state actions.<sup>102</sup> State actions have the advantage of leveraging the legitimacy of state elected

99. The new legislation in Missouri has strong reporting requirements that mandate accounting by municipalities of their police activity and linkages to their revenue streams.

100. See Charles F. Sabel & William H. Simon, *The Duty of Responsible Administration and the Problem of Police Accountability*, 33 *YALE J. ON REG.* 165 (2016).

101. See Samuel Walker & Morgan MacDonald, *An Alternative Remedy for Police Misconduct: A Model State “Pattern and Practice” Statute*, 19 *GEO. MASON U. CIV. RTS. L.J.* 479 (2009) (arguing for a state law closely modeled from 42 U.S.C. § 14141 to effect change in local policing when police create a pattern of violations of state constitutional rights).

102. Eric Lichtblau, *Sessions Indicates Justice Department Will Stop Monitoring Troubled Police Agencies*, *N.Y. TIMES* (Feb. 28, 2017), <https://www.nytimes.com/2017/02/28/us/politics/jeff-sessions-crime.html?smid=tw-share>.

officials in bringing about reforms to policing under state constitutional law. Some state attorneys general have used state power in federal court under a *parens patriae* doctrine to bring about police institutional reform.<sup>103</sup> There also are new models of local democratic oversight of police, some spurred by DOJ consent decrees pursuant to § 14141, that have created new governance structures that blend police and government interests with interests of citizens, civil-rights advocates and lawyers, and police representatives to oversee all facets of policing.<sup>104</sup> In these instances, the work of local entities exercising citizen review takes place in parallel with DOJ monitoring, but ultimately supplants it once federal oversight ends.

### E. COLLABORATIVE REFORM

Collaborative reform is an internal process where officers both at all levels of the police hierarchy and across command units pool their expertise to create new responses to complex crime problems. Crime problems in this view are contextually embedded in social and spatial contexts, where crime is common to a location. Crime problems may also reflect the acts of persons or groups, requiring a different response. In each instance, the pooled knowledge of multiple actors within police institutions, with diverse viewpoints and experience, is applied in a problem-solving process to identify tactical responses to crime problems. Cincinnati adopted a collaborative model in response to civil-rights litigation over use of force in the early 2000s.<sup>105</sup> The current model has now been in practice for close to a decade.<sup>106</sup> Reception by the police has been positive, and the core tenets of the model—“problems are dilemmas to be engaged in and learned from”—are deeply embedded in the police culture.<sup>107</sup>

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103. See, e.g., *People v. Town of Wallkill*, No. 01-Civ-0364, 2001 U.S. Dist. LEXIS 13364 at \*19–\*20 (S.D.N.Y. Mar. 16, 2001) (upholding attorney general’s *parens patriae* authority where legal standards and practical difficulties made it unlikely that individual victims of police misconduct could secure the sort of systemic, prophylactic injunctive relief sought); see also Jay L. Himes, *State Parens Patriae Authority: The Evolution of the State Attorney General’s Authority* (2004) (unpublished manuscript).

104. J.B. Wogan, *The New, More Powerful Wave of Civilian Oversight of Police*, GOVERNING, <http://www.governing.com/topics/public-justice-safety/gov-police-civilian-oversight-oakland-seattle.html> (last visited Mar. 25, 2017); see also JOSEPH DE ANGELIS, RICHARD ROSENTHAL & BRIAN BUCHNER, *CIVILIAN OVERSIGHT OF LAW ENFORCEMENT: A REVIEW OF THE STRENGTHS AND WEAKNESSES OF VARIOUS MODELS* (2016).

105. Sabel & Simon, *supra* note 100, at 193.

106. See Collaborative Agreement, *In re Cincinnati Policing*, No. C-1-99-317 (S.D. Ohio Aug. 5, 2002), available at <http://www.cincinnati-oh.gov/police/department-references/collaborative-agreement/> (last visited Mar. 25, 2017); see also *In re Cincinnati Policing*, 209 F.R.D. 395, 400 (S.D. Ohio 2002).

107. Collaborative Agreement, *supra* note 106, at 2.

The generalizable lesson from Cincinnati's experience, which has been closely monitored and studied by legal and social-science scholars, is the importance of creating an integrated organizational design that shares expertise and problem-solving responsibility among officers across ranks and commands, and instantiates this ethos throughout the police organization. This is a sharp departure from the traditional hierarchical and centralized decision-making and strategic planning models in contemporary police institutions. The reform process also illustrates a principle of "duty of responsible administration," where a comprehensive restructuring is a predicate to meaningful and effective reform.<sup>108</sup> These are not simple reforms, but these experiments are substantive changes to the New Policing models of centralized and aggressive intervention that seem to create harm with little to show for it.

#### F. MITIGATING HARM

The New Policing has several liabilities, beyond those illustrated in this chapter. First, there have been 25 investigations into law-enforcement agencies conducted since 2009 by the Special Litigation Section of the DOJ's Civil Rights Division (CRD) under 42 U.S.C. § 14141.<sup>109</sup> The CRD is currently enforcing 19 agreements—including 14 consent decrees and one post-judgment order—in counties and state agencies.<sup>110</sup> Since the inception of "pattern and practice" interventions in the 1990s, a total of 40 police agencies have entered into either stipulated settlements or consent decrees, committing local police to a series of court-supervised structural and policy reforms.<sup>111</sup> Three others are in negotiation now, in Ferguson, Baltimore and Chicago, but it is uncertain whether they will be implemented by the DOJ under Attorney General Jeff Sessions.<sup>112</sup> This all has taken place in the era of the New Policing, with its aggressive approach to less serious crimes and signs of social disorder.

108. Sabel & Simon, *supra* note 100, at 201.

109. *Special Litigation Section Cases and Matters*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#police> (last visited Mar. 25, 2017).

110. *Id.*

111. See U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., *THE CIVIL RIGHTS DIVISION'S PATTERN AND PRACTICE POLICE REFORM WORK: 1994-PRESENT 3* (2017), <https://www.justice.gov/crt/file/922421/download>; see also Goldie Taylor, *More than 20 U.S. Cities are Currently under a DOJ Consent Decree, But do They Really Work?*, BLUE NATION REV. (May 27, 2015), <http://archives.bluenationreview.com/more-than-20-u-s-cities-are-currently-under-a-doj-consent-decree-but-do-they-really-work/>.

112. Lichtblau, *supra* note 102; see also Ryan J. Reilly, *Jeff Sessions Didn't Read DOJ's Chicago Police Report—But He Thinks It's "Anecdotal,"* HUFFINGTON POST (Feb. 28, 2017), [http://www.huffingtonpost.com/entry/jeff-sessions-doj-police\\_us\\_58b4a2eae4b060480e0b1ce6](http://www.huffingtonpost.com/entry/jeff-sessions-doj-police_us_58b4a2eae4b060480e0b1ce6).

Second, there is no reliable evidence of its overall effectiveness in reducing crime. In fact, recent studies suggest that policing models that redirect attention from policing disorder and focus instead on indications of actual and more serious crime have stronger crime-reduction effects.<sup>113</sup> Under the New Policing, the yield for public safety is low if these low-level crimes or signs of disorder are not gateways to violence or major property crimes. More important, the standard of proof there is intrinsically low. In a succession of Supreme Court cases in recent years, the reasonable-suspicion standard has expanded to include pretextual stops (*U.S. v. Whren*),<sup>114</sup> neighborhood characteristics (*Illinois v. Wardlow*),<sup>115</sup> “honest mistakes” leading to unlawful stops and arrests (*Herring v. U.S.*),<sup>116</sup> and unlawful stops that lead to arrests for outstanding warrants (*Utah v. Strieff*).<sup>117</sup> The bases of suspicion, in other words, have expanded beyond the capacity of courts or police agencies to effectively regulate the power to conduct investigative stops.

More important, the intrinsically low standard for investigative stops (and the arrests or summons that follow) inevitably leads to police intervention in inherently benign acts. This distracts police from intervening in the more harmful ones. It is only in the narrow shared space where suspicion of more serious crime overlaps with the general interest of the New Policing regimes that it makes sense to intervene in the benign act at a lower standard of proof, and the size of that shared space is part of a contentious debate. The social harms from undetected harmful acts—when police are distracted from more serious crimes to the less serious in the hope of discovering a more harmful act—will far outweigh any private or small-scale benefits from intervening in

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113. See John MacDonald, Jeffrey Fagan & Amanda Geller, *The Effects of Local Police Surges on Crime and Arrests in New York City*, 11 PLoS ONE e0157223, 10–11 (2016); see also Fagan, *supra* note 36.

114. 517 U.S. 806 (1996) (declaring that any traffic or vehicular offense or suspected traffic or vehicular offense is a legitimate basis for a stop, no matter how pretextual the suspected offense).

115. 528 U.S. 119 (2000) (allowing presence in a high crime area to be a factor in police decisions to conduct an investigative stop, without specifying the parameters of “high crime area”).

116. 555 U.S. 135 (2009) (allowing a good-faith exception to the exclusionary rule when for an arrest is based on erroneous information or negligent error).

117. 136 S. Ct. 2056 (2016) (allowing an arrest for an outstanding warrant even if the warrant was discovered in an unlawful investigative stop).

the benign acts whose connections to serious crime are tenuous at best. In other words, do not sweat the little stuff, and focus on more serious acts with more consequential public harms. This is simple regulatory algebra.<sup>118</sup>

This leads directly to the final recommendation: law enforcement and citizen interests are better served by a recalibration of the jurisprudential and operational basis for the New Policing's standards to move them closer to a *Mapp's* more exacting probable-cause standard,<sup>119</sup> and moving away from the more subjective reasonable-suspicion standard of *Terry*.<sup>120</sup> A more workable and easily understood standard for regulating police use of the stop power would create a more comfortable space internally for police to monitor, audit, and regulate compliance with constitutional law as well as internal policy. And it can provide a standard that moves away from the subjective criteria that are less vulnerable to cognitive error, perceptual distortions, and social harms.<sup>121</sup> Secondary benefits for legitimacy and cooperation may well follow.

### RECOMMENDATIONS

This section summarizes the major reforms for law and policy that this chapter recommends:

1. Increase the specificity of the reasonable suspicion standard as the basis for investigative stops to more closely approximate an exacting probable cause standard.
2. Institute caps on municipal revenue from traffic fines and non-traffic violations.
3. Strengthen indigent defense to avoid reliance on pleas to close low-level misdemeanor cases.
4. Use race-neutral, risk-based instruments to determine pretrial release eligibility and to determine bail amounts.
5. Take speedy trial rules seriously by limiting the number of appearances for adjudication of misdemeanors.

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118. See, e.g., Louis Kaplow, *Burden of Proof*, 121 *YALE L. J.* 738 (2011) (arguing that strong evidence is necessary to assign liability or culpability since the proof burden can affect the design accuracy of enforcement); see also Fagan, *supra* note 36.

119. *Mapp v. Ohio*, 367 U.S. 643 (1961).

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

121. *Floyd v. City of New York*, 959 F. Supp. 2d 540, 615 (S.D.N.Y. 2013) (linking the low seizure rates to Fourth Amendment violations in carrying out *Terry* stops).

6. Develop state-level statutes providing remedies and injunctive relief, including civil-rights actions by states when police are found to have engaged in a pattern and practice of constitutional violations.
7. Create incentives for collaborative reforms between police and community to revise non-productive and harmful policing strategies.

Appendix Table 1. OLS Regression of Racial Differences in Stop Outcomes, 2004-2014

Suspect Race	Stop Outcome				
	(1)	(2)	(3)	(4)	(5)
	Frisked	Unproductive Frisk	Use of Force	Unnecessary Use of Force	Arrest Made
Black	.047***	.034***	.021*	.028***	-.003
	(.010)	(.006)	(.011)	(.008)	(.003)
White Hispanic	.067***	.014**	.040***	.014**	.002
	(.012)	(.005)	(.011)	(.006)	(.002)
Black Hispanic	.072***	.022***	.051***	.032***	.006*
	(.008)	(.006)	(.010)	(.008)	(.003)
Sample Restriction	-	If Frisked	-	If Force Used	-
N	4,811,769	2,519,934	4,811,769	1,076,575	4,811,769
Adj. R-sq	.228	.026	.052	.024	.014

Significance: \* =  $p < 0.05$ , \*\* =  $p < 0.01$ , \*\*\* =  $p < 0.001$ .

**Note:** Average difference in rates of stop outcomes by race, relative to the average for Whites and other races. Standard errors in parentheses, clustered by precinct. Regressions include year fixed effects and controls for the reason for the stop. Robust standard errors in parentheses, clustered by precinct. Data include all stops for 2004 through 2014.

**Appendix Table 2. OLS Regressions on Sanction Rates for SQF Cases by Suspect Race, New York City, Street Stops 2009-14 (Odds Ratios, SE)**

	N, %	Black		Black Hispanic		White Hispanic	
Arrested <sup>a</sup>	142,596	1.08	***	1.047	***	1.014	ns
	5.9%	(.012)		(.011)		(.010)	
Arraigned <sup>b</sup>	117,425	.832	**	.717	***	.850	**
	82.4%	(.062)		(.058)		(.064)	
Adjudicated or Plead Guilty <sup>c</sup>	71,795	1.386	***	1.389	***	1.277	***
	61.1%	(.079)		(.085)		(.065)	
Conviction Offense <sup>d</sup>	71,795	1.543	***	1.453	***	1.878	***
	Felony	9.3%	(.113)	(.104)		(.072)	
Misdemeanor	53.5%						
Violation	37.2%						
Sentence <sup>e</sup>	71,795	1.312	**	0.98	ns	0.939	ns
	Time served or no time	44.5%	(.079)	(.064)		(.261)	
Fine or Probation	42.4%						
Jail or Prison	13.1%						

Odds ratio is compared to White suspects. N=2,396,314 stops.

Significance: \*  $p < .10$ , \*\*  $p < .05$ , \*\*\*  $p < .01$

a. The total arrests recorded were 148,880. 7,500 cases were eliminated because of duplicate or incomplete arrest identifiers. In addition, 146,323 cases resulted in issuance of a summons.

b. Models estimated with controls for age and gender, and fixed effects for year and arrest charge. Models estimated conditional on probability of arrest or summons. Standard errors clustered by police precinct

c. Models estimated with controls for age and gender, and fixed effects for year and arraignment charge. Models estimated conditional on probability of arraignment. Standard errors clustered by precinct.

d. Ordered logit regression of cases conditional on probability of conviction. Estimates control for age and gender, and fixed effects for year and arraignment charge.

e. Ordered logit based on sentences of time served, fine, probation, jail, prison conditional on conviction. "No time" includes conditional discharge. Models estimated based on probability of conviction. Controls for age and gender. Fixed effects for year and conviction charge.

**Appendix Table 3. Logistic Regression of Race Effects on Stop Outcomes, Ferguson, 2010–2013 (Odds Ratio, SE)**

	Stop Outcome				
	Driver Ticketed	Arrest Made	Vehicle Searched	Contraband Seized	Warrant Arrest
Black-White Odds Ratio	1.354+	1.928**	1.670**	0.744	3.241**
(Standard error)	(.236)	(.297)	(.235)	(.171)	(.921)
Sample Restriction	-	-	-	If Searched	If Arrested
N of Cases	11592	11592	11592	1203	951
Pseudo R-sq.	.359	.063	.101	.041	.083

**Notes.** Standard errors in parentheses, p-values in brackets.

Significance: +  $p < 0.10$ , \*  $p < 0.05$ , \*\*  $p < 0.01$ . Robust standard errors clustered by arresting officer. Models include controls for driver age and gender, officer assignment (patrol vs. traffic), indicator for two officers with extreme level of stop activity, and the reason for the stop. Column 4 is estimated conditional on a search occurring. Column 5 is estimated conditional on an arrest being made.