

## Refunding the Community: What Defunding MPD Means and Why It Is Urgent and Realistic

*JLI* Vol. 39 Editorial Board<sup>1</sup>

“(The police) are a very real menace to every black cat alive in this country. And no matter how many people say, ‘You’re being paranoid when you talk about police brutality’—I know what I’m talking about. I survived those streets and those precinct basements and I know. And I’ll tell you this—I know what it was like when I was really helpless, how many beatings I got. And I know what happens now because I’m not really helpless. But I know, too, that if he (police) don’t know that this is Jimmy Baldwin and not just some other nigger<sup>[2]</sup> he’s gonna blow my head off just like he blows off everybody else’s head. It could happen to my mother in the morning, to my sister, to my brother . . . [.] For me this has always been a violent country—it has never been a democracy.” – James Baldwin<sup>3</sup>

“Fuck Tha Police,”<sup>4</sup> rapped the revered American hip-hop group N.W.A from Compton, California in their seminal debut studio album, “Straight Outta Compton.”<sup>5</sup> In six short minutes, Emcees Ice Cube, Ren, and Eazy-E, serve as effective prosecutors—with Dr. Dre presiding as a judge in the case of *N.W.A v. The Police Department*<sup>6</sup>—against the Los Angeles Police Department (LAPD) for possessing the “authority to kill a

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1. The *Minnesota Journal of Law & Inequality's (JLI)* editorial board includes both the editors and the staff members. The article was drafted by Anna Berglund, Articles Editor; Sam Brower, Lead Online Editor; Abigail Hanson, Lead Managing Editor; Navin Ramalingam, Editor-in-Chief; and one more Editor. Thanks to Jen Davison, Lead Articles Editor, for her feedback; Abby Rauls, Executive Editor, and Hillary Richard, Staff Member, for their inputs. Thanks are also due to Adam Johnson and Chris Lund, Online Editors, for their help editing this article. Thanks, most of all, to *JLI* for providing a space for all us to come together, learn, and advocate for much-needed legal reform in this country.

2. *JLI's* Vol. 39 does not have a single Black Editor. *JLI* acknowledges its own role in perpetuating racial inequality by not having Black voices in positions of power within the Journal. *JLI* strives to diversify its membership, authorship, and readership, and has measurable goals to achieve these objectives in the next few years. We chose to publish the n-word unredacted because it was part of a Baldwin quote. We do not possess the intellectual chutzpah to edit or censor a quote by James R. Baldwin. Not redacting the word while providing this context is our best solution to make peace with these competing tensions.

3. See Liz Kaufman, *6 James Baldwin Quotes About Race*, PBS: AM. MASTERS (Aug. 4, 2020), <https://www.pbs.org/wnet/americanmasters/6-james-baldwin-quotes-race/15142/> [perma.cc/73KR-SE49] (quote from Baldwin’s 1969 interview on the Dick Cavett Show).

4. N.W.A., *Fuck tha Police*, on STRAIGHT OUTTA COMPTON (Universal Music Grp., Ruthless Records, Priority Records 1988).

5. *Id.*; see also Preezy Brown, *Tale of the Tape: N.W.A.'s "Fuck Tha Police"*, REVOLT (Feb. 21, 2019), <https://www.revolt.tv/2019/2/21/20824193/tale-of-the-tape-n-w-a-s-fuck-tha-police> [perma.cc/T3ZS-B8XY].

6. N.W.A., *supra* note 4, at 0:08.

minority.”<sup>7</sup> The LAPD, like police departments in other American cities,<sup>8</sup> had a notorious reputation for corruption,<sup>9</sup> using excessive force, racial profiling, and harassing minority communities in the Greater Los Angeles area.<sup>10</sup> While some citizens<sup>11</sup> and the police<sup>12</sup> gave it their all to curb the

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7. *Id.* at 0:38. See also “*Fuck Tha Police*”, N.W.A., CLARKU: HIP-HOP & POLITICS, <https://wordpress.clarku.edu/musc210-hhp/hip-hop-culture-politics-exploring-the-narrative-and-power-of-rap-lyrics/fuck-tha-police-n-w-a/> [perma.cc/AHL7-LFHD]; Kory Grow, *How N.W.A.’s ‘Fuck tha Police’ Became the ‘Perfect Protest Song’*, ROLLING STONE (June 9, 2020), <https://www.rollingstone.com/music/music-features/nwa-fuck-tha-police-protest-song-1010355/> [perma.cc/44RE-SLW3].

8. See, e.g., CLARENCE TAYLOR, *FIGHT THE POWER: AFRICAN AMERICANS AND THE LONG HISTORY OF POLICE BRUTALITY IN NEW YORK CITY* (2018); Hollie A Teague, *Black and Blue in North Texas: The Long-Neglected History of Anti-Black Police Violence in North Texas, 1880-1930*, 49 J. BLACK STUD. 756 (2018); Safia Samee Ali, *George Floyd’s Death a Painful Reminder of Chicago’s History of Police Brutality*, NBC NEWS (June 3, 2020), <https://www.nbcnews.com/news/us-news/george-floyd-s-death-painful-reminder-chicago-s-history-police-n1224076> [perma.cc/NV43-TMMN]; Arun Rath, *Looking Back on Police Brutality and Racism in Boston*, GBH NEWS (June 14, 2020), <https://www.wgbh.org/news/local-news/2020/06/14/looking-back-on-police-brutality-and-racism-in-boston> [perma.cc/H5AX-2C7S]; Rebecca Gordon, *San Francisco’s Police Problem*, THE NATION (Feb. 23, 2016), <https://www.thenation.com/article/archive/san-franciscos-police-problem/> [perma.cc/ZY4H-YQZZ]; Levi Pulkkinen, *Feds: Seattle Police Show ‘Pattern of Excessive Force’*, SEATTLEPI (Dec. 16, 2011), <https://www.seattlepi.com/local/article/Feds-findings-in-Seattle-Police-abuse-2407378.php> [perma.cc/3FXM-KXHJ]; Radley Balko, *Albuquerque’s Long History of Police Abuse, Cover-Up, and Scandal*, WASH. POST (Apr. 14, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/04/14/albuquerque-long-history-of-police-abuse-cover-up-and-scandal/> [perma.cc/DX46-75WX].

9. See *Rampart Scandal Timeline*, PBS: FRONTLINE (May 2001), <https://www.pbs.org/wgbh/pages/frontline/shows/lapd/scandal/cron.html> [perma.cc/368W-BJ2D].

10. See Karen Grigsby Bates, *‘It’s Not Your Grandfather’s LAPD’—and That’s a Good Thing*, NPR: CODE SWITCH (Apr. 26, 2017), <https://www.npr.org/sections/codeswitch/2017/04/26/492848045/-it-s-not-your-father-s-lapd-and-that-s-a-good-thing> [perma.cc/F9PS-T8H5]; Peter J. Boyer, *Bad Cops*, NEW YORKER (May 13, 2001), <https://www.newyorker.com/magazine/2001/05/21/bad-cops> [perma.cc/685P-4MQS]; Sara Kate, *The 12 Biggest LAPD Screw-Ups of All Time*, RANKER (Sept. 18, 2020), <https://www.ranker.com/list/the-13-biggest-lapd-screw-ups-of-all-time/sarakate> [perma.cc/87DP-EG44].

11. See Rich Goldstein, *A Brief History of the Phrase ‘F\*ck the Police’*, DAILY BEAST (Apr. 24, 2017), <https://www.thedailybeast.com/a-brief-history-of-the-phrase-fck-the-police> [perma.cc/52MD-852U] (describing how the album *Straight Outta Compton* was among the first to receive a Parental Advisory sticker after advocacy from the group Parents Music Resource Center).

12. See Steve Knopper, *The True Story of N.W.A. Playing ‘Fuck Tha Police’ Live in Detroit*, GQ (July 21, 2020), <https://www.gq.com/story/nwa-fuck-the-police-live-detroit> [perma.cc/7C3S-CYBB]; *Fuck Tha Police*, N.W.A., CLARKU, *supra* note 7 (citing a letter from the Assistant Dir. of the FBI Off. of Pub. Affairs to Priority Records); Kory Grow, *N.W.A.’s ‘Straight Outta Compton’: 12 Things You Didn’t Know*, ROLLING STONE (Aug. 8, 2018), <https://www.rollingstone.com/feature/n-w-as-straight-outta-compton-12-things-you-didnt-know-707207/> [perma.cc/S6JF-L46Z] (“Law enforcement flat out refused to protect N.W.A. on tour,” and “[t]heir contract forbade them from performing ‘Fuck tha Police’ and ‘Straight Outta Compton’ . . . but they chose to do so anyway . . .”).

popularity of the track, the song, the album, and the hip-hop group themselves would go on to achieve blockbuster status. In the summer of 2020, after the brutal killing of George Floyd<sup>13</sup>—an unarmed Black man—by a police officer<sup>14</sup> with the Minneapolis Police Department (MPD), the popularity of the thirty-two-year old anti-police-brutality anthem skyrocketed.<sup>15</sup> The very existence of an audio track called “Fuck Tha Police” and its enduring and unwavering appeal among large swaths of Americans over multiple decades perfectly encapsulates the story of modern American policing, especially its relationship to racial and ethnic minority groups in the United States.

In four sections, this Article (1) looks at the history of policing in the United States and the city of Minneapolis; (2) surveys the ineffective internal reforms the MPD and the City have undertaken over the past few decades; (3) proposes urgent and effective responses to prevent the deaths of Black Americans, like Floyd, and other racial and ethnic minorities at the hands of the MPD; and (4) concludes why refunding the community, by defunding the MPD, is a pragmatic and timely response to the MPD killing Black and Brown Minnesotans.

## I. The True History of Policing in the United States and Minneapolis

This past summer, Americans and people around the world watched in horror as pictures and videos of police officers in heavily militarized gear and war-time weapons subjected peaceful protestors across the United States to extraordinary violence.<sup>16</sup> The scale and

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13. See Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [perma.cc/2M5M-VUXX].

14. See Doha Madani, *Derek Chauvin, Ex-officer Charged with Murder in George Floyd Case, Released on \$1M Bond*, NBC NEWS (Oct. 7, 2020), <https://www.nbcnews.com/news/us-news/derek-chauvin-ex-officer-charged-murder-george-floyd-case-released-n1242433> [perma.cc/NFL7-UCK4].

15. See Jonathan Bernstein, *Streams of N.W.A.'s 'F—k tha Police' Nearly Quadruple Amid Nationwide Protests*, ROLLING STONE (June 3, 2020), <https://www.rollingstone.com/music/music-news/fuck-tha-police-streams-protest-songs-george-floyd-1009277/> [perma.cc/UD5Y-6ET8]; Charlotte Krol, *Streams of N.W.A.'s 'Fuck Tha Police' Grow by 272 per Cent amid George Floyd Protests*, NME (June 3, 2020), <https://www.nme.com/news/music/streams-of-n-w-as-fuck-tha-police-grow-by-272-per-cent-amid-george-floyd-protests-2681270> [perma.cc/R2SP-GZPM].

16. See Shawn Hubler & Julie Bosman, *A Crisis that Began with an Image of Police Violence Keeps Providing More*, N.Y. TIMES (Mar. 11, 2021), <https://www.nytimes.com/2020/06/05/us/police-violence-george-floyd.html> [perma.cc/8T9W-A5SF]; Daniel Politi, *Activists Create Public Online Spreadsheet of Police Violence Videos*, SLATE (June 6, 2020), <https://slate.com/news-and-politics/2020/06/george-floyd-public-spreadsheet-police-violence-videos.html> [perma.cc/63PG-MHSW]; Taylor Lorenz, *People Can't Stop Watching Videos of Police and*

intensity of violence the police inflicted upon Americans exercising their constitutionally-protected first amendment rights begged the question—exactly *who* are these police officers sworn to “protect and serve?”<sup>17</sup> Any meaningful survey tracing the roots of modern American policing begins with its relationship to that purported North Star of American prosperity<sup>18</sup>—private property.<sup>19</sup>

The first documented death of Black men by law enforcement in what would become the United States happened in 1619 when a Dutch slave ship landed in Virginia.<sup>20</sup> Enslaved Africans aboard the ship were killed “because of overcrowding, unsanitary conditions, and inadequate provisions on the ships.”<sup>21</sup> Their situation did not improve after they landed.<sup>22</sup> The highly impactful Barbadian Slave Codes,<sup>23</sup> used by the British “to justify the practice of slavery and legalize the planters’ inhumane treatment of their enslaved Africans,” inspired American colonies to draft their own slave codes.<sup>24</sup> The first of these codes, drafted by Maryland and Virginia, defined enslaved people as “piece[s] of property” possessing no human rights, unlike their White owners.<sup>25</sup> The

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*Protesters. That’s the Idea.*, N.Y. TIMES (June 3, 2020), <https://www.nytimes.com/2020/06/02/style/police-protests-video.html> [perma.cc/Q8SZ-9A5J]; Jay Corbett, *2020 George Floyd Protests – Police Brutality Compilation – The 29th of May to the 2nd of June*, YOUTUBE (June 5, 2020), <https://www.youtube.com/watch?v=Dn6pAOIjgQg>.

17. See Jeremiah P. Johnson, *A Hippocratic Oath for Policing*, NAT’L POLICE FOUND., <https://www.policefoundation.org/a-hippocratic-oath-for-policing/> [perma.cc/Q66F-VPRB] (discussing Professor David Kennedy’s proposal for a Hippocratic Oath in policing).

18. See Roger Pilon, *16. Property Rights and the Constitution*, in *CATO HANDBOOK FOR POLICY MAKERS* (8th ed. 2017), <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution> [perma.cc/8AN6-8TQJ] (referring to property as “the foundation of all rights” in American law).

19. See Jack Hurbanis, *History of Policing in America: Starts and Ends with Protecting Private Property*, WUWM 89.7 (June 2, 2020), <https://www.wuwm.com/podcast/spotlight/2020-06-02/history-of-policing-in-america-starts-and-ends-with-protecting-private-property#stream/0> [perma.cc/YRV3-B2JV].

20. Michael A. Robinson, *Black Bodies on the Ground: Policing Disparities in the African American Community—An Analysis of Newsprint from January 1, 2015, Through December 31, 2015*, 48 J. BLACK STUD. 551, 552 (2017).

21. *Id.*

22. Mary Elliott & Jazmine Hughes, *Four Hundred Years After Enslaved Africans Were First Brought to Virginia, Most Americans Still Don’t Know the Full Story of Slavery*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/interactive/2019/08/19/magazine/history-slavery-smithsonian.html?mtrref=undefined&assetType=REGIWALL&mtrref=www.nytimes.com&gwh=2AB56260100AE928A4AE9A12CB77E790&gwt=regi&assetType=REGIWALL> [perma.cc/KX95-MDTU].

23. See Sir Hilary Beckles, *On Barbados, the First Black Slave Society*, BLACK PERSPECTIVES (Apr. 8, 2017), <https://www.aaihs.org/on-barbados-the-first-black-slave-society/> [perma.cc/92B]-683K].

24. Robinson, *supra* note 20, at 552–53.

25. *Id.* at 552.

enslaved essentially had the same “status of farm animals or chattel.”<sup>26</sup> While Americans enslaved the Africans starting in the early seventeenth century, the history of modern policing itself goes back to thirteenth-century England.

William Blackstone, the eighteenth-century English lawyer, jurist, author of “Commentaries on the Laws of England,” and Tory politician the American common law judges love to love,<sup>27</sup> called the modern police’s predecessors King’s men.<sup>28</sup> These men kept the “king’s peace” since as early as the thirteenth century.<sup>29</sup> Even after Americans overthrew the king—with Thomas Paine famously proclaiming “the law is king”<sup>30</sup>—Americans retained the King’s men. Since the thirteenth century, the constable, an officer of the King’s court, was aided by a group called the “watch.”<sup>31</sup> The watch was composed of able-bodied adult male volunteers from the community who alerted authorities when there was trouble and operated mostly at night.<sup>32</sup> In the early American colonies, these watches streamlined. Boston, New York, and Philadelphia formed their official night watches in the seventeenth century and their day watches in the early nineteenth century.<sup>33</sup> The goal of these watches was to “warn of impending danger” including activity that would break the law.<sup>34</sup> In the early colonies, and up until the mid-nineteenth century, slavery was legal in large parts of the United States.<sup>35</sup> This meant that any action that subverted slavery, like escaping it, was *breaking the law*.

#### A. *Modern American Policing is a Loyal Descendant of the*

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26. *Id.*

27. See Greg Bailey, *Sir William Blackstone in America*, VARSITYTUTORS, <https://www.varsitytutors.com/earlyamerica/early-america-review/volume-2/sir-william-blackstone-in-america> [perma.cc/LYL5-SGZ7]; cf. Neal Devins & David Klein, *The Vanishing Common Law Judge?*, 165 U. PENN. L. REV. 595 (2017).

28. Jill Lepore, *The Invention of the Police*, NEW YORKER (July 13, 2020), <https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police> [perma.cc/CZP2-T6EY].

29. *Id.*

30. *Paine on the Idea that the Law Is King (1776)*, LIBERTY FUND: ONLINE LIBR. OF LIBERTY, <https://oll.libertyfund.org/quote/paine-on-the-idea-that-the-law-is-king-1776> [perma.cc/VU6F-J3QK].

31. Gary Potter, *The History of Policing in the United States, Part 1*, E. KY. UNIV.: POLICE STUD. ONLINE (June 25, 2013), <https://plsonline.eku.edu/insideloook/history-policing-united-states-part-1> [perma.cc/9J9H-W34N].

32. Lepore, *supra* note 28; Potter, *supra* note 31.

33. GARY POTTER, *THE HISTORY OF POLICING IN THE UNITED STATES 2* (2013), <https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf> [perma.cc/7EB6-RUEU].

34. *Id.*

35. See *American Slavery: Separating Fact from Myth*, THE CONVERSATION (June 19, 2017), <https://theconversation.com/american-slavery-separating-fact-from-myth-79620> [perma.cc/X9MU-VNQ8].

*Original Slave Patrols*

“It was part of my business to arrest all slaves and free persons of color who were collected in crowds at night, and lock them up. It was also part of my business to take them before the Mayor. I did this without any warrant, and at my own discretion. Next day they were examined and punished. The punishment is flogging. I am one of the men who flog them. They get not exceeding thirty-nine lashes. I am paid 50 cents for every negro I flog. The price used to be sixty-two and a half cents. I am paid fifty cents for every negro I arrest, and fifty cents more if I flog him. I have flogged hundreds. I am often employed by private persons to pursue fugitive slaves. I have been thus employed since 1838. I never refuse a good job of that kind.” - John Capeheart, Norfolk, Virginia’s Constable<sup>36</sup>

“... the paddy rollers would come an’ horse whip every las’ one of ‘em, jes cause poor souls were praying to God to free ‘em from dat awful bondage.” - Minnie Fulkes, formerly enslaved, Work Projects Administration interview, March 5, 1937<sup>37</sup>

Historian Jill Lepore argues slavery is “not a rule of law . . . [but] a rule of police.”<sup>38</sup> Policing in the early United States followed two distinct but ultimately complementary approaches in the North and the South.<sup>39</sup> In the South, following the adoption of the aforementioned slave codes, slave patrols were formed in the early eighteenth century, the first one in the Carolinas in 1704.<sup>40</sup> The enslaved Africans called the slave patrols “patrollers,” “patty rollers,” or “paddy rollers” who used what would eventually become known as “paddy wagons,” an older version of the modern-day police van, to scour the counties for the runaway enslaved.<sup>41</sup> These slave patrols were formed under state laws, organized by counties, and bankrolled by taxes.<sup>42</sup> The same slave patrols would go on to inspire the Ku Klux Klan’s “night riders” after the end of the Civil War in 1865.<sup>43</sup>

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36. SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* 83 (First Harvard University Press paperback ed. 2003) (2001).

37. Lincolnquakers, *Loudon County and the Paddy Rollers*, NEST OF ABOLITIONISTS (Sept. 9, 2020), <https://lincolnquakers.com/2020/09/09/loudoun-county-and-the-paddy-rollers/> [perma.cc/VRA2-NYTT].

38. Lepore, *supra* note 28.

39. See *The Racist Roots of American Policing: From Slave Patrols to Traffic Stops*, THE CONVERSATION (June 4, 2019), <https://theconversation.com/the-racist-roots-of-american-policing-from-slave-patrols-to-traffic-stops-112816> [perma.cc/8HDR-PZ5H].

40. POTTER, *supra* note 33, at 3.

41. Shem El, *From Slave Patrols to Paddy Wagons*, MOORISH AM. NEWS (May 2, 2015), <http://moorishamericannews.com/from-slave-patrols-to-paddy-wagons> [perma.cc/LGR2-YBKH].

42. *Loudon County and the Paddy Rollers*, *supra* note 37.

43. *Id.*

Following the Carolinas, the other southern colonies, Virginia, Tennessee, Georgia, and, after independence, states such as Kentucky, all formed slave patrols in the eighteenth century to protect the properties of White slave owners.<sup>44</sup> These laws were further strengthened following the slave revolts led by Abolitionists like Nat Turner, Gabriel Prosser, and Denmark Vesey in the early nineteenth century.<sup>45</sup> The goals of these slave patrols were multifold: (1) apprehend the runaway enslaved; (2) provide organized terror to deter revolt by the enslaved; and (3) maintain extra-judicial discipline for enslaved workers.<sup>46</sup> These slave patrols shed light on not only the origins of American law enforcement but also its primary motive—“the need to police enslaved Africans and control the behavior of Black people.”<sup>47</sup>

Though slave patrols originated in the Southern states, Northern states are not off the hook for their own contributions. Northern states like New York and Connecticut passed laws controlling the enslaved who escaped from the South to the Northern states.<sup>48</sup> The Northern States also helped Congress pass Fugitive Slave Laws in 1793—which were strengthened again in 1850—that “allowed for runaway enslaved Africans to be returned to their owners.”<sup>49</sup>

In the early nineteenth century, American cities experienced huge population growth through immigration and industrialization.<sup>50</sup> Industrialization also increased urbanization.<sup>51</sup> Although public disorder—public drunkenness and prostitution—seemed to have increased with swift urbanization, “evidence of an actual crime wave [was] lacking.”<sup>52</sup> But this did not stop the “emerging commercial elite”<sup>53</sup> nativists<sup>54</sup> from using the fear of purported “outsiders”—mostly immigrants and Blacks—to whip up fear and establish “a mechanism to insure a stable and orderly work force, a stable and orderly environment for the conduct of business, and the maintenance of what they referred to as the ‘collective good.’”<sup>55</sup> Around the same time, starting in the early

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44. Robinson, *supra* note 20, at 553.

45. *Id.*

46. POTTER, *supra* note 33, at 3.

47. Robinson, *supra* note 20, at 533.

48. *Id.*

49. *Id.* at 533–34.

50. Lepore, *supra* note 28.

51. See Stuart M. Blumin, *Driven to the City: Urbanization and Industrialization in the 19th Century*, COLLEGE BD.: AP CENTRAL, <https://apcentral.collegeboard.org/series/america-on-the-world-stage/urbanization-industrialization-nineteenth-century> [perma.cc/7LY4-XD56].

52. POTTER, *supra* note 33, at 3.

53. *Id.* at 4.

54. Lepore, *supra* note 28.

55. POTTER, *supra* note 33, at 4.

1830s, almost every major American city—Boston, New York City, Albany, Chicago, New Orleans, Cincinnati, Philadelphia, Newark, and Baltimore—had established centralized, bureaucratic police forces.<sup>56</sup> Professor Michael A. Robinson of the University of Georgia argues that the goal of early police departments was “to protect the financial interest of the wealthy, much like the slave patrols protected financial interests of enslaved African owners.”<sup>57</sup>

While early policing in America targeted and terrorized enslaved Black people, early policing efforts also took aim at other non-White populations. Indigenous communities were forcibly moved and held indefinitely in military detention, including at Minnesota’s Fort Snelling Concentration Camp, which held over 1,600 Dakota people during the winter of 1862–63.<sup>58</sup> It is estimated that up to 300 Dakota detainees died in the camp.<sup>59</sup> The Texas Rangers reorganized shortly after in the 1870s to address the pressing “native question.”<sup>60</sup> More recently, in 2016–2017, law enforcement officers in North Dakota inflicted extraordinary violence against Native water protectors at Standing Rock.<sup>61</sup> Over 300 police-inflicted injuries were reported among those protesting the Dakota Access Pipeline.<sup>62</sup>

Although slave patrols were formally dissolved after the Civil War, the formerly enslaved promptly came under the Black Codes.<sup>63</sup> These Codes restricted where Black Americans could travel and live, and were brutally enforced by the newly formed police departments in both the North and the South.<sup>64</sup> The Black Codes were followed by (1) the Jim Crow laws (a “new kind of slave code”);<sup>65</sup> (2) the emergence of state police

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56. *Id.* at 2–3.

57. Robinson, *supra* note 20, at 555.

58. *The US-Dakota War of 1862*, HISTORIC FORT SNELLING, <https://www.mnhs.org/fortsnelling/learn/us-dakota-war> [perma.cc/986Y-UUV6].

59. *Id.*

60. Andrew R. Graybill, Rangers, Mounties, and the Subjugation of Indigenous Peoples, 1870-1885, *GREAT PLAINS QUARTERLY*, Spring 2004, at 82, 83.

61. See Julia Carrie Wong & Sam Levin, *Standing Rock Protesters Hold Out Against Extraordinary Police Violence*, *THE GUARDIAN* (Nov. 29, 2016), <https://www.theguardian.com/us-news/2016/nov/29/standing-rock-protest-north-dakota-shutdown-evacuation> [perma.cc/9VVD-FHX2].

62. *Id.*

63. *Racist Roots of American Policing*, *supra* note 39; *Jim Crow Laws*, HISTORY.COM (Mar. 26, 2021), <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> [perma.cc/FE4A-9RUG].

64. *Racist Roots of American Policing*, *supra* note 39.

65. Lepore, *supra* note 28.



forces and union busting<sup>66</sup>—a proud American tradition<sup>67</sup>—during the Progressive Era; (3) the bipartisan “War on Crime” led by Presidents Lyndon Johnson and Richard Nixon;<sup>68</sup> and (4) the 1990s’ so-called Tough-on-Crime bills.<sup>69</sup> Lepore succinctly articulates the vicious cycle of the self-fulfilling prophecy that is the policing of Black Americans in the United States:

Police patrolled Black neighborhoods and arrested Black people disproportionately; prosecutors indicted Black people disproportionately; juries found Black people guilty disproportionately; judges gave Black people disproportionately long sentences; and, then, after all this, social scientists, observing the number of Black people in jail, decided that, as a matter of biology, Black people were disproportionately inclined to criminality.<sup>70</sup>

Today, there are approximately eighteen thousand law-enforcement agencies or police departments in the United States.<sup>71</sup> Between them, they have nearly seven hundred thousand police officers. These agencies have received more than “seven billion dollars’ worth of surplus military equipment” from the Pentagon in the past two decades.<sup>72</sup> In its treatment of its Black population, especially through its police force, Minneapolis is no different from any other major American city.

*B. Minneapolis—A Unique American Subculture Yet All Too Common American Policing Problems*

“Would [the killing of Philando Castile by an officer in a suburb of St. Paul] have happened if those passengers, the driver and the passengers, were white? I don’t think it would have. So, I’m forced to confront, and I think all of us in Minnesota are forced to confront, that

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66. See Frank Olito, *Photos Show How Policing Has Evolved in the US Since Its Beginnings in the 1600s*, INSIDER (Apr. 26, 2021), <https://www.insider.com/history-of-police-in-the-us-photos-2020-6> [perma.cc/8KMU-LTAY].

67. See G. William Domhoff, *The Rise and Fall of Labor Unions in the U.S.*, WHO RULES AMERICA? (Feb. 2013), [https://whorulesamerica.ucsc.edu/power/history\\_of\\_labor\\_unions.html](https://whorulesamerica.ucsc.edu/power/history_of_labor_unions.html) [perma.cc/143H-KFZ9].

68. See Elizabeth Hinton, *Why We Should Reconsider the War on Crime*, TIME (Mar. 20, 2015), <https://time.com/3746059/war-on-crime-history/> [perma.cc/LMF6-JWTT].

69. See Ed Chung, Betsy Pearl & Lea Hunter, *The 1994 Crime Bill Continues to Undercut Justice Reform—Here’s How to Stop It*, CTR. FOR AM. PROGRESS (Mar. 26, 2019), <https://www.americanprogress.org/issues/criminal-justice/reports/2019/03/26/467486/1994-crime-bill-continues-undercut-justice-reform-heres-stop/> [perma.cc/6CLR-33TF].

70. Lepore, *supra* note 28.

71. Robinson, *supra* note 20, at 552.

72. Lepore, *supra* note 28.

this kind of racism exists and that it's incumbent upon all of us to vow that we're going to do whatever we can to see that it doesn't happen, doesn't continue to happen." - Governor Mark Dayton of Minnesota, July 7, 2016<sup>73</sup>

Minneapolis has long been described as a paradox.<sup>74</sup> It is part of one of the wealthiest metropolitan areas in the country, but this has been primarily true only for its White residents.<sup>75</sup> Minneapolis is a bastion of progressive politics,<sup>76</sup> but is also a racially segregated city despite a history of welcoming refugees and immigrants from all around the world.<sup>77</sup> The current chief of the MPD, as a young lieutenant, once joined a lawsuit filed against his own department for tolerating racism.<sup>78</sup> Only 7 percent of MPD officers live in the city.<sup>79</sup> Some commute from predominantly White suburbs like Anoka or even exurbs like Hudson, Wisconsin.<sup>80</sup> This disparity has worsened in the past two decades after Governor Jesse Ventura signed a law revoking the requirement that Minneapolis and St. Paul police officers live in the cities in which they worked.<sup>81</sup>

Excessive force complaints against the eight-hundred-plus-officer strong MPD are commonplace.<sup>82</sup> Black Americans account for twenty percent of the city's population, but "accounted for more than 60 percent of the victims in Minneapolis police shootings from late 2009 through May 2019."<sup>83</sup> Black Minneapolitans are also more likely "to be pulled over,

73. PBS Newshour, *Minn. Governor: Castile Shooting Outcome Would Have Been Different If He Was White*, YOUTUBE (Jul. 7, 2016), <https://www.youtube.com/watch?v=E6Qf7zJYNHc>.

74. Ricardo Lopez, *Minnesota's Decades-Long Failure to Prevent Police Abuse*, NEW YORKER (June 10, 2020), <https://www.newyorker.com/news/news-desk/minnesotas-decades-long-failure-to-confront-police-abuse> [perma.cc/8HMU-EMFA].

75. *Id.*

76. See Matt Furber, John Eligon & Audra D. S. Burch, *Minneapolis Police, Long Accused of Racism, Face Wrath of Wounded City*, N.Y. TIMES (Apr. 5, 2021), <https://www.nytimes.com/2020/05/27/us/minneapolis-police.html> [perma.cc/Q5LC-FUT8].

77. See generally MYRON ORFIELD, *Draft, INTEGRATION AND NEO-SEGREGATION IN MINNESOTA* (Dec. 2018), [https://www.law.umn.edu/sites/law.umn.edu/files/metro-files/orfield\\_neosegregation\\_draft.pdf](https://www.law.umn.edu/sites/law.umn.edu/files/metro-files/orfield_neosegregation_draft.pdf) [perma.cc/7PDV-BWP3].

78. See Furber et al., *supra* note 76.

79. Jessie Van Berkel & Liz Navratil, *Minnesota Human Rights Department Launches Probe into Minneapolis Police*, STAR TRIB. (June 30, 2020), <https://www.startribune.com/minn-officials-push-for-systems-change-at-minneapolis-police-dept/570958652/> [perma.cc/MPY2-H5E6].

80. Lopez, *supra* note 74.

81. News Release, Representative Rich Stanek, Stanek Residency Freedom Bill Becomes Law (Mar. 15, 1999), <https://www.house.leg.state.mn.us/GOP/goppress/Stanek/0309rsresidency.htm> [perma.cc/XW7A-NN3P].

82. See Furber et al., *supra* note 76.

83. *Id.*

arrested and have force used against them than white residents,”<sup>84</sup> which MPD’s own data demonstrates.<sup>85</sup>

Today in Minneapolis, Native individuals experience more stops and searches relative to their population frequency.<sup>86</sup> In the U.S., Native Americans are more likely to be killed by the police than any other racial or ethnic group.<sup>87</sup> For those who survive police encounters and end up incarcerated in Minnesota, Native inmates are 1.8 times more likely than their White counterparts to be placed in solitary confinement.<sup>88</sup> Native organizers have rallied against police brutality for many years: The American Indian Movement (AIM) was formed in 1968, in part due to police brutality against Native people in Minneapolis.<sup>89</sup> Minnesota’s Native communities continue to protest the state-sanctioned violence against non-White bodies and affirm that Native Lives Matter.<sup>90</sup>

In 2015, an MPD officer killed Jamar Clark, a Black man, claiming that Clark tried to take another officer’s weapon.<sup>91</sup> The Hennepin County Attorney, Mike Freeman, declined to press charges, claiming the shooting was justified. In 2016, a suburban police officer fired seven shots and killed Philando Castile, a Black man, in front of Castile’s four-year-old daughter, and girlfriend, even after Castile informed the officer he had a licensed gun on his person.<sup>92</sup> In 2018, Thurman Blevins, a Black man, begged two White police officers closing in on him to not shoot him and leave him alone. Blevins was still shot in a fatal encounter captured on camera.<sup>93</sup> Only one percent of complaints against MPD officers “that have

84. *Id.*

85. Joseph Schneider & Alfred Ndungu, *Does the Minneapolis Police Department Traffic Stop Data Reveal Racial Bias?*, INEQUALITY INQUIRY (Nov. 24, 2020), <https://lawandinequality.org/2020/11/24/does-the-minneapolis-police-department-traffic-stop-data-reveal-racial-bias/> [perma.cc/65SS-KCMG].

86. Matthew Harvey, *Fatal Encounters Between Native Americans and the Police*, FED’L RESERVE BANK OF MINNEAPOLIS (Mar. 25, 2020), <https://www.minneapolisfed.org/article/2020/fatal-encounters-between-native-americans-and-the-police> [perma.cc/99DN-UCL7].

87. *Id.*

88. Andy Mannix & Jeff Hargarten, *Minnesota Sending Black, Native American Prisoners to Solitary Confinement at Higher Rates than Whites*, STAR TRIB. (Jan. 17, 2020), <https://www.startribune.com/minnesota-sending-black-native-american-prisoners-to-solitary-confinement-at-higher-rates-than-whites/567087582/> [perma.cc/6US3-WQXL].

89. See Katrina Phillips, *Longtime Police Brutality Drove American Indians to Join the George Floyd Protests*, WASH. POST (June 6, 2020), <https://www.washingtonpost.com/outlook/2020/06/06/longtime-police-brutality-drove-american-indians-join-george-floyd-protests/> [perma.cc/CBT7-A3W3].

90. *Id.*

91. See Lopez, *supra* note 74.

92. See *id.*

93. Barbara Marcolini, *Minneapolis Police Video Shows Moments Before Thurman Blevins Was Shot*, N.Y. TIMES (July 30, 2018), <https://www.nytimes.com/video/us/100000006031561/minneapolis-police-video-thurman-blevins-shot.html>.

been adjudicated since 2012 have resulted in disciplinary action.”<sup>94</sup> The only MPD officer to be convicted of an on-duty, fatal shooting was “a Black MPD officer who shot and killed Justine Ruszczyk, a white woman, in 2017.”<sup>95</sup> Ruszczyk’s family received a \$20 million settlement from the city of Minneapolis. Minneapolis Police Union’s then-president has called Black Lives Matter a “terrorist organization”<sup>96</sup> and “openly wore a white power patch on his motorcycle jacket.”<sup>97</sup> MPD, like many other police departments, has tried unsuccessfully to reform itself many times over the past few decades.

## II. Current Efforts at Reform

### A. *Trial and Error—A Decades-Long Story of the City and the MPD’s Inability to Create Meaningful Change*

“We’re tired of weak reforms like body cameras, tweaks to civilian oversight, and new signs in police cars . . . 150 years after MPD was founded and 3 years after they murdered Jamar Clark, the problems they cause in our communities haven’t changed. We want a better return on the investment of our tax dollars.” - Hani Ali, Black Visions Collective, Nov. 1, 2018.<sup>98</sup>

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94. See Furber et al., *supra* note 76.

95. Kandace Montgomery & Miski Noor, *Decades of Tensions Between Minneapolis Police and Black Communities Have Led to This Moment*, VOX (June 1, 2020), <https://www.vox.com/first-person/2020/6/1/21276309/george-floyd-police-protests-minneapolis-black-lives-matter> [perma.cc/X6AD-43TF].

96. *Id.*

97. Haven Orecchio-Egresitz, *A 2007 Lawsuit Said the President of the Minneapolis Police Union Wore a ‘White Power’ Patch on His Motorcycle Jacket and Discriminated Against Officers of Color*, INSIDER (May 29, 2020), <https://www.insider.com/president-minneapolis-police-union-wore-white-power-patch-lawsuit-2020-5> [perma.cc/5V2H-W3US].

98. Press Release, Black Visions Collective, FACEBOOK (Nov. 1, 2018), <https://www.facebook.com/LitBLVC/posts/for-immediate-release-november-1-2018reclaim-the-block-coalition-demands-5-dives/316155155638538/>.

George Floyd.<sup>99</sup> Jamar Clark.<sup>100</sup> David Smith.<sup>101</sup> Tommie Baker.<sup>102</sup> Quincy Smith.<sup>103</sup> Dominic Felder.<sup>104</sup> Christopher Burns.<sup>105</sup> Mark Henderson.<sup>106</sup> Philando Castile. Thurman Blevins. How much longer will we engage in a process of trial and error that results in Black and Brown people shot and killed?<sup>107</sup> Racially discriminatory policing in Minneapolis is not a recent phenomenon,<sup>108</sup> and any suggestion<sup>109</sup> that the issue can be solved through incremental policy changes faces a difficult task in explaining why this time will be different. George Floyd's tragic murder was preceded by decades of unrestrained police misconduct and decades of ineffective reform measures.<sup>110</sup> The experience of Minneapolis, one of

99. See Hill et al., *supra* note 13.

100. See *Jamar Clark Shooting, One Year Later*, MPR NEWS, [https://live.mprnews.org/Event/Black\\_Lives\\_Matter\\_protests\\_in\\_Minneapolis\\_Fourth\\_Pre\\_cinct?Page=24#](https://live.mprnews.org/Event/Black_Lives_Matter_protests_in_Minneapolis_Fourth_Pre_cinct?Page=24#).

101. See Randy Furst, *May 25: Minneapolis Pays \$3 Million in Police Misconduct Case*, STAR TRIB. (June 1, 2013), <https://www.startribune.com/may-25-minneapolis-pays-3-million-in-police-misconduct-case/208912661/> [perma.cc/BS57-6CBV].

102. See COMMUNITIES UNITED AGAINST POLICE BRUTALITY, STOLEN LIVES IN MINNESOTA: PEOPLE WHO HAVE LOST THEIR LIVES THROUGH ENCOUNTERS WITH LAW ENFORCEMENT AUTHORITIES 3 (Oct. 18, 2018), [https://d3n8a8pro7vnm.cloudfront.net/cuapb/pages/17/attachments/original/1556948828/Minnesota\\_Stolen\\_Lives\\_Names\\_2018.pdf?1556948828](https://d3n8a8pro7vnm.cloudfront.net/cuapb/pages/17/attachments/original/1556948828/Minnesota_Stolen_Lives_Names_2018.pdf?1556948828) [perma.cc/N7FC-3P5B].

103. See *Minneapolis Agrees to Pay \$3 Million for Police Misconduct*, PINTAS & MULLINS (May 31, 2013), <https://www.pintas.com/blog/minneapolis-agrees-to-pay-3-million-for-police-misconduct/> [perma.cc/HR2F-H8LB].

104. See Brandt Williams, *Family of Man Shot by Mpls Police Wins \$1.8M Award*, MPR NEWS (Oct. 25, 2010), <https://www.mprnews.org/story/2010/10/25/excessive-force-verdict> [perma.cc/Y4UU-T93P].

105. Alejandra Matos & Matt McKinney, *13 Excessive Force Complaints Against Minneapolis Police Officer Involved in Terrence Franklin Shooting*, STAR TRIB. (July 1, 2013), <https://www.startribune.com/13-excessive-force-complaints-against-minneapolis-cop-involved-in-shooting/213718651/> [perma.cc/HWM9-K4S2].

106. Mara Klecker, *Woodbury Reaches \$1.5 Million Settlement with Mother of Man Killed by Police in 2012*, STAR TRIB. (Apr. 17, 2019), <https://www.startribune.com/woodbury-reaches-1-5-million-settlement-with-mother-of-man-killed-by-police-in-2012/508709872/> [perma.cc/SQ46-C2E9].

107. Jeff Hargarten, Jennifer Bjorhus, Maryjo Webster & Kelly Smith, *Every Police-Involved Death in Minnesota Since 2000*, STAR TRIB. (Apr. 27, 2021), <https://www.startribune.com/every-police-involved-death-in-minnesota-since-2000/502088871/> [perma.cc/CFQ5-UV63].

108. See Jamiles Lartey & Simone Weichselbaum, *Before George Floyd's Death, Minneapolis Police Failed to Adopt Reforms, Remove Bad Officers*, THE MARSHALL PROJECT (May 28, 2020), <https://www.themarshallproject.org/2020/05/28/before-george-floyd-s-death-minneapolis-police-failed-to-adopt-reforms-remove-bad-officers> [perma.cc/ZWC8-5HY].

109. *E.g.*, Jason C. Johnson & James A. Gagliano, Opinion, *Defunding the Police Isn't the Answer*, CNN (June 9, 2020), <https://www.cnn.com/2020/06/09/opinions/defunding-police-is-not-the-answer-johnson-gagliano/index.html> [perma.cc/G2HB-N9FL].

110. MPD150, ENOUGH IS ENOUGH: A 150 YEAR PERFORMANCE REVIEW OF THE MINNEAPOLIS POLICE DEPARTMENT (Expanded ed. 2020), [https://www.mpd150.com/wp-content/uploads/reports/report\\_2\\_compressed.pdf](https://www.mpd150.com/wp-content/uploads/reports/report_2_compressed.pdf) [perma.cc/65X8-9F5A]; see also

the most “progressive” cities in the United States,<sup>111</sup> demonstrates that good intentions and internal solutions are not enough to counteract the repressive and systemic racism that has been intrinsic to police forces from the outset.<sup>112</sup> When it comes to constraining excessive use of force and holding MPD accountable, we have fallen woefully short.

Complicating Minneapolis’ reputation for racist policing<sup>113</sup> are the City’s progressive attitudes and prior attempts to constrain the use of force. In 2016, MPD issued a new policy creating a “duty to intervene” for officers in circumstances where they see a fellow officer use excessive force.<sup>114</sup> That same year, MPD unveiled its “sanctity of life” policy,<sup>115</sup> which set forth a requirement of de-escalation for officers in “dangerous situations.”<sup>116</sup> In 2017, the Department implemented body cameras to be worn by its officers,<sup>117</sup> a measure viewed by some as “key to police reform.”<sup>118</sup> There was also cause for optimism when, in August 2017, Medaria Arradondo was appointed the City’s first Black police chief.<sup>119</sup> Arradondo had previously joined other Black police officers in

Lopez, *supra* note 74.

111. See John Eligon & Julis Bosman, *How Minneapolis, One of America’s Most Liberal Cities, Struggles with Racism*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/06/01/us/minneapolis-racism-minnesota.html> [perma.cc/QFZ2-RGVU].

112. See Lepore, *supra* note 28; MPD150, ENOUGH IS ENOUGH, *supra* note 110.

113. See Furber et al., *supra* note 76.

114. MINNEAPOLIS POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL 5-301 § III(C)(2) (“Regardless of tenure or rank, any sworn employee who observes another employee use any prohibited force, or inappropriate or unreasonable force (including applying force when it is no longer required), must attempt to safely intervene by verbal and physical means, and if they do not do so shall be subjected to discipline to the same severity as if they themselves engaged in the prohibited, inappropriate, or unreasonable use of force.”). See also Lopez, *supra* note 74; Bernard Condon & Todd Richmond, *Duty to Intervene: Floyd Cops Spoke Up but Didn’t Step In*, ASSOCIATED PRESS (June 7, 2020), <https://apnews.com/article/george-floyd-american-protests-us-news-ap-top-news-mn-state-wire-0d52f8accbbdab6a29b781d75e9aeb01> [perma.cc/4MW5-M3TM].

115. MINNEAPOLIS POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL 5-301 § I.

116. Libor Jany, *Minneapolis Police Reveal Changes to Use-of-Force Policy*, STAR TRIB. (Aug. 9, 2016), <https://www.startribune.com/minneapolis-police-reveal-changes-to-use-of-force-policy/389509371/> [perma.cc/2LUS-DKNH].

117. See Tim Nelson, *Bodycam Use by Minneapolis Police Hits Record Highs This Year*, MPR NEWS (Aug. 14, 2019), <https://www.mprnews.org/story/2019/08/14/bodycam-use-by-minneapolis-police-hits-record-highs-this-year> [perma.cc/HJ8B-4UXF].

118. See Candice Norwood, *Body Cameras Are Seen as Key to Police Reform. But Do They Increase Accountability?*, PBS NEWSHOUR (June 25, 2020), <https://www.pbs.org/newshour/politics/body-cameras-are-seen-as-key-to-police-reform-but-do-they-increase-accountability> [perma.cc/7QYF-AN7E].

119. *Minneapolis Police Name First Black Chief in Wake of Shooting*, NBC NEWS (Aug. 21, 2017), <https://www.nbcnews.com/news/nbcblk/minneapolis-police-name-first-black-chief-wake-shooting-n793956> [perma.cc/X84L-2PPV].

Minneapolis in suing the MPD for racial discrimination; the case eventually settled for \$740,000.<sup>120</sup>

In 2018, the City Council shifted \$1.1 million of the MPD budget to fund community-led public safety initiatives.<sup>121</sup> However, the City Council added \$8.2 million to the department budget in December of 2019.<sup>122</sup> In April of 2019, Minneapolis Mayor Jacob Frey announced that the City would ban “warrior-style” training that police officers were allowed to use when they were off-duty, one of the first bans of its kind in the nation.<sup>123</sup> These policies and reform measures failed to prevent George Floyd’s killing, when former-Officer Derek Chauvin knelt on Floyd’s neck for—at least— 8 minutes and 46 seconds.<sup>124</sup> Nor do these policies, even with the added weight of public scrutiny after Floyd’s murder, give any assurance that they will be sufficient to prevent another instance of police brutality.

An inability to prevent MPD officers from using excessive force against Black and Brown people has led to reliance on other avenues, beyond internal reform, to seek accountability for the officers involved.<sup>125</sup> MPD 150—a collective of local organizers, researchers, artists, and activists—have compiled resources that analyze the history of the Minneapolis Police Department.<sup>126</sup> In the late 1960s, the City Council created a “Civil Rights Commission” designed to provide an outlet for investigating civilian complaints about police officers.<sup>127</sup> Shortly thereafter, Mayor Charles Stenvig, who had previously served as head of the police union, revoked the Civil Rights Commission’s authority to conduct investigations, leaving the Minneapolis Police Department as the only entity capable of investigating police misconduct.<sup>128</sup> The issues that led to the creation of the Civil Rights Commission persisted in its absence, and the City created the “Civilian Review Authority” in 1990.<sup>129</sup> Unfortunately, the Civilian Review Authority was stripped of power by the Minnesota Legislature in 2012—at the request of the Minneapolis

120. See Orecchio-Egresitz, *supra* note 97.

121. See Montgomery & Noor, *supra* note 95.

122. *Id.*

123. Cinnamon Janzer, *Minneapolis Bans “Warrior-Style” Training for Police Officers*, NEXT CITY (Apr. 30, 2019), <https://nextcity.org/daily/entry/minneapolis-bans-warrior-style-training-for-police-officers> [perma.cc/MJ27-8QTT].

124. See Hill et al., *supra* note 13.

125. See Lartey & Weichselbaum, *supra* note 108 (quoting Valerie Castile, mother of Philando Castile) (“We still have that big question: Why? Why does this keep happening and why no one is being held accountable?”).

126. *MPD 150: A People’s Project Evaluating Policing*, <https://www.mpd150.com/>. See MPD150, ENOUGH IS ENOUGH, *supra* note 110.

127. MPD150, ENOUGH IS ENOUGH, *supra* note 110, at 12.

128. *Id.*

129. *Id.* at 13.

Police Federation—and replaced by the City with the Office of Police Conduct Review.<sup>130</sup>

The current process of filing complaints against Minneapolis police officers is complicated, based on theories of self-accountability, and is, ultimately, ineffective.<sup>131</sup> In its current form, the Office of Police Conduct Review works to investigate charges of police misconduct and provides “recommendations regarding the merits of such complaints to the chief of police.”<sup>132</sup> Any such recommendations are interceded by another layer of review, whereby a review panel composed of two MPD officers and two civilians provides an opportunity for MPD to prevent issues from reaching the Chief’s desk.<sup>133</sup> Despite the fact that hundreds of police misconduct complaints against the MPD are brought each year, only three percent of complaints result in discipline, and the vast majority of complaints result in no action, while a moderate corrective action of “coaching” serves as an alternative.<sup>134</sup>

Even if a complaint does reach a recommendation of officer discipline, another obstacle looms: arbitration. Internal disciplinary decisions are finalized after binding arbitration, which regularly reverses firings and other punishments.<sup>135</sup> Between 2013 and 2018, MPD fired five officers and demoted one officer from its 800-person force.<sup>136</sup> When asked to comment or respond to these jarring numbers, MPD did not respond,<sup>137</sup> apparently running from scrutiny rather than facing it. In more recent years, some have observed the Minneapolis Police

130. *Id.* at 15; Randy Furst, *New Law Throws Minneapolis Police Oversight in Turmoil*, STAR TRIB. (Apr. 6, 2012), <https://www.startribune.com/new-law-throws-minneapolis-police-oversight-in-turmoil/146497655/> [perma.cc/Z38F-FZRG]; *Office of Police Conduct Review*, MINNEAPOLIS: CITY OF LAKES <https://www2.minneapolismn.gov/government/departments/civil-rights/opcr/> [perma.cc/UN74-KJ77].

131. See Jennifer Bjorhus, Liz Sawyer & Star Tribune Staff Writers, *Minneapolis Police Officers Disciplined in Fraction of Cases*, STAR TRIB. (June 9, 2020), <https://www.startribune.com/minneapolis-police-officers-disciplined-in-fraction-of-cases/571120852/> [perma.cc/F6EJ-QSEX].

132. MINNEAPOLIS, MINN. CODE OF ORDINANCES § 172.10, available at [https://library.municode.com/mn/minneapolis/codes/code\\_of\\_ordinances?nodeId=COOR\\_TIT9FIPOPR\\_CH172POCOOV](https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT9FIPOPR_CH172POCOOV).

133. *Id.* at § 172.40.

134. Bjorhus et al., *supra* note 131, tbl.

135. Solomon Gustavo, *What We Know (and Don’t Know) So Far About the Effort to Dismantle the Minneapolis Police Department*, MINNPOST (July 9, 2020), <https://www.minnpost.com/metro/2020/07/what-we-know-and-dont-know-so-far-about-the-effort-to-dismantle-the-minneapolis-police-department/> [perma.cc/5M7T-T6CW].

136. Bjorhus et al., *supra* note 131 (“Of the 1,600 police misconduct complaints filed in Minneapolis from 2013 through 2018 . . . only 45 resulted in an officer being disciplined. . . . Five officers were successfully fired during that six-year period, and one was demoted.”); Furber et al., *supra* note 76 (referring to Minneapolis’ “800-plus officer force”).

137. Bjorhus et al., *supra* note 131.



Department engaging in a pattern of “stonewalling, evading and deflecting the slightest suggestion of police brutality” in response to racially discriminatory policing.<sup>138</sup> Although there are a host of reasons why racially discriminatory policing continues in Minneapolis, lack of accountability is a common thread.

The inability or unwillingness to hold MPD accountable or prevent its officers from using excessive force has damaging consequences for Black Minneapolitans and other minorities. According to a 2015 report from the American Civil Liberties Union, Black people in Minneapolis were 8.7 times more likely than White people to be arrested for low-level offenses and 25 times more likely to be arrested for “loitering with intent to commit a narcotics offense.”<sup>139</sup> Despite constituting only 6 percent of the population of Minneapolis, “Black people accounted for more than 60 percent of the victims in Minneapolis police shootings from late 2000 through 2018.”<sup>140</sup> Carrying on with the status quo is an act of complicity to the cruelty Black people in Minneapolis experience on a daily basis.<sup>141</sup>

*B. Recent Attempts at Reform Demonstrate the Difficulty of Achieving Substantive and Meaningful Change*

The killing of George Floyd, an unarmed Black man, by a White Minneapolis police officer on May 25, 2020, fueled renewed outrage towards the racist policing of the MPD. Floyd was murdered with a knee to his neck as onlookers pleaded for his release and captured a video that would spur protests in at least 140 cities across the United States.<sup>142</sup> In

138. Todd Baer, Opinion, *The Minneapolis Police Department Has a Long History of Brutality*, AL JAZEERA (June 11, 2020), <https://www.aljazeera.com/opinions/2020/6/11/the-minneapolis-police-department-has-a-long-history-of-brutality/> [perma.cc/42YU-BUTE].

139. *Picking Up the Pieces: A Minneapolis Case Study*, ACLU (Apr. 15, 2015), <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces?redirect=feature/picking-pieces> [perma.cc/ZP5M-YSTZ].

140. Montgomery & Noor, *supra* note 95 (citing Jeff Hargarten, *Minneapolis Police Shootings Since 2000: A Deeper Look at Who and Where*, STAR TRIB. (July 15, 2018), <https://www.startribune.com/minneapolis-police-shootings-since-2000-a-deeper-look-at-who-and-where/435882213/> [perma.cc/QDZ5-45RV]).

141. See Audrey McNamara, *Minneapolis Declares Racism a Public Health Emergency*, CBS NEWS (July 17, 2020), <https://www.cbsnews.com/news/minneapolis-racism-public-health-emergency/> [perma.cc/3MDW-8U64] (“The resolution notes that ‘the killings of unarmed Black men are associated with an increase in depression and emotional issues for Black people.’ Dr. Jess Clemons . . . told ‘CBS This Morning’ . . . ‘We’re expected to not only present with symptoms, but also have nowhere to go, because lack of access, the stigma, and barriers associated with it.’”); RESOLUTION BY JENKINS AND CUNNINGHAM, DECLARING RACISM A PUBLIC HEALTH EMERGENCY IN THE CITY OF MINNEAPOLIS, <https://lims.minneapolismn.gov/Download/RCA/14012/Declaring%20Racism%20a%20Public%20Health%20Emergency%20Resolution.pdf> [perma.cc/DB3E-QJ7D].

142. See Derrick Bryson Taylor, *Floyd Protests: A Timeline*, N.Y. TIMES (Mar. 28, 2021),

Minneapolis, the reaction to the death was swift: thousands gathered in protest the next day, the four officers involved were fired, the protests grew rapidly, Governor Walz declared a peacetime emergency, and for over a week crowds swelled, shutting down the city and demanding change.<sup>143</sup> The officer who had forced his knee on Floyd's neck was charged with third degree murder just four days after Floyd's death.<sup>144</sup> This powerful reaction suggested that substantive change of the MPD might finally be in reach.

The cause advanced by the protesters was distilled by their rallying cries to abolish the police and defund MPD,<sup>145</sup> a cause that community groups such as Black Visions<sup>146</sup> and Reclaim the Block<sup>147</sup> have been championing for several years. As pressure mounted to take action, the Minneapolis City Councilors responded. On June 7, 2020, a majority of City Councilors pledged to dismantle the MPD in its current form<sup>148</sup> and on June 26, the Council unanimously passed an ordinance seeking an amendment to the City Charter.<sup>149</sup> The City Charter currently contains a provision, § 7.3(c), requiring that a police department be funded by the Council in an amount proportional to the City's population.<sup>150</sup> The amendment, which would need approval by the Charter Commission, Mayor, and voters of Minneapolis, would mark a major transition from

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<https://www.nytimes.com/article/george-floyd-protests-timeline.html> [perma.cc/DK92-2WH3].

143. See Greta Kaul, *Seven Days in Minneapolis: A Timeline of What We Know About the Death of George Floyd and Its Aftermath*, MINNPOST (June 1, 2020), <https://www.minnpost.com/metro/2020/05/what-we-know-about-the-events-surrounding-george-floyds-death-and-its-aftermath-a-timeline/> [perma.cc/3XG2-E7DK].

144. See Jeannie Suk Gersen, *How the Charges Against Derek Chauvin Fit into a Vision of Criminal-Justice Reform*, NEW YORKER (June 17, 2020), <https://www.newyorker.com/news/our-columnists/how-the-charges-against-derek-chauvin-fit-into-a-vision-of-criminal-justice-reform> [perma.cc/WWW4-AG9S] (“After criminal charges against Chauvin were announced, on May 29th, protesters decried their insufficient severity.”).

145. See Miguel Otárola, *Movement to Defund Police Sees Minneapolis as Proving Ground*, STAR TRIB. (June 9, 2020), <https://www.startribune.com/movement-to-defund-police-sees-minneapolis-as-proving-ground/571116932/?refresh=true> [perma.cc/M8HJ-C7ED].

146. See *Values*, BLACK VISIONS, <https://www.blackvisionsmn.org/values> [perma.cc/8PX6-ZGGL].

147. See RECLAIM THE BLOCK, <https://www.reclaimtheblock.org/> [perma.cc/U2YE-F9WC].

148. Dionne Searcey & John Eligon, *Minneapolis Will Dismantle Its Police Force, Council Members Pledge*, N.Y. TIMES (June 7, 2020), <https://www.nytimes.com/2020/06/07/us/minneapolis-police-abolish.html> [perma.cc/FTN7-GJAD].

149. David Schuman, *Mpls. City Council Votes Unanimously to Dismantle MPD*, CBS MINN. (June 26, 2020), <https://minnesota.cbslocal.com/2020/06/26/minneapolis-city-council-takes-another-step-toward-dismantling-police-department/> [perma.cc/4JJE-4JAN].

150. MINNEAPOLIS, MINN. CODE OF ORDINANCES, CHARTER § 7.3(c), available at [https://library.municode.com/mn/minneapolis/codes/code\\_of\\_ordinances?nodeId=CH\\_ARTVIIAD](https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=CH_ARTVIIAD).

how the MPD is currently funded and change the shape of policing in the city.

The charter amendment process hit immediate hurdles, showing the difficulty of sustaining momentum for change. The Charter Commission, an unelected body whose members skew White, stymied any hope of having the amendment appear on the November 3, 2020 ballot.<sup>151</sup> They voted to take the full 150 days to review the City Council's proposed amendment, meaning that the multi-stage process was stalled while the energy from the summer protests dissipated.<sup>152</sup> The Commission rejected the Council's proposal in November.<sup>153</sup> In December 2020, the City Council voted to divert \$8 million from the MPD to the Office of Violence Prevention and other city services.<sup>154</sup> This amount reflects just 4.5% of MPD's budget.<sup>155</sup> The City Council narrowly voted to not diminish the size of the police force, keeping it above the threshold size required by the City Charter.<sup>156</sup> These acts are a far cry from the expansive vision of reform demanded after Floyd's killing.

Monumental change to the MPD was never going to be easy. Though protests suggested mass support for the idea of defunding the police, a local poll found that 44% of residents oppose a reduction in the size of the force, while 40% support it.<sup>157</sup> There are legitimate concerns regarding changing the current mechanisms of public safety, and those concerns are not only expressed by White suburbanites. The same poll found that residents who identify as Black were more likely to oppose the reduction than their White counterparts.<sup>158</sup> Black residents of

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151. See Andrew Hazzard, *Minneapolis Charter Commission's Slow-Rolling of Public Safety Amendment Follows Pattern*, SW. J. (Aug. 19, 2020), <https://www.southwestjournal.com/news/2020/08/minneapolis-charter-commissions-slow-rolling-of-public-safety-amendment-follows-pattern/> [perma.cc/4TDY-WLSJ].

152. *Id.*

153. Brandt Williams, *Charter Commission Rejects Minneapolis Council's Public Safety Amendment*, MPR NEWS (Nov. 5, 2020), <https://www.mprnews.org/story/2020/11/04/charter-commission-rejects-councils-public-safety-amendment> [perma.cc/9RLL-R9WN].

154. Jenny Gross & John Eligon, *Minneapolis City Council Votes to Remove \$8 Million from Police Budget*, N.Y. TIMES (Dec. 10, 2020), <https://www.nytimes.com/2020/12/10/us/minneapolis-police-funding.html> [perma.cc/LH65-AR7Q].

155. *Id.*

156. See MINNEAPOLIS, MINN. CODE OF ORDINANCES, CHARTER § 7.3(c); Liz Navratil, *With 2021 City Budget, Minneapolis Council Leaves Its Mark on Police and Public Safety*, STAR TRIB. (Dec. 10, 2020), <https://www.startribune.com/with-2021-city-budget-minneapolis-council-leaves-its-mark-on-police-and-public-safety/573361181/> [perma.cc/R2SP-RMC8].

157. Star Trib., MPR News & Kare 11 Minn., *Poll: Mayor Frey, the City Council and Defunding Minneapolis Police*, STAR TRIB. (Aug. 16, 2020), <https://www.startribune.com/minnesota-poll-full-results-minneapolis-defund-police-department-city-council-mayor-jacob-frey-dismantle-reform-george-floyd-mpd/572109911/?refresh=true> [perma.cc/U7ZK-WQ5T].

158. *Id.*

Minneapolis' North Side report mixed feelings about the proposal; some acknowledge the need to have an authority to call when a crime is committed while also having encountered racist policing themselves.<sup>159</sup> When something goes wrong, people still want someone to count on to protect their families.<sup>160</sup>

One of the major sticking points for residents about the City Council proposal is that it does not map out a vision for what type of services would replace a police department presence.<sup>161</sup> Everyone from Mayor Jacob Frey to the Charter Commission to community activists have expressed frustration and reluctance towards the City Council's lack of a plan.<sup>162</sup> Members of the Council, however, insist that the lack of detail is part of the design and will allow them to spend time with stakeholders devising a workable replacement.<sup>163</sup>

The national backlash over George Floyd's killing was swift and powerful; the City Council's reaction was equally fast, but progress stalled when anti-democratic barriers emerged. Now residents are left wondering whether change will ever happen and, if so, what it will look like.

### III. Solutions

The recent barriers faced by the Minneapolis City Council reveal the difficulties in challenging the MPD's entrenched power. Throughout the history of the MPD, systemic hurdles have prevented progress, societal racism has hindered change, and community concerns about alternative safety strategies have cast doubt on new proposals. Yet, since 2000, the officers tasked with protecting and serving Minneapolis residents have killed 34 individuals, 22 of whom were Black.<sup>164</sup>

Compounding the statistics about loss of life is real concern about the effectiveness of the MPD. Statistics cited after the killing of George Floyd show the MPD has cleared only 56% of homicide cases in 2019,

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159. John Eligon, *Distrust of the Minneapolis Police, and Also the Effort to Defund Them*, N.Y. TIMES (Apr. 5, 2021), <https://www.nytimes.com/2020/08/04/us/minneapolis-defund-police.html?auth=linked-google> [perma.cc/63BH-EJD3].

160. *Id.* (quoting Raeisha Williams, community activist) ("When my house is broken into, I want to be able to call the police. When my security alarm goes off, I want to know they're going to arrive and protect my family.").

161. *Id.*

162. Emily Haavik, *Public Can Now Weight In on City Council Plan to Replace the Minneapolis Police Department*, KARE 11 (June 29, 2020), <https://www.kare11.com/article/news/local/minneapolis-city-council-plan-to-replace-minneapolis-police-department-open-for-public-comment/89-8b87a698-29f5-4f56-95ce-895c1127c60e> [perma.cc/5FYQ-43XU].

163. *Id.*

164. Hargarten et al., *supra* note 107.

along with just 22% of rapes in 2016.<sup>165</sup> These clearance rates trend lower than those nationally, where, in corresponding years, 61% of murder offenses<sup>166</sup> and 41% of rape offenses<sup>167</sup> were cleared. Additionally, we should be able to “resolve confusion over a \$20 grocery transaction without drawing a weapon or pulling out handcuffs.”<sup>168</sup> Clearly, the current system is not working.

We argue for a two-prong response: defund the MPD and decriminalize or legalize certain non-violent offenses. These approaches are feasible and focus on local change. Altering police funding mechanisms and decriminalizing low-level crimes potentially provide the quickest and most direct impact for Minneapolis residents.

#### A. *Defund MPD, Refund the Community*

Our first proposed change is defunding the MPD. As used in this article, defunding encompasses both reducing the budget of the police *and* reducing police responsibilities. Common critiques from outside,<sup>169</sup> as well as inside,<sup>170</sup> the police force describe the many roles a police officer is expected to play: social worker, mental health practitioner, traffic liaison, investigator, and more. “Unbundling” those roles from a police officer’s duties would divert funds from the police department to other city departments or community resources that address housing, mental health, and preventative violence.<sup>171</sup>

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165. Susan Du, Emily Cassel & Hannah Jones, *Defund & Dismantle: Minneapolis Looks Toward a Police-Free Future*, CITY PAGES (July 1, 2020), [https://web.archive.org/web/20200824074336/http://www.citypages.com/news/defund-dismantle-minneapolis-looks-toward-a-police-free-future/571575191].

166. U.S. DEP’T OF JUST., FED’L BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT: CRIME IN THE UNITED STATES, 2019 – OFFENSES CLEARED (2020), https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/clearances.pdf [perma.cc/FDB8-Y3CZ].

167. *Clearances*, FBI: UCR: 2016 CRIME IN THE UNITED STATES, https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/clearances#:~:text=Overview,by%20arrest%20or%20exceptional%20means [perma.cc/4KB5-MNNC].

168. Steve Fletcher, *I’m a Minneapolis City Council Member. We Must Disband the Police—Here’s What Could Come Next*, TIME (June 5, 2020), https://time.com/5848705/disband-and-replace-minneapolis-police/ [perma.cc/X8RC-GAJE].

169. *See* Opinion, *Are We Asking Police to Do Too Much? 7 Experts Debate the Role Cops Should Play in Today’s Society*, PHILA. INQUIRER (Feb. 28, 2019), https://www.inquirer.com/opinion/commentary/role-of-police-law-enforcement-expert-opinion-20190228.html [perma.cc/VM5A-K5FH].

170. *See, e.g.*, German Lopez, *One of the Biggest Problems with American Policing: We Rely on Cops Way Too Much*, VOX (Jan. 24, 2016), https://www.vox.com/2016/1/24/10816536/police-reliance-melvin-russell [perma.cc/SV8]-5B]6] (citing Baltimore Police Lt. Colonel Melvin Russell); CBSDFW, *Dallas Police Chief ‘We’re Asking Cops to Do Too Much in This Country*, YOUTUBE (July 11, 2016), https://www.youtube.com/watch?v=3RtnQ2GqBeg.

171. Derek Thompson, *Unbundle the Police*, THE ATLANTIC (June 11, 2020), https://www.theatlantic.com/ideas/archive/2020/06/unbundle-police/612913/

Shifting funds to service providers outside of the police department would reduce potential violent interactions between community members and police. It would address societal issues closer to their roots, as opposed to the temporary solutions that the police can provide. While the goal of defunding is to shrink the police department, it would still retain a police force to address serious threats to public safety which would calm the fears of many described above.

### 1. Redirect MPD Funding

Many cities across the nation have started *defunding* their police departments by *funding* alternative safety programs. Although Minneapolis may not be able to reduce the size of the police force and thereby dramatically cut funding without a charter amendment, the city had initial success with community safety programs and should build on those successes by shifting more funds from the police department budget. In 2018, the Office of Violence Prevention (OVP) was established within the Minneapolis Health Department (MHD).<sup>172</sup> Since its inception, the OVP has implemented programs which are designed to treat community violence as a public health concern.<sup>173</sup> Three program highlights include:

- i. Project LIFE, a group violence intervention initiative, focuses its efforts on group-involved gun violence.<sup>174</sup> The program serves individuals with prior exposure to violence and provides them with wrap-around support services that address health, housing, and other basic needs. Since the start of the program in 2016, non-fatal gang affiliated shootings in Minneapolis have dropped from 93 to 27.<sup>175</sup>

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[perma.cc/UL6P-N3PW].

172. *History of the Office of Violence Prevention*, MINNEAPOLIS: CITY OF LAKES (May 17, 2021), <https://www2.minneapolismn.gov/government/departments/health/office-violence-prevention/violence-prevention-history/> [perma.cc/HKT7-4ZFJ].

173. See Phillippe Cunningham, *Reimagination of Public Safety Should Start with This Principle*, STAR TRIB. (July 18, 2020), <https://www.startribune.com/reimagination-of-public-safety-should-start-with-this-principle/571809282/> [perma.cc/2AAK-6XS9].

174. See *Project Life - Lifestyle Intervention for Empowerment*, NORTHPOINT HEALTH & WELLNESS CENTER, <https://northpointhealth.org/project-life> [perma.cc/725W-24TB]; Jessica Lee, *After Positive Results, Minneapolis Looks to Expand Anti-Violence Program*, MINNPOST (Nov. 18, 2019), <https://www.minnpost.com/metro/2019/11/after-positive-results-minneapolis-looks-to-expand-anti-violence-program/> [perma.cc/D9FR-QUZZ].

175. Minneapolis City Council Meeting, *Policy & Government Oversight: Community Safety Workgroup Presentation* (Aug. 6, 2020) (presentation of Sasha Cotton, Dir. of Minneapolis Off. of Violence Prevention), recording available at [https://mpls.dev.implex.net/?p=9460\(2:33:20\)](https://mpls.dev.implex.net/?p=9460(2:33:20)).

- ii. Next Step, a program in partnership with Hennepin Healthcare, seeks to interrupt community violence by connecting young people who have suffered a violent injury to resources such as job training, educational support, or housing.<sup>176</sup> Since 2016, the program has helped 400 individuals connect with community support, and less than 7% have returned to a partner hospital with the same or similar injuries.<sup>177</sup>
- iii. Most recently, the OVP rolled out MinneapUs.<sup>178</sup> Modeled after Cure Violence,<sup>179</sup> a successful nationwide community safety program, MinneapUs staff members act as violence interrupters. The program will provide informal mediation and de-escalation, while offering connections for community support.

Additionally, the OVP has helped to fund<sup>180</sup> successful community programs such as MAD DADS,<sup>181</sup> St. Stephen's Homeless Outreach,<sup>182</sup> and the Domestic Abuse Project.<sup>183</sup> Yet the OVP received roughly \$3.7 million in funding from the city in 2020 compared to the MPD's \$192 million. Though OVP resources are slated to substantially increase in 2021,<sup>184</sup> Minneapolis should more aggressively fund and expand OVP programming. While "there are not deep literatures on [community safety programs] individually, there is evidence that combinations of these programs are under appreciated causes of reduced crime over the

176. *Next Step Program*, HENNEPIN HEALTHCARE, <https://www.hennepinhealthcare.org/support-services/next-step-program/> [perma.cc/DSG7-PV7B].

177. Minneapolis City Council Meeting, *Policy & Government Oversight: Community Safety Workgroup Presentation* (Aug. 6, 2020) (presentation of Sasha Cotton, Dir. of Minneapolis Off. of Violence Prevention), recording available at [https://mpls.dev.implex.net/?p=9460\(2:28:50\)](https://mpls.dev.implex.net/?p=9460(2:28:50)).

178. See Liz Navratil, *Outreach Workers in Minneapolis Walk a Beat to Turn People Away from Violence*, STAR TRIB. (Oct. 13, 2020), <https://www.startribune.com/new-minneapolis-outreach-workers-walk-a-beat-to-turn-people-away-from-violence/572733161/> [perma.cc/E9XV-PKVP].

179. CURE VIOLENCE GLOBAL, <https://cvg.org/> [perma.cc/V7WA-YEPY].

180. See *Violence Prevention Initiatives*, MINNEAPOLIS: CITY OF LAKES (May 17, 2021), <https://www2.minneapolismn.gov/government/departments/health/office-violence-prevention/violence-prevention-initiatives/> [perma.cc/GL56-DSVD].

181. MAD DADS OF MINNEAPOLIS, <http://minneapolismaddads.org/> [perma.cc/GB5Z-HZC9].

182. *What We Do*, ST. STEPHENS, <https://ststephensmpls.org/our-programs> [perma.cc/46F4-FSCB].

183. DOMESTIC ABUSE PROJECT, <https://www.mndap.org/> [perma.cc/PZ6U-7PTC].

184. CITY OF MINNEAPOLIS, 2021 MAYOR'S RECOMMENDED BUDGET 365-71 (2020) [<https://web.archive.org/web/20201103075652/https://www2.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/wcmssp-226229.pdf>].

past several decades.”<sup>185</sup> The recent movement of \$8 million from the MPD’s 2021 budget to violence prevention still leaves a police force with a suspect community safety culture largely intact.<sup>186</sup>

In addition to violence prevention initiatives, increased funding should be directed to programs which bolster the ability of mental health practitioners to respond to those in crisis. A robust mental health response beyond current police capabilities is imperative, as “the risk of being killed during a police incident is 16 times greater for individuals with untreated mental illness than for other civilians approached or stopped by officers.”<sup>187</sup> Since 2006, Hennepin County, in which Minneapolis is located, has offered direct support for adults with mental health crises through Community Outreach for Psychiatric Emergencies.<sup>188</sup> Increased funding through Hennepin County and structural changes to the 911 response framework could help Minneapolis mirror the results seen in Oregon’s much lauded CAHOOTS program, which responded to roughly 17 percent of Eugene’s emergency calls in 2019.<sup>189</sup>

Programs without city connections are also important to the promotion of a changed relationship with community safety. Black Visions, a leader in the Minneapolis abolition movement, has coordinated “Peace Walks”<sup>190</sup> throughout Minneapolis neighborhoods and hosted teach-ins about community safety.<sup>191</sup> The American Indian Movement

185. *Center for Policing Equity Releases Critical Steps for Exploring How Public Safety Resources Are Allocated*, CTR. FOR POLICING EQUITY (July 27, 2020), <https://policingequity.org/newsroom/press-releases/critical-steps-exploring-public-safety-resources-allocation> [perma.cc/3LYB-TRSA].

186. See Solomon Gustavo, *What Minneapolis’ Budget Debate Actually Means—for the City, the MPD, and Future of Policing in the City*, MINNPOST (Dec. 14, 2020), <https://www.minnpost.com/metro/2020/12/what-minneapolis-budget-debate-actually-means-for-the-city-the-mpd-and-future-of-policing-in-the-city/#:~:text=In%20response%2C%20Frey%20proposed%20a,cuts%20for%20almost%20every%20department.> [perma.cc/6EML-ABKC]; Shannon Gibney, *A Black Mother Contemplates What It Means to Defund the Police*, TWIN CITIES PBS: ORIGINALS, <https://www.tptoriginals.org/a-black-mother-contemplates-what-it-means-to-defund-the-police/> [perma.cc/9NAK-JYDT].

187. TREATMENT ADVOCACY CTR., OFF. OF RSCH. & PUB. AFFS., *OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS 1* (Dec. 2015), <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf> [perma.cc/U4BB-6KD8].

188. *Hope from COPE*, HEALTHY HENNEPIN (Aug. 2015), <https://www.healthyhennepin.org/stories/cope> [perma.cc/X8EZ-2G3V].

189. WHITE BIRD CLINIC, *CRISIS ASSISTANCE HELPING OUT ON THE STREETS (CAHOOTS), MEDIA GUIDE 2020*, at 1 (2020), <https://whitebirdclinic.org/wp-content/uploads/2020/07/CAHOOTS-Media.pdf> [perma.cc/5UCD-CXVA].

190. See, e.g., @BlackVisionsMN, TWITTER (Sept. 3, 2020, 1:00 PM), <https://twitter.com/BlackVisionsMN/status/1301580785674223621> [perma.cc/3PK2-F8A6].

191. See, e.g., Black Visions, Online Event, *National Night Out Teach In*, FACEBOOK (Sept.



(AIM) has long engaged in informal community security initiatives, one being AIM Patrol.<sup>192</sup> Bolstering the funding of these non-city associated organizations through fundraising or grants will not only serve as a continued check on systemic safety powers, but also support a more community-based understanding of what safety is.

## 2. Disaggregate MPD Functions

In addition to redirecting funds away from the MPD, certain responsibilities should be redirected as well. Specifically, MPD officers should not be conducting traffic stops. While this article was prompted by the killing of George Floyd, the role of police in traffic stops was questioned after another tragic and unnecessary killing in Minnesota: that of Philando Castile.<sup>193</sup> In 2016, Philando Castile, a nutrition services supervisor at a local elementary school, was pulled over for a broken taillight. After notifying the officer of his legally possessed firearm, Castile was shot and killed. Castile's girlfriend and her daughter were also in the car.<sup>194</sup> In the years leading up to his shooting, Castile had been pulled over fifty-two times for traffic violations.<sup>195</sup> Removing armed police officers from these types of routine interactions could prevent the deadly escalation of commonplace encounters.<sup>196</sup>

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15, 2020), <https://www.facebook.com/events/320339325858939/> [perma.cc/C4CW-NMNL].

192. See Delilah Friedler, *What Will Replace the Minneapolis Police? The City's Native American Community Has Some Ideas*, MOTHER JONES (June 13, 2020), <https://www.motherjones.com/politics/2020/06/american-indian-movement-patrol-defund-police-minneapolis/> [perma.cc/8JUF-6QHM].

193. See Pam Louwagie, *Falcon Heights Police Shooting Reverberates Across the Nation*, STAR TRIB. (July 8, 2016), <https://www.startribune.com/falcon-heights-police-shooting-reverberates-across-the-nation/385861101/> [perma.cc/LZ9C-C5NM]; Jessica Lussenhop, *Philando Castile Death: 'I Lost My Best Friend in a Police Shooting'*, BBC NEWS (June 3, 2020), <https://www.bbc.com/news/world-us-canada-52896872> [perma.cc/B69Q-T3GM]. This Article was drafted before police in Brooklyn Center, an inner-ring suburb of Minneapolis, shot and killed Daunte Wright in the course of a traffic stop in April 2021. See Denise Lavoie, *Daunte Wright: Doting Dad, Ballplayer, Slain by Police*, ASSOCIATED PRESS (Apr. 14, 2021), <https://apnews.com/article/daunte-wright-shooting-minnesota-f70fb7fc4c205740507b7ec53d7315f0> [perma.cc/DL4P-EGCY].

194. Louwagie, *supra* note 193.

195. *Philando Castile Had Been Stopped 52 Times by Police*, CBS MINN. (July 9, 2016), <https://minnesota.cbslocal.com/2016/07/09/philando-stops/> [perma.cc/7DN4-8QFD].

196. See Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635 (2019); Julianne Cuba, *Vision Zero Cities: Removing Police from Traffic Enforcement Is Crucial*, STREETS BLOG NYC (Oct. 21, 2020), <https://nyc.streetsblog.org/2020/10/21/vision-zero-cities-removing-police-from-traffic-enforcement-and-self-enforced-streets/> [perma.cc/ZTR8-GRUR].

Other cities within the nation have proposed moving towards police-less traffic stops, including Berkley<sup>197</sup> and Cambridge.<sup>198</sup> Minneapolis should follow their lead and implement a non-police traffic enforcement system. This system could be staffed with civilian employees and housed within the Minneapolis Regulatory Services Department,<sup>199</sup> a division which already manages Minneapolis Traffic Control.<sup>200</sup>

Demographic data shows the need for traffic stop reform. In 2019, Minneapolis was over 60 percent White,<sup>201</sup> yet 70 percent of traffic stops were of non-Whites.<sup>202</sup> If a traffic stop progressed to a search of the vehicle, 78 percent of those searches were of Black individuals' vehicles.<sup>203</sup> These extreme disparities mandate a system overhaul.

Reinforcing this need for a drastic shift in the traffic safety system is the fact that Minneapolis has attempted elements of traffic stop reform. This reform has not worked. "Lights On!," a program which allowed police officers to hand out vouchers to fix minor equipment violations, was adopted after Castile's death.<sup>204</sup> Yet Minneapolis police "issued White drivers the vouchers at a rate three times higher than Black and East African ones in equipment stops."<sup>205</sup> The outcome of the voucher disbursement is especially discouraging, given that Black drivers are pulled over at a much higher rate than White drivers.<sup>206</sup>

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197. *California City Moves Toward Removing Police from Traffic Stops*, NBC NEWS (July 15, 2020), <https://www.nbcnews.com/news/us-news/berkeley-california-police-reform-rcna48> [perma.cc/2YPB-HFQF].

198. *Cambridge Proposal: Let Unarmed City Employees Make Traffic Stops Instead of Police*, CBS BOSTON (July 29, 2020), <https://boston.cbslocal.com/2020/07/29/cambridge-police-officers-traffic-stops-proposal-city-employees/> [perma.cc/UQN9-4LNR].

199. *Regulatory Services*, MINNEAPOLIS: CITY OF LAKES (May 3, 2021), <https://www2.minneapolismn.gov/government/departments/reg-services/> [perma.cc/8R2E-53K4].

200. *Traffic Control Services*, MINNEAPOLIS: CITY OF LAKES (May 3, 2021), <https://www2.minneapolismn.gov/government/departments/reg-services/divisions/traffic-control/> [perma.cc/55Y5-CMHF].

201. *QuickFacts: Minneapolis city, Minnesota*, U.S. CENSUS BUREAU (July 1, 2019), <https://www.census.gov/quickfacts/minneapoliscityminnesota> [perma.cc/F6AX-XN2K].

202. Andy Mannix, *Black Drivers Make Up Majority of Minneapolis Police Searches During Routine Traffic Stops*, STAR TRIB. (Aug. 7, 2020), <https://www.startribune.com/black-drivers-make-up-majority-of-minneapolis-police-searches-during-routine-traffic-stops/572029792/> [perma.cc/8WPE-52DH] (select "Stopped" from drop-down menu on the table in the article).

203. *Id.*

204. LIGHTS ON!: A PROGRAM OF MICROGRANTS, <https://www.lightsonus.org/> [perma.cc/S6VP-Y8FL].

205. Mannix, *supra* note 202.

206. See Sarah Holder, Rachael Dottle & Marie Patino, *The Precipitous Drop of Police Traffic Stops in Minneapolis*, BLOOMBERG: CITYLAB (Sept. 14, 2020), <https://www.bloomberg.com/graphics/2020-minneapolis-police-stops/> [perma.cc/RE5Y-

The removal of traffic safety responsibilities from the MPD offers an opportunity to restructure safety regulations. At a minimum, removal of armed officers correspondingly removes the potential for officer-associated violence stemming from traffic stops. At a higher level, reassigning traffic enforcement duties to a separate department would allow Minneapolis to define policies of enforcement that actively counteract operational biases produced by racism.

*B. Rethink What We See as a Threat in Society*

In order to change the way police interact with citizens, it is necessary to re-evaluate which situations warrant armed police intervention. Disaggregating current police functions, as discussed above, is part of the solution. But disaggregation must be accompanied by the decriminalization and legalization of activities that our society no longer views as a threat to community safety and which produce racial disparities in our criminal justice system. By both disaggregating police functions and decriminalizing certain low-level, non-violent offenses—such as legalizing recreational marijuana use for adults—high-risk interactions between police and community will decrease, and police officers and prosecutors will be able to focus on more substantial threats to community safety.

Although broad decriminalization and legalization requires legislative action, prosecutorial discretion allows for change at the local level. Prosecutors in both Hennepin and Ramsey counties have implemented policies aimed at reducing the prosecution of certain low-level crimes such as drug possession. In 2019, the Hennepin County Attorney's Office announced that it would no longer be prosecuting those in possession of small amounts of marijuana.<sup>207</sup> According to Hennepin County Attorney Mike Freeman, the policy change was motivated by a flawed Minnesota law with “grossly inappropriate” penalties that result in racial disparities in the criminal justice system.<sup>208</sup> However, the policy contains exceptions that allow for charges in situations where a person also possesses trace amounts of another illegal substance (like THC oil or wax) or a firearm.<sup>209</sup> Previous drug possession convictions, or allegations of gang activity, can also lead to charges.<sup>210</sup>

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LDGL] (noting the disparities in the voucher program and traffic stops generally, but also an 80 percent decrease in traffic stops following George Floyd's death).

207. David Chanen, *Hennepin County Prosecutor Won't Charge People Caught with Small Amounts of Marijuana*, STAR TRIB. (Mar. 15, 2019), <https://www.startribune.com/hennepin-county-attorney-won-t-prosecute-people-caught-with-small-amounts-of-marijuana/507174002/> [perma.cc/JU8C-66PM].

208. *Id.*

209. *Id.*

210. *Id.*

Ramsey County Attorney John Choi also implemented a similar policy regarding marijuana possession in 2019.<sup>211</sup> More recently, prosecutors in Ramsey County have opted not to pursue charges for all fifth-degree drug possession cases throughout the COVID-19 pandemic in order to ease the burden on an already backlogged court system and to ensure the right to a speedy trial in more serious cases.<sup>212</sup> Ramsey County Sheriff Bob Fletcher expressed his support for the policy, noting that his department had already moved away from pursuing small possession cases because “[w]e need to be thinking about where we can do the most good to keep the community safe.”<sup>213</sup> Despite some flaws, policies that give prosecutors and police the discretion to eliminate charges for low-level drug possession crimes are a step in the right direction in the face of legislative inaction. These policies should be expanded to cover more low-level non-violent crimes and implemented with accompanying tools to track the impact on reducing racial disparities in the criminal justice system.

Prosecutorial discretion and decriminalization must be accompanied by legalization of marijuana use for adults. In every state, Black people are arrested for marijuana possession at higher rates than White people, despite the fact that Blacks and Whites use marijuana at essentially the same rate.<sup>214</sup> Although possession of a small amount of marijuana in Minnesota is not technically a criminal offense, Minnesota has the eighth largest racial disparity in the United States in arrests for marijuana possession: Black people are over five times more likely than White people to be arrested.<sup>215</sup> Despite broad public support<sup>216</sup> and recent federal action towards decriminalization,<sup>217</sup> legislative pushes for

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211. Memorandum from John J. Choi, Ramsey Cnty. Att’y, to All Assistant Ramsey Cnty. Att’ys in the Crim. Div. & Juv. Div. (Feb. 28, 2019), <https://www.ramseycounty.us/sites/default/files/County%20Attorney/Charging%20Policy%20Regarding%20the%20Sale%20of%20a%20Small%20Amount%20of%20Marijuana%203.1.19.pdf> [perma.cc/DCT2-G7PN].

212. Sarah Horner, *Ramsey County Attorney’s Office Stops Charging 5th-Degree Drug Possession Cases During Coronavirus Pandemic*, TWINCITIES.COM: PIONEER PRESS (June 28, 2020), <https://www.twincities.com/2020/06/28/coronavirus-ramsey-county-mn-attorney-drops-5th-degree-drug-possession-cases/> [perma.cc/BG3E-HN52].

213. *Id.*

214. ACLU, *A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM* 5 (2020), [https://www.aclu.org/sites/default/files/field\\_document/marijuanareport\\_03232021.pdf](https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf) [perma.cc/6EXK-HPKX].

215. *Id.* at 70 (state profile).

216. Andrew Daniller, *Two-Thirds of Americans Support Marijuana Legalization*, PEW RSCH. CTR. (Nov. 14, 2019), <https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/> [perma.cc/X4TU-5ASK].

217. Catie Edmondson, *House Passes Landmark Bill Decriminalizing Marijuana*, N.Y. TIMES (Dec. 6, 2020), <https://www.nytimes.com/2020/12/04/us/politics/house-marijuana.html> [perma.cc/9LFY-YXGY].

legalization of recreational marijuana in Minnesota have failed.<sup>218</sup> Legalizing recreational marijuana use for adults in Minnesota would result in fewer arrests,<sup>219</sup> which in turn would reduce the number of potentially high risk interactions between armed police and community members. It would assist in addressing the racial disparities within the criminal justice system and promote community safety by allowing police and prosecutors to focus on more significant threats.

### Conclusion

Over the past year, “Defund the Police” became a rallying cry for racial justice activists in the United States. However, liberal establishment figures such as President Barack H. Obama<sup>220</sup> and Representative James E. Clyburn,<sup>221</sup> the highest-ranking Black member of Congress and a veteran of the civil rights movement, have acknowledged the political costs of calling for what many see as a radical response. But the severity of the problem necessitates an extreme solution. The politicization of the language of defunding obscures the end goal of this process, which is as much about *funding* community safety programs as *defunding* militarized police departments. Although the popularity of the rallying cry has garnered national attention, the important debate is not whether to use the language of defunding, but how to prevent the continuing subjugation of Black people by the police.

As a legal journal that focuses its scholarship on how the existing legal system oppresses, exploits, and discriminates against marginalized communities, we believe that the response should be multifaceted. In Section I, we traced the history of policing in the United States since its colonial days. From its racist roots in slave patrols and Black codes to today’s hyper-militarized police departments, it is clear that American policing does what it was intended to do: control Black lives through state violence. In Section II, we outlined the decades of failure to achieve

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218. J. Patrick Coolican, *Minnesota Senate Rejects Legalizing Recreational Marijuana*, STAR TRIB. (Mar. 12, 2019), <https://www.startribune.com/republican-committee-to-hear-marijuana-legalization-bill-monday-in-minnesota-senate/506978532/> [perma.cc/82B5-7T7C].

219. See, e.g., Christopher Ingraham, *After Legalization, Colorado Pot Arrests Plunge*, WASH. POST. (Mar. 26, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/03/26/after-legalization-colorado-pot-arrests-plunge/> [perma.cc/V4S7-VUT4].

220. Chandelis Duster, *Obama Cautions Activists Against Using ‘Defund the Police’ Slogan*, CNN (Dec. 2, 2020), <https://www.cnn.com/2020/12/02/politics/barack-obama-defund-the-police/index.html> [perma.cc/ULR9-G5RQ].

221. Matthew Brown, *Democratic Whip James Clyburn: ‘Defund the Police’ Cost Democrats Seats, Hurt Black Lives Matter Movement*, USA TODAY (Nov. 8, 2020), <https://www.usatoday.com/story/news/politics/2020/11/08/james-clyburn-defund-police-cost-democrats-seats-hurt-black-lives-matter/6216371002/> [perma.cc/B8DQ-8C5A].

meaningful progress in Minneapolis, despite the existence of “liberal” policies and procedures meant to address the unauthorized use of force against Black people. For a few months in the summer of 2020, it appeared that this was poised to change as mass protests kicked off a period of intense scrutiny of policing. However, recent efforts have fallen short of providing the substantive change they promised. In Section III, we advocated for the redirection of MPD funding to violence prevention and alternative responses, along with the decriminalization of certain low-level non-violent offenses. We recognize that neither of these approaches represent a complete solution. However, both represent viable changes to the structural problems inherent within the MPD.

As the energy from the past summer’s protests fades, the cause of police reform does not become any less urgent. The sweeping promises and blanket optimism must be followed up by an ongoing commitment to the details of enacting change. Those of us who benefit from the privilege of not thinking about race every single day must remind ourselves that every day we wait for change is another day a Black man might be murdered by the state for a simple grocery store dispute.