

Protests and Pandemic: Concrete Ways for Law Enforcement, Prosecutors, Courts, and Local Governments to Respond

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The Values and Reasons Behind These Recommendations

All people deserve safety and justice. All communities should have the power to hold criminal-legal systems accountable to the people they serve. These values—safety, justice, fairness, community power, and accountability—are crucial to the success of our democracy and our society.

The violent deaths of George Floyd, Ahmaud Arbery, Breonna Taylor, and many others sparked protests in Cincinnati and around the country. People are calling for an end to racial violence and discriminatory policing, as well as an increase in police accountability. The local bodies that would advance these goals, like the Citizens' Complaint Authority, are unfortunately stalled. At the same time, recent data shows that policing of the Governor's pandemic-related Orders generated **high levels of arrests** in Cincinnati and the rest of Hamilton County, a **significant racial disparity** in arrests, and numerous **improper arrests**.

Our recommendations offer clear, concrete ways for local law enforcement, prosecutors, courts, and local governments to work toward our common values and build trust with the community. The recommendations are reflective of a longstanding effort in Cincinnati to improve policing and to ensure that people of all races and backgrounds are treated fairly. In April 2002, the City of Cincinnati entered into the historic Collaborative Agreement in order to resolve pending litigation alleging discrimination and excessive force in policing. The agreement included the City, U.S. Department of Justice, Fraternal Order of Police, and the community as a whole. It focused on "community problem-oriented policing" practices; mutual accountability; improving use-of-force policies, documentation, and investigations; commitment to fair, equitable, courteous, statistically bias-free policing; and an independent civilian review process. While the official agreement ended in 2008, the City stated that it was committed to its underlying principles.

In June 2017, the City and community members announced a voluntary "Refresh" of the Collaborative Agreement. The parties hired Saul Green, who had served as the court-appointed monitor of the Agreement, to review reports from various City agencies, evaluate community feedback, and conduct an independent review. Mr. Green produced recommendations and action steps for implementing problem-oriented policing, ensuring bias-free policing, having a stronger Citizens Complaint Authority with community engagement, getting community input in policing, and promoting mutual accountability.

There has been a lot of progress and a lot to be proud of. There is also a lot of work left to do.

Now more than ever, we need a mutual commitment to safety, justice, fairness, community power, and accountability. We all value justice over blame, and we all want to work together on common goals. We have a shared interest in building trust between communities of color and law enforcement, in protecting the health and safety of all people, and in ending violence and discrimination. While the last few months exposed and underscored problems in our legal system, borne largely by people of color, there are ways to ensure equitable, effective criminal justice in the future.

Recommendations

- 1) **Apply laws and policies fairly to all people. Eliminate racial disparity in the criminal-legal system – including in arrests, convictions, and sentencing.** We urge police departments to enhance anti-profiling and anti-bias policies, to offer continuous trainings for all officers, and in Cincinnati, to actively support the Refresh. This is particularly important in light of recent data showing that Black people were disproportionately arrested for social-distancing violations while Ohio's statewide Stay-Home and Stay-Safe Orders were in effect (see below). Eliminating bias is also an important in light of recent protests and ongoing efforts to reduce use of excessive force.
- 2) **Offer warnings first and problem-solve for constructive, creative solutions while policing. Commit to understanding why reducing arrests and citations produces better outcomes for the community.** Problem solving has to be the primary strategy to promote public safety. Law enforcement can often end alleged violations without criminal charges or juvenile delinquency charges. This is explicitly part of the Refresh recommendations for the City, and the concept is true anywhere in Hamilton County. For example, when enforcing state or local emergency orders, the solutions like sending people home, dispersing crowds, and taking injured people to get medical attention do not require criminal charges or juvenile delinquency charges. Officers should be prepared to refer people to social services agencies where needed. Importantly, law enforcement does not need to find the solutions alone; they should engage teams of neighbors, community leaders, and local organizations to address the roots of the problems, such as addiction, homelessness, or misunderstanding of law. This builds trust in the community and has better outcomes than lifelong criminal records, court debt, and incarceration. Fewer arrests also mean fewer use-of-force issues and better health outcomes—especially given the need to limit police-community contact and decrease the number of people in our courts and jail during the pandemic.
- 3) **When charging people with a crime, cite-and-release rather than arrest, wherever possible.** First, mass-arrests and hours-long detention based on city curfew violations must stop. Second, there should be no more arrests related to the state pandemic orders. If a situation truly necessitates criminal charges, then traffic offenses, misdemeanors, and fourth- or fifth-degree felonies should be presumptively cited rather than arrested. This strategy keeps people out of jails at a time when the pandemic makes facilities especially dangerous for virus transmission. A cite-and-release policy also protects our city and county's police officers, since arresting people has a higher risk of exposure to a virus. If cited, people should understand how to move through the court process, at a time when courts are operating in an unusual way (hearing dates are changed, courthouse rules change, etc.). Whether through the citation paperwork, or through other means, people must clearly know the location and time of the hearing, any current court-specific rules, a phone number to contact a public defender for eligibility (rather than in-person), and an appropriate phone number to contact the court to check for updates on the hearing date.
- 4) **Address the pandemic as an issue of public health not of criminality.** In Ohio, Governor Mike DeWine issued a series of emergency orders through the Ohio Department of Public Health. These included the "Stay at Home Order" (March 13 to May 1) and the "Stay Safe Order" (May 1 to May 19). These public-health Orders were meant to keep people healthy by curbing the spread of COVID-19. Local health

departments and law enforcement, however, varied in their interpretation and enforcement of the orders, with only some focusing on problem-solving and health-based responses. Too often, the Orders were instead used a tool for criminalizing and incarcerating people under R.C. 3701.352, a law that prohibits violating a public-health order intended to mitigate a pandemic. From March 16 to May 11, there were 111 criminal cases in Hamilton County for violating the social-distancing orders. For comparison, during that same timeframe in New York City, there were 125 social-distancing arrests—despite New York City having 10 times more people. Instead of turning to law enforcement, we can turn to agencies that focus on health. The Hamilton County Department of Health can set up call lines, diverting calls from law enforcement. As the health crisis continues, the City and County must investment in social services that address public health rather than cutting social-service funding and spending money on furthering criminalization.

- 5) **Ensure that City of Cincinnati and Hamilton County prosecutors drop charges for violations of R.C. 3701.352.** Data now shows that arrests under R.C. 3701.352 were made too often and, alarmingly, that Black people were arrested far more often for allegedly violating social-distancing rules. The data shows, throughout Hamilton County, 61% of criminal cases were against Black people, who comprise only 27% of the county population. In the City of Cincinnati, 78% of arrested people were Black. The 111 arrests included people who were victims of violent crimes, people who were charged twice for the same conduct, and parents who were charged because their children were outside. In about 30% of criminal cases (33 cases), people were arrested solely for their inability to explain an “essential” reason to be outside the home; 21 of these cases had Black defendants, again showing unacceptable racial disparity. Instead, law enforcement could have taken teenagers home with a warning and should have taken victims of shootings to the hospital—all without imposing a criminal charge. Of note, where people are convicted of other criminal acts while violating state order, the sentencing for those other charges will already consider context like the pandemic; heaping on the additional criminalization serves no purpose. In light of the data, we know that arresting practices were a harmful response, and the responsible course-correction is dropping all charges and dismissing all cases related to RC 3701.352.
- 6) **Revive the Citizen Complaint Authority (CCA) and the City Managers Advisory Group (MAG), and empower these groups to fulfill their work.** The CCA was established in 2003 in connection with the Collaborative Agreement. Its mission is to investigate serious interventions by police officers such as using and discharging of firearms; deaths in custody; excessive use of force; improper stops; improper entries, searches and seizures; and discrimination. The MAG was established when court supervision of the Collaborative Agreement ended in 2008 to advise the City Manager about continuing to implement the reforms under the spirit of the Collaborative Agreement. The CCA and MAG are critical to ensuring that citizen complaints and input are addressed fairly and timely. They ensure community engagement in policing and promote better policies and training where systems have broken down. Unfortunately, the work of both groups has stalled and must be revived and fully funded immediately. Even while it functioned, the CCA was supposed to independently review each use of force incident within 90 days, but could not meet this deadline due to chronic understaffing. Without CCA review and recommendations, discipline for officers is delayed. The City of Cincinnati must immediately name a permanent Director for the CCA, reactivate the MAG, and appropriately fund the work of both bodies.

- 7) Review **use-of-force** policies, conduct/repeat trainings for officers about responding in ways that protect the safety and health of officers and community members, and hold officers **accountable** for policy violations. In many local police departments, officers can be disciplined and fired for excessive use of force. Continually reviewing and improving these use-of-force policies, and training officers to reduce excessive force, is critical. We commend the Cincinnati police for recently requiring de-escalation when approaching suspects, as well as increasing body-camera interactions subject to review. We ask for continued training for all law-enforcement departments, funding for CCA to foster accountability, and renewed dedication to reducing excessive use-of-force. We ask for an end to use-of-force as a tool to prevent protected First Amendment activities. The City should also implement the problem solving effort that was promised when Officer Brown was disciplined, to reduce arrests and use of force against youth (see CPD Press Release “Statement from Police Chief Isaac on Officer Kevin Brown on 10/30/2018).
- 8) Improve policing **data** collection, analysis, and evaluation capabilities—including tracking by race. Create data-driven policies collaboratively with police and the community to ensure accountability in law-enforcement activities. Arrests for violating social-distancing Orders are problematic and lack this community’s support in large part because they are disproportionately imposed on Black people. Arrest data for traffic offenses recently showed similar trends. Now more than ever, there needs to be robust, accurate data-tracking by race for all stops and arrests, to create transparency and build community trust in police. This is true in the City and countywide, and requires separately identifying for adult and juvenile arrests. While protecting people’s identities, the criminal-legal data should be made accessible to the public.

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Supporters and Co-Signers:

Due to the incredible support for these recommendations, we are still in the process of adding names to this list. If you would like to be added, or if we missed you, please contact Iris Roley or OJPC.

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