



Policing and Drug Policy

A White Paper from the Academy for Justice



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This white paper is a production of the **Academy for Justice** at the Sandra Day O'Connor College of Law at Arizona State University. The catalyst for this white paper was a roundtable held on March 30, 2023, at the Sandra Day O'Connor College of Law, in which a panel of experts and a number of professional participants gathered to talk about policing and drug policy and ways we can think about the topic moving forward. The white paper is intended to provide proposed solutions and strategies in the overlapping fields of policing and drug policy.

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About the Academy for Justice

The **Academy for Justice** at the Sandra Day O'Connor College of Law at Arizona State University is dedicated to bridging the gap between academia and on-the-ground criminal justice reform by making scholarly research and ideas accessible to policymakers, stakeholders, journalists, and the public. Our primary objectives include identifying the major challenges confronting our criminal justice system; developing and promoting fact-based, non-partisan scholarship that identifies potential reforms; and facilitating the sharing of information between academics and those responsible for making and implementing criminal justice policy.

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I. EXECUTIVE SUMMARY

Since “the War on Drugs” was informally declared in 1971 and formally enforced beginning in 1973, incarceration has soared. Drug offenses became a priority for law enforcement agencies, who devoted time and resources to identifying, arresting, and prosecuting, drug users, sellers, and manufacturers alike. Funding and statutory civil asset forfeiture expansion kept law enforcement agencies supported and rewarded them for drug-related investigations and arrests— regardless of successful prosecutions or reductions in drug crimes. These incentives allowed agencies to acquire tactical equipment—previously reserved for extreme circumstances such as terrorist and hostage situations—for use in executing search warrants and drug investigations.¹ The state sanctioned and incentivized militarization of police during the War on Drugs ultimately resulted in targeting impoverished communities of color and eroding trust between civilians and police. As it turns out, criminalizing drug sales and use has done little to deter the availability or use of illicit substances.² Research and real-world examples show that a collaborative, public health focus is more likely to be effective in both mitigating harm that drugs cause communities and reducing costs. Law enforcement is directly in the center of this debate. Police are expected to deal with those issues society is otherwise unable to deal with, including drug uses’ nuanced companions, such as homelessness, mental illness, and a myriad of other crises. However, without support from community stakeholders better suited to address public health crises, aggressive and forceful intervention remains the de facto response. A shift to a harm-reduction model for police, community service providers, and the public is critical for rebuilding trust and for effectively combatting the epidemic of drug misuse in America.

II. PROBLEM STATEMENT

In 1971, in a special message to Congress, President Nixon declared that drug abuse was “public enemy number one.” Within a day, media outlets coined Nixon’s declaration “the War on Drugs.” Nixon’s message included an ask for \$155 million to launch federal drug enforcement programs and policies consistent with the enforcement of the Controlled Substances Act (CSA) he signed in to law in the previous year. Codified at 21 U.S.C. §§ 801-904, the CSA repealed nearly all previous federal substance control law and replaced it with a new, comprehensive regulatory scheme.³ In 1973, Nixon formed the Drug Enforcement Administration as the enforcement arm of the CSA.

¹ Hannah LF Cooper, *War on Drugs, Policing, and Police Brutality*, SUBSTANCE USE & MISUSE, 5 (2015).

² Alice Zhang et al., *The Relationship Between Police Contacts for Drug Use-Related Crime and Future Arrests, Incarceration, and Overdoses: A Retrospective Observational Study Highlighting the Need to Break the Vicious Cycle*, 19 HARM REDUCTION J. 1, 2 (2022).

³ Thomas M. Quinn & Gerald T. McLaughlin, *The Evolution of Federal Drug Control Legislation*, 22 CATH. U.L. REV. 605, 605-06 (1973).

Though Nixon is often credited with launching the War on Drugs, Ronald Reagan's presidency, which occurred contemporaneous to the crack cocaine epidemic, catalyzed the government-led strict enforcement and sentencing for drug related offenses across the nation. In 1982, using the national platform of her husband's presidency, First Lady Nancy Reagan became the face of the "Just Say No" campaign that was promoted in classrooms throughout the country. Then, in 1986, President Reagan ushered in the Anti-Drug Abuse Act.

With \$1.7 billion in funding, the Anti-Drug Abuse Act imposed mandatory minimum sentencing schemes; broadened the scope of civil asset forfeiture from drugs and drug equipment to cash, bank accounts, land, jewelry, cars, and more; and set the penalties for crack and powdered cocaine at 100:1 (500 grams of powdered cocaine to trigger the same mandatory minimum sentence as 5 grams of crack cocaine).⁴ Critics of the Act have argued that these key aspects played a critical role in shaping the current state of policing drugs and mass incarceration of drug offenders.⁵

The increased focus on enforcing drug laws, along with mandatory sentencing schemes, largely contributed to federal prison populations tripling from 24,640 inmates in 1980 to 100,958 in 1995.⁶ In January 2023, approximately 42% (65,975) of those serving federal prison time were doing so for non-violent, drug-related crimes.⁷ The socioeconomic and racial realities of the crack epidemic combined with the disproportionate sentencing for crack cocaine, resulted in equally disproportionate incarceration rates for black men.⁸ The expansion of civil asset forfeiture incentivized law enforcement "to take a more militarized approach . . . [increasing] the frequency of raids and use of tactical squads," through which they could support their budgets using seized assets without formal charges or convictions for the property owners.⁹

States soon followed the federal government's lead. Modeled after the federal CSA, the 1990 Uniform Controlled Substances Act (UCSA) provided the states with a complimentary model of drug scheduling.¹⁰ Forty-six states, including Arizona,

⁴ Anti-Drug Abuse Act of 1986 (ADAA), Pub. L. No. 99-570, 100 Stat. 3207 (1986).

⁵ NAT'L RSCH. COUNCIL, NAT'L ACADS. OF SCIS., ENG'G, AND MED., *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES*, 3 (2014) (ebook) ("The best single proximate explanation of the rise in incarceration is not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment as a response to crime. Mandatory prison sentences, intensified enforcement of drug laws, and long sentences contributed not only to overall high rates of incarceration, but also especially to extraordinary rates of incarceration in black and Latino communities.").

⁶ *Past Inmate Population Totals*, FED. BUREAU OF PRISONS, https://www.bop.gov/about/statistics/population_statistics.jsp;#old_pops_ (last visited June 22, 2023).

⁷ U.S. SENTENCING COMM'N, *QUICK FACTS: FEDERAL OFFENDERS IN PRISON*, 1 <https://www.ussc.gov/research/quick-facts/federal-offenders-prison> (Jan. 2023).

⁸ *Crack Epidemic*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/crack-epidemic> (last visited June 22, 2023).

⁹ *American War on Drugs*, CRACKDOWN, <https://policing.umhistorylabs.lsa.umich.edu/s/crackdowndetroit/page/national-and-state-level-war-on-drugs1> (last visited Mar. 12, 2023).

¹⁰ Unif. Controlled Substances Act, 9 U.L.A. 1 (1990).

adopted the UCSA, though sentencing schemes vary from state to state.¹¹ Federal support and incentives to States, especially through the 1998 Byrne Memorial State and Local Law Enforcement Assistance Program and Justice Assistance Grants (JAG), encouraged expansion and development of narcotics task forces by providing the financial backing necessary for the staffing and equipment used by police tactical and narcotics units.¹²

Though states have discretion to use federal funds for non-law enforcement purposes, such as drug treatment, indigent defense, crime prevention and education, and court and prosecutorial programming, the bulk of such funds have historically been spent by state and local governments on law enforcement.¹³ In fiscal year 2020, for example, 71% of the total allocated funds were spent on law enforcement, while no other category's funding exceeded a single digit percentage.¹⁴ This increased stable funding, coupled with the direct financial benefits of asset forfeiture in the asset saturated culture of drug markets resulted in significant increases to the policing of drugs, and not just at the highest levels.

In the last seven years, the War on Drugs that brought focused criminalization on drug use collided with the epidemic of opioid addiction. In Arizona alone, the number of non-fatal opioid overdoses doubled from 1,736 in 2017, to 3,329 in 2022 and the number of confirmed opioid overdose deaths nearly doubled from 923 to 1930 in the same time period.¹⁵ Law enforcement and the criminal justice system have been unable to reconcile the historical drug enforcement practices and resulting sentencing schemes—which became the norm through the CSA—with the massive public health crisis of the opioid epidemic.

Public health advocates and criminal justice scholars have been calling for shifts in police and criminal justice response to drug addiction for decades. The proliferation of opioid addiction has forced a reckoning within the criminal justice system to respond with a public health ethic. "Police discretion guided by a public health ethic takes the profession's putative role of protecting life and delivering public safety and operationalizes it with decisions that equitably improve health outcomes."¹⁶ This public health ethic can be implemented through a multitude of responses that can be applied individually or in combination to advance public health, officer safety, and the de facto decriminalization of drug use. When a sufficient infrastructure exists, law

¹¹ Richard L. Braun, *Uniform Controlled Substances Act of 1990*, 13 CAMPBELL L. REV. 365, 371 (1991).

¹² Katherine Beckett, *The Uses and Abuses of Police Discretion: Toward Harm Reduction Policing*, 10 HARVARD L. & POL'Y REV. 77, 81 (2016).

¹³ BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST., ACTIVITY REPORT: JUSTICE ASSISTANCE GRANT PROGRAM 1, 2 (2021), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/JAG-Activity-Report-FY-2020.pdf>.

¹⁴ *Id.* at 2–3 (90% of all personnel allocations were directed to law enforcement; 29% of task force funding went to drug task forces).

¹⁵ *Opioid Prevention: Weekly Opioid Data*, ARIZ. DEP'T OF HEALTH SRVS., <https://www.azdhs.gov/opioid> (last visited June 22, 2023).

¹⁶ Brandon del Pozo et al., *Beyond Decriminalization: Ending the War on Drugs Requires Recasting Police Discretion Through the Lens of a Public Health Ethic*, 21 AM. J. BIOETHICS 41, 41–44 (2021).

enforcement can employ pre-arrest diversion and crisis response strategies. This can include direct referrals to substance-use treatment—either following use of naloxone to prevent overdose deaths, or in lieu of citation or arrest drug use-related calls—or where there is non-drug related, low-level criminal conduct.

Studies have shown that the traditional model of criminalizing drug use through arrest and incarceration is ineffective for reducing recidivism and addiction, while harm reduction models show notable promise through both improved public health and reduced criminal justice involvement.¹⁷ One such model is Law Enforcement Assisted Diversion (LEAD). The LEAD model is a pre-arrest diversion model that allows police to divert individuals with substance use, mental health, and other cognitive disorders to community based and harm reduction services rather than engaging in typical criminal justice tactics.¹⁸ LEAD has been implemented in multiple cities nationally with promising results. Evaluation of Seattle’s LEAD program showed a 60% reduction in re-arrest within six-months of program participation and LEAD participants were 87% less likely to be sentenced to prison.¹⁹

In drug use-related crimes, any resultant harms to individuals are generally seen as self-inflicted, and because they are self-inflicted, the non-drug-using community’s response is often unsympathetic and punitive. Focusing on alternatives to incarceration and criminal justice involvement for use-related crimes and non-violent substance use-driven crimes (e.g., trespass, shoplifting, and minor theft) and developing processes in which police can act as agents of harm reduction in the public health crisis of opioid addiction, are critical for turning the tide.

III. PROPOSED SOLUTIONS AND STRATEGIES

A. Reshape Officer and Societal Attitudes about Substance Misuse and Responses

Historically, substance use and misuse are seen and treated as a personal choice to engage in criminal activity.²⁰ As a result, the traditional criminal justice model of arrest, prosecution, and incarceration has been the default. Since the traditional response has yielded little to no positive results for individuals or communities, practitioners and scholars have explored alternative methods to address drug misuse. Some areas of the country have begun implementing innovative and holistic models of addressing drug misuse in their communities.²¹

¹⁷ Alex Stevens, *Applying Harm Reduction Principles to the Policing of Retail Drug Markets*, INT’L DRUG POL’Y CONSORTIUM (Mar. 19, 2013), <https://idpc.net/publications/2013/03/applying-harm-reduction-principles-to-the-policing-of-retail-drug-markets>; Beckett, *supra* note 12, at 85.

¹⁸ *Assessing the Impact of Law Enforcement Assisted Diversion (LEAD): A Review of Research*, INT’L ASSOC. OF CHIEFS OF POLICE & CENTER FOR POLICE RESEARCH AND POLICY, UNIVERSITY OF CINCINNATI (2020), <https://www.theiacp.org/sites/default/files/IDD/Review%20of%20LEAD%20Evaluations.pdf>.

¹⁹ *Id.* at 13.

²⁰ Zhang et al., *supra* note 2, at 2.

²¹ Beckett, *supra* note 12, at 81.

Bias is just one part of puzzle in reshaping the officer attitudes toward participating in the harm reduction programs. Understanding the myriad of attitudes towards drug users and exploring support for alternative interventions are critical to successful implementation of interventions that diverge from the traditional policing model and incorporate a multidisciplinary response to drug-related crime. Studies have shown that police sometimes adopt stigmatized views of people with substance abuse disorders.²² **“In the drug context, the use of criminal law to handle a public health crisis ultimately merged with a strong punitive streak, yielding a regulatory regime undergirded with violent moralism.”**²³ It is no wonder, then, that several officers agree that people with addictions are “to blame for their own condition,”²⁴ and were concerned that implementing treatment in response to an overdose may demonstrate that the officer condones the use of drugs.²⁵

These attitudes can frustrate efforts to implement evidence-based, harm reduction practices. Early efforts to curb drug-related crime using harm reduction means were unsuccessful, partially because officers did not invest in the underlying principles of the programs.²⁶ However, officer buy-in does seem possible, particularly when officers are provided with the tools and infrastructures to allow for a different avenue of solving these problems.²⁷

In addition to attitudes around substance use and interventions, there is concern that police develop a feeling of distance towards the communities they are tasked with serving, viewing members as enemies rather than civilians.²⁸ This can occur when police spend so much time in policing one area and become accustomed to regarding the members of a particular community with suspicion.²⁹ On the other hand, having law enforcement police an area they are so intimately familiar with and invested in can lead to positive outcomes and in fact meet legitimate state purposes.³⁰ The tension between the two is difficult to reconcile.

²² Saba Rouhani et al., *Police Attitudes Towards Pre-Booking Diversion in Baltimore, Maryland*, 65 INT’L J. DRUG POL’Y 78, 81-82 (2019).

²³ Benjamin Levin, *Guns and Drugs*, 84 FORDHAM L. REV. 2173, 2215 (2016).

²⁴ Brandon del Pozo, *Police Discretion in Encounters with People Who Use Drugs: Operationalizing the Theory of Planned Behavior*, 18 HARM REDUCTION J. 1, 6 (2021).

²⁵ Michael D. White et al., *Moving Beyond Narcan: A Police, Social Service, and Researcher Collaborative Response to the Opioid Crisis*, 46 Am. J. Crim. Just. 626, 628 (2021).

²⁶ *Id.* at 629.

²⁷ Caitlin Schmidt, *Tucson Police Pushing for Treatment Rather than Jail for Hundreds of Drug Users*, ARIZONA DAILY STAR (July 13, 2019), https://tucson.com/news/local/tucson-police-pushing-treatment-rather-than-jail-for-hundreds-of-drug-users/article_0d3dd2fa-83af-5457-acce-8dfb0168b100.html.

²⁸ Cooper, *supra* note 1, at 6.

²⁹ *Id.*

³⁰ *Detroit Police Officers Ass’n v. City of Detroit*, 190 N.W.2d 97, 98 (1971) (upholding a City of Detroit requirement that police officers live in the City cites several other legitimate state purposes including: promotion of ethnic balance in the community; reduction in high unemployment rates of inner-city minority groups; improvement of relations between such groups and city employees; enhancement of the quality of employee performance by greater personal knowledge of the city’s conditions and by a feeling of greater personal stake in the city’s progress; diminution of absenteeism and tardiness among municipal personnel; ready

A Canadian study explored the common “us vs. them” mentality held by police towards the general public by focusing on the period between a police recruits choice to pursue a career in law enforcement but before those recruits had actually experienced police work.³¹ Ultimately, the study showed that the “us vs. them” mentality is present when police cadets begin their training.³² Overall, police were found to have a general distrust of civilians that were not members of law enforcement due to a number of distinctions—a badge, a gun, a uniform, negative encounters—seen by officers as separating them from the people they serve.³³ In-group versus out-group distinctions can help to explain how these boundaries form and result in the aforementioned default to distrust.³⁴ Regularly tapping into and reminding officers of their reason for joining the force—for most, to help others—could mitigate against this attitude.³⁵ In an article about the use of Narcan, an opioid overdose reversal drug, officers reported increased job satisfaction when they were able to reverse the effects of an overdose and save a life, regardless of their interest in being involved in human services.³⁶

All said, there are a number of competing interests at play. For example, police may experience incentives or even encouragement for aggressive policing tactics even when those tactics are hindering any ability to help others. On the other hand, through continued exposure to the lack of results these tactics produce, officers can foster ambivalence or hostility to alternative intervention methods. Providing opportunities to remind police of the supportive nature of the work they signed up to do can increase support for non-punitive approaches to drug-related crime. Well-formed harm reduction systems that don’t rely on officers to administer social services while simultaneously trying to enforce the law can also assist with officer buy-in.

B. Provide and Enhance Harm Reduction Training to Law Enforcement

Harm reduction is a public health principle meant to reduce negative outcomes related to drug use. Harm reduction methods are both pragmatic and ethically justifiable because they prioritize strategies *that work* along with the health and experiences of those impacted.³⁷ Training law enforcement officers on harm reduction principles and the reasons for them has the potential for exponential benefits for both police and those engaging in drug use.³⁸

availability of trained manpower in emergency situations; and the general economic benefits flowing from local expenditure of employees' salaries).

³¹ Remi Boivin et al., *The 'Us vs Them' Mentality: A comparison of Police Cadets at Different Stages of Their Training*, 21 POLICE PRAC. RSCH. 49, 51 (2020).

³² *Id.* at 56.

³³ *Id.* at 50-51.

³⁴ *Id.* at 50.

³⁵ White et al., *supra* note 25, at 634-35.

³⁶ *Id.*

³⁷ Stevens, *supra* note 17, at 1-2.

³⁸ Using opioid overdose reversing drugs is an important harm reduction technique, but is discussed in other parts of this paper at length and will not appear in this section.

One significant reason to provide officers harm reduction training is to afford them the knowledge necessary to properly recognize and assess risks so as not to perpetuate the stigma that things such as zero-tolerance drug legislation and its enforcement magnify.³⁹ Maryland researchers found that officers with less experience were more unified in their beliefs while those officers with more years of service were more likely to perpetuate stigmatizing views.⁴⁰ This same study showed that appropriate harm reduction training reduced these overestimations and helped to reduce barriers for officers who would otherwise be hesitant to engage with some of the most vulnerable and marginalized of the target population.⁴¹

Harm reduction training can also improve the breadth of associated health risks. Where the community does not experience police tactics as fair, lawful, and effective, those community relationships and the legitimacy of policing will suffer as a result.⁴² In turn, this has been found to exacerbate health risks associated with drug use.⁴³ For example, the criminalization of drug possession encourages individuals who inject drugs to do so hurriedly in unsafe environments to avoid detection.⁴⁴ Overdose is yet another associated health risk.⁴⁵ With adequate emergency response, the fatal impact of overdoses can be limited.⁴⁶ However, the fear of arrest and subsequent prosecution lowers the likelihood of seeking assistance.⁴⁷

Ultimately, harm reduction training for law enforcement that provides a better understanding of the target population and how certain policing efforts will impact that population can lead to reductions in traditional, harmful police responses and simultaneously bolster legitimacy in policing.⁴⁸

C. Develop Police and Stakeholder Partnerships

By default, public health and social welfare issues fall within the purview of police officers. As 24-hour first responders, police are often the first to contact people who are suffering from substance use disorders. As the most frequent and primary responders, police have incredible power to shape the course of each interaction and their outcomes. However, without connected systems of support from well-trained social service professionals, police are left ill-equipped to assist. Though an officer's decision not to arrest may make a world of difference to an individual—avoiding a criminal record, expensive fines, and even jail time—without social service professionals engaged in the interaction, it is a missed opportunity to create beneficial support connections and impact potential recovery. Police may be reluctant to not arrest someone who is violating the law without a viable alternative

³⁹ Rouhani et al., *supra* note 22, at 81-82.

⁴⁰ *Id.*

⁴¹ *Id.* at 82.

⁴² Stevens, *supra* note 17, at 1.

⁴³ *Id.* at 5.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Rouhani et al., *supra* note 22, at 83.

that addresses the behavior. With no deterrent in place to stop the criminal behavior even with effective services and systems in place some officers view diversion as a “get out of jail free card.”⁴⁹

Leaders in law enforcement around the globe seem to recognize the success of these programs and have signaled a shift in culture and use. In 2022, the International Association of Chiefs of Police (IACP) developed a report designed specifically to assist communities in developing plans that not only allow for alternatives to arrest, but provide roadmaps for how to intervene further in an effort to provide would-be arrestees with support beyond keeping them out of the criminal legal system.⁵⁰ National police leadership embracing alternative methods signals support from the top. This leadership-backed support could have a positive impact on the line officers who will be facing these issues head-on.

Ensuring that stakeholders are committed and that the necessary infrastructure is in place is key to successfully developing police and stakeholder partnerships. A number of stakeholders can partner with first responders to provide services and a meaningful alternative to arrest. The IACP guide identified the following spaces that relevant stakeholders may occupy: “community service; treatment for SUDs [substance use disorders]; treatment for MHCs [mental health conditions]; restorative justice; other supportive services and treatment.”⁵¹

In 2011, Seattle, Washington launched the first large-scale collaborative police-led pre-arrest intervention program.⁵² This program gave officers the discretion to divert individuals to social service organizations in lieu of engaging them in the criminal legal system. Seattle’s program utilized a broad pool of stakeholders including law enforcement and treatment service providers, but also the ACLU, the Department of Corrections, the King County Executive, a number of advisory boards, and several civilian leaders among others.⁵³ Seattle’s LEAD program adhered to a number of principles: “to improve public safety and reduce crime; [to recognize] that traditional drug war tactics such as booking, prosecuting, and jailing individuals for low-level drug offenses do not meaningfully improve public safety and public order; and [to understand] that connecting low-level drug law violators with services may be a less expensive and more efficacious way to improve public safety than conventional law enforcement tactics.”⁵⁴ The Seattle officers were provided guidance and training on using discretion to make referrals rather than incarcerate individuals suspected of having substance abuse disorders.⁵⁵

Tucson also developed its own pre-arrest diversion program, known as “deflection”, that creates a path for officers to assist self-referring clients as well as individuals

⁴⁹ Beckett, *supra* note 12, at 96.

⁵⁰ *Alternatives to Arrest*, INT’L ASS’N CHIEFS POLICE, <https://www.theiacp.org/alternatives-to-arrest> (last visited June 22, 2023) [hereinafter *Alternatives to Arrest*].

⁵¹ *Alternatives to Arrest*, *supra* note 50.

⁵² Beckett, *supra* note 12, at 86-87.

⁵³ *Id.*

⁵⁴ *Id.* at 88.

⁵⁵ *Id.* at 89.

who would otherwise be facing arrest.⁵⁶ Eligibility criteria included misdemeanor offenders, but excluded deflection for crimes involving violence or sex offenses.⁵⁷ The Tucson Police Department budgeted for the initiative, anticipating 92 percent of the cost to come from the use of personnel,⁵⁸ but it was discovered that the process of deflection actually saved officers an average of 25 minutes per deflection interaction, resulting in a cost savings of approximately \$28,529 across all 2,129 deflection incidents.⁵⁹ Recognizing the importance of readiness for treatment and taking a non-judgmental and non-punitive approach, officers were directed that once they decided to offer deflection to treatment, instead of arrest, they did not arrest—regardless of whether the individual agreed to deflection to a treatment provider.⁶⁰ Only 29 percent of subjects offered deflection to treatment did not agree to be connected with a treatment provider, while 45 percent of those offered deflection went directly to a treatment provider.⁶¹

Tempe, Arizona adopted a similar pilot program in 2019. The Tempe First Responder Opioid Recovery Project (ORP), an overdose response program, incorporated a multidisciplinary approach and engaged a number of community-based organizations and other first responder teams to address drug addiction based on responses to overdoses.⁶² The Tempe ORP created a 24/7 team to support the social services needs of its initiative.⁶³ Tempe utilized the infrastructure of an existing community service center called EMPACT as the framework for its system to provide follow-up services to overdose survivors.⁶⁴ In this model, officers received Narcan and training on how to use it.⁶⁵ When an overdose is reversed, the ORP crisis team is contacted and a representative is immediately deployed to either the location of the overdose, the hospital, or the residence of the client, for the initial contact and introduction to the program.⁶⁶ Additionally, follow-up services are provided by a post-crisis team for them and their loved ones within 24 hours of the incident.⁶⁷ As with other similar programs, the patient retained the option to decline services.⁶⁸ While not everyone opted to receive the services offered after overdose,

⁵⁶ Schmidt, *supra* note 27.

⁵⁷ *Pre-Arrest Deflection*, TUCSON POLICE DEP'T 1, 13, https://ptacollaborative.org/wp-content/uploads/2019/11/11-12_Hall.pdf (last visited June 25, 2023).

⁵⁸ *Id.*

⁵⁹ Josephine Korchmaros et al., *Costs, Cost Savings, and Effectiveness of a Police-led Pre-arrest Deflection Program*, UNIV. OF ARIZ., SW. INST. FOR RESEARCH ON WOMEN 1, 2 (2022), https://sirow.arizona.edu/sites/sirow.arizona.edu/files/DefProg_Outcomes_Report_2022_final.pdf (additional potential savings from deflection totaled \$48,654 in jail costs and \$601,512 in total justice system costs).

⁶⁰ *Pre-Arrest Deflection*, *supra* note 59.

⁶¹ Josephine Korchmaros, et al., *Feasibility and Acceptance of a Police Pre-arrest Deflection Program*, UNIV. OF ARIZ., SOUTHWEST INSTITUTE FOR RESEARCH ON WOMEN 2 (2022).

⁶² White et al., *supra* note 25, at 631.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 632.

⁶⁷ *Id.*

⁶⁸ *Id.*

many did—54% accepted the services or referrals offered.⁶⁹ Compare this to individuals seeking post-overdose treatment with and without non-OPR trained officer referrals which resulted in 33% and 25% acceptance rates, respectively.⁷⁰ At the start, 10 officers were provided Narcan and ORP training, but within a few short months almost 300 officers were equipped and trained.⁷¹

Most pre-arrest diversion programs still involve officer discretion, though guides like the one issued by the IACP which limit discretion as much as possible by emphasizing clear and specific rules and policies surrounding who is and is not eligible and whether an eligible person should or should not be diverted.⁷² There is a robust body of research that illustrates the racial disparities that occur when officers are given unchecked discretion on how to move forward with someone they may perceive as a suspect. For example, a study on stop-and-frisks in New York City showed that only 9-12% of individuals stopped were non-Hispanic white, despite them making up 33% of the population.⁷³ In Seattle, prior to the implementation of LEAD, arrest rates of Black individuals was 13.6 times higher for drug possession and 21 times higher for drug delivery offenses than their white counterparts.⁷⁴ It is with a seasoned understanding of this problem that one round table panelist commented that when discretion is built in, often black men are left out. Since attitudes and biases held by officers can impact whether an officer decides in favor of diversion, this is an important part of the conversation. With clear eligibility direction—guidance for which can be found in the IACP report as well as within models that have already demonstrated some success—coupled with documentation about individuals who were not referred and why, cognitive biases that interfere with discretionary decisions can be avoided.

Key to the success of both Seattle, Tucson, and Tempe's programs include officer buy-in, efficient, effective alignment of all organizations, and reaching individuals pre-arrest.⁷⁵ Often, post-arrest programs are ineffective. As several roundtable practitioners noted: if the goal of these programs is harm reduction and recovery, the target populations—when reached post-arrest—do not have the resources to use the programs as they are designed or to comply with the requirements they demand. This is why it is so crucial that systems are streamlined for maximum efficiency in order to be successful and effectively utilized.

⁶⁹ See *id.* at 633-34; see also Beckett, *supra* note 12, at 90.

⁷⁰ White et al., *supra* note 25, at 636.

⁷¹ *Id.* at 631.

⁷² Rouhani et al., *supra* note 22, at 81-82.

⁷³ Cooper, *supra* note 1, at 4.

⁷⁴ Beckett, *supra* note 12, at 87.

⁷⁵ *Id.*

D. Demilitarization, Restructuring Civil Asset Forfeiture, and Ending No-Knock Warrants and Stop-and-Frisk

1. Demilitarize Law Enforcement

In *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander asks (and then answers) a reasonable question: “why are police putting forth this level of effort for lower level drug-related crimes?”⁷⁶ **The proliferation of federal monetary and equipment incentives in the 1970s, 80s, and 90s created a massive financial incentive for law enforcement to engage in increased and militarized drug enforcement.**⁷⁷ Military weaponry that can be counted among this bounty include M-14s, M-16s, and grenade launchers.⁷⁸ Once agencies began gaining greater access to these military weapons, in combination with notably more liberal asset forfeiture rules, they increasingly began to use them in the context of drug investigations.⁷⁹ Despite these tactics arguably being used to prevent the destruction of evidence, rather than the preservation of life and health, only 35% of these raids actually produced drugs.⁸⁰

“The militarization of police during the War on Drugs has created a domestic space of conflict. Viewed through this frame, some aspects of law enforcement look less like a preservation of public safety and more like an all-out battle between police and civilians.”⁸¹ Reducing federal funding for the delivery of tactical gear to circumstances in which agencies can demonstrate a direct impact on recidivism could go far in repairing trust, reducing avoidable injuries and death, and freeing up resources for evidence-based initiatives. As mentioned previously, in 2020, law enforcement agencies were the recipients of 71% of state funds, but a restructuring of these funds could make more space for programs that have been shown to reduce the harms that substance misuse and over-policing of drugs can cause. The funds saved from reducing spending on the militarization of police agencies can also be diverted to these programs.

2. Restructuring Civil Asset Forfeiture

Through the use of tactical gear, battering rams, and military style weaponry often obtained through federal dollars, police pursued the heavy drug market, funneling billions of dollars in civil asset forfeitures into coffers of law enforcement agencies.⁸²

⁷⁶ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 68 (2010).

⁷⁷ Levin, *supra* note 23, at 2185 (Federal incentives through the Department of Homeland Security and the Edward Byrne Memorial State and Local Law Enforcement Assistance Program discussed previously, combined with The Military Cooperation with Civilian Law Enforcement Officials Act, and the Department of Defense’s Program 1033, flooded state law enforcement anti-drug initiatives with money, intelligence, and surplus military equipment designed for national combat and national defense).

⁷⁸ Cooper, *supra* note 1, at 6.

⁷⁹ Alexander, *supra* note 78.

⁸⁰ *Id.*

⁸¹ Levin, *supra* note 23, at 2185.

⁸² *Id.*

This began with federal law in the 1970s, but by the mid-1980s 47 states, including Arizona by 1986, had similar civil asset forfeiture laws on the books.⁸³ **Law enforcement can capitalize on drug investigations by applying civil asset forfeiture laws to seize assets that are believed to be the fruits of illegal activity.**⁸⁴ In Arizona, a court need only find probable cause that the property to be seized was acquired unlawfully in order for law enforcement to confiscate it, either based on an officer affidavit or evidence provided after the assets are seized.⁸⁵ In 2021, however, legislation passed that now requires a conviction in most cases for seized assets to become permanent police property.⁸⁶

Arizona law enforcement agencies have wide latitude to determine what they can do with proceeds of forfeited property.⁸⁷ If money is the forfeited asset and the money belonged to another agency, it must be returned to that agency, otherwise property can essentially be used, bought, or sold in whatever legal way serves the interest of the agency that has acquired it.⁸⁸

Though Arizona recently incorporated a conviction requirement for permanent seizures of property under the civil asset forfeiture laws, there is no evidence that civil asset forfeiture actually supports more effective law enforcement. According to the Institute for Justice, high profits from forfeitures are actually *negatively* correlated with solving violent crime and can lead officers to pursue the monetary fruits of drug trafficking rather than prioritizing removing the drugs from the offenders.⁸⁹ Furthermore, critics have made the argument that, since forfeiture can be a term of a plea agreement, it can operate as an extortion tactic or opportunity for offenders who have assets to buy leniency.⁹⁰

Taking an intentional approach, law enforcement agencies that receive the benefits civil asset forfeiture provides can find ways to rebuild trust in their communities. Redirecting funds from civil asset forfeitures from police to beneficial community programming would de-incentivize police from overreaching by seizing assets that they believe will become agency assets. These assets could instead be directed towards the types of services that would support communities rather than disrupt them, initiatives like stakeholder partnerships for arrest diversion programs. Additionally, LEAP and JAG grants are not limited to enforcement and prosecution uses.⁹¹ These funds can also be used for treatment, prevention, program planning,

⁸³ Hannah Laqueur et al., *Wrongful Conviction, Policing, and the “War on Crime,”* EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK AND MOVING FORWARD, 8 (eds. Allison D. Redlich, James R. Acker, Rober J. Noris and Catherine L. Bonventre, 2014).

⁸⁴ *Id.*

⁸⁵ ARIZ. STAT. ANN. §§ 13-4304, 13-4305 (2021).

⁸⁶ *Id.*

⁸⁷ ARIZ. STAT. ANN. § 13-4315 (2021).

⁸⁸ *Id.* § 13-4315(B).

⁸⁹ Andrew Wimer, *Arizona Governor Signs Important Forfeiture Reform Bill*, INST. FOR JUST., (May 5, 2021), <https://ij.org/press-release/arizona-governor-signs-important-forfeiture-reform-bill/>.

⁹⁰ *Id.*

⁹¹ CONG. RSCH. SERV., THE EDWARD BYRNE MEMORIAL JUST. ASSISTANCE GRANT (JAG) PROGRAM, <https://crsreports.congress.gov/product/pdf/IF/IF10691> (last updated Feb. 17, 2023).

and mental health services.⁹² Redirecting funds away from punitive and violent response to largely non-violent drug-related crimes will begin to rebuild the trust that was lost through years of War on Drug fueled aggression, while also providing funding for evidence-based interventions.

3. Eliminate Use of No-Knock Warrants and SWAT Teams in Drug Enforcement

Along with military weaponry, police have adopted military tactics to fight the War on Drugs including Special Weapons and Tactics (SWAT) units to execute warrants.⁹³ SWAT teams have existed long before their use in the context of the War on Drugs, but were limited to extreme circumstances. Prior to the War on Drugs, cases that involved hostages, terrorist threats, and terrorist attacks were ones considered to warrant a SWAT response.⁹⁴ Now, however, SWAT teams are not only regularly, but typically, deployed to execute standard warrants.⁹⁵

Though widely and frequently used, there is a lack of uniformity in standards and training for SWAT deployment procedures.⁹⁶ Comparing U.S. and Canadian tactical responses, researchers found that U.S. safety governance around SWAT type responses were generally less rigid and less consistent than those of comparable Canadian teams.⁹⁷ Despite this, or perhaps because of it, U.S. SWAT units often execute their warrants at night and without announcing their presence—known as a “no knock” warrant.⁹⁸ While executing these surprise middle-of-the-night warrants, officers often equip themselves with military weapons.⁹⁹

The argument in favor of using such aggressive tactics to execute warrants for drug-related offenses is simple: drugs are easy to destroy quickly, so police require the element of surprise.¹⁰⁰ **Unfortunately, “not only have legislators and the executive armed police for a war against the citizenry, but the courts also have stripped civilians of many protections against police intrusions in the drug context.”**¹⁰¹ In a series of 4th, 5th, and 6th Amendment decisions, the United States Supreme Court vastly expanded police authority in the context of drug enforcement, including the use of no knock warrants.¹⁰² **The analyses, however, failed to**

⁹² *Id.*

⁹³ Cooper, *supra* note 1, at 7.

⁹⁴ *Id.*

⁹⁵ Adam T. Dobrin et al., *Swat Unit Proactive Search Warrant Deployments: A Mixed Effects Model Exploration*, 14 POLICING: A J. OF POL'Y & PRAC. 792, 799 (2020).

⁹⁶ *Id.*

⁹⁷ K Cyr et al., *Militarization of Police: A Comparison of Police Paramilitary Units in Canadian and the United States*, 22 INT'L J. OF POLICE SCI. & MGMT. 137 (2020).

⁹⁸ Cooper, *supra* note 1, at 7.

⁹⁹ *Id.*

¹⁰⁰ *Richards v. Wisconsin*, 520 U.S. 385, 395 (1997).

¹⁰¹ Levin, *supra* note 23, at 2186.

¹⁰² See *Richards v. Wisconsin*, 520 U.S. at 395; *California v. Acevedo*, 500 U.S. 565, 580 (1991); *Florida v. Bostick*, 501 U.S. 429, 439 (1991); John A. Powell & Eileen B. Hershenov, *Hostage to the Drug War: The National Purse, the Constitution and the Black Community*, 24 U. CAL. DAVIS L. REV. 557, 578-79 (1991) (citations omitted) (“Perhaps the judiciary’s single most destructive contribution to the drug war has been its creation of the “drug exception to the Constitution.”

reconcile the danger to civilians and police when executing these warrants, particularly when heavily armed, militarized police in SWAT units execute them. While statistical information is lacking because of general agency reluctance to share information and because there are currently no regulatory bodies requiring such compilations,¹⁰³ the tragic death of Breonna Taylor is one of the many stories that illustrate the dangers of using such tactics.

4. **End Stop-and-Frisks**

The stop-and-frisk, or *Terrystop*, is when an officer stops an individual and “frisks” the exterior of the person’s clothes to ascertain if the person has a weapon prior to or while questioning. A prerequisite to a stop-and-frisk is the officer forming an objective, reasonable suspicion that a crime has been committed.¹⁰⁴ This is arguably one of the easiest police tactics with potential for misuse, as it requires snap judgments in which biases, implicit and explicit, easily contribute to decision-making, regardless of intention.¹⁰⁵ In fact, under the stop-and-frisk doctrine, civilians have claimed to have been sexually assaulted, verbally abused, and repeatedly humiliated in public spaces.¹⁰⁶ Some may find this social cost tolerable if it means that criminal activity is identified and addressed, but this tactic rarely bears fruit.¹⁰⁷

IV. **CONCLUSION**

Changing attitudes, building intricate systems of partnership, and interrupting decades of incentivized militarization of law enforcement agencies are all extremely difficult tasks individually—even more daunting when considered together. However, collaboration and cultural shifts can overcome both the systemic and individual challenges of shifting to a harm reduction, person-centered response to drug misuse and addiction. Rebuilding community trust in police will not only increase police legitimacy but improve safety for citizens and law enforcement alike.

Addressing and redressing historically racialized methods of drug enforcement are essential to effective implementation of harm reduction programs and to rebuilding trust and relationships with the community. **“Instead of a system designed and implemented to control (or even eradicate) drugs and drug use, the criminal regulation of drugs targets one subset of potential offenders. The resultant legal regime has therefore become less a mechanism for social reform than a means of criminal social control.”**¹⁰⁸ Those “potential offenders” are historically black and brown individuals often from impoverished communities: **“evidence suggests that illicit drug use or possession is not an epidemic confined to**

In their eagerness to combat drugs, the courts have departed from longstanding fourth, fifth, and fourteenth amendment protections.”).

¹⁰³ Dobrin et al., *supra* note 81, at 803.

¹⁰⁴ Terry v. Ohio, 392 U.S. 1, 29-30 (1968).

¹⁰⁵ Cooper, *supra* note 1, at 6.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Levin, *supra* note 23, at 2183-84.

communities of color; rather, arrests for illicit drug use is an epidemic largely focused in communities of color.”¹⁰⁹

Efforts toward policy and practice change in drug policy enforcement will be inadequate without robust methods for procedural justice and reconciliation that acknowledge the harms of past practices, allow for community input, and result in actual, everyday change that the community can see.¹¹⁰ “Specific types of policy changes that advance the agenda of trust building through procedural justice involve **reimagining the mission of the police, expanding the metrics of success, reevaluating policy, retraining officers, and changing internal procedures.**”¹¹¹

The preceding discussion calls for these exact types of policy and practice changes. Law enforcement agencies and the public must be willing to forego the status quo, reprioritize healthy communities over criminalization, and pursue harm reduction as fundamental tenets of their mission.

Directing federal and state drug enforcement incentives and the profits of civil asset forfeiture from militarization to drug treatment, harm reduction, and community building would serve dual purposes: disincentivizing profit motivated drug enforcement (which may allow or encourage police to focus less on drug-use enforcement and more on violent crime) and redressing the harms to communities, particularly communities of color, created by zealous enforcement. Decriminalization and de-prioritization of drug use, possession, and paraphernalia would dramatically reduce the perceived need for stop-and-frisk procedures that often result in racialized and disproportionate enforcement against communities of color. Stop-and-frisks are a product of the traditional policing models that have been proven both ineffective at curtailing illegal drug use and at achieving the alleged goal of the technique—generating useful evidence of a crime.

Research and real-world examples show that when law enforcement, community-organizations, and government come together to create collaborative systems to address substance abuse these systems can reduce recidivism, engage individuals in drug treatment, and rebuild trust between communities and police.

¹⁰⁹ *Id.* at 2181.

¹¹⁰ See Thomas C. O'Brien & Tom R. Tyler, *Rebuilding Trust Between Police & Communities Through Procedural Justice & Reconciliation*, 5 BEHAV. SCI. & POL'Y 35 (2020).

¹¹¹ *Id.* at 45.