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## #BLACKLIVESMATTER: FROM PROTEST TO POLICY

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### INTRODUCTION

In summer 2020, mass protests spread across the globe challenging police brutality and racial injustice and demanding change.

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Fueled by the Black Lives Matter (BLM) movement in the wake of the police murder of George Floyd, these protests drew 15 million to 26 million participants in the United States alone to participate in late May and June of 2020.<sup>1</sup> The sheer scale of these protests made them the largest movement in U.S. history.<sup>2</sup> While there has been some consensus that this unprecedented protest movement pushed social awareness and changed the national conversation around race,<sup>3</sup> existing research has yet to clearly document the extent to which it affected law and policy on the federal, state, and local levels. We begin to fill this gap by documenting the correlation between the online and offline protest activity, and showing the relationship between the location and intensity of protest activity and the initial wave of legal and policy change.

In this Article, we use Twitter conversation and protest data to show how BLM fueled global protests that changed minds, hearts, and the baseline understanding of inequality in ways that could also ultimately drive legal and policy change.<sup>4</sup> We have previously presented a model (see Figure 1) based on use of the hashtag #BlackLivesMatter that illustrates how modern-day social movements can build social awareness, shift cultural understandings, and make progress toward structural change.<sup>5</sup> This model incorporates both external conditions like the pandemic and anti-movement backlash with four levels of action that attempt to capture the process of how a movement transitions from social media conversation to the ultimate goal of structural change. We return to this model here to examine the

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1. Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/LS3F-J9GZ>].

2. *Id.*

3. Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter—Getting from Contemporary Social Movements to Structural Change*, 12 CAL. L. REV. ONLINE (SPECIAL ISSUE) 1 (June 2021), <https://www.californialawreview.org/blacklives-matter-getting-from-contemporary-social-movements-to-structural-change> [<https://perma.cc/37WQ-LM8R>]; Char Adams, *A Movement, a Slogan, a Rallying Cry: How Black Lives Matter Changed America's View on Race*, NBC NEWS (Dec. 29, 2020), <https://www.nbcnews.com/news/nbcblk/movement-slogan-rallying-cry-how-black-lives-matter-changed-america-n1252434> [<https://perma.cc/UY85-FA3D>].

4. We use protest data and Twitter data in our analysis to empirically explore how social media was leveraged to share information and coordinate protests. The protest data was collected using the Crowd Counting Consortium which captures all the protests after George Floyd's death. For the Twitter data, we used the Twitter Streaming API to collect posts containing the hashtag #BlackLivesMatter. While collection began in 2018, this study looks at different subsets of posts (tweets, retweets, and quotes) from May 15, 2020 to January 15, 2021. We use these data to measure daily and overall volume of conversation and topics of discussion relevant to this Article.

5. Williams et al., *supra* note 3, Figure 3; *see infra* Figure 1.

link between the second (yellow) and fourth (blue) levels in particular, focusing on the relationship between protest and activism in the summer of 2020 and legal and policy changes occurring across states and cities over the following year. The model shows how protests and allied activism build social awareness and political pressure, which are necessary conditions for building support for more sustainable policy change.

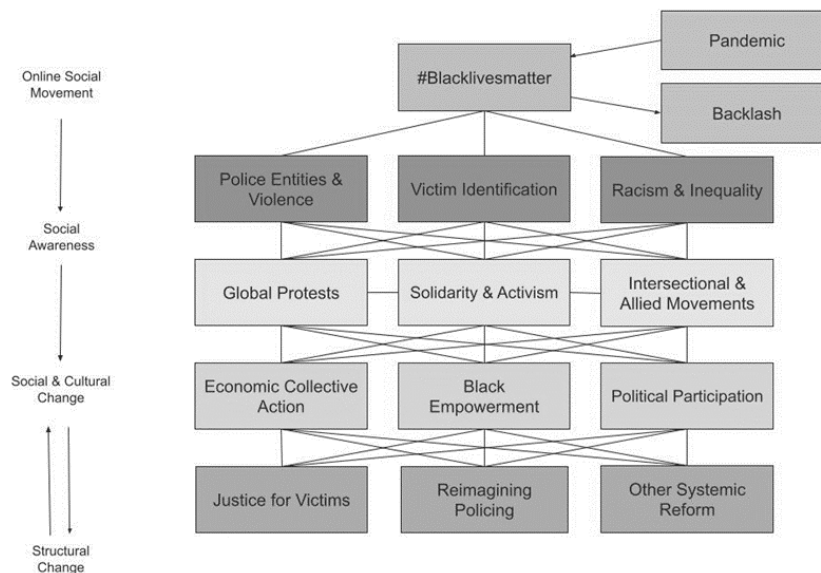


Figure 1. The Anatomy of the Black Lives Matter Movement<sup>6</sup>

Social media movements tend not to have staying power and the window for the change they advocate is small.<sup>7</sup> BLM has already defied the odds of online movements with its ability to inspire a massive online discussion and then mobilize that social media conversation into significant activism offline.<sup>8</sup> As we noted previously, by linking social media sophistication and traditional organizing work, BLM built “a dynamic model of online and offline activism capable of structural

6. Reprinted from Williams et al., *supra* note 3. Figure 1 available in color at Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter From Protest to Policy 3* (Dec. 7, 2021) (manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3980106](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980106).

7. Edward Vargas, Loren Collingwood & Jason Morin, *Unfair Detention: How Protests Activated Group Empathy to Shift Attitudes on Child Detention* (Nov. 7, 2019) (Panel Paper at 41st Annual Fall Research Conference “Rising to the Challenge: Engaging Diverse Perspectives on Issues and Evidence”) (unpublished manuscript) (on file with the authors).

8. Williams et al., *supra* note 3.

change.”<sup>9</sup> But legal change and broader cultural change take time and tenacity, and empirical research has shown that while empathy shifts after protests and activism, attitudes are likely to revert back.<sup>10</sup> Douglas McAdam, professor emeritus at Stanford University and an expert on social movements, said at the time that the protests seemed to be “achieving what very few do: setting in motion a period of significant, sustained, and widespread social, political change . . . . We appear to be experiencing a social change tipping point—that is as rare in society as it is potentially consequential.”<sup>11</sup>

We find that the protests of 2020 did indeed begin a paradigm shift in the social awareness of racialized police violence, and this important and significant social change has in turn already inspired political change and some degree of legal and policy change.<sup>12</sup> However, the movement remains in a precarious position and it is uncertain how enduring these changes will be. While many state legislators and local officials have responded to the protests with policy reforms, policy action at the federal level is mostly stalled. In addition, it is unclear whether the state and local policy changes will lead to the deeper and lasting structural changes sought by the movement. We are also observing substantial backlash policy that threatens to not only derail current racial justice efforts, but also exacerbate the underlying inequalities that the movement opposes.

In Part I, we offer an analysis of the 2020 protests, including the critical role of social media in building the protests themselves as well as the policy demands that the protests helped to broadcast. In Part II, we assess the policy activity occurring within the first year following this historic level of activism in the United States, looking specifically at where and when legislators responded to three different kinds of movement demands: individual accountability, institutional changes, and broader systemic reform.

## I. BUILDING THE PROTESTS ONLINE AND ON THE GROUND

The yellow categories (level 2) in our model represent the on-the-ground responses to BLM organizing after George Floyd’s killing and demonstrate the synergies between online conversation and off-line actions. The scale of the 2020 protests were only possible because of the effective communication, energy, and activism that had

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9. *Id.*

10. Loren Collingwood, Nazita Lajevardi & Kassra A. R. Oskooii, *A Change of Heart? Why Individual-Level Public Opinion Shifted Against Trump’s “Muslim Ban,”* 40 POL. BEHAV. 1035, 1059 (2018).

11. Buchanan et al., *supra* note 1.

12. Williams et al., *supra* note 3.

already been generated online.<sup>13</sup> In this Part, we show the connection between the online and offline activism in the summer of 2020 by detailing what the Twitter conversation revealed about the protests, what the protests looked like on the ground, and the relationship between the online and offline activity.

*A. Protests Online: The Twitter Conversation About Protests and Locations*

The coordination of the online conversation with offline activism created a synergy that enhanced the scope and persistence of the protests.<sup>14</sup> Across the globe, individuals from all races, ages, and socioeconomic status took to social media and the streets to collectively express their outrage and solidarity.<sup>15</sup> For example, between the beginning of May and the end of June 2020, there were over 12 million #BlackLivesMatter posts on Twitter that mentioned one or more protest-related hashtags, keywords, or locations.<sup>16</sup> BLM also found an expanded network of organizational allies in the LGBTQ rights movement, the women's rights movement, and in numerous advocacy organizations of other marginalized groups.<sup>17</sup> Corporations, universities, Members of Congress, and other high-powered institutions also spoke out and pledged to do their part in dismantling systemic racial inequality.<sup>18</sup> Social media facilitated the alliances, protests, and political activism, highlighting the breadth and depth of the growing community of supporters.<sup>19</sup>

An analysis of #BlackLivesMatter tweet volume and U.S. protest activity during the roughly one-month peak, from May 25 to June 30, 2020, shows how the Twitter conversation took off on May 26 and fueled and informed the protests that spread over the next few days. Figure 2 displays the volume of #BlackLivesMatter tweets related to a protest keyword, hashtag, or location (blue/light gray) and the number of people participating in protests (red/dark gray) on each day.<sup>20</sup> During this time, there was a strong correlation between

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13. *Id.*

14. *Id.*

15. *Id.*

16. To understand the online conversation related specifically to protests, we created a topic containing different words and hashtags that signify discussion about the protest topic. We began by identifying words that frequently co-occurred with #BlackLivesMatter. Experts on our team then selected the subset that indicated discussion of protests. We also added city locations where larger protests occurred using the Crowd Counting Consortium data. We then identified words that frequently occurred with the cities to ensure that no important words were excluded.

17. Williams et al., *supra* note 3.

18. *Id.*

19. *Id.*

20. See *infra* Figure 2 (based on Twitter analytics for #BlackLivesMatter posts

tweet volume and number of protesters (Pearson correlation = 0.74). We see that the daily volume of protest-related tweets exceeded 100,000 on all but two days between May 26 and June 30.<sup>21</sup>

The two largest volume days on Twitter were May 30 and June 6.<sup>22</sup> May 30 was the day that protests took place in over 300 cities, demanding all the officers involved in the Floyd killing be arrested.<sup>23</sup> On June 6, protests took place in over 420 cities (with many of those cities hosting multiple protests at the same time in different parts of the city).<sup>24</sup> Cities where protests drew 10,000 or more participants included Philadelphia, Chicago, New York, Jacksonville, Providence, and Washington D.C.<sup>25</sup> What is notable about these two Twitter conversation peaks is that there was significant volume on both the day before and the day after each peak (over 600,000 on May 29 and over 700,000 on June 5), suggesting that protest planning was occurring online, as were conversations about the protests after they occurred.<sup>26</sup> In this sense, social media not only plays an important role in information sharing, but also in reinforcing protest activity and messaging as well as in increasing awareness.

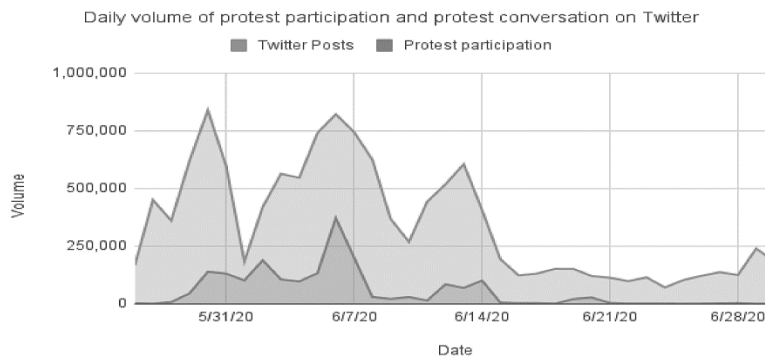


Figure 2. Daily Volume of Protest Participation and Protest Conversation on Twitter (United States)<sup>27</sup>

between May 25, 2020 to June 30, 2020).

21. *Id.*

22. *Id.*

23. *May 2020 Crowd Data*, CROWD COUNTING CONSORTIUM (2020), <https://sites.google.com/view/crowdcountingconsortium/view-download-the-data> [<https://perma.cc/HMB7-9LXP>] (follow “View” hyperlink for “May 2020 Crowd Data”).

24. *June 2020 Crowd Data*, CROWD COUNTING CONSORTIUM (2020), <https://sites.google.com/view/crowdcountingconsortium/view-download-the-data> [<https://perma.cc/HMB7-9LXP>] (follow “View” hyperlink for “June 2020 Crowd Data”).

25. *Id.*

26. *See infra* Figure 2.

27. Figure 2 available in color at Jamillah Bowman Williams, Naomi Mezey & Lisa

In order to further explore the Twitter conversation about the BLM protests, we used over 700 words and hashtags as representative words for protests. Some words were related to logistics (today, tomorrow, meet, happening). Others were locations or meeting places (NYC, Oakland, park, square, street), and others focused on protest words themselves (march, vigil, protest, protester) and the atmosphere and details of the protests (peaceful, thousands). Figure 3 shows a word cloud of the words that were mentioned at least 100,000 times.<sup>28</sup> The most frequently used words were general protest words (protest, protesters, people, march) and logistics words (today, going, time).<sup>29</sup> The high frequency words and hashtags help show the dynamic relationship between online and offline activism, with social media being used to organize protests locally, react in real time, and to further the impact of the protests by continuing the conversation and activism online.



Figure 3. Protest Words that Occurred with #BlackLivesMatter at Least 100,000 Times<sup>30</sup>

### B. Protests on the Ground

During the summer of 2020 there were multiple protests in every U.S. state, in hundreds of U.S. cities, and around the world.<sup>31</sup>

Singh, #BlackLivesMatter From Protest to Policy 6 (Dec. 7, 2021) (manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3980106](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980106).

28. See *infra* Figure 3.

29. See *id.*

30. Figure 3 available in color at Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, #BlackLivesMatter From Protest to Policy 7 (Dec. 7, 2021) (manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3980106](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980106).

31. Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Mar. 28, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html> [<https://perma.cc/J9Y8-TGVR>]; Williams et al., *supra* note 3.



According to polls taken during June 2020, there were protests in forty percent of U.S. counties and almost all of those counties were majority white.<sup>32</sup> In this section, we focus on what we know about the most significant protest activity on the ground, including the location and scale of the protests, the local activism they promoted, and the allies they brought together.<sup>33</sup>

### 1. States

Figure 4 shows three heatmaps of the protest data, aggregated by state.<sup>34</sup> In total, there were 6,987 protests for racial justice across the United States from late May through June 2020.<sup>35</sup> Figure 4A shows the number of people who attended the protests. Figure 4B shows the number of people adjusted based on the population of each state. This percentage represents the proportion of people in each state who attended the protests. Finally, Figure 4C shows the number of protests in each state. All fifty states had multiple protests during this one-month period, a clear indication of a widespread and urgent demand for action on and accountability for racial injustice at the individual, institutional, and systemic levels.<sup>36</sup> California had the most protests (914), followed by New York (750), Pennsylvania (483), Texas (289), and Florida (255).<sup>37</sup> In terms of participation, California also had the highest number of attendees (244,901), followed by New York (240,071), Pennsylvania (145,380), Washington (135,617), and Texas (123,756).<sup>38</sup> When we look at the participation adjusted for the population (Figure 4B), we see higher levels of participation in the northeast and the northwest, but we also see more clearly how significantly widespread protest participation was throughout the country.

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32. Buchanan et al., *supra* note 1 (noting that, unlike prior racial justice protests, “nearly 95 percent of counties that had a protest recently are majority white, and nearly three-quarters of the counties are more than 75 percent white”).

33. Except where noted, we use data from the Crowd Counting Consortium to assess the number of protests and the number of protesters in both U.S. states and cities. *See supra* note 23; *supra* note 24.

34. *See infra* Figure 4. Heat maps created using data from Crowd Counting Consortium.

35. *May 2020 Crowd Data*, *supra* note 23; *June 2020 Crowd Data*, *supra* note 24 [collectively, hereinafter *May & June 2020 Crowd Data*].

36. *June 2020 Crowd Data*, *supra* note 24.

37. *Id.*

38. *May & June 2020 Crowd Data*, *supra* note 35.



Figure 4. Heatmaps of the Number of Protests (4C), the Number of Protesters (4A), the Number of Protesters Adjusted by Population (4B) from May 26, 2020 through June 30, 2020. Darker colors indicate higher counts or proportions.<sup>39</sup>

## 2. Cities

Because in-person activity is always local, even in the context of a global movement, much of the Twitter conversation and the protests were focused on cities and towns.<sup>40</sup> For that reason, we identified the top ten cities for protest attendance as well as a few “over-performing” cities where protest attendance was significant relative to their populations. The top ten cities by number of attendees were New York, Washington D.C.,<sup>41</sup> Seattle, Philadelphia, Houston, Los Angeles, Portland, Chicago, Nashville, and Providence. New York City had over 150,000 protesters, Seattle and Washington D.C. had over 100,000 protesters, and Philadelphia, Houston, and L.A. had

39. Figure 4 available in color at Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, #BlackLivesMatter From Protest to Policy 9 (Dec. 7, 2021) (manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3980106](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980106).

40. Based on authors’ own Twitter data and analysis.

41. In general, we use the low estimate attendance number provided by the Crowd Counting Consortium as a conservative measure of the attendance. The one exception is Washington D.C. The median of the range between minimum and maximum attendance provided by the Crowd Counting Consortium across all the protests across all the cities was 100 and the average range was 1,120. That skew is a result of the attendance range for June 6, 2020 in Washington, D.C. The range for that date is 190,000. Therefore, for this Article, we use the average of the low and high estimate for D.C. on June 6, but the low estimate for the remaining days. Therefore, for this Article, the total attendance for D.C. is 114,600.

between 55,000–70,000 protesters in attendance.<sup>42</sup> The most noteworthy over-performing cities were Washington D.C., Providence, and Minneapolis.<sup>43</sup>

The cities with the highest number of protesters all had multiple protests at multiple locations within each city.<sup>44</sup> For example, New York City, where over 600 separate protests were held throughout the summer, saw about 470 protests before the end of June.<sup>45</sup> There were protests in every borough and on many days there were simultaneous protests in different locations, with notable gatherings and marches in Times Square, Union Square, Foley Square, Washington Square, Brooklyn's Borough Hall and Barclay's Center, the Brooklyn Bridge, the Bronx and Queens courthouses, and Conference House in Staten Island.<sup>46</sup>

Likewise, there were multiple daily protests in Washington D.C., which had about 100 separate protests, and Seattle, which had about 50.<sup>47</sup> In both D.C. and Seattle, protests were spread across the city, but ultimately came to be consolidated in and popularly associated with one location.<sup>48</sup> In D.C. that was Black Lives Matter Plaza, where 16th Street meets Lafayette Square in front of the White House.<sup>49</sup> On June 1, 2020, Donald Trump used this site for his infamous Bible photo-op, for which the U.S. Park Police and the National Guard used tear gas and rubber bullets to forcibly clear the area so that Trump could walk to St. John's Church, hold up a Bible, and declare his control over the streets and his commitment to law and order.<sup>50</sup>

42. *May & June 2020 Crowd Data*, *supra* note 35.

43. Much smaller over-performing cities included Asbury Park, New Jersey; Troy, New York; Beverly Hills, California; Corvallis, Oregon; Montpelier, Vermont; Evanston, Illinois; and Bozeman, Montana.

44. *May & June 2020 Crowd Data*, *supra* note 35.

45. *Id.*

46. *Id.*

47. *Id.*

48. See Marcus Harrison Green, *What Really Happened in CHOP?*, SEATTLE MET (June 8, 2021), <https://www.seattlemet.com/news-and-city-life/2021/06/history-of-chop-capitol-hill-protests-seattle> [<https://perma.cc/C22K-NAMK>].

49. Aaron Rugar, *What the New IG Report About the Gassing of Protesters Around Lafayette Square Actually Says*, VOX (June 11, 2021), <https://www.vox.com/2021/6/11/22527796/ig-report-trump-bible-lafayette-square-protest> [<https://perma.cc/6ZB5-4QT7>].

50. Tom Gjelten, *Peaceful Protesters Tear-Gassed to Clear Way for Trump Church Photo-Op*, NPR (June 1, 2020), <https://www.npr.org/2020/06/01/867532070/trumps-un-announced-church-visit-angers-church-officials> [<https://perma.cc/M5Q7-6HHD>]. A year later, the Interior Department's Inspector General released a report claiming that the area was not cleared for Trump's photo but in order to install fencing. Dan Mangan, *Trump Bible Photo Op Not Reason Cops Violently Cleared George Floyd Protest Outside White House, Feds Claim*, CNBC (June 9, 2021), <https://www.cnbc.com/2021/06/09/protesters-cleared-outside-white-house-for-fence-not-trump-photo-op.html> [<https://perma.cc/963R-QELU>].

The event was widely criticized,<sup>51</sup> and in response D.C. Mayor Muriel Bowser had the words “Black Lives Matter” painted over two blocks of 16th Street in yellow street paint.<sup>52</sup> Officially renamed “Black Lives Matter Plaza,” the site has been added to the long list of tourist destinations in the nation’s capital.<sup>53</sup>

Similarly, in Seattle, a six-block section of the Capitol Hill neighborhood around Cal Anderson Park was the focus of protests in the city.<sup>54</sup> Known as CHOP (an acronym for the Capitol Hill Organized Protest or Capitol Hill Occupied Protest), the area is close to the Seattle Police Department’s East Precinct headquarters where a series of clashes between protesters and police occurred during the first week of June 2020.<sup>55</sup> In response to the confrontations, Mayor Jenny Durkan ordered police to abandon the East Precinct in an attempt to de-escalate the situation.<sup>56</sup> Protesters moved in and occupied CHOP for the rest of June.<sup>57</sup>

### 3. Activism & Allies

Not only are protests and marches always local, but even in the context of a national and global movement for racial justice, such as BLM, some of the activism at these protests were clearly about local politics and local police.<sup>58</sup> In fact, in some prominent cases they became battles between mayors and President Trump over public

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51. See Matt Flegenheimer, *What Democracy Scholars Thought of Trump’s Bible Photo Op*, N.Y. TIMES (June 2, 2020), <https://www.nytimes.com/2020/06/02/us/politics/trump-holds-bible-photo.html> [<https://perma.cc/D2PD-5QZW>]; Garrett Epps, *Trump’s Grottesque Violation of the First Amendment*, ATLANTIC (June 2, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/trumps-grottesque-violation-first-amendment/612532> [<https://perma.cc/M74E-DHJ5>]; Rebecca Shabad, Geoff Bennett, Monica Alba & Shannon Pettypiece, *‘The Bible Is Not a Prop’: Religious Leaders, Lawmakers Outraged Over Trump Church Visit*, NBC NEWS (June 2, 2020), <https://www.nbcnews.com/politics/politics-news/religious-leaders-lawmakers-outraged-over-trump-church-visit-n1221876> [<https://perma.cc/T8NV-YE9U>].

52. Adam K. Raymond, *Huge ‘Black Lives Matter’ Mural Painted on Street Leading to White House*, N.Y. MAG. (June 5, 2020), <https://nymag.com/intelligencer/2020/06/black-lives-matter-mural-painted-on-street-to-white-house.html> [<https://perma.cc/S9TB-FX9Z>].

53. *Guide to Black Lives Matter Plaza*, WASH. DC, <https://washington.org/visit-dc/black-lives-matter-plaza> [<https://perma.cc/UB6D-G4UN>] (last visited Nov. 4, 2021).

54. Green, *supra* note 48.

55. *Id.*

56. *Id.*

57. *Id.* (local activists, participants, and reporters noted the cleanliness of the area and the communal living, with tents dedicated to a kitchen, medical assistance, mutual aid, political education, art and programming, and to those who were already in the park and unhoused).

58. See, e.g., *id.*

safety.<sup>59</sup> As an example, CHOP, which also became known in national and social media as the Capitol Hill Autonomous Zone (CHAZ), joined a long tradition of populist political occupations, of which Occupy Wall Street in New York City is one of the more recent examples.<sup>60</sup> As such, the protesters at CHOP used the occupation as an opportunity to make political demands. Among other things, they demanded a fifty percent defunding of the city police department and a redistribution of those funds to other community services; also, more broadly, they demanded reparations to victims of police violence.<sup>61</sup> Although much of the focus in Seattle was on the local police budget and policing tactics, the online conversation and media coverage amplified these issues so that they contributed to the national debate over reimagining policing as an institution. According to the Washington Post, “The mostly peaceful occupation became a flash point in the national debate over police brutality and the funding of police departments.”<sup>62</sup>

Seattle and CHOP, along with Washington D.C., became part of a debate about localism and the political power of cities.<sup>63</sup> These debates often played out in the national media as the pugilistic president sought to belittle and threaten Democratic mayors.<sup>64</sup> Mayors in turn fought back. Black Lives Matter Plaza was one such response, with Mayor Bowser’s chief of staff tweeting: “There was a dispute this week about whose street this is. Mayor Bowser wanted to make it abundantly clear that this is D.C.’s street and to honor demonstrators who (were) peacefully protesting.”<sup>65</sup> Likewise, a couple of

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59. See, e.g., *id.*

60. *Understanding Autonomous Zones, Starting with Seattle’s CHOP*, WASH. POST (July 14, 2020) [hereinafter *Understanding Autonomous Zones*], [https://www.washingtonpost.com/video/national/understanding-autonomous-zones-starting-with-seattles-chop/2020/07/14/00cb6659-6407-442d-aaf0-27a084aeb748\\_video.html](https://www.washingtonpost.com/video/national/understanding-autonomous-zones-starting-with-seattles-chop/2020/07/14/00cb6659-6407-442d-aaf0-27a084aeb748_video.html) [<https://perma.cc/2LB2-DFTC>].

61. *Id.*

62. *Id.*

63. *Id.*

64. See, e.g., Zolan Kanno-Youngs, Jennifer Steinhauer & Kenneth P. Vogel, *D.C.’s Mayor Fights for Control of Her City at Trump’s Front Door*, N.Y. TIMES (June 5, 2020), <https://www.nytimes.com/2020/06/05/us/politics/muriel-bowser-trump.html> [<https://perma.cc/AB3C-DFCT>].

65. Raymond, *supra* note 52 (quoting Bowser’s chief of staff John Falcicchio); see also Green, *supra* note 48 (Trump tweeted at Durkan, “Take back your city NOW. If you don’t do it, I will.”). In one early example, after three days of chaotic protests in Minneapolis, Trump Tweeted:

I can’t stand back & watch this happen to a great American City. A total lack of leadership. Either the very weak Radical Left Mayor, Jacob Frey, get his act together and bring the City under control, or I will send in the National Guard & get the job done right.

Taylor, *supra* note 31.

shootings near CHOP generated debate about the control over public safety, spurring disputes about whether the National Guard, local police, or protesters themselves could best keep neighborhoods and protests safe.<sup>66</sup> Six mayors, including Bowser and Durkan, sent a letter to Congress in July 2020 seeking its assistance in preventing the Trump administration from “sending ‘unidentified federal agents to operate with impunity’ in cities” without local consent.<sup>67</sup>

At the same time that mayors, and sometimes governors, were being targeted by Trump or managing federal intervention, they were also facing criticism from local activists who challenged police practices during the protests as well as police budgets and policies more broadly.<sup>68</sup> In this sense mayors and governors were often caught in the political cross-hairs. It is not surprising then that both “mayor” and “governor” show up as frequently used words in discussions of policy change on Twitter.<sup>69</sup>

The protests throughout the summer of 2020 resulted not only from the organizing power of BLM, but through the efforts of numerous organizations and the coming together of many allies.<sup>70</sup> A few prominent national organizations were involved in almost all of the top ten cities through the presence and work of their local chapters, with BLM being the most widespread.<sup>71</sup> In addition, protests in the top cities benefited from an abundance of smaller local organizations pitching in.<sup>72</sup> In all, more than 150 local entities were

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66. See *Understanding Autonomous Zones*, *supra* note 60.

67. Alana Wise, *Mayors Demand Congress Block Trump From Deploying Federal Agents to Cities*, NPR (July 27, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/27/895904023/mayors-demand-congress-block-trump-from-deploying-federal-agents-to-cities> [<https://perma.cc/D8T9-RWZX>].

68. See Samantha Schmidt, Jessica Contrera, Rebecca Tan, Hannah Natanson & John Woodrow Cox, *Protesters Throng D.C., Vowing to Be Heard after George Floyd’s Death*, WASH. POST (June 7, 2020), [https://www.washingtonpost.com/local/protesters-gather-for-massive-day-of-rallies-in-dc/2020/06/06/92cd6838-a6cb-11ea-bb20-ebf0921f3bbd\\_story.html](https://www.washingtonpost.com/local/protesters-gather-for-massive-day-of-rallies-in-dc/2020/06/06/92cd6838-a6cb-11ea-bb20-ebf0921f3bbd_story.html) [<https://perma.cc/W4RT-DMPF>] (focusing on the experience of Mayor Bowser in D.C.).

69. See *infra* Figure 6.

70. *May & June 2020 Crowd Data*, *supra* note 35.

71. See, e.g., *May 2020 Crowd Data*, *supra* note 23.

72. See, e.g., Monica Morales, *Brooklyn Community Organizer Inspiring a New Generation to Attend Rallies and Protests*, PIX11 (June 15, 2020), <https://pix11.com/news/local-news/brooklyn/brooklyn-community-organizer-inspiring-a-new-generation-to-attend-rallies-and-protests> [<https://perma.cc/9X8J-ETW2>] (reporting on organizing efforts of Black Liberated Queens and Kings); Callie Craighead, *Juneteenth Marches, Rallies Planned Across Seattle*, SEATTLE P-I (June 18, 2020), <https://www.seattlepi.com/local/seattlenews/article/Juneteenth-marches-rallies-planned-across-Seattle-15349607.php> [<https://perma.cc/QT5Z-D6QA>] (reporting on protest organized by Not This Time).

involved in protest organizing.<sup>73</sup> These groups were usually specific to each city, but often included Black clergy members,<sup>74</sup> the NAACP and the Hispanic Federation,<sup>75</sup> local healthcare workers,<sup>76</sup> and even local cyclists.<sup>77</sup> Many local organizations were ideological in nature, and included smaller alternative political parties, state and local socialist organizations, and a few Communist Party groups.<sup>78</sup> Notably, the many smaller organizations tended to contribute by organizing their members to hold smaller protests, whereas the larger protests usually had some BLM involvement, but largely consisted of unaffiliated protestors.<sup>79</sup>

### *C. Relationship Between Online Protest Conversation and on-the-Ground Protests*

While both the online conversation and the on-the-ground protests were independently significant, this section shows that a temporal relationship existed between the two. We began by considering the temporal discussion about protests on Twitter in cities with large protest participation.

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73. This analysis is based on data provided by the Crowd Counting Consortium. See CROWD COUNTING CONSORTIUM, <https://sites.google.com/view/crowdcountingconsortium/view-download-the-data> [<https://perma.cc/GY6G-BFQA>] (last visited Nov. 4, 2021).

74. See, e.g., Michelle Boorstein & Michael Laris, *Thousands Join in Sunday Prayer and Protest in Front of the White House*, TELEGRAPH (June 14, 2020), <https://www.thetelegraph.com/news/article/Thousands-join-in-Sunday-prayer-and-protest-in-15339099.php> [<https://perma.cc/S3HT-8B7H>].

75. See, e.g., Jane Recker, *Here's What You Need to Know About Al Sharpton's March on Washington*, WASHINGTONIAN (Aug. 18, 2020), <https://www.washingtonian.com/2020/08/18/heres-what-you-need-to-know-about-al-sharptons-march-on-washington> [<https://perma.cc/7LM4-KMKV>].

76. See, e.g., *Black Lives Matter Protest Focuses on Youth and Medicine*, ABC6 (June 14, 2020), <https://www.abc6.com/thousands-gather-for-youth-organized-protest-at-state-house> [<https://perma.cc/495H-TZE2>].

77. See, e.g., Luz Lazo, *New Yorkers Are Biking For Lives—And to End Disparities in Cycling*, WASH. POST (Aug. 26, 2021), [https://www.washingtonpost.com/local/traffic-andcommuting/bike-to-dc/2020/08/26/7ebb1aee-e60d-11ea-97e0-94d2e46e759b\\_story.html](https://www.washingtonpost.com/local/traffic-andcommuting/bike-to-dc/2020/08/26/7ebb1aee-e60d-11ea-97e0-94d2e46e759b_story.html) [<https://perma.cc/868V-E2ZQ>].

78. See, e.g., New York Community Action Project, La Lucha for Socialism & International Action Center, *Stop Police Crimes! Withdraw Federal Troops! Community Control NOW!*, FACEBOOK (Sept. 19, 2020), <https://www.facebook.com/events/union-sq-s-new-york-ny-10003-united-states/stop-police-crimes-withdraw-federal-troops-community-control-now/3262056190581447> [<https://perma.cc/LHE4-C79T>].

79. See, e.g., Sanya Mansoor, *From Donating to Volunteering: Here's How to Support Black Lives Matter, Protesters and Equality Initiatives*, TIME (Aug. 26, 2021), <https://time.com/5849721/how-to-help-black-lives-matter-protests> [<https://perma.cc/F9GP-XXUW>].

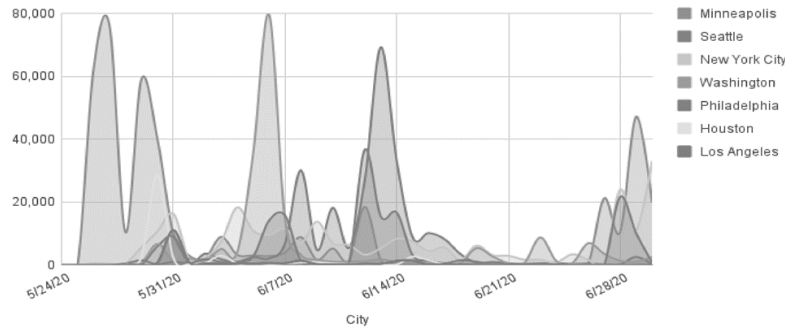


Figure 5. Tweet volume in cities with large protest volume<sup>80</sup>

Figure 5 shows the tweet volume for the cities with the largest protest turnout and Minneapolis, where George Floyd was killed.<sup>81</sup> The x-axis shows the date and the y-axis shows the tweet volume. Each line and corresponding area show the volume of tweets for each city from May 24, 2020, through June 30, 2020. We see that different cities have different conversation trends. Cities like New York (yellow) have a more stable, constant level of discussion about protests. This is likely because of the large number of protests in the city over the time period. On the other hand, some other cities like Minneapolis (blue), Washington (green), and Seattle (red), have more concentrated peaks of conversation around the dates of the larger protests.

To better understand this variation, we conducted a correlation study to determine whether or not a relationship existed between protest participation and the volume of tweets in ten cities with a particular focus on *leads* and *lags*. A *lead* refers to tweets occurring before protests. For example, a three-day lead means that we map a city's tweet volume on a specific day to the number of protesters in the city three days later. A *lag* refers to an increase in the number of protesters gathering before an increase in the tweet volume. For example, a one-day lag means that we map the number of protesters on a specific day to the number of protest tweets one day later. We computed the cross correlation between time series of tweets discussing a particular location and #BlackLivesMatter and protest numbers with different leads and lags to determine (1) if a relationship existed between these two time series, and (2) if one of the time

80. Figure 5 available in color at Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, #BlackLivesMatter From Protest to Policy 14 (Dec. 7, 2021) (manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3980106](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980106).

81. See *supra* Figure 5.



series happened before or after the other. We hypothesized that social media communications would lead protests in areas where organizers were trying to galvanize more participation or plan future protests; that they would have no lead or lag when those participating were sharing their experience (and incidents taking place) with others online in real time; and that tweet volume would lag when protesters and others recalled and discussed the protests after the fact.

Table 1 shows the correlation analysis for seven cities which include the six cities with the highest number of people protesting as well as Minneapolis, which was where the protests began, and which over-performed in terms of population.<sup>82</sup> We computed the Pearson correlation for different leads and lags. The numbers presented show the highest correlation for each city. *None* indicates that the correlation was computed without a lead or a lag, meaning the tweet volume and protester count are for the same day.

We find that Twitter conversation about protests led on-the-ground protest participation in Houston, Minneapolis, Washington D.C., and New York City. All of these correlations are statistically significant. In other words, tweet volume increased before protest volume in these cities, indicating that protest organizers were using social media as a tool to increase activism and participation in protests. Seattle, Philadelphia, and Los Angeles have weaker correlations that are not statistically significant. For these three cities the conversation online sometimes led the protests, but sometimes lagged the protests. In other words, people were discussing the protest before it happened, while it was happening, and after it was over.

TABLE 1. CORRELATION BETWEEN PROTEST CONVERSATION ON SOCIAL MEDIA AND PROTEST ATTENDANCE IN DIFFERENT CITIES

City	Lead/Lag	Pearson Correlation
Houston	Lead = 3 days	0.982
Minneapolis	Lead = 4 days	0.473
Washington D.C.	Lead = 1 day	0.420
New York City	Lead = 3 days	0.343
Seattle	none	0.247

82. See *infra* Table 1.

City	Lead/Lag	Pearson Correlation
Philadelphia	Lag = 1 day	0.242
Los Angeles	Lead = 2 days	0.140

Part I begins to demonstrate the strong relationship between online and offline activity that fueled the protests and generated unprecedented attention to racial inequality and the particular vulnerability of Black lives. In Part II we look more closely at the content of the protesters grievances and demands and chart the initial policy responses to those demands. In both contexts, protests and social media served to sustain the conversation about #BlackLivesMatter, transform baseline understandings of systemic racism, and inspire some legal and policy change.

## II. PROTESTS AS CATALYSTS FOR LEGAL AND POLICY CHANGE

The activism following the death of George Floyd brought renewed attention to racial justice policy and other legal changes aimed at valuing and preserving Black life.<sup>83</sup> Beyond the common demands such as #stopkillingblackpeople and #endpolicebrutality, activists have pushed a range of legal, policy, and political changes.<sup>84</sup> The group empathy and attitude shifts fosters by the widespread protests have provided some reason for hope and optimism.<sup>85</sup> In the two weeks following George Floyd's death, sixty-seven percent of Americans expressed support for the #BlackLivesMatter movement, rising from forty-three percent in 2016.<sup>86</sup> Sixty-nine percent of Americans had conversations with their family or friends about racial equality.<sup>87</sup> Many also credit the movement for historic political mobilization, particularly among Black and young voters, who turned out in record

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83. See, e.g., Rachel Hatzipanagos, Marian Liu & Kanyakrit Vongkiatkajorn, *The Impact of George Floyd And Black Lives Matter Protests a Year Later*, WASH. POST (Aug. 26, 2021), <https://www.washingtonpost.com/nation/interactive/2021/george-floyd-protests-blm-impact> [<https://perma.cc/MC3B-MKDS>].

84. Based on authors' own Twitter data and analysis.

85. Based on authors' own Twitter data and analysis.

86. Kim Parker, Juliana Menasce Horowitz & Monica Anderson, *Amid Protests, Majorities Across Racial, Ethnic Groups Express Support for the Black Lives Matter Movement*, PEW RSCH. CTR.'S SOC. & DEMOGRAPHIC TRENDS PROJECT (June 12, 2020), <https://www.pewresearch.org/social-trends/2020/06/12/amid-protests-majorities-across-racial-and-ethnic-groups-express-support-for-the-black-lives-matter-movement> [<https://perma.cc/UM3E-GLHJ>].

87. *Id.*

numbers in November 2020.<sup>88</sup> This political empowerment is a key link between protest and policy change as illustrated by the green boxes(level 3) in Figure 1.<sup>89</sup>

We have already seen evidence that this heightened political engagement led to increased pressure on lawmakers.<sup>90</sup> Officials at all levels (mayors, governors, congressional representatives, and presidential candidates) were called out on social media.<sup>91</sup> For example, every U.S. Senator and House member was mentioned in at least one post containing #BlackLivesMatter, and in total they were mentioned over 112,000 times between May 15, 2020, and January 15, 2021.<sup>92</sup> A number of policymakers made headlines for participating in protests and for other statements of solidarity, including tweeting #BlackLivesMatter themselves.<sup>93</sup> But protest participation and statements of support are fleeting. The question remains: how long will the reckoning for racial justice command the attention of both the public and policymakers, and will the shift in empathy and awareness generated by the movement lead to concrete and enduring legal and policy change?

In this Part we examine the legal and policy changes that activists have proposed, discussed, and advocated for in protests and online activism. Our analysis of themes that emerged in the Twitter conversation led us to categorize these policy changes into three primary levels of change: demands for individual accountability, institutional changes, and broader systemic changes.<sup>94</sup> In doing so, however, we do not mean to suggest that these categories are clean or mutually exclusive. Indeed, there is substantial overlap between them. Figure 6 represents a more realistic image of the multilevel,

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88. See Charlotte Alter, *How Black Lives Matter Could Reshape the 2020 Elections*, TIME (June 17, 2020), <https://time.com/5852534/black-lives-matter-2020-elections-voting> [<https://perma.cc/R6TM-LKYM>].

89. See *supra* Figure 1.

90. Based on authors' own Twitter data and analysis.

91. *Id.*

92. *Id.*

93. Mitt Romney (@MittRomney), TWITTER (June 7, 2020, 6:30 PM), <https://twitter.com/MittRomney/status/1269758561720156160> [<https://perma.cc/GU6P-ARL6>] (Mitt Romney marched with protestors in Washington D.C., making him the first Senate Republican to do so); Muriel Bowser (@MurielBowser), TWITTER (June 5, 2020, 10:42 AM), <https://twitter.com/MurielBowser/status/1268916115809488896> [<https://perma.cc/PW4P-W38P>]; Kamala Harris (@KamalaHarris), TWITTER (May 30, 2020, 5:10 PM), <https://twitter.com/KamalaHarris/status/1266839402724163584> [<https://perma.cc/44UD-ZVKH>]; Alicia Lee, *Congressional Democrats Criticized for Wearing Kente Cloth at Event Honoring George Floyd*, CNN (June 8, 2020), <https://www.cnn.com/2020/06/08/politics/democrats-criticized-kente-cloth-trnd/index.html> [<https://perma.cc/6HY4-WVUR>].

94. See *supra* Figure 1. The categories of legal and policy outcomes we use are illustrated in blue (level 4) at the bottom of Figure 1.

interlocking, and overlapping policy changes that could address demands for racial justice.<sup>95</sup>

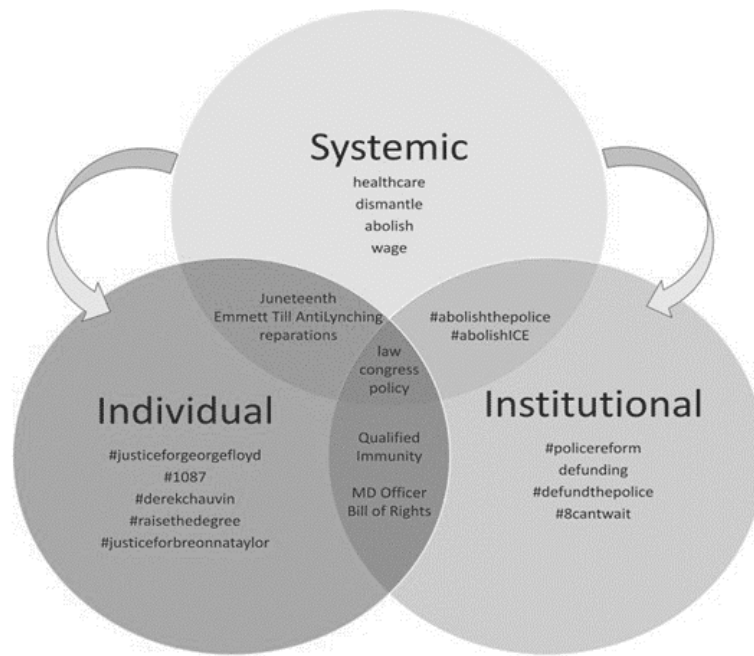


Figure 6. Multilevel Policy Demands for Racial Justice<sup>96</sup>

All three categories target the long-standing problem of racialized policing. Individual level accountability focuses on justice and legal remedies for the families of victims of police brutality, such as George Floyd and Breonna Taylor. These remedies often include legal accountability of the individual police officers responsible for the deaths. Institutional change focuses on reforming police practices and procedures through federal, state, and local level policy change, as well as the Black Lives Matter movement's central call to defund the police, one department at a time. And lastly, systemic change seeks

95. See *infra* Figure 6.

96. Figure 6 available in color at Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, #BlackLivesMatter From Protest to Policy 18 (Dec. 7, 2021) (manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3980106](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980106).

to get at the root of policing injustices, such as economic reform, reparations, and abolishing the police altogether.

To better understand and group these policy demands, we reviewed the words and hashtags activists used online alongside the hashtag #BlackLivesMatter. This allowed us to analyze the online conversations that were specific to legal and policy change, focusing on the period between May 1, 2020, and January 15, 2021. Overall, over 1 million tweets discussed different types of legal and policy change during this time period.<sup>97</sup> Figure 7 illustrates how we coded the online conversation. The hashtags and words are colored by the level of change and accountability demanded: individual (red), institutional (blue), and systemic (yellow). Each circle represents the volume of tweets containing both the #BlackLivesMatter hashtag and a specific keyword or hashtag that indicates conversation about the specific level of policy change.<sup>98</sup> The size of the circle is proportional to the number of tweets containing the word or hashtag.

Individual justice was the most prominent category on social media, with a pronounced focus on justice for George Floyd (#justiceforgeorgefloyd, #georgefloydwasmurdered, #raisethedegree) and Breonna Taylor (#justiceforbreonnataylor). With respect to institutional change, the most frequently used hashtags and keywords related to defunding the police (#defundthepolice, defunding) and to law and policy more broadly. The most frequently used keywords and hashtags specific to systemic change included those related to abolishing police departments (#abolishthepolice) and ICE (#abolishice). Reparations, healthcare reform, and wage/economic equity were topics of conversation, but were not discussed as extensively.

As Figure 6 shows, these categories often overlap so our coding is meant to highlight the variety of legal and policy approaches to racial justice. For example, government leaders (mayors, governors, representatives, congress) and general policy terms (law, policy) made up a significant part of the discussion. While these terms could apply to each of the categories we use, our analysis suggests that they were most often directed at institutional level change.

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97. See *infra* Figure 7.

98. Experts on the team manually curated a list of words and hashtags that were clear indicators of structural change. This curated list was developed using a list of high-volume words and phrases that co-occurred with #BlackLivesMatter, as well as traditional words that would be associated with each structural level.

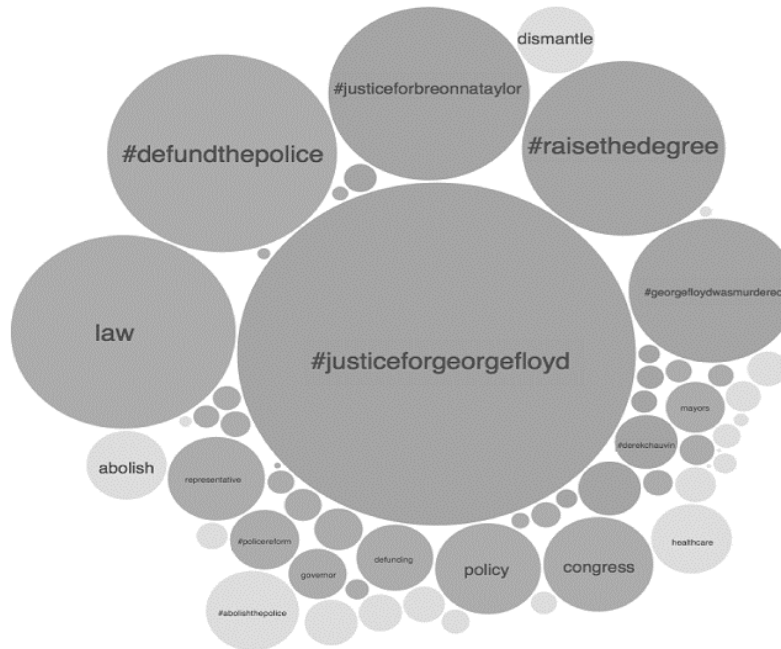


Figure 7. Hashtags and Keywords Used When Discussing Policy Change on Twitter<sup>99</sup>

The emphasis on these various types of policy change shifted over the months following the murder of George Floyd.<sup>100</sup> Figure 8 illustrates the temporal dynamics of the conversation about different levels of change. Using the same dataset as for Figure 7, the relative proportion of each category of posts is shown for the eight months following Floyd's death: individual (red/dark gray), institutional (blue/medium gray), and systemic (yellow/light gray). The online conversations in the first month following Floyd's death were mainly focused on individual level demands (76%), such as arresting Derek Chauvin and obtaining justice for George Floyd and other victims. After the first month, the demands for change shifted to focus more centrally on institutional level policy, such as reforming

99. Figure 7 available in color at Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter From Protest to Policy 20* (Dec. 7, 2021) (manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3980106](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980106).

100. *See infra* Figure 8.

and defunding police departments.<sup>101</sup> For example, from July 15 to August 15, 2020, sixty-seven percent of the discussion about legal and policy change was at the institutional level.<sup>102</sup> These calls for institutional change reached a high point in the months leading up to major political events, such as the 2020 election, and in January 2021, which included both the swearing in of new lawmakers and the attack on the U.S. Capitol on January 6, 2021. Broader systemic solutions began as a small fraction of the online demands for change, but then increased over time, reaching approximately twenty-five percent of the online discussion of Black Lives Matter and policy change in the month following the U.S. Presidential election.

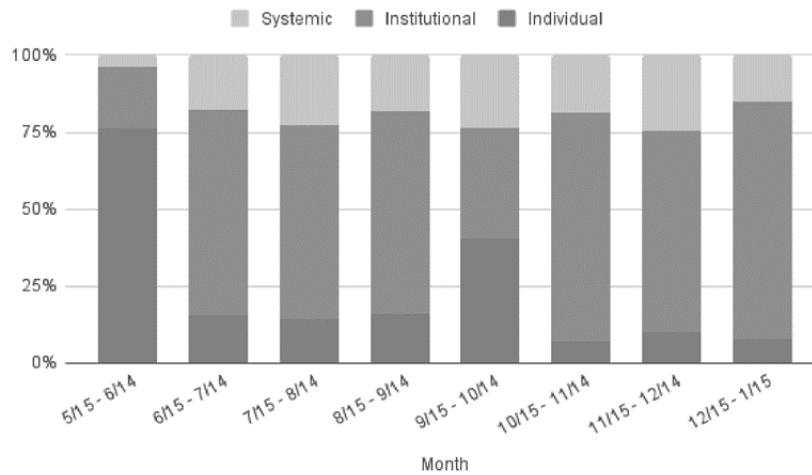


Figure 8. The Relative Proportion of Demands for Legal and Policy Change on Twitter<sup>103</sup>

#### A. *Individual Accountability: Justice for Victims*

The most prominent demands for individual accountability are those which call for police officers to face prosecution and other forms

101. Based on authors' own Twitter data and analysis.

102. We note that the largest volume of discussion was during the first month. The focus of Figure 8 is not the counts, but rather the proportions of different types of change conversations during and after the main period of protest.

103. Figure 8 available in color at Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter From Protest to Policy 21* (Dec. 7, 2021) (manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3980106](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3980106).

of accountability for police brutality and misconduct. These forms of accountability also bring justice for the families of victims and are often implicit in more general demands for justice for specific victims. For example, the hashtag #justiceforgeorgefloyd was used to push for charging and convicting Derek Chauvin and the other officers involved in Floyd's killing. This hashtag and similar ones were also commonly used to circulate petitions to add collective power to the individual demands on Twitter. The #justiceforgeorgefloyd hashtag helped to garner over 19 million signatures for a change.org petition on behalf of George Floyd by the end of 2020, while a similar petition for Breonna Taylor gathered over 11 million signatures in that time frame.<sup>104</sup>

In fact, the #justiceforgeorgefloyd change.org petition—demanding Mayor Jacob Frey and County Attorney Mike Freeman both fire and charge the officers responsible for killing Floyd—was the most signed petition of all time on the platform.<sup>105</sup> The petition was started by a fifteen-year-old boy named Kellen S. and highlights the true grassroots nature of the Black Lives Matter movement's social media presence.<sup>106</sup> While we are not offering causal evidence in this analysis, our data suggests a strong relationship between the largest protests in American history, the conversation online, and Chauvin's charges, indictment, and eventual conviction.<sup>107</sup>

Arguably the largest influence of the protests on the trial was a subtle one that arose in the context of jury selection. As our prior research suggests, the BLM movement had a dramatic effect on social awareness of racial injustice,<sup>108</sup> and social awareness informs both judge and jury understandings of the cases which they hear. Sonali Chakravarti, a professor at Wesleyan University who studies juries, has argued that the protest culture surrounding the trial forever altered the baseline for racial awareness permitted, and even expected, of juries.<sup>109</sup> Chakravarti points out that while jurors were

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104. Kellen S., *Justice for George Floyd*, CHANGE.ORG, <https://www.change.org/p/mayor-jacob-frey-justice-for-george-floyd> [<https://perma.cc/PY4F-ZMB6>] (last visited Nov. 4, 2021); Lorelei Ho-Jay, *Justice for Breonna Taylor*, CHANGE.ORG, <https://www.change.org/p/andy-beshear-justice-for-breonna-taylor> [<https://perma.cc/S573-WYJ2>] (last visited Nov. 4, 2021).

105. *Id.*

106. *Id.*

107. See also 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> [<https://perma.cc/HXW5-XJG6>]; *Protesters Hail Charges Against Police but Seek Broader Change*, N.Y. TIMES (June 3, 2020), <https://www.nytimes.com/2020/06/03/us/live-george-floyd-protests-today.html> [<https://perma.cc/2YC2-Y6Z7>].

108. Williams et al., *supra* note 3.

109. Sonali Chakravarti, *How BLM Is Subtly Shaping the Chauvin Trial*, THE NATION



asked about their support for Black Lives Matter, Blue Lives Matter, and their contact with police, what was notably different in the Chauvin trial was that Judge Peter Cahill declined to dismiss jurors who stated plainly that they believed Black people were treated less fairly than white people under law, ruling that these answers were not at odds with the “fair and impartial” requirement.<sup>110</sup>

While the online and offline demands for justice in George Floyd’s case likely influenced Chauvin’s conviction and sentencing, this outcome is a rare one.<sup>111</sup> In the vast majority of cases, police violence against Black men, women, and children goes unpunished.<sup>112</sup> There has been no justice or legal accountability for the family of Breonna Taylor, for example.<sup>113</sup> There are countless other cases of infamous police violence captured on video that failed to bring about accountability, most notably in the beating of Rodney King, or the shootings of Alton Sterling and Philando Castile.<sup>114</sup> To the extent that the demands for justice for George Floyd were only realized in Chauvin’s conviction after global protests (which were the product of a perfect storm of pandemic lockdown, economic turmoil, and the gruesome video), a rise in empathy, and heightened solidarity, it is not the least surprising that activists continue to call for broader accountability that reaches beyond the case of George Floyd.

Ending qualified immunity, which protects police officers from liability in certain circumstances,<sup>115</sup> is a policy effort that would both

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(Apr. 16, 2021), <https://www.thenation.com/article/society/chaubin-george-floyd-trial> [<https://perma.cc/5UCU-5F9U>].

110. *Id.* Chakravarti noted that Judge Cahill’s approach is very new and opposed to other recent cases, such as California’s 2020 *People v. Silas*, No. A150512 (Cal. Ct. App. 2021) (pending), in which BLM was condemned as an extremist group that condoned the destruction of property, and Connecticut’s 2019 *State v. Holmes*, 221 A.3d 407, 443 (Conn. 2019), in which a juror who worried about patterns of police violence was found to be biased. In contrast, Cahill determined that support for Black Lives Matter was not “an ideological position at odds with the responsibilities of being a juror.” *Id.*

111. See Shaila Dewan, *Few Police Officers Who Cause Deaths Are Charged or Convicted*, N.Y. TIMES, <https://www.nytimes.com/2020/09/24/us/police-killings-prosecution-charges.html> [<https://perma.cc/BGJ5-PDAY>]; Tucker Higgins & John Schoen, *These Four Charts Describe Police Violence in America*, CNBC, <https://www.cnbc.com/2020/06/01/george-floyd-death-police-violence-in-the-us-in-4-charts.html> [<https://perma.cc/3GYU-URP9>].

112. *See id.*

113. Brakkton Booker & Rachel Treisman, *A Year After Breonna Taylor’s Killing, Family Says There’s No Accountability*, NPR, <https://www.npr.org/2021/03/13/973983947/a-year-after-breonna-taylors-killing-family-says-theres-no-accountability> [<https://perma.cc/TN9D-8G2Y>].

114. See Sam Levin, *Rodney King: Thirty Years After Brutal Beating, Activists Say LAPD ‘Still Corrupt and Violent’*, GUARDIAN, <https://www.theguardian.com/us-news/2021/mar/02/rodney-king-lapd-police-30-years-later> [<https://perma.cc/JS3R-W8J9>]; Jason Hanna, *No Charges Against Officers in Alton Sterling Death; Other Videos Are Coming*, CNN, <https://www.cnn.com/2018/03/27/us/alton-sterling-investigation/index.html> [<https://perma.cc/YT8V-3583>].

115. Qualified immunity is a legal principle that protects certain state and local officials,

allow for greater individual accountability and could also be characterized as institutional change. The hashtag #endqualifiedimmunity trended on social media, calling for an end to the special legal protections afforded to the police officers responsible for violence against unarmed Black people. In response to such demands, politicians have drafted policy responses like the Ending Qualified Immunity Act, which was introduced by Congresswoman Ayanna Pressley and Congressman Justin Amash, with Amash explicitly tying the bill to George Floyd's murder in a tweet.<sup>116</sup> At one point, the bill had sixty-six cosponsors,<sup>117</sup> but since its reintroduction in the Spring of 2021, the number of cosponsors has dropped to forty and there has been no further action.<sup>118</sup>

Although it is unlikely that the current Congress will adopt the Ending Qualified Immunity Act, some state lawmakers are taking strides toward filling this gap by restricting the qualified immunity defense.<sup>119</sup> This issue remains highly controversial as police associations and other opponents argue that removing qualified immunity would “prompt police to quit in droves and put all blame on individual officers for any wrongdoing, even if officers were following policies enacted at the city level.”<sup>120</sup> For example, Kevin Lawrence, who leads the Texas Municipal Police Association, said some legislation has already prompted officers to leave the law enforcement profession and made it harder to recruit and retain police officers.<sup>121</sup>

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including police officers, from civil liability unless the plaintiff can show that the official violated “clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The Supreme Court developed qualified immunity during the 1960s Civil Rights era to protect government officials who acted in good faith. Hailey Fuchs, *Qualified Immunity Protection for Police Emerges as Flash Point Amid Protests*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/politics/qualified-immunity.html> [<https://perma.cc/4MLS-UW5Q>].

116. Ending Qualified Immunity Act, H.R. 7085, 116th Cong., 2d Sess. (2020); Justin Amash (@justinamash), TWITTER (May 31, 2020, 9:30 PM), <https://twitter.com/justinamash/status/1267267250475675651> [<https://perma.cc/SHK6-MFR7>].

117. Justin Amash, *Cosponsors—H.R. 7085—116th Congress (2019–2020): Ending Qualified Immunity Act*, CONGRESS.GOV (June 4, 2020), <https://www.congress.gov/bill/116th-congress/house-bill/7085/cosponsors> [<https://perma.cc/MF5M-LBPK>].

118. Ayanna Pressley, *Cosponsors—H.R. 1470—117th Congress (2021–2022): Ending Qualified Immunity Act*, <https://www.congress.gov/bill/117th-congress/house-bill/1470/cosponsors> [<https://perma.cc/UBH8-39LV>] (last visited Nov. 4, 2021).

119. Fuchs, *supra* note 115; Emma Tucker, *States Tackling “Qualified Immunity” for Police as Congress Squabbles Over the Issue*, CNN (Apr. 23, 2021), <https://www.cnn.com/2021/04/23/politics/qualified-immunity-police-reform/index.html> [<https://perma.cc/75CH-7KZ9>].

120. Jolie McCullough, *Texas’ George Floyd Act Seeks to Reform Violent Police Behavior. But a Sticking Point Centers on Protecting Officers from Lawsuits*, TEX. TRIB. (Mar. 26, 2021), <https://www.texastribune.org/2021/03/25/texas-george-floyd-act-police-protections> [<https://perma.cc/BNG3-VCET>].

121. *Id.*

In Democrat-heavy Maryland, where many residents participated in the Washington D.C. protests in addition to those in their home state,<sup>122</sup> lawmakers voted to override Republican Governor Larry Hogan's vetoes of three bills aimed at increasing public trust and police accountability.<sup>123</sup> One of the measures repeals job protections in the police disciplinary process that prevent officers from facing accountability.<sup>124</sup> Maryland first approved its Law Enforcement Officers Bill of Rights (LEBOR) in 1974, and approximately twenty other states followed by adopting similar bills guiding investigative procedures involving police misconduct.<sup>125</sup> These bills afforded officers an extra layer of due process, giving them expansive rights and shielding them from discipline and legal consequences, such as investigation and prosecution as a result of on-the-job conduct.<sup>126</sup> In 2021, Maryland was the first state to repeal their LEBOR, replacing it with new procedures that give civilians a role in the police disciplinary process, which could bring greater transparency as well as vital accountability for the individual officers who engage in police brutality.<sup>127</sup>

### *B. Institutional Change: Reimagining Policing*

In addition to demands for officer accountability and justice for victims, protesters overwhelmingly called for institutional changes in police departments through federal, state, and local policy.<sup>128</sup> These demands primarily called for either police reform or defunding the police.<sup>129</sup> Police reform is the most mainstream response to police violence.<sup>130</sup> Reform-oriented policy proposals typically focus on internal police practices and procedures and incremental changes designed to limit officers' use of force. For example, the hashtag #8CantWait was shared widely on social media to raise awareness and advocate for eight specific police reforms such as banning chokeholds, creating

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122. Mikaela Lefrak, *Suburbanites Take to the Streets for Vigils, Car Rallies and Marches Across D.C. Region*, DCIST (June 3, 2020), <https://dcist.com/story/20/06/03/dc-suburbs-md-va-george-floyd-protests-police-violence> [<https://perma.cc/3W6L-TU24>].

123. *Maryland Lawmakers Override Vetoes on Sweeping Police Reform*, NPR (Apr. 10, 2021) [hereinafter *Maryland Lawmakers*], <https://www.npr.org/2021/04/10/986159466/maryland-lawmakers-override-vetoes-on-sweeping-police-reform> [<https://perma.cc/54Y6-BBVZ>].

124. *Id.*

125. *Id.*

126. Eli Hager, *Blue Shield*, MARSHALL PROJECT (Apr. 27, 2015), <https://www.themarshallproject.org/2015/04/27/blue-shield> [<https://perma.cc/2CCD-WRZA>].

127. *Maryland Lawmakers*, *supra* note 123.

128. Based on authors' own Twitter data and analysis.

129. *Id.*

130. Ben Kessler, *Calls to Reform, Defund, Dismantle and Abolish the Police, Explained*, NBCNEWS (June 8, 2020), <https://www.nbcnews.com/news/us-news/calls-reform-defund-dismantle-abolish-police-explained-n1227676> [<https://perma.cc/EA4Q-J8NB>].

a duty to intervene, requiring de-escalation, and requiring the use of force to be reported.<sup>131</sup> Other common police reforms include increased police training and the use of body cameras.<sup>132</sup> The philosophy behind police reform emphasizes gradual change to policing practices and an increase in community-based policing, which encourages police to get to know and partner with the communities in which they operate.<sup>133</sup>

While these reforms have received the most legislative attention, most of the online and offline advocacy for racial justice has argued for moving beyond police reforms on the grounds that they do not go far enough. Many activists argue that these police reforms typically involve investing significantly more funding and resources into police departments.<sup>134</sup> Instead, calls to “defund the police” were core demands at BLM protests and were a significant part of the online conversation more broadly.<sup>135</sup> For example, in the month following the murder of George Floyd, there were almost 170,000 tweets containing hashtags about defunding the police, as opposed to less than 1,000 discussing police reform more generally, including #8cantwait. The philosophy behind the defund advocacy emphasizes a divest/invest model of policing, where police budgets are cut and those savings are used to invest in other forms of community protection and services.<sup>136</sup> For example, the defunding model would support redirecting police resources to violence prevention programs, public housing, health care, mental health services, as well as better support systems in schools that obviate the need for armed guards.<sup>137</sup>

### 1. Police Reform

Although police reform was not the most discussed institutional policy goal of the 2020 protests, it nonetheless has commonly been

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131. Matthew Yglesias, *8 Can't Wait, Explained*, VOX (June 5, 2020), <https://www.vox.com/2020/6/5/21280402/8-cant-wait-explained-policing-reforms> [<https://perma.cc/R6FC-4TXC>]; Kessler, *supra* note 130.

132. *Id.*; see Rafael Mangual, *MI Responds: Five Ideas for a More Sensible Approach to Police Reform*, MANHATTAN INST., <https://www.manhattan-institute.org/responds-five-ideas-sensible-approach-police-reform> [<https://perma.cc/EPU7-K7JG>] (last visited Nov. 4, 2021).

133. See, e.g., Steve Eder, Michael Keller & Blacki Migliozi, *As New Police Reform Laws Sweep Across the U.S., Some Ask: Are They Enough?*, N.Y. TIMES (Apr. 18, 2021), <https://www.nytimes.com/2021/04/18/us/police-reform-bills.html> [<https://perma.cc/BC5H-8TQW>].

134. Leila Fadel, *Protestors Call For Police to Be Defunded. But What Does That Mean?*, NPR (June 22, 2020), <https://www.npr.org/2020/06/22/881559687/protesters-call-for-police-to-be-defunded-but-what-does-that-mean> [<https://perma.cc/6M6N-22BB>].

135. Based on authors' own Twitter data and analysis.

136. Scottie Andrew, *There's A Growing Call to Defund the Police. Here's What It Means*, CNN (June 17, 2020), <https://www.cnn.com/2020/06/06/us/what-is-defund-police-trnd/index.html> [<https://perma.cc/6ZRU-BSQL>].

137. *Id.*

taken on by politicians and political candidates. For example, the George Floyd Justice in Policing Act was passed by the United States House of Representatives on March 3, 2021 and is also supported by the Biden-Harris Administration.<sup>138</sup> The bill would ban the use of no-knock warrants and chokeholds, and increase accountability for misconduct.<sup>139</sup> Although this type of policy proposal can be seen as an incremental step in the right direction, these reforms have also been criticized as too little, too late. From this perspective, common reforms proposed and passed within the year following the death of George Floyd may simply be a less controversial way for policymakers to respond to protests by doing *something*, but without authentically engaging the divest/invest model or broader systemic changes that may be better positioned to alter the lives of Black people for the better. This section discusses the police reform trends at the federal, state, and local levels in the year following the 2020 protests.

While House Democrats in Congress twice passed the George Floyd Justice in Policing Act following the BLM protests, the bill has been continually blocked by Senate Republicans.<sup>140</sup> On the other side, Senate Republicans proposed the Just and Unifying Solutions to Invigorate Communities Everywhere Act of 2020, or the Justice Act.<sup>141</sup> While it may seem promising that social and cultural pressures growing out of the BLM movement have led to police reform bills initiated by both parties in the Senate and the House of Representatives, passage of any bill will inevitably face an uphill battle given the current partisan gridlock in Congress.<sup>142</sup> This federal intractability highlights the importance of state and local policy efforts, as well as the broader goal of increasing voter mobilization and political engagement to bring about policy change at the federal level.

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138. Phil Helsel, *House Passes Police Reform Act Named for George Floyd*, NBCNEWS (Mar. 3, 2021, 11:48 PM), <https://www.nbcnews.com/politics/congress/house-passes-police-reform-act-named-george-floyd-n1259548> [<https://perma.cc/J5S8-DQWX>].

139. George Floyd Justice in Policing Act of 2020, H.R. 7120, 116th Cong. (2020); George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. (2021).

140. Chloe Weiner, *House Approves Police Reform Bill Named After George Floyd*, NPR (Mar. 3, 2021), <https://www.npr.org/2021/03/03/973111306/house-approves-police-reform-bill-named-after-george-floyd> [<https://perma.cc/BG9W-9CXZ>]. Like prior reform efforts, the bill aims to increase accountability and transparency for police misconduct and includes several important measures to address longstanding concerns about excessive police power and violence against Black and brown communities. For example, the bill seeks to ban chokeholds and impose reforms on federal law enforcement, such as ending qualified immunity, and would condition federal funding for state and local agencies on their adopting the same policies. Despite pressure from constituents, including on social media, this federal effort to enact broader policing reform nationally has remained stalled.

141. Just and Unifying Solutions to Invigorate Communities Everywhere Act, S. 3985, 116th Cong. (2020).

142. See Weiner, *supra* note 140.

State and local governments have been more likely to pass police reform legislation in the one year following Summer 2020.<sup>143</sup> These policies have been large in number and scope, with strong signals that the changes were driven by the protest activity and related activism surrounding the murder of George Floyd.<sup>144</sup> For example, as of July 1, 2021:

- Sixteen states have passed laws banning use of neck restraints (chokeholds), a demand of the BLM movement after the police murder of George Floyd.<sup>145</sup>
- Five states have passed restrictions on no-knock warrants, a police tactic used in the murder of Breonna Taylor.<sup>146</sup>
- Ten states have mandated funding for body cameras.<sup>147</sup>
- Four states have banned or weakened qualified immunity, which shields officers from legal liability for many actions while on duty.<sup>148</sup>
- Nine states have enacted duty-to-intervene laws, which some also believe could have saved George Floyd's life.<sup>149</sup>

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143. *One Year After George Floyd: The Changing Landscape of Policing*, NAACP LEGAL DEF. FUND, <https://www.naacpldf.org/george-floyd-anniversary> [<https://perma.cc/E4L5-ZRZY>] (last visited Nov. 4, 2021).

144. According to an index of policing legislation compiled by the NAACP Legal Defense Fund, 3,000 policing related bills were introduced in response to the protests in state legislatures alone. *Id.*; see, e.g., *Pathways to Reform, Transformation, and Reconciliation: 2020–2021 Year-End Review*, CITY OF PHILA. (June 2021), <https://www.phila.gov/media/20210614214637/Pathways-to-Reform2021-061521.pdf> [<https://perma.cc/8PQ5-ULDM>]; *An Ordinance Relating to the Seattle Police Department; Prohibiting the Use of Chokeholds by Officers, C.B. 119804*, SEATTLE CITY COUNCIL (June 15, 2020) [hereinafter *C.B.119804*], <https://seattle.legistar.com/LegislationDetail.aspx?ID=4564635&GUID=C24883AC-5654-4500-AEB6-587DD1026742&Options=ID%7cText%7c&Search=chokeholds> [<https://perma.cc/4V3Z-J7DJ>].

145. *Id.* (finding the following states have passed such laws: Vermont, New Hampshire, Massachusetts, Connecticut, New York, Delaware, Virginia, Indiana, Illinois, Iowa, Minnesota, Colorado, Utah, Nevada, California, and Oregon).

146. *Id.* (finding the following states have passed such laws: Massachusetts, Maryland, Virginia, Kentucky, and Illinois).

147. *Id.* (finding the following states have passed such laws: Vermont, Connecticut, New York, New Jersey, Maryland, Virginia, Kentucky, Illinois, Colorado, and New Mexico).

148. *Id.* (finding the following states have passed such laws: Massachusetts, Connecticut, Colorado and Minnesota).

149. *Legal Duties and Liabilities Database*, NAT'L CONF. OF STATE LEGISLATURES, <https://app.powerbi.com/view?r=eyJrIjoiMDgzMGFhOTgtYmUzZC00MWMwLWE5MDAtYTkyN2ViOGZiZWwiIiwidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOiJz9> [<https://perma.cc/6TQK-9PD9>] (last visited Nov. 4, 2021) (finding the following states have passed such laws: California, Colorado, Connecticut, Minnesota, Nevada, New Mexico, New York, Oregon, and Vermont).

Although Republican-led states have passed some police reform measures, states led by Democrats have not only passed more reform bills, they have passed more comprehensive bills as well.<sup>150</sup>

Even lawmakers in the most supposedly “pro-police” areas have adopted some of the less controversial demands such as banning chokeholds.<sup>151</sup> This finding is consistent with Figure 4B which shows how pervasive protests were when they are adjusted for population.<sup>152</sup>

However, most of the state policy action has occurred in states with high protest density and where highly visible events resulted in intense scrutiny and negative publicity for the police and state and local governments.<sup>153</sup> For example, in April 2021, Kentucky became only the third state to enact a law limiting the use of no-knock raids of the kind that killed Breonna Taylor.<sup>154</sup> This bill came a year after the police killing of Breonna Taylor fueled protests around the country. However, the Kentucky law is not a complete ban on no-knock warrants, and thus may be largely symbolic.<sup>155</sup> Two cities in Kentucky took this legislation a step further and voted to completely ban no-knock warrants.<sup>156</sup>

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150. Paul J. Weber & Farnoush Amiri, *Floyd Killing Has Prompted State Reforms, but Not Everywhere*, U.S. NEWS & WORLD REP. (Apr. 22, 2021), <http://www.usnews.com/news/politics/articles/2021-04-21/floyd-killing-has-prompted-state-reforms-but-not-everywhere> [<https://perma.cc/K3Q8-83LF>]. Some examples of reform bills that have passed in Republican-led states include a bill in Utah requiring officers to report any use of force and when they point a weapon, an Ohio bill that boosts police oversight, and a Nebraska bill requiring greater accountability and training for law enforcement officers. *Id.* Of the seventeen new laws banning chokeholds, two were signed by Republican governors, in Vermont and Massachusetts, and three passed in fully Republican-controlled states, including Iowa, Indiana, and Utah. *Id.* It is worth noting that although Vermont and Massachusetts had Republican governors, they are overwhelmingly Democratic states. *See id.* Moreover, the fact that reform measures passed in Republican states does not say anything about how effective or robust the measures were. It is easy to pass mostly symbolic legislation, and as critics contend, “reform” bills can still be a vehicle for decreasing officer accountability and increasing police budgets.

151. Although it is difficult to pinpoint state-by-state opinions about police, polling differences between Democrats and Republicans on the issue of policing suggest that a state’s partisanship can be used as a proxy for police support. For example, a March 2021 Ipsos poll found that 73% of Democrats support reforming the police as opposed to 33% of Republicans. Mallory Newall & Kate Silverstein, *Americans’ Trust in Law Enforcement, Desire to Protect Law and Order on the Rise*, IPSOS (Mar. 4, 2021), <https://www.ipsos.com/en-us/americans-trust-law-enforcement-desire-protect-law-and-order-rise> [<https://perma.cc/JNP3-AS7J>].

152. Compare *id.* with *supra* Figure 4B.

153. See Weber & Amiri, *supra* note 150.

154. 2021 KY. ACTS 202.

155. See *id.* Under the law, no-knock warrants are permitted when there is “clear and convincing evidence” that the crime under investigation “would qualify a person, if convicted, as a violent offender.” Additionally, no warrants may be executed between 10 p.m. and 6 a.m. and an emergency medical technician must be on site for the execution of the warrant.

156. *Kentucky’s Second-Largest City Bans ‘No-Knock’ Warrants*, AP NEWS (June 25,

Washington State, where some of the largest and most discussed protests occurred, passed a number of new laws in reaction to the increased activism that taken together are relatively comprehensive.<sup>157</sup> Collectively these laws prohibit police officers from using chokeholds, prohibit some types of military equipment, prohibit no-knock warrants, restrict the use of tear gas and similar weapons,<sup>158</sup> limit the use of deadly force as a last resort,<sup>159</sup> and require police intervention and reporting after observing a fellow officer's use of excessive force.<sup>160</sup> Washington also tackled institutional change by introducing bills addressing departmental data collection, accountability, police culture, officer liability, and notification of misconduct.<sup>161</sup> In Appendix A, we provide additional detail on the key police reform legislation enacted in the states with the highest protest turnout, including California, Florida, New York, Pennsylvania, and Texas. This includes laws passed between June 2020 and August 2021.

While more promising policy change occurred in states with high protest turnout like California,<sup>162</sup> other states, such as Connecticut,

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2021), <https://apnews.com/article/kentucky-75c32df10d23956362fef52f3a073a6b> [<https://perma.cc/D2US-XZFB>]. In the summer of 2021, the city of Lexington joined Louisville, which had voted to ban the practice a year earlier in the wake of Breonna Taylor's killing.

157. See Austin Jenkins, *With 12 New Laws, Washington State Joins Movement to Overhaul Policing*, NPR (May 18, 2021), <https://www.npr.org/2021/05/18/997974519/a-dozen-police-reform-bills-signed-into-law-in-washington-state> [<https://perma.cc/MT4J-UGJX>].

158. 2021 Wash. Adv. Legis. Serv. 320.

159. 2021 Wash. Adv. Legis. Serv. 324.

160. 2021 Wash. Adv. Legis. Serv. 321.

161. Bill 5259 establishes an advisory group to make recommendations for statewide data collection programs, reporting, and publication of use of force data. 2021 Wash. Adv. Legis. Serv. 326. Bill 1267 establishes the Office of Independent Investigations for the purpose of investigating deadly force incidents involving peaceful officers. 2021 Wash. Adv. Legis. Serv. 318. Bill 5051 seeks to change the police culture by modifying the Criminal Training Commission, expanding the background check, and expanding the conduct for revoking officer certification. 2021 Wash. Adv. Legis. Serv. 323. Bill 1089 authorizes the state auditor's office to audit the procedures and process of any deadly force investigation and to ensure that law enforcement is in compliance with laws and policies. 2021 Wash. Adv. Legis. Serv. 319. Bill 5263 limits the felony bar affirmative defense in civil actions. 2021 Wash. Adv. Legis. Serv. 325. Bill 1088 requires notification to prosecutors of any misconduct in an officer's duty. 2021 Wash. Adv. Legis. Serv. 322.

162. California Assembly Bill No. 127 "Requires a magistrate, before issuing an arrest warrant, to examine the declaration of probable cause made by a peace officer, or an employee of a public prosecutor's office when the subject of the arrest warrant is a peace officer." 2021 Cal. Stat. 20. California Senate Bill No. 480 "Prohibits, with certain exceptions, a law enforcement agency from authorizing or allowing its employees to wear a uniform that is substantially similar to a uniform of the United States Armed Forces." 2020 Cal. Stat. 336. California Assembly Bill No. 846 requires evaluations of officers to include implicit bias against certain groups. It also requires every department or agency that employs peace officers to make changes that de-emphasize the paramilitary aspects of the job and place more emphasis on community interaction and collaborative problem solving. 2020 Cal. Stat. 322. California Assembly Bill No. 1185 authorizes a county to establish a Sheriff Oversight Board with subpoena authority. 2020 Cal. Stat. 342. California Assembly Bill No. 1196 bans the use of most choke holds. 2020 Cal. Stat. 324. California



Florida, and New York have taken a more minimalist approach by passing legislation banning the use of chokeholds and requiring officers to wear and turn on their body cameras.<sup>163</sup> However, in many states, even these minimalist proposals have repeatedly failed to gain traction, both before and after the murder of George Floyd.<sup>164</sup>

A number of cities have also tackled institutional level reform like the measures recommended by advocates of #8cantwait. Since the killing of George Floyd, an additional 31 of the country's largest 100 cities have passed policies restricting the use of chokeholds, joining 31 others that already had such policies in place.<sup>165</sup> Cities like Detroit, Buffalo, Dallas, and Charlotte also enacted and strengthened duty-to-intervene policies, requiring officers to intervene when they observe other officers using excessive force.<sup>166</sup> Washington, D.C. moved quickly on institutional reform, helping make D.C. Mayor Muriel Bowser the most mentioned government official in the Twitter conversation about Black Lives Matter and related protests. Her Twitter handle was tagged 59,595 times with the hashtag #BlackLivesMatter between May 15, 2020, and January 15, 2021.<sup>167</sup>

In June of 2020, just weeks after mass demonstrations began in Washington, D.C., the D.C. City Council passed an emergency package of police reforms that included bans on certain types of deadly force

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Assembly Bill No. 1506 requires a state prosecutor to investigate incidents of an officer involved shooting resulting in the death of an unarmed civilian; makes the Attorney General the state prosecutor unless otherwise specified or named; authorizes the state prosecutor to prepare a written report and to post any reports made on a public internet website; and requires the Attorney General to operate a Police Practices Division to review the use of deadly force policies of a requesting law enforcement agency. 2020 Cal. Stat. 326. There are currently 31 pending pieces of legislation having to do with policing in California, almost all of which are reform efforts. *Legislative Responses for Policing—State Bill Tracking Database*, NAT'L CONF. STATE LEGISLATURES, <https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx> [https://perma.cc/HJT6-M3KN] (last visited Nov. 4, 2021).

163. Orion Rummler, *The Major Police Reforms Enacted Since George Floyd's Death*, AXIOS (Oct. 1, 2020), <https://www.axios.com/police-reform-george-floyd-protest-2150b2dd-a6dc-4a0c-a1fb-62c2e999a03a.html> [https://perma.cc/6U64-YKWE].

164. See, e.g., Jamiles Lartey & Simone Weichselbaum, *Before George Floyd's Death, Minneapolis Police Failed to Adopt Reforms, Remove Bad Officers*, 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> [https://perma.cc/K7QN-WNHV].

165. Ian Prasad Philbrick & Sanam Yar, *What Has Changed Since George Floyd*, N.Y. TIMES (Aug. 3, 2020), <https://www.nytimes.com/2020/08/03/briefing/coronavirus-vaccine-tropical-storm-isaias-tiktok-your-monday-briefing.html> [https://perma.cc/PE4H-6MTG].

166. Jackie Menjivar, *Black Lives Matter Protests: What's Been Achieved So Far*, DO SOMETHING (Aug. 13, 2020), <https://www.dosomething.org/us/articles/black-lives-matter-protests-whats-been-achieved-so-far> [https://perma.cc/U6DH-UL7N].

167. Based on Twitter analytics for #BlackLivesMatter posts and the Twitter account of Mayor Muriel Bowser between May 15, 2020 and Jan. 15, 2021.

an officer can use, limits on police union bargaining power, as well as restrictions on the use of military-style equipment purchased from the federal government.<sup>168</sup> Washington D.C. also worked to establish a twenty-person police reform commission tasked with exploring and proposing further changes to the City's police department.<sup>169</sup> After the commission released its final recommendations in April of 2021, Mayor Bowser announced the start of a citywide pilot program to send certain types of unarmed behavioral health experts to the scene of some mental health situations.<sup>170</sup> Although Mayor Bowser has proposed a \$37 million decrease in funding for the Metropolitan Police Department, she intends to increase the hiring of police officers throughout the City as well as to reject some of the commission's proposals, including the removal of officers from schools.<sup>171</sup>

Seattle also began to reform its police department as early as June 2020 when the City Council passed an ordinance prohibiting the use of chokeholds by officers and Mayor Jenny Durkan issued an executive order requiring officers to record body-worn video during protests.<sup>172</sup> The City Council passed additional ordinances related to policing procedures in 2020, including measures that aimed to limit police questioning of minors and to increase the use of traffic safety cameras throughout the city.<sup>173</sup> Alongside the Mayor's increased investments in BIPOC communities, the City also created a new Community Safety and Communications Center to incorporate civilian and community-led dispatch alternatives.<sup>174</sup>

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168. *Council Unanimously Passes Emergency Police and Justice Reform Measure*, DC COUNCIL (June 10, 2020), <https://dccouncil.us/council-unanimously-passes-emergency-police-and-justice-reform-measure> [https://perma.cc/3SBT-A8TK].

169. Martin Austerhuhle, *D.C. Council Passes Emergency Police-Reform Bill, But Delays Shrinking Size of MPD*, DCIST (June 9, 2020), <https://dcist.com/story/20/06/09/dc-council-passes-emergency-police-reform-bill-but-delays-shrinking-size-of-mpd> [https://perma.cc/3VV3-89HW].

170. *Id.*

171. *Id.*

172. *C.B. 119804*, *supra* note 144; Anthony Derrick, *Mayor Durkan Signs Executive Order to Activate Body-Worn Camera Recording During Demonstration*, SEATTLE.GOV (June 10, 2020), <https://durkan.seattle.gov/2020/06/mayor-durkan-signs-executive-order-to-activate-body-worn-camera-recording-during-demonstrations> [https://perma.cc/28BR-Y8H5].

173. Joseph O'Sullivan, *Seattle City Council Votes to Require Youths Have Legal Advice Before Being Questioned by Police*, SEATTLE TIMES (Aug. 17, 2020), <https://www.seattletimes.com/seattle-news/politics/seattle-city-council-votes-to-require-youths-have-legal-advice-before-being-questioned-by-police> [https://perma.cc/VNA9-PVXT].

174. Jake Goldstein-Street, *Downsize SPD? Seattle Debates New Community Safety and Communications Center to Move 911 and Parking Enforcement Operations out of Seattle Police*, CAPITOL HILL SEATTLE (May 11, 2021), <https://www.capitolhillseattle.com/2021/05/downsize-spd-seattle-debates-new-community-safety-and-communications-center-to-move-911-and-parkin%E2%80%A6> [https://perma.cc/5X9U-FZAH].

In June 2020, the Minneapolis City Council responded to the widespread protests and outrage over the murder of George Floyd by pledging to defund and dismantle the City's police department.<sup>175</sup> However, Mayor Frey soon changed gears and scaled down the commitment to instead focus on reforming the department from within, a strategy he favored over defunding.<sup>176</sup> The reforms Mayor Frey implemented over the year following the murder of George Floyd include requiring clearer documentation of use-of-force and de-escalation efforts, prohibiting officers from reviewing or disabling body camera footage, prohibiting officers from shooting at moving vehicles, and restricting the use of no-knock raids.<sup>177</sup> From an institutional standpoint, the City refocused its officer recruitment to attract candidates with city residency and social service experience and involved the city attorney's office in the officer complaint and disciplinary process.<sup>178</sup> While some argue that these police reforms will only scrape the surface of solving police brutality and racial injustice, others argue that this incremental progress is better than the many states and cities choosing to abandon police reform proposals and do nothing. In Appendix B, we provide additional detail on the reforms passed in the cities with the highest protest attendance, including New York, Washington D.C., Seattle, Philadelphia, Houston, Los Angeles, and the focal city of Minneapolis. This includes laws passed between June 2020 and August 2021.

## 2. *Defunding the Police*

As noted above, the call to "defund the police" has been the most prominent policy demand coming out of the 2020 protests and the broader Black Lives Matter movement.<sup>179</sup> Defunding advocates reject institutional level police reforms because they do not go far enough or are ineffective in the hands of current police departments.<sup>180</sup> They demand instead that cities defund the police and direct funds to

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175. Matt Sepic, *A Year After George Floyd's Death, Plans for Minneapolis Police Reform Have Softened*, NPR (May 25, 2021), <https://www.npr.org/2021/05/25/1000298293/a-year-after-george-floyds-death-plans-for-minneapolis-police-reform-have-soften> [https://perma.cc/6A6K-WTQB].

176. *Id.*

177. Becky Z. Dernbach, *No One Has More Power to Change the Minneapolis Police Department than Mayor Jacob Frey. We Asked Him What He's Accomplished*, SAHAN J. (May 3, 2021), <https://sahanjournal.com/police/minneapolis-mayor-frey-police-reform> [https://perma.cc/ME9S-4553].

178. *Id.*

179. Based on authors' own Twitter data and analysis; see also Kesslen, *supra* note 130.

180. *Id.*

other needed community services and programming.<sup>181</sup> Activists who advocate for defunding the police emphasize that police violence and the crises they create have become opportunities for police to receive more money and power for themselves.<sup>182</sup> This has been a historical problem dating to the 1960s, when President Lyndon B. Johnson created a commission to review policing after the civil rights movement, resulting in billions of federal dollars going to local police departments.<sup>183</sup> Princeton political scientist Naomi Murakawa captures the sentiments of BLM advocates when she notes that “Every time people rise up against police to demand change, police essentially benefit from it.”<sup>184</sup> Thus, the call to defund the police reveals an awareness of the deeply seated institutional problems and a “shift in consciousness.”<sup>185</sup>

Activists have been critical of policy makers who express their solidarity and support of the BLM movement, but have not made meaningful strides to shift resources away from policing and into other programs that would begin to dismantle systemic racism in Black communities.<sup>186</sup> This was the double bind faced by D.C. Mayor Muriel Bowser described in Part I above.<sup>187</sup> On one hand, the dramatic “Black Lives Matter” mural and the creation of “Black Lives Matter Plaza” directly in front of the White House was a strong statement of support for the movement. These expressions of solidarity were broadcast widely, attracted views from around the globe, and were considered meaningful by many.<sup>188</sup> Yet Black Lives Matter activists responded to Mayor Bowser with a statement of their own.<sup>189</sup> They painted “DEFUND THE POLICE” ten feet away from the mayor’s highly publicized mural, using the same large letters and bright yellow

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181. For example, the #NoCopAcademy campaign in Chicago is an example of a divest/invest model where community members are requesting that Mayor Lori Lightfoot reallocate police funding to family and support services, transportation, and planning and development (i.e., affordable housing). NO COP ACAD., <https://nocopacademy.com> [<https://perma.cc/C7H7-Y7SU>] (last visited Nov. 4, 2021).

182. Kessler, *supra* note 130.

183. PRESIDENT’S COMM’N ON LAW ENF’T & ADMIN. OF JUST., *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (Feb. 1967); Elizabeth Hinton, “A War within Our Own Boundaries”: Lyndon Johnson’s Great Society and the Rise of the Carceral State, 102 J. AM. HIST. 100, 103 (2015).

184. Kessler, *supra* note 130; see also Naomi Murakawa, *Police Reform Works—For the Police*, DEPT. OF AFR. AM. STUDIES—PRINCETON UNIV. (Oct. 26, 2020), <https://aas.princeton.edu/news/police-reform-works-police> [<https://perma.cc/H2LY-9CS4>].

185. *Id.*

186. Kessler, *supra* note 130.

187. Schmidt et al., *supra* note 68.

188. Based on authors’ own Twitter analysis.

189. *Id.*

paint.<sup>190</sup> The activists tweeted criticism of Mayor Bowser's mural as "a performative distraction from real policy changes," adding the Mayor "has consistently been on the wrong side of BLMDC history."<sup>191</sup>

While defunding may seem overly radical to some, and still a distant hope to others, a number of major cities responded to such demands in 2020 by at least initially pledging to reduce police resources.<sup>192</sup> The cities that made commitments are primarily those with high protest activity, such as Seattle, Los Angeles, San Diego, Philadelphia, New York City, Philadelphia and Washington D.C.<sup>193</sup> However, over the course of the following year, most of these efforts lost momentum. Approximately a year out, only Seattle,<sup>194</sup> Portland,<sup>195</sup> Chicago,<sup>196</sup> and Washington DC<sup>197</sup> had, at least initially, partially defunded their police departments. Los Angeles,<sup>198</sup> San Diego,<sup>199</sup>

190. Rachel Sadon, Hannah Schuster & Matt Blitz, *Activists Painted "Defund The Police" Next To The New Black Lives Matter Mural*, NPR (June 8, 2020), <https://www.npr.org/local/305/2020/06/08/872234932/activists-painted-defund-the-police-next-to-the-new-black-lives-matter-mural> [<https://perma.cc/Q8E6-A5WS>].

191. Black Lives Matter DC (@DMVBlackLives), TWITTER (June 5, 2020, 9:53 AM), <https://twitter.com/DMVBlackLives/status/1268903712581464066> [<https://perma.cc/2YVH-3432>].

192. See, e.g., Sarah Holder, *The Cities Taking Up Calls to Defund the Police*, BLOOMBERG (June 9, 2020), <https://www.bloomberg.com/news/articles/2020-06-09/the-cities-taking-up-calls-to-defund-the-police> [<https://perma.cc/J469-BND3>].

193. *Id.* Other cities making commitments to defund include: Seattle, Portland, Los Angeles, San Diego, Chicago, Philadelphia, St. Louis, Dallas, Austin, New York City, Philadelphia, Baltimore, Washington D.C., and Hartford, many of which are in close proximity to protest hot spots. *Id.*

194. Danny Westneat, *If the Seattle Mayor's Race Is Any Guide, Defund the Police Has Lost Its Steam*, SEATTLE TIMES (June 30, 2021), <https://www.seattletimes.com/seattle-news/politics/if-the-seattle-mayors-race-is-any-guide-defund-the-police-has-lost-its-steam> [<https://perma.cc/P9QP-FAXL>].

195. Alicia Victoria Lozano & Gabe Gutierrez, *Portland, Ore., Leaders Walk Tightrope Between Calls to Defund Police, Escalating Violence*, NBC NEWS (June 27, 2021), <https://www.nbcnews.com/news/us-news/portland-ore-leaders-walk-tightrope-between-calls-defund-police-escalating-n1272196> [<https://perma.cc/VU96-DR56>].

196. David Klepper & Gary Fields, *Killings Spiked in the US and Republicans Blame Calls to 'Defund the Police.' But They Are Also Rising in Cities that Increased Spending on Cops*, CHI. TRIB. (June 10, 2021), <https://www.chicagotribune.com/nation-world/ct-aud-nw-crime-spike-police-funding-20210610-graeyrs24zapbkvpsbhvlfiakm-story.html> [<https://perma.cc/RSD9-HX2X>].

197. Julie Zauzmer & Michael Brice-Saddler, *Bowser's Budget, Flush with Federal Dollars, Boosts Spending on Housing, Mental Health, Violence Prevention*, WASH. POST (May 27, 2021), [https://www.washingtonpost.com/local/dc-politics/dc-budget-bowser-police/2021/05/27/11acef38-be69-11eb-83e3-0ca705a96ba4\\_story.html](https://www.washingtonpost.com/local/dc-politics/dc-budget-bowser-police/2021/05/27/11acef38-be69-11eb-83e3-0ca705a96ba4_story.html) [<https://perma.cc/RB9D-T8VM>].

198. Sam Levin, *'It's a Slap in the Face': LA Activists Protest Mayor's Police Budget Increase*, GUARDIAN (Apr. 22, 2021), <http://www.theguardian.com/us-news/2021/apr/22/los-angeles-protest-mayor-police-budget-increase>.

199. Andrew Keatts, *A Year After 'Defund' Demands, San Diego May Hike Police Spending Again*, VOICE OF SAN DIEGO (Apr. 19, 2021), <https://www.voiceofsandiego.org/topics/public-safety/a-year-after-defund-demands-san-diego-might-up-police-spending-again> [<https://perma.cc/68F6-38SE>].

Philadelphia,<sup>200</sup> Baltimore,<sup>201</sup> and Hartford<sup>202</sup> either made no progress, walked back their proposals, had their proposals fail, or ultimately proposed budget increases after initially defunding police.

The protest hotspots were most likely to go beyond pledges and at least partly implement a defund model, even if success of these efforts are yet to be determined. For example, in Seattle, activists pushed the city government to invest more in social services and other community needs.<sup>203</sup> In its 2021 budget, the city moved forward with measures that prioritized greater investment in community safety and well-being that did not involve police officers and use of force, such as expanding housing services for the homeless, providing alternative responses to mental health crises, revitalizing city parks and other community green spaces, and launching initiatives to combat racial inequality within the city.<sup>204</sup>

Likewise, in protest-heavy Los Angeles, BLM demanded that the city budget reinvest in Black communities and prioritize community services over police funding.<sup>205</sup> These local demands achieved some success at the city and county levels. On November 3, 2020, LA County voters approved Measure J, which requires the county to spend at least ten percent of its discretionary funds on social programs designed to keep people out of the criminal justice system.<sup>206</sup> These programs include community efforts to address youth development, job training, small business development, supportive housing services, and alternatives to incarceration.<sup>207</sup> This initiative later hit

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200. Chris Palmer & Laura McCrystal, *Philly Mayor Jim Kenney Promised Police Reform. It's a Work in Progress a Year Later*, INQUIRER (June 1, 2021), <https://www.inquirer.com/news/philadelphia-police-reform-mayor-jim-kenney-george-floyd-protests-20210601.html> [<https://perma.cc/8972-ET8X>].

201. Keith Daniels, *Defund Police? Not in Baltimore—Mayor Scott Increases City Police Budget*, WBFF (May 27, 2021), <https://foxbaltimore.com/news/local/baltimore-tax-payers-oppose-mayors-proposed-budget-particularly-police-spending> [<https://perma.cc/WX7X-XE4F>].

202. Rebecca Lurye, *Council Majority Rejects Proposal to Cut \$12M from Hartford Police Budget Next Year*, HARTFORD COURANT (May 21, 2021), <https://www.courant.com/community/hartford/hc-news-hartford-council-budget-changes-20210521-asuzwxcu7jeejgi2v5qyi3mvau-story.html>.

203. Jack Brewster, *Here's What The Capitol Hill Autonomous Zone Protesters Are Demanding*, FORBES (June 13, 2020, 2:25 PM), <https://www.forbes.com/sites/jackbrewster/2020/06/13/heres-what-the-capitol-hill-autonomous-zone-protesters-are-demanding/?sh=7c10c35636c5> [<https://perma.cc/43N4-454W>].

204. Kenny Lo, Betsy Pearl & Chelsea Parsons, *5 Discussions That Shaped the Justice Reform Movement in 2020*, CTR. FOR AM. PROGRESS (Mar. 18, 2021), <https://www.americanprogress.org/issues/criminal-justice/news/2021/03/18/497328/5-discussions-shaped-justice-reform-movement-2020> [<https://perma.cc/4UM7-KSNT>].

205. *ATI Measure J 2021 Spending*, CHIEF EXEC. OFFICE CNTY. OF LOS ANGELES, <https://ceo.lacounty.gov/measure-j-2021-spending> [<https://perma.cc/3KBG-B839>].

206. *Id.*

207. *Id.*

a major roadblock, however, when a judge struck it down as unconstitutional, holding that it violated a portion of state law that requires the Board of Supervisors to make budgeting decisions.<sup>208</sup> In addition to this ballot initiative, other city level action includes: the Los Angeles City Council cut the LAPD budget by \$150 million;<sup>209</sup> the Los Angeles Unified School District cut its police budget by thirty-five percent;<sup>210</sup> the City Council is developing a program to use unarmed social workers instead of police to respond to some mental health calls;<sup>211</sup> and the city is studying whether it could remove police from traffic enforcement.<sup>212</sup>

Minneapolis, ground zero of the 2020 protests and an over-performing city in terms of protest participation, has also encountered judicial pushback to its defunding efforts.<sup>213</sup> The Minneapolis City Council initially responded to the protests and public outrage by agreeing to dismantle the Minneapolis police department.<sup>214</sup> The Council entered this agreement with the understanding that the city would create a new safety paradigm that better meets community needs.<sup>215</sup> However, Minneapolis residents sued the city for failing to provide the minimum number of police officers as provided by charter.<sup>216</sup> On July 1, 2021, a judge ruled in their favor, ordering the Minneapolis Police Department to hire at least 730 officers by June 30, 2022, or .0017 officers per resident.<sup>217</sup> Additionally, the city

208. Megan Nguyen, *Judge Strikes Down Measure J, Seen as a Blow to the Criminal Justice Reform Movement*, LAIST (June 18, 2021), <https://laist.com/news/criminal-justice/judge-strikes-down-measure-j-which-comes-as-a-blow-to-the-criminal-justice-reform-movemen> [<https://perma.cc/3LX5-Q4T3>].

209. Fola Akinnibi, Sarah Holder & Christopher Cannon, *Cities Say They Want to Defund the Police. Their Budgets Say Otherwise*, BLOOMBERG (Jan. 12, 2021), <https://www.bloomberg.com/graphics/2021-city-budget-police-funding> [<https://perma.cc/2LVH-KRN6>].

210. Kyle Stokes, *LAUSD Board Reduces School Police Budget By 35%*, LAIST (June 30, 2020), <https://laist.com/news/lausd-school-police-budget-cut> [<https://perma.cc/H25R-7YNR>].

211. LOS ANGELES. CNTY. ALTS. TO INCARCERATION WORK GRP., CARE FIRST, JAILS LAST (2020), [https://lcalternatives.org/wp-content/uploads/2020/03/ATI\\_Full\\_Report\\_single\\_pages.pdf](https://lcalternatives.org/wp-content/uploads/2020/03/ATI_Full_Report_single_pages.pdf) [<https://perma.cc/YE6R-CWCD>].

212. Robert Garrova, *LA (Finally) Will Explore Alternatives To Armed Police In Traffic Enforcement*, LAIST (Feb. 23, 2021), <https://laist.com/news/la-finally-will-explore-alternatives-to-armed-police-in-traffic-enforcement> [<https://perma.cc/P6RS-3KRD>].

213. Rav Arora, *How a Minneapolis Resident Fought City's Decision to Defund Police—and Won*, N.Y. POST (July 10, 2021), <https://nypost.com/2021/07/10/how-minneapolis-residents-overturned-decision-to-defund-police> [<https://perma.cc/X39D-HZ8E>].

214. *Id.*

215. Tim Stelloh & Shaquille Brewster, *Majority of Minneapolis City Council Commits to Dismantling City's Police Department*, NBC NEWS (June 7, 2020), <https://www.nbcnews.com/news/us-news/majority-minneapolis-city-council-commits-dismantling-city-s-police-department-n1227116> [<https://perma.cc/K3KU-SZGG>].

216. Arora, *supra* note 213.

217. *Id.* A proposed amendment to the Minneapolis Charter that would have eliminated the minimum number of officers and replaced the police department with a Department

council reversed its initial decision and approved \$6.4 million in additional funding for the police department to hire and train additional officers.<sup>218</sup> Given prior failure of police reform efforts in Minneapolis, this is not the type of deeper change the movement activists were seeking.

While these calls for meaningful institutional change have been loud and clear, and “Defund the Police” has become a globally recognized campaign slogan, the initial wave of defund policy efforts have not been realized.<sup>219</sup> In the one year since the height of the BLM protests, few cities have actually shifted funding away from police department budgets.<sup>220</sup> Even cities that have adopted a divest/invest model are now reconsidering that move. For example, New York City shifted about \$1 billion from its police budget in 2020, yet the budget appears to be rising again in 2021 as concerns about crime grow.<sup>221</sup> There is also a lack of broad public support for defunding the police and continued confusion among Americans about what the defund call to action means.<sup>222</sup> A March 2021 poll found that fewer than one in five Americans support the movement to defund the police.<sup>223</sup>

Although the idea of reallocating resources away from police officers and towards other services including mental health services has gained support,<sup>224</sup> the path for political leaders to enact these policies is unclear going forward. Republican politicians and activists have weaponized the idea of defunding the police and most Democratic politicians have been unwilling to defend, let alone embrace, this position.<sup>225</sup> With rising crime rates, or at least perceptions that

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of Public Safety was rejected by voters in November 2021. Holly Bailey, *Minneapolis Rejects Measure to Replace Police Department in First Major Electoral Test of Reform Movement After George Floyd’s Murder*, WASH. POST (Nov. 2, 2021), <https://www.washingtonpost.com/nation/2021/11/02/minneapolis-mayor-police-vote/> [<https://perma.cc/VY54-FAY7>].

218. Arora, *supra* note 213.

219. William Roberts, *After 2020’s BLM Protests, Real Police Reform Proves a Struggle*, ALJAZEERA, <https://www.aljazeera.com/news/2021/4/13/after-2020s-blm-protests-police-reform-still-a-struggle-in-us> [<https://perma.cc/SVV9-CMXM>].

220. Laurie Woods, *Defund the Police? Actually, Police Salaries Are Rising in Departments across the United States*, CONVERSATION (June 29, 2021), <http://theconversation.com/defund-the-police-actually-police-salaries-are-rising-in-departments-across-the-united-states-161977> [<https://perma.cc/X924-VDPP>].

221. Fola Akinnibi, Sarah Holder, & Christopher Cannon, *Cities Say They Want to Defund the Police. Their Budgets Say Otherwise*, BLOOMBERG (Jan. 12, 2020), <https://www.bloomberg.com/graphics/2021-city-budget-police-funding/> [<https://perma.cc/V8DD-FUVB>].

222. Newall & Silverstein, *supra* note 151.

223. *Id.*

224. Sam Levin, *These U.S. Cities Defunded Police: ‘We’re Transferring Money to the Community’*, GUARDIAN (Mar. 11, 2021, 11:03 AM), <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community> [<https://perma.cc/B3KX-CTCZ>].

225. *Democrats Split on ‘Defund Police’ Movement*, BOS. HERALD (June 15, 2020),



crime is rising, the fate of the defund movement is facing an increasingly steep uphill battle. Despite the obstacles, activists continue to press for defunding as the type of transformational and lasting institutional change that they envision.

### *C. Broader Systemic Reform*

Most of the demands for legal and policy change arising out of the 2020 protests focus on individual level justice for victims and institutional reforms that change the practices and procedures in police departments.<sup>226</sup> However, racial justice activists also emphasize that the core issues go much deeper than police brutality, and involve other systemic issues such as mass incarceration, health care, housing, education, and economics.<sup>227</sup> These interrelated systems perpetuate the broader patterns of racial subordination that date back to slavery and have become deeply entrenched in U.S. history, law, and culture. Activists who recognize these deeper root causes of racial subordination have used social media and the protests to call for multifaceted policy change such as #reparations, wages, health, and #medicareforall; specific legislative proposals such as #greennewdeal; and more systemic calls to #abolish police, ice, and other components of the prison industrial complex.

#### *1. Abolish*

In the context of criminal justice and policing, abolitionists go beyond those who advocate for defunding and demand “an end to policing long term while still addressing community needs.”<sup>228</sup> Abolitionists seek a more fundamental reimagining of community life and safety that ultimately stops criminalizing Black and brown people and makes police obsolete.<sup>229</sup> The hope of these activists who support abolition is that access to basic needs such as health care, housing, jobs, and education will pave the way for the realization of that vision.<sup>230</sup>

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<https://www.bostonherald.com/2020/06/14/dems-split-on-defund-police-movement> [<https://perma.cc/XPC3-ZQ4G>]; Harriet Alexander, *Jen Psaki Accuses Republicans of Defunding the Police*, DAILY MAIL (June 29, 2021), <https://www.msn.com/en-us/news/politics/jen-psaki-accuses-republicans-of-defunding-the-police/ar-AALz4B2> [<https://perma.cc/Q8E3-WAL9>].

226. *Id.*

227. *Id.*

228. Kessler, *supra* note 130.

229. *Id.*

230. Sean Illing, *The “Abolish the Police” Movement, Explained by 7 Scholars and Activists*, VOX (June 12, 2020), <https://www.vox.com/policy-and-politics/2020/6/12/21283813>

There were few concrete policy proposals related to abolition considered in cities and states, and public support is generally low.<sup>231</sup> Additionally, one year following the protests, trust in law enforcement and the desire to protect law and order are on the rise as well.<sup>232</sup> However, even prior to the 2020 protests, some places were experimenting with alternatives to police and prison in as many situations as possible. L.A. County spearheaded a program called “Care First, Jail Last Counties” that, among other things, recommended minimizing law enforcement response to mental health and substance abuse crises.<sup>233</sup> The goal is to provide care and treatment instead of arrest and jail whenever possible.<sup>234</sup> Currently, Los Angeles County is home to the nation’s largest jail system, with nearly one third of incarcerated people diagnosed with a serious mental disorder.<sup>235</sup> With this project Los Angeles County hopes to close their Men’s Central Jail and reduce their reliance on incarceration by dedicating resources to services that provide care and keep people out of prisons.<sup>236</sup>

## 2. Reparations

For years, reparations have been proposed to address the lingering disadvantages and harms of chattel slavery and centuries of federally constructed and funded apartheid.<sup>237</sup> However, a systemic policy proposal has been considered politically impossible given that fewer than one third of Americans supported the idea as recently as

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/george-floyd-blm-abolish-the-police-8cantwait-minneapolis [https://perma.cc/F8RZ-KE8C].

231. Standing at only 11 percent support in a March 2021 poll, compared to 18 percent support for defunding the police. Newall & Silverstein, *supra* note 151.

232. *Id.*

233. LOS ANGELES CNTY. ALTS. TO INCARCERATION WORK GRP., *supra* note 211.

234. *Id.*

235. *Id.*

236. An act to add and repeal Article 8.5 of Chapter 7 of Division 1 of Title 2 of the Government Code, relating to emergency services, A.B. 2054, State Legislature, 2019–20 Sess. (Cal. 2020), [http://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB2054](http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2054) [https://perma.cc/H2DX-DKBJ]. California is also considering the Community Response Initiative to Strengthen Emergency Systems (CRISES) Act, an abolition spirited bill that “would create a three year pilot program focused on putting community organizations in the role of first responder for certain calls involving homelessness, mental health, domestic abuse, and other situations that the bill’s supporters say would be better served by community-based response teams centered on culturally appropriate, trauma-informed, and relationship-building services.” *Id.*

237. Joy Milligan, *Remembering: The Constitution and Federally Funded Apartheid*, U. CHI. L. REV. (May 2021), <https://papers.ssrn.com/abstract=3849599> (forthcoming); Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631> [https://perma.cc/5KAE-DJ8V]; see also KATHERINE FRANKE, REPAIR: REDEEMING THE PROMISE OF ABOLITION 140 (Haymarket Books, 2019).

2019 and even President Barack Obama considered the idea impractical.<sup>238</sup> It was not until the protests of 2020 that the idea gained traction in mainstream politics.<sup>239</sup> Given the formidable opposition, it is significant that the 2020 protests spread awareness of racial injustice and empathy in ways that tangibly shifted the political legitimacy of reparations.<sup>240</sup>

For example, Representative John Conyers, founding member of the Congressional Black Caucus, introduced H.R. 40, the Commission to Study Reparation Proposals for African-Americans Act, each year from 1989 until 2017 when he resigned.<sup>241</sup> Representative Sheila Jackson Lee reintroduced H.R. 40 at the outset of the new Congressional session in January 2021.<sup>242</sup> The commission it creates would be charged with examining the effects of slavery and discrimination from slavery's inception in the colonies to the present day and recommending appropriate remedies.<sup>243</sup> The bill went from being backed by two members in 2014 to attracting 190 cosponsors in 2021.<sup>244</sup> President Joe Biden also supports reparations and addressed the topic on the campaign trail.<sup>245</sup>

States and local jurisdictions are also considering reparations proposals. Although these proposals face obstacles similar to those at the federal level, they stand a better chance of being implemented.<sup>246</sup> State lawmakers in California, Maryland, New Jersey, and Oregon

238. Mohamed Younis, *As Redress for Slavery, Americans Oppose Cash Reparations*, GALLUP (July 29, 2019), <https://news.gallup.com/poll/261722/redress-slavery-americans-oppose-cash-reparations.aspx> [<https://perma.cc/Z3CW-S7PD>]; Ta-Nehisi Coates, *Better Is Good: Obama on Reparations, Civil Rights, and the Art of the Possible*, ATLANTIC (Dec. 21, 2016), <https://www.theatlantic.com/politics/archive/2016/12/ta-nehisi-coates-obama-transcript-ii/511133> [<https://perma.cc/XSJ2-4A3U>].

239. Emma Goldberg, *How Reparations for Slavery Became a 2020 Campaign Issue*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/us/politics/reparations-slavery.html> [<https://perma.cc/6UCD-23LC>]; Frank Newport, *American Attitudes and Race*, GALLUP (June 17, 2020), <https://news.gallup.com/opinion/polling-matters/312590/american-attitudes-race.aspx> [<https://perma.cc/DD5X-29W3>].

240. Eugene Scott, *Support for Reparations Has Grown. But It's Still Going to Be a Hard Sell for Congress*, WASH. POST (Apr. 15, 2021), <https://www.washingtonpost.com/politics/2021/04/15/support-reparations-has-grown-its-still-going-be-hard-sell-congress/> [<https://perma.cc/NHL7-C722>].

241. H.R. 40, 117th Cong. (2021); H.R. 40, 115th Cong. (2017); H.R. 3745, 101st Cong. (1989).

242. H.R. 40, 117th Cong. (2021).

243. *Id.*

244. *Id.*

245. Seth McLaughlin, *Joe Biden Wants Reparations for Blacks to Include Native Americans*, WASH. TIMES (June 10, 2020), <https://www.washingtontimes.com/news/2020/jun/10/joe-biden-wants-reparations-blacks-include-native-> [<https://perma.cc/7UHA-KBC7>].

246. See Piper Hudspeth Blackburn, *Despite Racial Reckoning, State Efforts Stall on Reparations*, ABC NEWS (Apr. 25, 2021, 3:30 PM), <https://abcnews.go.com/US/wireStory/racial-reckoning-state-efforts-stall-reparations-77299413> [<https://perma.cc/T97Z-W6M9>].

introduced, or attempted to reintroduced, reparations bills.<sup>247</sup> Thus far, California is the only state to make progress, adopting Assembly Bill No. 3121 on September 30, 2020.<sup>248</sup> This law creates the “Task Force to Study and Develop Reparation Proposals for African Americans, with a Special Consideration for African Americans Who Are Descendants of Persons Enslaved in the United States . . . .”<sup>249</sup> The law requires the commission to examine the institution of slavery that existed in the U.S. and the lingering effects resulting from slavery.<sup>250</sup> The task force is to submit their findings and recommendations to the state legislature and later disburse any potential reparations.<sup>251</sup> Bills proposed in other states remain stalled.<sup>252</sup> Cities that have taken steps to address systemic racism through reparations include Evanston, Illinois, which adopted a resolution on reparations;<sup>253</sup> Asheville, North Carolina, which approved reparations to promote homeownership and business opportunities for Black residents;<sup>254</sup> Burlington, Vermont, where the city council voted to create a task force to study reparations;<sup>255</sup> and Providence, Rhode Island, where the mayor signed an executive order to look into the feasibility of reparations.<sup>256</sup>

#### D. Backlash Policies

Not all legal and policy change resulting from the 2020 protests has involved individual, institutional, or systemic demands for

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247. *Id.*

248. See Antonio Ray Harvey, *Gov. Newsom Signs Reparations Bill Into Law*, PRECINCT RPTR. NEWS (Sept. 30, 2021), <https://www.precinctreporter.com/2020/09/30/gov-newsom-signs-reparations-bill-into-law> [https://perma.cc/NAT8-BL84].

249. 200 CAL. STATS. 319.

250. *Id.* at art. 2, § 8301.1.

251. *Id.* at art. 2, § 8301.1(3), art. 6.

252. Blackburn, *supra* note 246.

253. Andy Fies, *Evanston, Illinois, Finds Innovative Solution to Funding Reparations: Marijuana Sales Taxes*, ABCNEWS (July 19, 2020, 11:03 AM), <https://abcnews.go.com/US/evanston-illinois-finds-innovative-solution-funding-reparations-marijuana/story?id=71826707> [https://perma.cc/L6EB-T2BD]; Bryan Smith, *Evanston's Road to Reparations*, CHI. MAG. (June 2, 2020, 10:19 AM), <https://www.chicagomag.com/Chicago-Magazine/June-July-2020/Evanstons-Road-to-Reparations> [https://perma.cc/5SUQ-GCJZ].

254. Neil Vigdor, *North Carolina City Approves Reparations for Black Residents*, N.Y. TIMES (July 16, 2020), <https://www.nytimes.com/2020/07/16/us/reparations-asheville-nc.html> [https://perma.cc/N7DB-3CTT].

255. Ethan Bakuli, *BTV City Council Votes to Create Task Force to Study Reparations for Slavery*, BURLINGTON FREE PRESS (Aug. 11, 2020, 10:05 PM), <https://www.burlingtonfreepress.com/story/news/2020/08/11/burlington-city-council-creates-task-force-slavery-reparations/3348422001> [https://perma.cc/BEF7-DS8G].

256. Deborah Becker, *Providence Mayor's Executive Order Marks First Steps Toward Reparations in Rhode Island*, WBUR (July 16, 2020), <https://www.wbur.org/news/2020/07/16/providence-mayor-executive-order-reparations> [https://perma.cc/UJT3-S9CG].

racial justice and police reform consistent with the BLM movement's goals.<sup>257</sup> Similar to the social media backlash illustrated by the orange box (top right) in Figure 1, backlash legislation has also followed the protest movement and the renewed demands for racial justice. This legislation, seen in states across the country, represents a reaction to the gains, or perceived gains, of the BLM movement.<sup>258</sup> As Carol Anderson has written, "the trigger for white rage, inevitably, is Black advancement."<sup>259</sup> Throughout American history, white backlash has been the rule, not the exception.<sup>260</sup>

Since 1865 and the passage of the Thirteenth Amendment, every time African Americans have made advances towards full participation in our democracy, white reaction has fueled a deliberate, relentless rollback of their gains. The end of the Civil War and Reconstruction was greeted with the Black Codes and Jim Crow; the Supreme Court's landmark 1954 *Brown v. Board of Education* [sic] decision was met with the shutting down of public schools throughout the South; the Civil Rights Act of 1964 and Voting Rights Act of 1965 triggered a coded response, the so-called Southern Strategy and the War on Drugs that disenfranchised millions of African Americans.<sup>261</sup>

As another scholar notes, "American reactionary politics is nearly always preemptive, predicting catastrophe and highlighting potential slippery slopes."<sup>262</sup> Thus, it is not surprising that while the policy gains of the BLM movement have been relatively modest nationally, the influx of reactionary legislation has been comparably dramatic; this outsized reaction is not out of step with American history.<sup>263</sup>

The backlash legislation has been most pronounced in Republican trifecta states, states in which Republicans control both chambers of

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257. See, e.g., Sophie Quinton, *Republicans Respond to Black Lives Matter with Anti-Protest Bills*, PEW TRUSTS (Feb. 4, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/02/04/republicans-respond-to-black-lives-matter-with-anti-protest-bills> [<https://perma.cc/ZLQ7-FV8B>].

258. See CAROL ANDERSON, *WHITE RAGE: THE UNSPOKEN TRUTH OF OUR RACIAL DIVIDE* 3 (2016); see, e.g., Quinton, *supra* note 257.

259. ANDERSON, *supra* note 258, at 3.

260. See *id.*

261. Carol Anderson, *White Rage: The Unspoken Truth of Our Racial Divide*, <https://www.professorcarolanderson.org/white-rage> [<https://perma.cc/J3Y8-6DD2>] (last visited Nov. 4, 2021) (book summary).

262. Lawrence Glickman, *How White Backlash Controls American Progress*, ATLANTIC (May 21, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/white-backlash-nothing-new/611914> [<https://perma.cc/TAV2-CKQX>].

263. See ANDERSON, *supra* note 258, at 3.

the legislature and the governor's seat.<sup>264</sup> Although backlash legislation has historically taken various forms, today's racial backlash policies can be categorized into four primary groups: (1) anti-protest legislation,<sup>265</sup> (2) "pro-police" and "Blue Lives Matter" legislation,<sup>266</sup> (3) legislation banning discussion of race in public schools (described by the right as anti-Critical Race Theory legislation),<sup>267</sup> and (4) voter suppression legislation.<sup>268</sup>

In the 2021 legislative session alone, Republican legislators introduced more than eighty bills in forty-five states targeting the right to protest.<sup>269</sup> Thirty-six of these bills have been enacted, almost all in states with Republican trifectas.<sup>270</sup> The bills cover a range of topics, from punishing "unreasonable noises" to heightened penalties for infractions related to protests to redefining what is considered a riot.<sup>271</sup> In Oklahoma and Iowa, new bills would grant immunity to drivers who injure or kill protesters.<sup>272</sup> A sweeping piece of legislation in

264. See Michael Martin, *Republicans Push Wave of Protest Bills In 'Alternative Universe' Backlash*, NPR (Apr. 25, 2021), <https://www.npr.org/2021/04/25/990710251/republicans-push-wave-of-anti-protest-bills-in-alternative-universe-backlash> [<https://perma.cc/FNP5-RDVN>]; see *State Government Trifectas*, BALLOTPEDIA, [https://ballotpedia.org/State\\_government\\_trifectas](https://ballotpedia.org/State_government_trifectas) [<https://perma.cc/5LXV-J4KP>] (last visited Nov. 4, 2021).

265. Char Adams, *Experts Call "Anti-Protest" Bills a Backlash to 2020's Racial Reckoning*, NBC NEWS (May 18, 2021), <https://www.nbcnews.com/news/nbcblk/experts-call-anti-protest-bills-backlash-2020-s-racial-reckoning-n1267781> [<https://perma.cc/UN7M-TMM8>] (including bills making it more difficult to protest, reducing liability for people who hit protesters with their cars, criminalizing tearing down statues, banning excessive noise, barring those convicted for a crime related to protesting from receiving student loans, federal housing assistance, etc.).

266. Farnoush Amiri, *Amid Reform Movement, Some GOP States Give Police More Power*, AP NEWS (June 19, 2021), <https://apnews.com/article/george-floyd-police-reform-police-government-and-politics-bd53b00020b1070ad9840751ef885fc5> [<https://perma.cc/C997-RC3M>].

267. Lauren Camera, *Bills Banning Critical Race Theory Advance in States Despite Its Absence in Many Classrooms*, U.S. NEWS & WORLD REP. (June 23, 2021), <https://www.usnews.com/news/education-news/articles/2021-06-23/bills-banning-critical-race-theory-advance-in-states-despite-its-absence-in-many-classrooms>.

268. *State Voting Bills Tracker 2021*, BRENNAN CTR. FOR JUST. (last updated May 28, 2021), <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021> [<https://perma.cc/Q2VF-TVN5>] (This reflects a reaction to the growing political strength of historically marginalized groups and efforts to suppress that power; likely indirectly fueled by last summer's protests and high turnout in the 2020 election in areas like Atlanta.).

269. See *US Protest Law Tracker*, INT'L CTR. FOR NOT-FOR-PROFIT L. (June 28, 2021), <http://www.icnl.org/usprotestlawtracker> [<https://perma.cc/947L-F7DU>]; and see *US Protest Law Tracker*, INT'L CTR. FOR NOT-FOR-PROFIT L. (June 28, 2021), <https://www.icnl.org/usprotestlawtracker/?location=&status=enacted&issue=&date=&type=legislative> [<https://perma.cc/WB4C-M5PP>].

270. See *US Protest Law Tracker* results, *supra* note 269 (applying two different sets of search filters).

271. See *id.*

272. See *id.*

Florida would make tearing down statues punishable by up to fifteen years in prison, a reaction to the removal of Confederate statues last summer.<sup>273</sup> Other states have passed bills barring those convicted of a crime related to protesting from receiving student loans, federal housing assistance, and other government benefits.<sup>274</sup> These bills present serious challenges to the First Amendment's guarantees of freedom of speech and freedom of assembly.<sup>275</sup> As Dartmouth historian Matthew Delmont has argued, "It has been a pretty consistent pattern, at least since the 1960s, that any kind of movement for racial justice is accompanied by a strong desire by a different set of the population to rein those protests in and re-establish a sense of order—typically for white Americans."<sup>276</sup>

Second, in contrast to the police reform and accountability legislation pushed largely in Democratic-led states, Republican-led states advanced "Back the Blue" and "Blue Lives Matter" legislation following the 2020 protests.<sup>277</sup> The "Blue Lives Matter" movement capitalizes on language of the Black Lives Matter movement and argues that there is a "war on police."<sup>278</sup> One scholar describes this movement as being "built on white backlash" and "ripe with the potential to be a repository of white resentment of black and brown progress."<sup>279</sup> In Iowa, Republicans removed sections of a bill that would ban racial profiling in police stops in order to replace them with expanded qualified immunity for police officers.<sup>280</sup> Other states have reduced the power of civilian oversight boards,<sup>281</sup> barred cities from defunding their police departments,<sup>282</sup> and expanded funding for the

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273. See Steven Lemongello & Gray Rohrer, *DeSantis Signs 'Anti-Riot' Bill into Law, Sparking Outcry from Democrats, Civil Rights Groups*, ORLANDO SENTINEL (Apr. 19, 2021), <https://www.orlandosentinel.com/politics/os-ne-desantis-signs-anti-riot-bill-20210419-ilt27x5mzcbheeqvyhclhz2xq-story.html> [<https://perma.cc/CN24-LJ5P>].

274. *US Protest Law Tracker* results, *supra* note 269 (applying two different sets of search filters).

275. See, e.g., Rosalyn R. LaPier, *New Wave of Anti-Protest Laws May Infringe on Religious Freedoms for Indigenous People*, CONVERSATION (July 12, 2021), <http://theconversation.com/new-wave-of-anti-protest-laws-may-infringe-on-religious-freedoms-for-indigenous-people-160733> [<https://perma.cc/N23E-CKAB>].

276. Adams, *supra* note 265.

277. Frank Rudy Cooper, *Cop Fragility and Blue Lives Matter*, 2020 U. ILL. L. REV. 621, 623, 637–39 (2020).

278. *Id.* at 633.

279. *Id.* at 634, 635.

280. Amiri, *supra* note 266.

281. *Id.* ("Republican governors in Tennessee and Arizona signed into law measures that could reduce the independence of [oversight] boards.")

282. Jeff Amy, *Kemp Signs Bill Aimed at Banning "Defund the Police" Efforts*, AP NEWS (May 7, 2021), <https://apnews.com/article/george-floyd-racial-injustice-police-police-reform-government-and-politics-a11edff75f6ef955fa074dc4e1d3a6fa> [<https://perma.cc/KWQ4-S3V5>].

police, among other “pro-police” measures. Given this shift, it appears that the appetite and window for reform was especially short-lived in many conservative states.

Third, Republican-led states have responded to the racial reckoning of 2020 and the conversations that it inspired by barring discussions about race and racism in public education.<sup>283</sup> Loosely termed “anti–Critical Race Theory” legislation, these bills ban teaching about the ongoing effects of racism in society, calling “history education that focuses on systemic racism a form of ‘activist indoctrination.’”<sup>284</sup> As of August 2021, twenty-six states introduced bills banning so-called “Critical Race Theory” and twelve enacted such bills into law.<sup>285</sup> Although many Republicans have long denied and opposed the concept of systemic racism, the spread and timing of these bills was likely accelerated by the conversations, education, and awareness that BLM activism inspired.<sup>286</sup>

Lastly, and perhaps most perniciously, backlash policies include efforts in Republican-led states to counter the growing political strength of historically marginalized groups, particularly Black people, with draconian policies aimed at limiting the right to vote.<sup>287</sup> The BLM protests played a significant role in the 2020 election with roughly one fifth of Americans saying that racial justice was the most important issue when voting.<sup>288</sup> In key swing states like Pennsylvania, Georgia, Wisconsin, and Michigan, Black voters were critical to the election of Joe Biden and the flip to a Democratic-controlled Senate.<sup>289</sup> Responding to this showing of political power and relying on the myth of widespread voter fraud, as of May 2021 legislators in forty-eight states had introduced over 380 bills making it more difficult to vote, including twenty-two that have passed, and

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283. See, e.g., *Map: Where Critical Race Theory Is Under Attack*, EDUC. WEEK (July 12, 2021), <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [<https://perma.cc/2HMK-UTH3>].

284. Trip Gabriel & Dana Goldstein, *Targeting ‘Critical Race Theory,’ Republicans Rattle American Schools*, N.Y. TIMES (June 1, 2021), <https://www.nytimes.com/2021/06/01/us/politics/critical-race-theory.html> [<https://perma.cc/LFS4-RLSF>].

285. See *Map: Where Critical Race Theory Is Under Attack*, *supra* note 283.

286. See *id.*

287. See, e.g., Nick Corasaniti & Reid J. Epstein, *What Georgia’s Voting Law Really Does*, N.Y. TIMES (Aug. 18, 2021), <https://www.nytimes.com/2021/04/02/us/politics/georgia-voting-law-annotated.html> [<https://perma.cc/H7Z2-72FZ>].

288. Rachel Ramirez, *Black Lives Matter Helped Shape the 2020 Election. The Movement Now Has Its Eyes on Georgia*, VOX (Nov. 27, 2020), <https://www.vox.com/21591560/black-lives-matter-protests-2020-election-georgia> [<https://perma.cc/K7XD-8MM5>].

289. *Id.*; Janell Ross, *How Black Voters in Key Cities Helped Deliver the Election for Joe Biden*, NBC NEWS (Aug. 27, 2021), <https://www.nbcnews.com/news/nbcblk/how-black-voters-key-cities-helped-deliver-election-joe-biden-n1246980> [<https://perma.cc/F9ET-8DCZ>].



many more that are moving through state legislatures.<sup>290</sup> These bills cover a range of issues including voter ID laws, purging voters from the rolls, making it more difficult to register to vote, restricting mail-in and early voting, closing polling locations, banning providing food and water to people waiting in line to vote, and much more.<sup>291</sup> These bills also often take election powers away from local administrators and Secretaries of States and give power to Republican legislatures to overturn elections.<sup>292</sup> In Georgia, for example, the new law allows the Republican legislature to remove election officials at will.<sup>293</sup> Wasting no time, legislators have already removed a number of officials, including several Black Democrats.<sup>294</sup> In the absence of federal legislation and with a heavily conservative Supreme Court, these bills could significantly diminish the political power of Black Americans, locally and nationally.<sup>295</sup>

#### CONCLUSION

The groundwork laid by the Black Lives Matter movement, the murder of George Floyd, the massive social media response, and the ensuing protests during the summer of 2020 together created a paradigm shift in the social awareness of racialized police violence and in the national conversation about racial injustice. This shift occurred across the political spectrum and created a window of opportunity for legal and policy change. While bipartisan gridlock continues at the federal level, state and local governments have achieved important legislative results that could save Black lives. However, the legal changes have primarily been focused on policing policies and practices, and less on the more transformative change envisioned by activists advocating for the “defund” divest/invest approach. Even just a year out, the window of empathy appears to have narrowed, making it less likely that the 2020 protests will generate the type of lasting and more structural policy changes that would make an enduring difference for the Black community.

Further, the backlash policies that were aided by the partisan fervor around the presidential election may have stifled hope for policy change at the federal level. This backlash has also encouraged

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290. *State Voting Bills Tracker 2021*, *supra* note 268.

291. *Id.*

292. Nick Corasaniti & Reid J. Epstein, *How Republican States Are Expanding Their Power Over Elections*, N.Y. TIMES (June 19, 2021), <https://www.nytimes.com/2021/06/19/us/politics/republican-states.html> [<https://perma.cc/S5AJ-QKKK>].

293. *Id.*

294. *Id.*

295. *Id.*

retreat from racial justice and reform commitments in many states and has prompted several types of backlash legislation that will exacerbate existing racial inequities.<sup>296</sup>

The most promising policy responses have been at the city level, particularly in locations with heavy protest activity.<sup>297</sup> This suggests the power of cities and counties have to take the lead in responding to racial injustice. It also demonstrates the continuing power of protest activism to generate policy changes, especially at the local level.

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296. *Id.*

297. See Palmer & McCrystal, *supra* note 200; *Kentucky's Second-Largest City Bans "No-Knock" Warrants*, *supra* note 156.

## APPENDIX A

## California State Survey

Statute Number	Law Description <sup>298</sup>
Act No. 2021-020	Requires a magistrate, before issuing an arrest warrant, to examine the declaration of probable cause made by a peace officer, or an employee of a public prosecutor's office when the subject of the arrest warrant is a peace officer.
Act No. 2021-250	Existing law authorized the state prosecutor to investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of an unarmed civilian. This legislation authorizes the state prosecutor to investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of a civilian if there is a reasonable dispute as to whether the civilian was armed.
Act No. 2021-267	Makes it a crime for a peace officer to make a false statement to another peace officer if that statement is included in a peace officer report. Clarifies that the exemption for third party statements does not apply to the peace officer writing or making the report, with regard to a false statement that the peace officer included in the report that is attributed to any other person, if the peace officer knows the statement is false and is including the statement to present the statement as being true.

298. Descriptions are pulled from the National Conference of State Legislatures, Legislative Responses for Policing-State Bill Tracking Database, <https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx>. It does not include all enacted bills during this period, but rather focuses specifically on so-called police reform bills. In other words, this appendix does not include either so-called pro-police bills (increasing funding, improving equipment, defunding localities that defund police, etc.) or purely logistical bills (setting budgets, retirement plans, etc.). It also does not include reform bills that are currently pending in either the state House or Senate. It does include a note of bills that have passed in both chambers and are therefore likely, though not guaranteed, to be enacted.

<b>Statute Number</b>	<b>Law Description</b>
Act No. 2021-126	Prohibits a police department or sheriff's office from sharing, on social media, booking photos of an individual arrested on suspicion of committing a nonviolent crime, unless specified circumstances exist. Requires a police department or sheriff's office that shares, on social media, a booking photo of an individual arrested for the suspected commission of a nonviolent crime to remove the information from its social media page, upon request, unless the same specified circumstances exist.
Act No. 2020-336	Prohibits, with certain exceptions, a law enforcement agency from authorizing or allowing its employees to wear a uniform that is made from a camouflage printed or patterned material, or that is substantially similar to a uniform of the United States Armed Forces.
Act No. 2020-322	Requires the evaluation of peace officers by a physician and surgeon, or psychologist, to include bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation. Requires every department or agency that employs peace officers to review the job descriptions used in the recruitment and hiring of those peace officers and to make changes that de-emphasize the paramilitary aspects of the job and place more emphasis on community interaction and collaborative problem solving.

<b>Statute Number</b>	<b>Law Description</b>
Act No. 2020-342	Authorizes a county to establish a Sheriff Oversight Board to assist the Board of Supervisors with their duties as they relate to the Sheriff, either by action of the Board of Supervisors or through a vote of county residents. Authorizes the Chair of the Oversight Board and the Inspector General to issue a subpoena or subpoena duces tecum when deemed necessary to investigate a matter within their jurisdiction.
Act No. 2020-324	Prohibits a law enforcement agency from authorizing the use of a carotid restraint or a choke hold.
Act No. 2020-326	Requires a state prosecutor to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian. Makes the Attorney General the state prosecutor unless otherwise specified or named. Authorizes the state prosecutor to prepare a written report and to post any reports made on a public internet website. Requires the Attorney General to operate a Police Practices Division to review the use of deadly force policies of a requesting law enforcement agency.
Act No. 2020-327	Creates an exception of protection from civil action the privilege provisions for any communication between a person and a law enforcement agency in which the person knowingly or recklessly makes a false report. Provides that intimidation by threat of violence includes knowingly or recklessly making or threatening to make a false claim or report to a peace officer or law enforcement agency alleging that another person has engaged in unlawful activity or in an activity that requires law enforcement intervention.

<b>Statute Number</b>	<b>Law Description</b>
Act No. 2020-170	Amends existing law relating to the Rural Indian Crime Prevention Program. Requires the Department of Justice to provide technical assistance to local law enforcement agencies and tribal governments with Indian lands, relating to tribal issues, including providing guidance for law enforcement education and training on policing and criminal investigations on Indian lands, providing guidance on improving crime reporting, crime statistics, criminal procedures, and investigative tools. Requires the department to conduct a study to determine how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native Americans in California.

#### Florida State Survey

<b>Statute Number</b>	<b>Law Description</b>
Act No. 2021-129	Prohibits the unauthorized use or release of any information contained in the Driver and Vehicle Information Database, provides for noncriminal infraction, requires the law enforcement accreditation program to address access to and use of personal identification information contained in electronic databases, requires the Criminal Justice Standards and Training Commission to incorporate into the course curriculum instruction on the authorized access to and use of personal identification information.

<b>Statute Number</b>	<b>Law Description</b>
Act No. 2021-241	Relates to law enforcement and correctional officer practices, requires application for employment or appointment as law enforcement or correctional officer to contain specified disclosures, requires background investigation of applicant to include specified information, requires employing agencies to maintain employment information for minimum period, requires establishment of standards for officer training and policies concerning use of force.

#### New York State Survey

<b>Statute Number</b>	<b>Law Description</b>
2021 Act No. 33	Directs the commissioner of mental health to create a working group and report regarding frontline worker trauma informed care.
2020 Act No. 93	Amends the Civil Rights Law, provides for the reporting of a nonemergency incident involving a member of a protected class.
2020 Act No. 95	Establishes the Office of Special Investigation within the Office of the Attorney General to investigate and prosecute any alleged criminal offense or offenses committed by a police officer, or peace officer, concerning the death of any person as a result of any encounter with such police or peace officer.
2020 Act No. 100	Relates to recording certain law enforcement activities, provides that a person not under arrest or in the custody of a law enforcement official has the right to record police activity, and to maintain custody and control of that recording

Statute Number	Law Description
	and of any property or instruments used by that person to record police activities, provides that a person in custody or under arrest does not, by that status alone, forfeit such right to record.
2020 Act No. 104	Relates to the Port Authority of New York and New Jersey, establishes the Law Enforcement Misconduct Investigative Office.
2020 Act No. 94	Amends the Penal Law, establishes the crime of aggravated strangulation, provides that a person is guilty of aggravated strangulation when that person, being a police or peace officer, commits the crime of criminal obstruction of breathing or blood circulation, thereby causing serious physical injury or death to another person, makes such offense a class C felony.
2020 Act No. 103	Provides that when a person is under arrest, or otherwise in custody of a police officer, peace officer, or other law enforcement representative or entity, such officer, representative or entity shall have a duty to provide attention to the medical and mental health needs of such person.
2020 Act No. 105	Relates to the use of body worn cameras by state police officers, establishes the State Police Body Worn Cameras Program, requires the Division of State Police to provide body worn cameras to be worn by all officers.
2020 Act. No. 96	Amends the Civil Rights Law and the Public Officers Law, provides for the disclosure of law enforcement disciplinary records.



<b>Statute Number</b>	<b>Law Description</b>
2020 Act No. 106	Revises provisions relating to the Law Enforcement Misconduct Investigative Office.
2020 Act No. 101	Requires a law enforcement officer or peace officer, who discharges his or her weapon under circumstances where a person could be struck by a bullet, to immediately report the incident to his or her superiors.

#### **Pennsylvania State Survey**

<b>Statute Number</b>	<b>Law Description</b>
Act No. 2020-134	Amends statutes relating to law and justice, establishes the Sheriff and Deputy Sheriff Education and Training Board, sets forth training requirements, provides for the Sheriff and Deputy Sheriff Education and Training Account.
Act No. 2020-57	Amends statutes relating to law and justice, provides for law enforcement background investigations, provides for duties of the Municipal Police Officers' Education and Training Commission, law enforcement agencies, and employers, provides immunity from liability and violations.

#### **Texas State Survey**

<b>Statute Number</b>	<b>Law Description</b>
2021 Tex. Gen. Laws ch. 834	Relates to the procedures required before a law enforcement agency hires a peace officer.
2021 Tex. Gen. Laws ch. 508	Relates to a mental health program that includes peer-to-peer counseling for certain law enforcement personnel, allows for contracting with an institution of

Statute Number	Law Description
	higher education that has appropriate expertise in mental health or law enforcement to develop the peer support network, requires information relating to officer's participation to remain confidential, relates to licensure protection for officers participating in the program, provides for an annual report.
2021 Tex. Gen. Laws ch. 534	Relates to the use of force by peace officers including required intervention for excessive use of force.
2021 Tex. Gen. Laws ch. 509	Relates to certain duties of law enforcement agencies concerning certain information subject to disclosure to a defendant.
2021 Tex. Gen. Laws ch. 979	Relates to the duty of a peace officer to request and render aid for an injured person. Requires officer to request emergency medical services personnel to provide the person with emergency medical services, and to provide first aid or treatment to the person to the extent of the officer's skill and training while waiting for emergency medical services personnel to arrive.
2021 Tex. Gen. Laws ch. 895	Relates to the criminal offenses of violation of civil rights of and improper sexual activity with persons in custody, increases a criminal penalty.
2021 Tex. Gen. Laws ch. 722	Relates to the training and hiring of peace officers

## APPENDIX B

**Houston City Survey**

<b>Ordinance Number</b>	<b>Law Description</b>
	Harris County Commissioners Court passed a criminal justice package that included 10 substantive reforms. <sup>299</sup>
Criminal Justice Task Force	Houston has passed 58% of police reform recommendations according to the new Office of Policing Reform and Accountability. <sup>300</sup>

**New York City Survey**

<b>Ordinance Number</b>	<b>Law Description</b> <sup>301</sup>
Law No. 2020/065	Amending the administrative code of the city of New York, in relation to creating comprehensive reporting and oversight of New York city police department surveillance technologies
Law No. 2020/067	Amending the administrative code of the city of New York, in relation to the right to record police activities
Law No. 2020/069	Amending the administrative code of the city of New York, in relation to requiring the police department to develop an internal disciplinary matrix
Law No. 2021/004	Amending the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record, pending criminal accusations or criminal convictions

299. For full list, see Andrew Schneider, *Harris County Passes Package of 11 Criminal Justice Reform Proposals*, HOUST. PUB. MEDIA (June 10, 2020, 12:53 PM), <https://www.houstonpublicmedia.org/articles/news/criminal-justice/2020/06/10/375606/harris-county-passes-package-of-11-criminal-justice-reforms/> [https://perma.cc/59BF-LQL5].

300. *Reform Checklist*, HOUST. PUB. MEDIA, <https://www.houstonpublicmedia.org/app/plugins/pdfjs-viewer-shortcode/pdfjs/web/viewer.php?file=https://cdn.hpm.io/wp-content/uploads/2021/08/18111419/Reform-Checklist.pdf&dButton=true&pButton=true&oButton=false&sButton=true#zoom=auto&pagemode=none>.

301. Descriptions are based on bill titles and bill summaries found in *Legislation*, NEW YORK CITY COUNCIL, <https://legistar.council.nyc.gov/Legislation.aspx> (last visited Nov. 4, 2021).

<b>Ordinance Number</b>	<b>Law Description</b>
Law No. 2021/045	Amending the administrative code of the city of New York, in relation to requiring the police department to report on traffic encounters
Law No. 2021/047	Amending the New York city charter and the administrative code of the city of New York, in relation to clarifying that the New York city civilian complaint review board has the power to investigate bias-based policing and racial profiling, requiring such board to investigate past professional conduct by members of the police department determined to have engaged in acts of bias and to make remedial recommendations and requiring the police department to engage an external consultant to perform a review of certain past work done by the equal employment opportunity division of the police department
Law No. 2021/048	Amending the administrative code of the city of New York, in relation to creating a right of security against unreasonable search and seizure, and against excessive force regardless of whether such force is used in connection with a search or seizure, that is enforceable by civil action and requiring the law department to post online certain information regarding such civil actions
The mayor also passed a number of police reform-related Executive Orders	

### Minneapolis City Survey

<b>Ordinance Number</b>	<b>Law Description</b>
Ord. 2020-045	Amending Title 9, chapter 172 of the Minneapolis Code of Ordinances relating to Fire and Police Protection: Police Conduct oversight <sup>302</sup>

302. Description based on the ordinance title found in Ordinance No. 2020-045, City of Minneapolis (Aug. 22, 2020), [https://lims.minneapolismn.gov/Download/MetaData/18191/2020-045\\_Id\\_18191.pdf](https://lims.minneapolismn.gov/Download/MetaData/18191/2020-045_Id_18191.pdf).

### Philadelphia City Survey

Ordinance Number	Law Description <sup>303</sup>
	The city committed to a range of actions including no budget increase, new use-of-force policies, changes to union contracts, and more <sup>304</sup>
Bill 200538 (signed Nov. 10, 2020)	Amending Title 10 of The Philadelphia Code to create a new Chapter 10-2500, entitled “Less Lethal Devices,” to regulate the use of less lethal devices in specific situations; all under certain terms and conditions.
Bill 200367 (signed July 1, 2020)	Providing for the submission to the qualified electors of the City of Philadelphia of the proposal set forth in a Resolution approved by Council proposing an amendment to The Philadelphia Home Rule Charter relating to the creation of the Citizens Police Oversight Commission; and authorizing the appropriate officers to publish notice and to make arrangements for the special election; all under certain terms and conditions.
Bill 200076 (signed July 1, 2020)	Providing for the submission to the qualified electors of the City of Philadelphia of an amendment to The Philadelphia Home Rule Charter calling on the Police Department to eliminate the practice of unconstitutional stop and frisk, as approved by Resolution of the City Council; fixing the date of a special election for such purpose; prescribing the form of ballot question to be voted on; and, authorizing the appropriate officers to publish notice and to make arrangements for the special election.

303. Descriptions are based on bill titles and bill summaries found in *Legislation*, PHILADELPHIA CITY COUNCIL, <https://phila.legistar.com/Legislation.aspx> (last visited Nov. 4, 2021).

304. See Jim Kenney, *Actions for Change: No Budget Increase, New Use-of-Force Policies, Changes in Union Contract and More*, CITY OF PHILA. (June 9, 2020), <https://www.phila.gov/2020-06-09-actions-for-change-no-budget-increase-new-use-of-force-policies-changes-to-union-contract-and-more/> [<https://perma.cc/QH82-22CN>].

<b>Ordinance Number</b>	<b>Law Description</b>
Bill 200364-A (signed Sept. 30, 2020)	Amending Title 17 of The Philadelphia Code, entitled “Contracts and Procurement,” by adding a new Chapter 17-2300, entitled “Public Hearing Required Prior to Execution of a Labor Agreement with City Workers Represented by the Fraternal Order Of Police With Respect To The Workers’ Terms And Conditions Of Employment,” by establishing certain definitions; and requiring a public hearing within thirty (30) days prior to the City entering into or amending a labor agreement with City workers represented by the Fraternal Order of Police, all under certain terms and conditions.
Bill 200538 (signed Nov. 10, 2020)	Amending Title 10 of The Philadelphia Code to create a new Chapter 10-2500, entitled “Less Lethal Devices,” to regulate the use of less lethal devices in specific situations; all under certain terms and conditions including not using chemical weapons on protesters.
Bill 210074 (signed June 9, 2021)	Repealing Chapter 21-1200 of The Philadelphia Code, entitled “Police Advisory Board,” and replacing it with a new Chapter 21-1200 that reconstitutes and renames the board as the “Citizens Police Oversight Commission,” and, as authorized by the Charter, provides for the Commission’s appointment, the powers and duties of the Commission and the manner in which the Commission and other officers, employees, and agencies shall fulfill their respective responsibilities with respect to the Commission, all under certain terms and conditions.

### Seattle City Survey

Ordinance Number	Law Description <sup>305</sup>
Ord 126096	Prohibiting the use of chokeholds by officers; amending Section 12A.04.200 of, and adding a new Section 3.28.145 to, the Seattle Municipal Code.
Ord 126150	Amending Ordinance 126000, which adopted the 2020 Budget; creating new budget summary levels to disaggregate Seattle Police Department precincts from the Patrol Operations Budget Summary Level.
Ord 126132	Ordinance named in honor of MiChance Dunlap-Gittens and relating to the Seattle Police Department; prohibiting law enforcement officers from questioning, except in limited circumstances, persons 18 years of age or younger where a Miranda warning is administered unless legal counsel is provided; prohibiting law enforcement officers from requesting permission from a person under 18 years of age to conduct a search of the person or property, dwellings, or vehicles under that person's control unless legal counsel is provided for that person; and adding a new Section 3.28.147 to the Seattle Municipal Code.
Ord 126183	Establishing additional uses for automated traffic safety cameras to reduce traffic congestion and increase safety; amending Sections 11.31.090 and 11.50.570 of the Seattle Municipal Code; and ratifying and confirming certain prior acts.

305. Descriptions are based on bill titles and bill summaries found in *Legislation*, SEATTLE CITY COUNCIL, <https://seattle.legistar.com/Legislation.aspx> (last visited Nov. 4, 2021).

Ordinance Number	Law Description
Ord 126233	An ordinance relating to the organization of City government; creating a new Community Safety and Communications Center; and making necessary amendments to Chapters 3.15, 3.28, 6.10, 10.08, 11.14, 11.16, and 12A.16 of the Seattle Municipal Code and Ordinance 86431 to implement associated organizational changes and make technical revisions.
Ord 126264	Relating to civilian and community oversight of the police; creating a subpoena process for the Office of Police Accountability and Office of Inspector General for Public Safety while ensuring due process for individuals who are the subject of the subpoena; and adding new Sections 3.29.126 and 3.29.245 to the Seattle Municipal Code.
Ord 126312	Relating to surveillance technology implementation; authorizing approval of uses and accepting the surveillance impact report for the Seattle Police Department's use of Automated License Plate Reader technology.
Ord 126315	Relating to surveillance technology implementation; authorizing approval of uses and accepting the surveillance impact report for the Seattle Police Department's use of the CopLogic technology.
Ord 126341	Relating to surveillance technology implementation; authorizing approval of uses and accepting the 2020 surveillance impact report and 2020 executive overview for the Seattle Police Department's use of Forward Looking Infrared Real-Time Video.



<b>Ordinance Number</b>	<b>Law Description</b>
Ord 126344	Relating to surveillance technology implementation; authorizing approval of uses and accepting the 2020 surveillance impact report and 2020 executive overview for the Seattle Police Department's use of Situational Awareness Cameras Without Recording.
Ord 126345	Relating to surveillance technology implementation; authorizing approval of uses and accepting the 2020 surveillance impact report and 2020 executive overview for the Seattle Police Department's use of Video Recording Systems.

#### Washington, DC Survey

<b>Statute Number</b>	<b>Law Description</b> <sup>306</sup>
2021 Act No. 24-28	Amends the Comprehensive Policing and Justice Reform Second Temporary Amendment Act, extends the report submission and sunset dates of the Police Reform Commission.
2020 Act No. 23-336	Provides, on an emergency basis, for comprehensive policing and justice reform for District residents and visitors, and for other purposes.
2020 Act No. 23-399	Provides, on a temporary basis, for comprehensive policing and justice reform for District residents and visitors, and for other purposes.

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306. Descriptions are based on bill titles and bill summaries found in *Legislative Information Management System*, COUNCIL OF THE DISTRICT OF COLUMBIA, <https://lims.dc.council.us/> (last visited Nov. 4, 2021).

<b>Statute Number</b>	<b>Law Description</b>
2020 Act No. 23-437	Provides, due to congressional review, for comprehensive policing and justice reform for District residents and visitors.
2020 Act No. 23-556	Amends, on an emergency basis, the Comprehensive Policing and Justice Reform Second Temporary Amendment Act of 2020 to extend the report submission and sunset dates of the Police Reform Commission, amends the Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2020 to make conforming changes.