

*Volume 2*

## Instilling Ethical Policing Policy Brief

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The brutal death of George Floyd, Breonna Taylor, and so many other Black Americans at the hands of law enforcement has rightly trained our eyes on systemic racism and bias in our criminal justice system. For years, the nation has been fed a steady diet of visuals showing the tragic deaths of civilians at the hands of police, civilians who are disproportionately Black and Brown people. For many Americans, the trial of former Minneapolis police officer Derek Chauvin was about more than a single officer's actions; rather, the entire system of policing was on trial. While a guilty verdict was rendered in this one instance, it remains clear that nothing short of a complete transformation of policing is necessary to ensure safety for the people of our country. Whether it is implicit or explicit, racial bias is real, influences perceptions, and behaviors can be deadly.

At the federal level, President Biden's Department of Justice (DOJ) has reinstated "patterns and practice" investigations into police departments. These inquiries often lead to changes including federal consent decrees, that is, binding agreements for law enforcement agencies that may mandate major changes including rewriting policies and procedures, establishing strict use-of-force standards and investigations, writing new training and supervisory standards, and more. On the congressional front, the U.S. House has passed the George Floyd Justice in Policing Act, a bold and comprehensive approach to hold police accountable, end racial profiling, change the culture of law enforcement, empower our communities, and build trust between law enforcement and our communities by addressing systemic racism and bias to help save lives. The Justice in Policing Act would: 1) establish a national standard for the operation of police departments; 2) mandate data collection on police encounters; 3) reprogram existing funds to invest in transformative community-based policing programs; and 4) streamline federal law to prosecute excessive force and establish independent prosecutors for police investigations. U.S. Senator Tim Scott (R-SC) has offered a more watered-down "compromise" plan in the Senate, seeking to maintain qualified immunity for police officers involved in deadly incidents. Some progress feels possible. But while we must move federal reforms forward, the true test will be whether local departments embrace a change in culture.

As we collectively struggle to make sense of where we are as a nation on this most critical issue, we need to center discussions on research-informed approaches to policing combined with a cultural shift in how we approach police accountability in America. Local elected officials and law enforcement leaders across the nation are scrambling to address the public's demand for that accountability. Simultaneously, city leaders are increasingly becoming aware of not only the emotional toll on a community that arises from civilian deaths by police but also the financial impact on municipal budgets in the form of wrongful deaths lawsuits. Civil lawsuits have become the primary tool for victims to obtain legal redress in the absence of criminal convictions. Since 2015, the 20 cities with the nation's largest police departments paid out over \$2 billion in misconduct cases.<sup>1</sup> And the problem isn't isolated to just large departments as we see small communities paying out large settlements as well.<sup>2</sup> This has pushed many leaders to take a hard look at how to address this problem.

Local governments and officials control hiring, budgeting and oversight over local law enforcement agencies. Police departments can adopt personnel practices that result in the hiring and retention of diverse law enforcement professionals who are culturally sensitive and are residents of their patrolled communities. Local departments can also mandate department-wide use of body-worn cameras, as has been done in many large police agencies across the South.

From an organizational perspective, there is a deeper range of causes and precipitating factors that lead to civilian deaths by law enforcement. Most notably those include inadequate and/or flawed training, discriminatory patterns and practices, and organizational cultures that support bad behaviors.<sup>3</sup> But, we are learning more and more about the ability of social science research to inform our ability to address these organizational problems. This is particularly true in regard to how these organizational dispositions lead to negligence and excessive force.

Former President Barack Obama's Task Force on 21<sup>st</sup> Century Policing heavily promoted the need for investments in criminal justice research across the board and underscored the importance of the adoption and integration of research into policy making.<sup>4</sup> However, for decades we've known that law enforcement agencies have been particularly resistant to science, preferring the adoption of policy based on intuition, internal culture, and street smarts.<sup>5</sup>

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<sup>1</sup> Calvert, S., Frosch, D. 2020. "Police Rethink Policies as Cities Pay Millions to Settle Misconduct Claims." Wall Street Journal. October, 22, 2020

<sup>2</sup> DeVeaux, A., Bronner, L., Sarma, D. 2021. "Cities Spend Millions On Police Misconduct Every Year. Here's Why It's So Difficult to Hold Departments Accountable." FiveThirtyEight.com.

<sup>3</sup> Worden, R. 1995. "The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force." In book: And Justice for All: Understanding and Controlling Police Abuse of Force (pp.31-60). Eds: William A. Geller and Hans Toch

<sup>4</sup> United States Department of Justice. 2015. "[Final Report of the President's Task Force on 21st Century Policing.](#)" Office of Community Oriented Policing Services.

<sup>5</sup> [https://cpoa.org/wp-content/uploads/2017/09/CPOA-2017-Journal-vol51-2\\_Potts.pdf](https://cpoa.org/wp-content/uploads/2017/09/CPOA-2017-Journal-vol51-2_Potts.pdf)

Moreover, the success of interventions aimed at addressing and improving law enforcement procedures have hinged upon the ability of interventions to counter a set of organizational barriers that take on a unique character in law enforcement, including conflicting priorities, limited resources, a lack of commitment by leadership, and communication barriers between researchers and law enforcement.<sup>6</sup> But, one of the most problematic barriers is the “say nothing, do nothing” mantra that is pervasive in law enforcement. Otherwise known as the “blue wall of silence,” this is reflected as a culture of protecting fellow officers by not calling out problematic actions and reinforcing that practice through social, physical, and professional isolation and sanctions.<sup>7</sup> All of this is predicated on an “us versus them” mentality that is widespread in law enforcement agencies.

How do we address this challenge and create a culture of accountability to the law and to higher standards of duty that these organizations are sworn to uphold? It takes a concerted effort by community leaders, law enforcement, and the community. And, it's not always easy. In the case of New Orleans, Mayor Mitch Landrieu invited the DOJ to investigate the New Orleans Police Department (NOPD) in 2010 in light of an alleged pattern of civil rights violations and other misconduct. The NOPD entered into a federal consent decree with the DOJ. Though not without some stumbling blocks, the consent decree has led to significant improvements in the NOPD.

One of the policy changes that has shown tremendous promise in tackling this issue head on is Ethical Policing is Courageous (EPIC). Designed to empower officers to intervene if they witness a fellow officer engaging in misconduct, the peer intervention model was implemented as one of the departmental reforms under the consent decree. In essence, it is the operationalization of duty to intervene standards that are in place in many departments, that takes the standards a step farther by creating a set of trainings and tools for law enforcement officers. The program not only helps stop a wrongful action before it occurs but also protect the careers of police officers. EPIC strives to redefine police culture so that intervention to prevent or stop harmful action is not an exception to good teamwork; it is the very definition of good teamwork.

The EPIC model is based on active bystandership research associated with the pioneering work of Professor Ervin Staub whose work focuses on helping behavior, altruism, and the role of bystanders in addressing harm.<sup>8</sup> EPIC is a peer intervention model that is premised on identifying signs that an intervention is needed, teaching effective intervention skills, protecting those who engage in the intervention, and creating a culture of acceptance.<sup>9</sup> The model has shown some promising effects and is increasingly being adopted by police departments all over the nation. Christy Lopez, a top DOJ Civil Rights Division official in the

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<sup>6</sup> International Association of Directors of Law Enforcement Standards and Training. 2020. [“Why Law Enforcement Needs to Take a science-Based Approach to Training and Education.”](https://www.iadlest.org/Portals/0/Files/Documents/IPAC/IPAC%20Science-Based%20Learning-Digital-Report.pdf?ver=57KHOzrqE02h-Cyeieb7Uw%3d%3d) Retrieved April 15, 2021.

<sup>7</sup> Skolnick, J. 2010. “Corruption and the Blue Code of Silence.” *Police Practice and Research: Volume (3), Issue 1*

<sup>8</sup> <https://www.umass.edu/peacepsychology/ervin-staub>

<sup>9</sup> Aronie, J. 2016. A Look at the NOPD’s Innovative and Career-Saving Peer Intervention Program.” Subject to Debate, A Newsletter Of The Police Executive Research Forum: Vol (30) No.2

Obama administration, noted, "Immediate officer intervention also can be far more effective in preserving and restoring police legitimacy than any after-the-fact apology or even prosecution."<sup>10</sup> After the EPIC model and significant consent decree reforms were implemented, complaints against officers were down, the percentage of residents satisfied overall with the NOPD rose, and use-of-force incidents dropped.

However, one training module alone cannot counter deep-rooted conformity to culture, tradition, and an over-emphasis on street smarts and instincts that are still barriers to the progress of evidence-based policing. As such, what is required for successful adoption of the EPIC model or other related duty-to-intervene initiatives is a comprehensive examination of departmental policies and culture to ensure that the model has a chance to succeed. This requires the adoption of a range of supportive policies that fit under three main policy categories:

- Racial bias training and assessment;
- Procedural justice; and,
- Comprehensive adoption.

## RACIAL BIAS TRAINING AND ASSESSMENT

Oftentimes, the behaviors that are subject to review in cases of police misconduct stem from patterns of policing that are unfortunately informed by racial bias. For instance, despite actions taken by departments to eliminate racial profiling, we still see departments and individual officers relying on outmoded, discriminatory, and illegal practices like stop-and-frisk (see [Washington DC](#), [Milwaukee](#), [New York](#) and other cities for examples). As such, the adoption of the EPIC-style models should occur within the context of a thorough departmental examination of patterns and practices. And departments should ensure that their hiring and training standards are fully integrated with racial bias training that addresses racialized actions that may inflame situations and bias that may make them less likely to intervene to stop a fellow officer. The EPIC model in New Orleans was implemented within the context of a commitment to greater data tracking on race and ethnicity, civilian attorney oversight over police and use-of-force investigations to instill trust, enhanced deescalation training, increased use of summonses in lieu of arrests, and an organizational commitment to policing that is equitable, respectful, and bias-free. This has included improvement to training standards, the adoption of supportive policies, and a renewed commitment by leadership to equity principles and standards.<sup>11</sup> Recent evaluations on implicit bias training underscores the importance and potential effectiveness of integrating such police training with other organizational systems.<sup>12</sup>

## PROCEDURAL JUSTICE POLICIES

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<sup>10</sup> Lopez, C. 2020. "George Floyd's Death Could Have Been Prevented if We Had a Police Culture of Intervention." Washington Post. May 29, 2020.

<sup>11</sup> United States District Court Eastern District of Louisiana. 2018. [Amended and Restated Consent Decree Regarding the New Orleans Police Department](#). October 2, 2018.

<sup>12</sup> Worden, R.; McLean S.; Engel R.; Cochran H.; Corsaro, N.; Reynolds, D.; Najdowski, C.; Isaza, G. 2020. "[The Impacts of Implicit Bias Awareness Training in the NYPD](#)." The John F. Finn Institute for Public Safety.

If we are asking officers to take on the responsibility to intervene, they must feel that their actions will be supported by the department and their fellow officers. That means that departments must adopt internal policies and procedures that officers view as fair and just in regard to handling violations of policies and with respect to the protections afforded to them within their departments. Simply put, officers should have confidence that action will be taken when violations are brought to the attention of the department. And, they should have confidence that they will not be subject to undue retaliation. This is particularly true for officers who are members of minority groups who feel marginalized in majority-white police departments.<sup>13</sup> In concert with the EPIC model, the NOPD instituted a range of strategies to safeguard officers against retaliation, as well as reforms to its structure and process of investigating misconduct violations. For reference, the International Association of Chiefs of Police has a set of [policy guidelines](#) to guide the adoption of supportive frameworks for duty to intervene initiatives.

## COMPREHENSIVE ADOPTION

The most important aspect of ethical policing is the creation of a culture of ethical action. Therefore, EPIC-style initiatives should not be focused solely on excessive-force reporting. That means that in practice, peer interventions should happen with respect to routine violations of policy, illegal behaviors, moral issues, and detrimental behaviors like alcohol abuse.<sup>14</sup> In that way, ethical policing and its culture becomes ingrained in a department and becomes routine, both of which are key steps to creating true and lasting change in any organization.

## CLOSING

E Pluribus Unum has identified ethical policing as one of its action priorities. We are committed to supporting communities in their quest for building bridges between communities and law enforcement, improving the law enforcement profession, and ensuring the protection of life and liberty for all civilians. That commitment begins with a recognition that we must address the concerns and fears of Black and Brown Americans by ensuring that our institutions reflect the highest ethical ideals and professional conduct. Early assessments indicate that the EPIC model has shown promise in meeting that goal within the context of a comprehensive departmental set of reforms.<sup>15</sup>

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<sup>13</sup> Morin, R., Parker, K., Stepler, R., & Mercer, A. 2017. [Inside America's police departments: Behind the Badge](#). Pew Research Center.

<sup>14</sup> Council on Criminal Justice. 2021. "[Duty To Intervene: Policy Assessment](#)." Retrieved: April 15, 2021

<sup>15</sup> Arone, J. and Lopez C. 2017. "[Keeping Each Other Safe: An Assessment of The Use of Peer Intervention Programs to Prevent Police Officer Mistakes and Misconduct, Using New Orleans' EPIC Program as a Potential National Model](#)." Police Quarterly.