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Matthew J. Parlow

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## THE GREAT RECESSION AND ITS IMPLICATIONS FOR COMMUNITY POLICING

**Matthew J. Parlow\***

*During the last twenty years, community policing has been the dominant approach to local law enforcement. Community policing is based, in part, on the broken windows theory of public safety. The broken windows theory suggests a link between low-level crime and violent crime—that is, if minor offenses are allowed to pervade a community, they will lead to a proliferation of crime and, ultimately, a community plagued by violent crime. To maintain a perception of community orderliness, many local governments adopted “order maintenance” laws—such as panhandling ordinances and anti-homeless statutes. This emphasis on cracking down on such low-level offenses brought with it an increase in the needs and costs of policing, prosecutions, jails, social services, and other related resources.*

*When the economy was flourishing, local governments were able to pay for the time- and resource-intensive broken windows approach to community policing. The Great Recession, however, has forced localities to think critically about whether they can sustain these practices given budget cuts. This Article analyzes the effects that the downturn in the economy has had on public safety budgets and the changes that many local governments have made, and are continuing to make, to adjust to decreasing revenue and resources. This Article will also explore proposed changes to the current criminal justice and social service systems that seek cost-effective approaches to*

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*deliver the same level of public safety to which communities are accustomed. In particular, this Article will assess and evaluate evidence-based decision-making—an emerging trend in some criminal justice systems—as part of an evolving trend driven by the effects of the Great Recession, but also stemming out of community policing. Finally, this Article will use Milwaukee County, Wisconsin, as an example of an evidence-based decision-making approach and explain how it can fulfill the public safety goals of the broken windows theory of community policing while creating a framework that provides for “smart” decision-making that accounts for the financial realities that most cities face.*

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## I. INTRODUCTION

The last fifteen to twenty years has brought a paradigm shift in local policing efforts—moving from a reactive approach to a proactive one marked by community engagement and problem-oriented policing processes. This shift spawned the rise of community policing as a dominant trend in local policing. Community policing is, in part, based on the seminal work of George L. Kelling and James Q. Wilson’s *Broken Windows*.<sup>1</sup> The broken windows theory links minor public disorders—vagrancy, public drunkenness, and panhandling, to name a few—to violent crime: If such small offenses are allowed to pervade a community, they will inevitably escalate and lead to a community plagued by violent crime. Building on social psychology theory, the broken windows theory views maintaining a perception of community orderliness—by cracking down on low-level criminal offenses to stop their proliferation or escalation—as central to keeping that community safe. Community policing was designed on these premises, and thus many local governments adopted “order maintenance” laws such as panhandling ordinances, anti-gang statutes, anti-homeless statutes, and anti-loitering laws, to take aim at maintaining order in their communities. This focus on low-level offenses led to increases in prosecutions and a demand for attendant needs such as jails, prisons, and other social services related to the criminal justice system. This trend in local policing also coincided with a wave of “tough on crime” political rhetoric and policies.

The Great Recession<sup>2</sup>—and the related budget deficits faced by many local governments—are forcing local governments<sup>3</sup> to think

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1. George L. Kelling & James Q. Wilson, *Broken Windows*, THE ATLANTIC, Mar. 1982, available at <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/>.

2. For the purposes of this article, the term “Great Recession” will refer to the significant economic downturn that affected the United States and global economies beginning in 2007. See generally Catherine Rampell, “Great Recession”: A Brief Etymology, N.Y. TIMES (Mar. 11, 2009, 5:39 PM), <http://economix.blogs.nytimes.com/2009/03/11/great-recession-a-brief-etymology/> (detailing the etymology of the term “Great Recession”).

3. In this Article, I use the terms local governments, cities, and localities interchangeably to refer to local government entities.

critically about their commitment to community policing and the costs associated with it. Can this dominant approach to local policing remain intact with the economic realities faced by local governments? Or might new local policing philosophies align with fledgling movements in the criminal justice and social service systems that seek to make difficult but cost-efficient decisions regarding the allocation of scarce resources? This Article explores these questions to determine what changes are in store for local governments due to the current economic crisis and what their implications are for localities. This Article will also examine the proposed changes to the criminal justice and social service systems that seek cost-efficient approaches that hark back to a rehabilitative approach to low-level criminals—in somewhat stark contrast to the “tough on crime” rhetoric that has pervaded the political debate. Finally, this Article will assess and evaluate the broader implications of these coalescing trends on local policing and criminal justice and social service systems.

Part II of this Article provides an overview of community policing, the most prevalent model of policing today. Part III briefly describes the broken windows theory, which serves as a foundational basis for this model of policing. Part IV describes some of the costs of community policing—both for local governments and arrestees. Part V explores how the financial downturn marked by the Great Recession has affected local government funding and describes the difficult funding choices communities face—related to police services and more generally—because of these changed circumstances. Part VI analyzes how cities have responded to reduced funding in both traditional and nontraditional manners. Part VII reflects on how these difficult economic times may provide an opportunity for a more creative, holistic approach to policing and social services—in the form of evidence-based decision-making—that remains consistent with the broken windows theory of community policing while adjusting to the realities of current local government budgets. Part VII uses Milwaukee County as an example of how some localities are embracing evidence-based decision-

making to reinvent their criminal justice system during these challenging economic times. Part VIII will provide some concluding thoughts.

## II. COMMUNITY POLICING

The term “community policing” has no settled definition. While the goal of this Article is not to delve into the various iterations and characteristics that collectively define community policing, a working definition and understanding proves helpful for the purposes of the forthcoming analysis. Community policing is a theoretical and practical approach to policing that focuses on crime prevention, order maintenance, and partnership with the community to achieve these goals.<sup>4</sup> The United States Department of Justice’s Office of Community Oriented Police Services defines community policing as “a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.”<sup>5</sup> As described further below, community policing shepherded in a new model of policing that valued decentralization, deep community

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4. Sarah E. Waldeck, *Cops, Community Policing, and the Social Norms Approach to Crime Control: Should One Make Us More Comfortable with the Others?*, 34 GA. L. REV. 1253, 1254–55 (2000). Community policing is oftentimes linked with community prosecution, which is a newer philosophy of prosecution that seeks to redefine the role of the prosecutor in the criminal justice system from merely punishing crimes to also helping prevent them. See M. Elaine Nugent-Borakove & Patricia L. Fanflik, *Community Prosecution, Rhetoric or Reality?*, in THE CHANGING ROLE OF THE AMERICAN PROSECUTOR 211–12 (John L. Worrall & M. Elaine Nugent-Borakove eds., 2008). While a more in-depth analysis of community prosecution is outside of the scope of this Article, this recognition of the link between community policing and community prosecution will be helpful for the various issues explored in this Article.

5. *Community Policing Defined*, COMMUNITY ORIENTED POLICING SERVICES, U.S. DEP’T OF JUSTICE, <http://www.cops.usdoj.gov/default.asp?item=36> (last visited Nov. 12, 2011). The United States Department of Justice formed the Office of Community Oriented Policing Services in 1994—pursuant to the Violent Crime Control and Law Enforcement Act of 1994—to encourage and fund local government community policing programs. See Tracey L. Meares, *Praying for Community Policing*, 90 CALIF. L. REV. 1593, 1596 (2002).

partnerships, a problem-solving approach to crime and crime prevention, and citizen satisfaction.<sup>6</sup>

Community policing rose to prominence in the 1980s after a general consensus formed that police-community relationships were severely strained and that there was a need for a different paradigm for the legitimacy and effectiveness of local police forces.<sup>7</sup> The traditional model of the “warrior” police officer—the detached, aloof crime-fighter—battling the enemy (that is, the public) was one that had sown deep resentment in many communities.<sup>8</sup> Law enforcement organizations thus sought to change their image and partner with their respective communities to better achieve a mutual goal: a safe environment within which to work and live.<sup>9</sup> At the same time, new research emerged that called into question the efficacy of traditional policing theories and practices. Studies questioned whether some of the tenets of policing leading up to the 1980s were effective: increasing the number of passive patrols in a neighborhood; random and saturation patrols; and an emphasis on rapid response times for 911 calls.<sup>10</sup> Finally, crimes rates were also on the rise during this time, which led to considerable fear in many neighborhoods.<sup>11</sup> The confluence of these three forces—the rise in crime, poor relationships between many police departments and their communities, and research questioning the effectiveness of traditional police strategies—led to an environment where a paradigm shift to community policing could, and did, occur.

Community policing thus ushered in an approach to policing that deemphasized the “us against them” and “warrior police officer versus the enemy” view and focused instead on collaboration and partnership with the community.<sup>12</sup> In this model, instead of patrolling

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6. See Waldeck, *supra* note 4, at 1254.

7. See James Forman, Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 4–5 (2004).

8. Bret D. Asbury, *Anti-Snitching Norms and Community Loyalty*, 89 OR. L. REV. 1257, 1307 (2011).

9. See Forman, Jr., *supra* note 7, at 4.

10. *Id.* at 5.

11. *Id.* at 6.

12. See *id.* at 4–5.

neighborhoods in cars, police officers walk a beat within a neighborhood so that they are visible, easily accessible to the community, and better able to develop strong ties with community stakeholders.<sup>13</sup> The collaborative emphasis of community policing provides the community with an opportunity to provide input regarding the services that it receives and the types of problems it would like addressed.<sup>14</sup> Community policing thus embraces collaboration with various community stakeholders: neighborhood groups, grass-roots organizations, property owners, businesses, other government officials and agencies, and the like. In making common cause, the community can define its social norms and values. Partnering with the police department ensures that those norms are inculcated and respected in the community and enforced by the police.<sup>15</sup> This approach also allows the police and those they serve to tailor specific solutions to the problems and challenges facing their particular community.<sup>16</sup>

This ability for the community to help inform police decision-making comports with the problem-oriented approach to policing that this model encourages. Indeed, community policing envisions a problem-oriented approach where police officers collaborate with key stakeholders in a community. This collaboration identifies disorders and then devises solutions that seek to solve the underlying problems.<sup>17</sup> As discussed in Part VII, not all of these underlying

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13. Michael D. Reisig, *Community and Problem-Oriented Policing*, 39 CRIME & JUST. 1, 5 (2010). The traditional regimented and hierarchical decision-making and supervisory practices are also loosened to allow the beat officer to creatively solve problems that he experiences in the community. *Id.* at 6.

14. See Kami Chavis Simmons, *New Governance and the "New Paradigm" of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 420 (2010).

15. See Alafair S. Burke, *Unpacking New Policing: Confessions of a Former Neighborhood District Attorney*, 78 WASH. U. L. REV. 985, 986 (2003). But see David Thacher, *Conflicting Values in Community Policing*, 35 LAW & SOC'Y REV. 765, 766–69 (2001) (noting that police and community values may not always be compatible and, in fact, may actually be at odds).

16. See Reisig, *supra* note 12, at 5–6.

17. See Reenah L. Kim, Note, *Legitimizing Community Consent to Local Policing: The Need for Democratically Negotiated Community Representation on Civilian Advisory Boards*, 36 HARV. C.R.-C.L. L. REV. 461, 480–81 (2001). Problem-oriented policing involves police identifying and understanding problems facing their community and crafting and executing a solution to these problems—those that cause residents, businesses, and others to call the police for service and assistance. Reisig, *supra* note 12, at 5–6. This approach has been characterized by four basic stages: scanning

problems are necessarily crime related. Consequently, community policing expects that the police department will engage and collaborate with other governmental and social services agencies to help address these problems.<sup>18</sup> With the financial constraints affecting local governments today, this holistic approach to addressing disorder and its underlying problems may prove of even greater importance in maintaining community policing and attempting to stay true to the broken windows theory that underlies it.

### III. BROKEN WINDOWS THEORY

The broken windows theory of policing provides one of the key philosophical foundations for community policing.<sup>19</sup> George L. Kelling and James Q. Wilson first outlined the theory in their seminal 1982 article.<sup>20</sup> In the article, the authors describe a Newark, New Jersey neighborhood that implemented a police foot patrol after many years of having only vehicle control.<sup>21</sup> The foot patrol officer kept order in the neighborhood by encouraging normatively desirable behavior. For example, the officer would not allow drunks to sleep on the main streets—rather, only in alleys—and he arrested people for breaking informal rules of vagrancy.<sup>22</sup> Interestingly, while the neighborhood did not, in fact, see a reduction in crime after the implementation of the foot patrol, residents nevertheless felt safe and perceived that crime rates had dropped.<sup>23</sup> This story served as the

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(where police endeavor to identify and define the problem), analysis (where police seek to understand the causes and magnitude of the problem), response (where police attempt to devise an alternative approach to the current one that has proved ineffective), and assessment (where police determine the efficacy of the approach and any alterations necessary to improve future responses). *Id.* at 7–8. While community policing and problem-oriented policing are conceptually linked—and, indeed, many police departments embrace them as interconnected—it is worth noting that problem-oriented policing does not emphasize citizen involvement and collaboration as much as community policing. *Id.* at 9.

18. *See infra* Part VII and accompanying notes.

19. *See* Nicole Stelle Garnett, *The Order-Maintenance Agenda as Land Use Policy*, 24 NOTRE DAME J.L. ETHICS & PUB. POL'Y 131, 132–33 (2010).

20. George L. Kelling & James Q. Wilson, *Broken Windows*, THE ATLANTIC, Mar. 1982, available at <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/>.

21. *Id.*

22. *Id.*

23. *Id.* This point underscores a lesser-known foundational premise of the broken windows theory—that is, that people do consider disorder when making a judgment about how safe their neighborhood is.

conduit for Kelling and Wilson to develop their theory linking disorder to violent crime.

While acknowledging that for many the link seems tenuous at best, Kelling and Wilson claim that “at the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence.”<sup>24</sup> To this end, the authors theorize that if small infractions such as vagrancy, public drunkenness, and panhandling—the broken windows—are allowed to pervade a community, then crime in the area will further proliferate, and the neighborhood will eventually be riddled with violent crime.<sup>25</sup> These obvious and visible signs of disorder undermine the social, law-abiding norms in a community.<sup>26</sup> The disorder signals that the community either cannot or will not enforce basic social norms—a clear indication of a breakdown of community control.<sup>27</sup> If a community is unwilling or unable to enforce social norms, it provides a reasonable inference to both criminals and law-abiding citizens that the community similarly will not or cannot prevent more serious crimes.<sup>28</sup> This disorder leads criminals to commit more serious crimes in greater numbers and instills fear in the law-abiding stakeholders in the community. Conversely, if criminals see more arrests for drunkenness, driving violations, or other disruptions of order, they will believe arrest is more likely and thus will be deterred from committing crimes.<sup>29</sup>

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24. *Id.*

25. *Id.* The “broken windows” moniker derived from an experiment conducted by Philip Zimbardo, where he left a car sitting in the Bronx in New York City, New York, and another in Palo Alto, California. *Id.* The Bronx, at the time, was filled with disorder and crime, and the car was vandalized within ten minutes. The car left in Palo Alto—an affluent community with low crime and minimal disorder—was left untouched for more than a week until Zimbardo broke one of its windows with a sledgehammer. Within hours of Zimbardo doing so, the car was entirely ruined by others. *Id.* A similar metaphor is an abandoned manufacturing plant building that remains untouched until a window is broken, which triggers more windows being broken, followed by vandalism and other crimes, and eventually the building being burned to the ground. Both metaphorical examples serve to demonstrate the theory that even in an orderly neighborhood, once there are visible signs of acceptance of disorder, further disorder and greater crime will inevitably follow.

26. See Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CALIF. L. REV. 1513, 1528 (2002).

27. *Id.*

28. See *id.*

29. See Robert J. Sampson & Jacqueline Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*, 22 LAW & SOC’Y REV. 163, 165 (1988).

Indeed, as Professor Dan M. Kahan points out, “[I]ndividuals are much more likely to commit crimes when they perceive that criminal activity is widespread.”<sup>30</sup> If there is no visible communal moral rebuke of small crimes, people in the community will likely engage in such behavior themselves because they perceive such actions to be acceptable—with low risks and potentially high payoffs.<sup>31</sup>

Social psychology supports the broken windows theory. If people see a weakening in the orderliness of a system, they begin to doubt whether they can do anything to prevent such disorder.<sup>32</sup> This doubt feeds on itself, causing those in a disorderly neighborhood to be less likely to report a crime because they think the police will not respond in time or will not be able to do anything about the situation.<sup>33</sup> This devolving cycle leads to more crimes as those before them go unreported and unpunished.<sup>34</sup> The increase in crimes is also accompanied by a greater seriousness in the type of crimes that are committed. In this regard, disorder leads to citizen fear, which causes citizens to physically and socially withdraw.<sup>35</sup> Such withdrawal spurs increased predatory behavior and rising crime rates—leading to a spiral of decline in the neighborhood.<sup>36</sup> Therefore, according to the broken windows theory, a community must address disorder early on so as to prevent the spiral of decline from eventually occurring.

The broken windows theory thus spurred policing responses that sought to crack down on low-level criminal offenses to stop their

30. Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349, 350 (1997).

31. *Id.* at 355–57. What further compounds this problem is that those who do not engage in criminal activity will eventually leave the community, thus eroding some of the positive social influence possibilities in the neighborhood. *Id.* at 371.

32. See Kelling & Wilson, *supra* note 20.

33. See *id.*

34. See *id.*

35. See *id.*

36. See George L. Kelling & William J. Bratton, *Declining Crime Rates: Insiders' Views of the New York City Story*, 88 J. CRIM. L. & CRIMINOLOGY 1217, 1219 (1998). Law-abiding citizens withdraw by either moving to a different locality—if they have the resources to do so—or by avoiding the streets as much as possible. In either case, the absence of such law-abiding community stakeholders increases the concentration of criminals in the area and takes away a mediating presence—the law-abiding citizens themselves—that might help deter crime. See Kahan, *supra* note 26, at 1528.

proliferation, escalation, or both.<sup>37</sup> For when police enforce basic social norms, and when community stakeholders both obey and embrace such norms, the community signals to criminals and law-abiding citizens alike that it is intolerant of criminal behavior.<sup>38</sup> This positive messaging, broken windows theorists posit, helps avoid the downward spiral that communities with rampant disorder experience. Accordingly, police seeking to adopt broken windows policing strategies target both social and physical disorder. Social disorder includes loitering, vandalism, gangs, public drinking, drug dealing, prostitution, and street harassment.<sup>39</sup> Physical disorder encompasses building abandonment, graffiti, litter on the streets and sidewalks, abandoned cars, junk and garbage in vacant lots, and the like.<sup>40</sup> These small quality-of-life crimes “contribute to a sense of disorder and danger on the street.”<sup>41</sup> Many communities thus adopted order maintenance laws such as panhandling ordinances, anti-gang statutes, anti-homeless statutes, anti-loitering statutes, and vagrancy statutes to target these forms of disorder and avoid the devolution toward crime that the broken windows theory describes.<sup>42</sup> Police departments even used civil laws like nuisance abatement and forfeiture laws to address and prevent these quality-of-life criminal activities.<sup>43</sup> This approach supports the social influence theory’s focus on how a community’s norms and behavior affect its conduct and the conduct of others

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37. See Josh Bowers, *Legal Guilt, Normative Innocence, and the Equitable Decision Not to Prosecute*, 110 COLUM. L. REV. 1655, 1693 (2010). Interestingly, this strategy finds police departments investing fewer resources in the areas of serious crimes—murder, armed robbery, etc.—and channeling more of their resources into targeting the lower-level, disorderly misconduct. See Kahan, *supra* note 26, at 1527.

38. See Kahan, *supra* note 26, at 1528.

39. See WESLEY G. SKOGAN, *DISORDER AND DECLINE* 51 (1990).

40. See Robert J. Sampson & Stephen W. Raudenbush, *Systematic Social Observation of Public Space: A New Look at Disorder in Urban Neighborhoods*, 105 AM. J. SOC. 603, 608 (1999).

41. William J. Bratton, *The New York City Police Department’s Civil Enforcement of Quality-of-Life Crimes*, 3 J.L. & POL’Y 447, 448 (1995).

42. See Risa L. Goluboff, *Dispatch from the Supreme Court Archives: Vagrancy, Abortion, and What the Links Between Them Reveal About the History of Fundamental Rights*, 62 STAN. L. REV. 1361, 1374 (2010).

43. See Bratton, *supra* note 41, at 452–63. Nuisance abatement laws allow police to close locations where crimes occur, thus removing criminal activity from that area. Forfeiture laws allow the police to seize cars used in soliciting prostitutes, effecting a drug deal, or even playing music too loud. See *id.*

entering the community.<sup>44</sup> Therefore, by adopting order maintenance laws, communities can use social influence to discourage criminality.<sup>45</sup>

However, this social influence aspect of the broken windows theory is oftentimes misunderstood in community policing literature. As Professor K. Babe Howell notes, “[O]rder-maintenance policing as described in *Broken Windows* neither demands nor suggests that zero tolerance arrest policies are efficient, desirable, or effective methods to achieve order and reduce fear.”<sup>46</sup> In fact, the broken windows approach to community policing is not entirely based on arrests. For example, the police officer in the *Broken Windows* article did not arrest people, but rather enforced social norms by breaking up arguments and asking drunks to move to different areas.<sup>47</sup> Indeed, under this approach, police seek to employ non-arrest approaches and interventions—such as discussion, persuasion, negotiation, counseling, and ordering—in an attempt to ameliorate the problem without making an arrest.<sup>48</sup> Nevertheless, despite this philosophical and practical approach to non-arrest interventions, the broken windows theory has led to a significant number of arrests for relatively minor offenses during the community policing era.<sup>49</sup>

#### IV. THE COSTS OF COMMUNITY POLICING

Whether police attempt arrest or non-arrest solutions, the broken windows approach to community policing requires significant expenditures and resources by local governments.<sup>50</sup> Foot patrols, while beneficial for establishing better community relationships, are

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44. Kahan, *supra* note 30, at 355–57.

45. *See id.* at 365.

46. K. Babe Howell, *Broken Lives from Broken Windows*, 33 N.Y.U. REV. L. & SOC. CHANGE 271, 279 (2009).

47. *See* Kelling & Wilson, *supra* note 20.

48. *See* Reising, *supra* note 13, at 26–27.

49. *See id.* at 27–29.

50. *See* Waldeck, *supra* note 4, at 1275 (noting that while many approaches to broken windows policing used arrest as a last resort, arrest was still heavily relied upon by various police departments as part of their community policing approaches).

less efficient for police in terms of patrolling portions of the city. In this regard, a police department needs more police officers than it previously did to maintain such a visible presence in the community. With the shift to community policing, police officers spend more time attending community meetings and developing personal relationships with key stakeholders in the neighborhood in order to help understand the community's challenges and devise strategies for addressing them. While an effective use of the police officer's time in the theoretical construct of community policing, such efforts are time-intensive and require more dedicated officers from a police force than previous approaches to policing did.

Moreover, the broken windows approach to community policing inevitably leads to arrests for the various low-level criminal offenses that lead to disorder in a community. There are also tremendous hidden costs in the time, money, and personnel required for "extra arrests" and the costs to the local criminal justice system in processing and prosecuting each misdemeanor.<sup>51</sup> The police department, the district attorney's or city attorney's offices, the public defenders' offices, and the local court system all spend a significant amount of resources to process these minor offenses through the criminal justice system.<sup>52</sup> For example, many police departments face substantial overtime expenses to pay for police officers and other staff to process the increase in these quality-of-life criminal arrests.<sup>53</sup> There are also other externalized costs borne by the city, and taxpayers more broadly, when an arrest and criminal record leads an individual down the all-too-common spiral of multiple subsequent arrests, incarceration, and unemployment.<sup>54</sup>

This is to say nothing of the significant costs to the individual arrested for these low-level, quality-of-life crimes. The arrestee loses significant time, money, and opportunity each time he or she is

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51. See Howell, *supra* note 46, at 283–90, 307–14.

52. See *id.* at 292.

53. See *id.* at 307. Even setting aside the issue of overtime pay, the choice to have police officers processing such arrests instead of being out in the community also poses a cost to the police department and the community. See *id.*

54. See *id.* at 292.

booked for a misdemeanor. He or she typically misses two to four days of work (or school), which may lead to a loss of employment, and the arrestee must also pay the processing fees for being arrested.<sup>55</sup> The criminal record that such an arrestee may wind up with can prevent that person from getting a loan for a car, a house, or schooling—thus limiting his or her options and potentially leading that person back to committing more crimes.<sup>56</sup> The arrestee—and possibly his or her family—could be kicked out of public housing.<sup>57</sup> All of these costs on the individual affect the community as well. While the broken windows approach to community policing may decrease fear in the community, it might also result in economic ruin for the arrestee and thus create an even more desperate criminal.<sup>58</sup> These costs have become more magnified in the past few years as the Great Recession has taken a devastating toll on the economy more generally and local government budgets more specifically.

## V. LOCAL GOVERNMENT FUNDING AND THE GREAT RECESSION

### A. Sources of Local Government Funding

Local governments receive funding from six main sources: taxes, federal government assistance, state government assistance, special assessments, fees and fines, and borrowing.<sup>59</sup> While local governments do not have an inherent power to levy taxes, states grant localities the power to tax through their constitutions, statutes, and local home rule charter provisions.<sup>60</sup> However, the local government power to tax is often quite limited and not universally enjoyed in every state.<sup>61</sup> The most common and universal form of local

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55. *See id.* at 296.

56. *See* Howell, *supra* note 46, at 297.

57. *See id.* at 302.

58. *See id.* at 306–07.

59. *See generally* DANIEL R. MANDELKER ET AL., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM 282–518 (2010).

60. *See* Laurie Reynolds, *Taxes, Fees, Assessments, Dues, and the “Get What You Pay for” Model of Local Government*, 56 FLA. L. REV. 373, 383 (2004).

61. *See* Richard Briffault, *Home Rule for the Twenty-First Century*, 36 URB. LAW. 253, 269 (2004).

government tax is the property tax, while some localities are also able to garner funds through taxes related to sales and other excise taxes, local income, use, and licenses.<sup>62</sup>

Due to these limited taxation sources of revenue, local governments rely on the other aforementioned sources of non-tax revenues to help meet their budgets. The federal government has historically given substantial financial aid to local governments through block grants—categorical grants aimed at funding particular programs, with specific requirements and conditions attached—which gave local governments more discretion to use such funds for a variety of policy areas.<sup>63</sup> State governments also provide funding to local governments through direct revenue sharing, education budgets, and grants-in-aid (for specific purposes or uses).<sup>64</sup> Special assessments allow local governments to raise revenue by funding a community improvement—such as infrastructure projects—by assessing a fee to those property owners who will benefit from it.<sup>65</sup> Localities also charge various fees and fines on businesses, individuals, properties, and other entities for various regulatory, licensing, permitting, and user purposes.<sup>66</sup> Finally, local governments also obtain money needed to meet their yearly budgetary obligations by borrowing money and issuing bonds to repay their debt.<sup>67</sup>

### *B. The Effects of the Great Recession on Public Safety Budgets*

Before the Great Recession began in 2007, these funding sources for local governments were relatively stable and predictable. However, with the financial downturn that the United States—and the world more generally—has experienced in the past several years,

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62. See Amnon Lehavi, *Intergovernmental Liability Rules*, 92 VA. L. REV. 929, 949 (2006).

63. See Peter W. Salsich, Jr., *Toward a Policy of Heterogeneity: Overcoming a Long History of Socioeconomic Segregation in Housing*, 42 WAKE FOREST L. REV. 459, 484 (2007).

64. See MANDELKER, *supra* note 59, at 461–63.

65. See Reynolds, *supra* note 60, at 397 (providing an overview of local government special assessments).

66. See *id.* at 407–24 (detailing the various types of local government fees).

67. See Sean Carey, Note, *Post-Davis Conduit Bonds: At the Intersection of the Dormant Commerce Clause and Municipal Debt*, 78 FORDHAM L. REV. 121, 125–26 (2009).

localities experienced severe reductions from virtually all of their revenue sources that dramatically impacted their budgets. The federal government significantly cut its funding to local governments in its attempt to balance its budget and rein in the national debt.<sup>68</sup> Many state governments cut their funding to local governments—in a variety of different areas—to help make up budget deficits.<sup>69</sup> Cities also saw a significant drop in tax revenues as housing prices dropped, foreclosures proliferated, and spending (and thus sales taxes) dropped significantly while unemployment rose and fear of worse financial circumstances lingered.<sup>70</sup> In addition, some cities bore additional unexpected costs. Localities in California, for example, were forced by state law to house prisoners formerly imprisoned in state facilities in an attempt to save money at the state level.<sup>71</sup>

Police departments, and public safety budgets more generally, were not immune to these difficult economic times for local governments. A 2010 study conducted by the Police Executive Forum revealed that fifty-one percent of police departments responding to the survey had their budgets cut since the Great Recession began.<sup>72</sup> The average cut to police department budgets was seven percent.<sup>73</sup> Fifty-nine percent of those respondents also anticipated cuts to their budgets in 2011.<sup>74</sup> Another study showed that eight-five percent of responding police departments had their budgets

68. See William Selway, *U.S. Federal Budget Cuts to Hit Cash-Strapped Cities, Transit*, BLOOMBERG BUSINESSWEEK (Apr. 12, 2011, 1:26 PM), <http://www.businessweek.com/news/2011-04-12/u-s-federal-budget-cuts-to-hit-cash-strapped-cities-transit.html>.

69. See, e.g., Howard Wilkinson, *Ohioans Embrace New Reality*, CINCINNATI.COM (July 2, 2011, 4:34 PM), <http://news.cincinnati.com/article/20110702/NEWS0108/107030320/Ohioans-embrace-new-reality> (detailing the significant cuts in state aid to local governments in Ohio and the likely fallout from the cuts).

70. See Kelly Nolan, *Fall in Property-Tax Revenue Squeezes Cities*, WALL ST. J., July 16, 2011, <http://online.wsj.com/article/SB10001424052702304521304576447940532071536.html> (explaining the difficulties cities are facing from decreased tax revenues).

71. See Andrew Blankstein & Robert Faturechi, *L.A. County Jails May Be Out of Room Next Month*, L.A. TIMES, Nov. 11, 2011, <http://www.latimes.com/news/local/la-me-jails-release-20111111,0,4128740.story>.

72. See POLICE EXEC. RESEARCH FORUM, *IS THE ECONOMIC DOWNTURN FUNDAMENTALLY CHANGING HOW WE POLICE?* 1 (2010), available at <http://www.policeforum.org/library/critical-issues-in-policing-series/Econdownturnaffectpolicing12.10.pdf>.

73. See *id.*

74. See *id.*

cut in 2010, with more than half of them experiencing a five percent cut and nearly a quarter of them having a cut of ten percent or more.<sup>75</sup> Still another study detailed that seventy-eight percent of responding major city police departments experienced budget cuts by an average of 5.4%.<sup>76</sup> As nearly any newspaper in the country would likely report, police departments—like all other local government agencies—have experienced, and will likely continue to face, budget cuts during this economic downturn.

## VI. LOCAL GOVERNMENT RESPONSES AND AN OPPORTUNITY BORN?

### *A. Traditional Approaches: Cutting Costs and Raising Revenue*

The challenging economic times and attendant budget cuts have forced police departments to make difficult decisions to balance their budgets. There are several approaches that are worth analyzing because of their potential impact on a police department's ability to continue with a broken windows approach to community policing. Many police departments have laid off officers and made other reductions in their workforces. Some police departments have experimented with turning to private security firms for help with police services—or at least permitting them to operate in certain spheres—and “de-deputizing” certain police work so that civilian employees can perform those tasks. Other cities and suburbs have explored combining or regionalizing police services. Finally, many cities have attempted various cost-saving measures and looked to identify new, nontraditional revenue sources in an attempt to maintain staffing and service levels.

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75. See CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, THE IMPACT OF THE ECONOMIC DOWNTURN ON AMERICAN POLICE AGENCIES 10–11 (2011), available at [http://cops.usdoj.gov/Publications/e101113406\\_Economic%20Impact.pdf](http://cops.usdoj.gov/Publications/e101113406_Economic%20Impact.pdf) (citing the International Association of Chiefs of Police (IACP) study *Policing in the 21st Century: Preliminary Survey Results* (2010)). These cuts were already on top of budget cuts from previous years during the current economic downturn. See *id.*

76. See *id.* at 11 (citing an unpublished study by the Major City Chiefs Association entitled *Police Economic Challenges Survey Results* (2011)).

### 1. Reductions in Police Department Workforces

To address budget cuts, many police departments have laid off officers, made other personnel cuts, or left various jobs unfilled.<sup>77</sup> In fact, the United States Department of Justice estimated that by the end of 2011, approximately 12,000 officers would have been laid off by police departments and nearly 30,000 law enforcement jobs would go unfilled.<sup>78</sup> Some examples of police layoffs are breathtaking. The City of Camden, New Jersey, announced in January 2011 that it was cutting nearly half of its police force.<sup>79</sup> The City of Flint, Michigan, laid off 80 of its 260 police officers due to budget cuts.<sup>80</sup> The City of Paterson, New Jersey, eliminated one quarter of its police force—125 officers—to help combat a \$70 million city budget deficit.<sup>81</sup> The effects of such cuts are even more staggering when considering the significant amount of crime that each of these cities experiences.

Such a reduction in police officers has forced police departments to alter and reduce some of their traditional services and practices. Many police departments are prioritizing emergency calls over non-emergency calls.<sup>82</sup> Others are making similar, though difficult, decisions on what problems to focus on given their more limited resources. For example, some departments are no longer responding to motor vehicle thefts.<sup>83</sup> The City of Detroit, Michigan, recently followed the lead of other big cities in no longer responding to burglar alarms unless the alarm company has verified that there is a

77. See *id.* at 13. In addition, many police departments also experienced cuts in overtime funding and mandatory furlough days for police officers and other law enforcement personnel. See POLICE EXEC. RESEARCH FORUM, *supra* note 72, at 1.

78. See Kevin Johnson & David Jackson, *Economy Costing 12,000 Cops Their Jobs*, CHI. SUN-TIMES, Oct. 25, 2011, at 17, available at 2011 WLNR 21864539.

79. See *Crime-Ridden Camden, N.J., Cuts Police Force Nearly in Half*, CNN.COM (Jan. 18, 2011), [http://articles.cnn.com/2011-01-18/us/new.jersey.layoffs\\_1\\_police-force-police-officers-public-safety?\\_s=PM:US](http://articles.cnn.com/2011-01-18/us/new.jersey.layoffs_1_police-force-police-officers-public-safety?_s=PM:US).

80. See Joe Swickard & Dawson Bell, *Flint Official: National Guard Not an Option to Fix Violence*, DETROIT FREE PRESS, May 27, 2011, available at 2010 WLNR 10896407.

81. See *Paterson Police Plan to Protest Layoffs of 125 Officers*, NJ.COM (Apr. 18, 2011, 7:55 AM), [http://www.nj.com/news/index.ssf/2011/04/paterson\\_police\\_plan\\_to\\_protes.html](http://www.nj.com/news/index.ssf/2011/04/paterson_police_plan_to_protes.html).

82. See CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 35.

83. See POLICE EXEC. RESEARCH FORUM, *supra* note 72, at 2.

valid alarm.<sup>84</sup> In a response to a reduction of 165 sworn police officers, the City of San Jose, California, adopted a “modified response policy” that reduces the number of police responses to non-emergency situations.<sup>85</sup> To this end, the San Jose Police Department (SJPD) no longer responds to noise complaints, recycling thefts, traffic accidents in which no one is injured, fruit vending without valid permits, and illegal parking.<sup>86</sup> The SJPD also followed a national trend of severely reducing, if not eliminating, its horse-mounted police force.<sup>87</sup> Other police departments reduced their investigation follow-ups with property, computer, and financial crimes; non-felony domestic assaults; narcotics; and other such crimes.<sup>88</sup> Some localities are reducing or eliminating police services for community events such as parades, funerals, and high school football games.<sup>89</sup> Finally, cutbacks have forced some police departments to require residents to file their own reports online or in

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84. See Press Release, City of Detroit Police Dep’t, Verified Response Will Reduce 911 Calls for False Alarms (Aug. 15, 2011), available at <http://www.securitysales.com/files/DPD-Verified-Response-Press-release.doc> (noting that Salt Lake City, Utah; Milwaukee, Wisconsin; Aurora, Colorado; Fremont, California; and Madison, Wisconsin also have adopted this policy).

85. See John Woolfolk, *San Jose Cops Unveil Plan to Cut Services to Businesses and Residents*, OAKLAND TRIB., Aug. 12, 2011, available at 2011 WLNR 16050912.

86. See *id.* The SJPD also implemented cuts to its gang-reduction officers in city schools and drastically reduced the number of flight hours of the police helicopter in an attempt to close budget deficits. See *id.*

87. See *id.* The cities of Boston, Massachusetts; Tulsa, Oklahoma; and San Diego, California, have all entirely cut their horse-mounted police forces. See Jeff Martin, *Mounted Police Fading in Sunset?*, USA TODAY (Feb. 10, 2010, 12:48 PM), [http://www.usatoday.com/news/nation/2010-02-11-mounted-police\\_N.htm](http://www.usatoday.com/news/nation/2010-02-11-mounted-police_N.htm). There are only one hundred existing horse-mounted police units in the country, down from nearly three hundred just ten years ago. See *id.*

88. See CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 20. The City of Sacramento, California, eliminated its entire narcotics and gangs units due to budget cuts. See *id.* at 22. Other cities are seeking to cut their crossing guard programs to help close budget gaps. See Anna Carrera, *SP Police May Cut Crossing Guard Program*, WKOW.COM (Oct. 7, 2011, 7:21 AM), <http://www.wkow.com/story/15645505/sp-police-may-cut-crossing-guard-program> (noting a similar plan in Stevens Point, Wisconsin); Anne Jungen & Patrick B. Anderson, *Police Department Wants to Cut Crossing Guard Program to Save Money*, LA CROSSE TRIB. (Sept. 15, 2011, 12:00 AM), [http://lacrossetribune.com/news/local/article\\_ed309876-df52-11e0-b330-001cc4c002e0.html](http://lacrossetribune.com/news/local/article_ed309876-df52-11e0-b330-001cc4c002e0.html) (explaining such a proposal in La Crosse, Wisconsin).

89. See *Police Budget Cuts Force Victims to Solve Property Crimes on Their Own*, KREM.COM (July 14, 2011, 7:17 PM), <http://www.krem.com/news/local/Police-budget-cuts-force-victims-to-solve-property-crimes-on-their-own-125611808.html> (detailing how Beloit, Wisconsin, is making such cuts due to budget constraints).

writing for lower-level crimes such as break-ins.<sup>90</sup> With the reductions in police personnel that many cities are experiencing, some police departments have no choice but to make such difficult decisions.

## *2. Partnering with Private Security Firms and Civilianizing Police Work*

Cities and their police departments have also tried to cut costs by working with private security firms—or at least allowing them to function in certain capacities and locations.<sup>91</sup> The use of private security guards in specific areas of a city—in downtown or particular tourist locations—was not uncommon before the Great Recession.<sup>92</sup> However, the recent budget cuts have led some police departments to collaborate with, or even hire, private security firms to help them with providing police services. For example, the Minneapolis Police Department (MPD) collaborates with private security officers in the downtown business district to help reduce crime through enhanced communication, wireless cameras placed in strategic locations, and MPD training of these private security officers.<sup>93</sup> Cities such as Las Vegas, Nevada; Wilmington, Delaware; New York City, New York; and Durham, North Carolina, have all collaborated with private security firms to reduce their costs while maintaining their effectiveness.<sup>94</sup> Some cities have even sought to go further than such collaborations. The City Council in Oakland, California, had originally voted to hire private armed security guards to patrol high-

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90. See Kevin Johnson, *Cutbacks Force Police to Curtail Calls for Some Crimes*, USA TODAY (Aug. 25, 2011, 2:19AM), [http://www.usatoday.com/news/nation/2010-08-25-1Anresponsecops25\\_ST\\_N.htm](http://www.usatoday.com/news/nation/2010-08-25-1Anresponsecops25_ST_N.htm) (noting such a move by Oakland, California; Tulsa, Oklahoma; and Norton, Massachusetts).

91. See CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 22.

92. See Marco Caffuzzi, Note, *Private Police and Personal Privacy: Who's Guarding the Guards?*, 40 N.Y.L. SCH. L. REV. 225, 226–29 (1995) (commenting on the rise in private policing during the 1990s).

93. See Lucy Gerold, *Downtown Security Collaborative*, POLICE CHIEF MAG., July 2006, available at [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article\\_id=930&issue\\_id=72006](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=930&issue_id=72006).

94. See CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 24.

crime areas of the city, but the contract was later rescinded when the company with whom it contracted, International Services, Inc., was indicted for fraud.<sup>95</sup> With the significant cost savings in private security officers compared to sworn public police officers, it is no wonder that many cities are exploring how they might use or partner with private security firms.

Other police departments have increased the duties of civilian workers by assigning them tasks that deputized police officers have traditionally performed. By shifting such clerical and non-law-enforcement activities to civilians, police departments can deploy their sworn officers into the field to deal with more pressing crime needs.<sup>96</sup> Some cities have explored responsibilities for civilians beyond the traditional clerical activities. For example, the City of Mesa, Arizona, created a civilian investigation unit in 2009 to respond to low-level crimes and conduct investigations.<sup>97</sup> These civilian investigators take initial reports and collect DNA and fingerprints at the crime scene, but they are not armed and do not have the authority to make an arrest.<sup>98</sup> The City of Chicago, Illinois, has similarly sought to cut costs by civilianizing traditional police work, hiring 104 civilian detention aides at city jails and transferring the police officers stationed there to beat patrols.<sup>99</sup> Such civilianization has helped many cities save money in an era of dwindling budgets.<sup>100</sup>

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95. See Bobby White, *Cash-Strapped Cities Try Private Guards Over Police*, WALL ST. J., Apr. 21, 2009, at A4, <http://online.wsj.com/article/SB124027127337237011.html>.

96. See Alan Gomez, *Civilians Help with Minor Police Duties*, USA TODAY (Mar. 31, 2008, 12:01 AM), [http://www.usatoday.com/news/nation/2008-03-30-civiliancops\\_N.htm](http://www.usatoday.com/news/nation/2008-03-30-civiliancops_N.htm).

97. See Nathan Gonzalez, *Mesa Civilian Investigators Save Money, Create Rapport with Public*, ARIZ. REPUBLIC (July 19, 2010, 9:20 AM), <http://www.azcentral.com/community/mesa/articles/2010/07/19/20100719mesa-civilian-police-investigators0717.html>. The San Francisco Police Department also started a civilian investigation unit in 2010. See *San Francisco PD Tries Out Civilian Investigators* (NPR radio broadcast Aug. 2, 2010), available at <http://www.npr.org/templates/story/story.php?storyId=128923342>.

98. See Gonzalez, *supra* note 97.

99. See Kristen Mack, *Emanuel, McCarthy Shift 138 Officers from Jail Lockups to Beat Patrol*, CHI. TRIB., Oct. 6, 2011, [http://articles.chicagotribune.com/2011-10-06/news/chi-emanuel-mccarthy-shift-138-officers-from-jail-lockups-to-beat-patrol-20111006\\_1\\_mayor-rahm-emanuel-officers-on-city-streets-patrol](http://articles.chicagotribune.com/2011-10-06/news/chi-emanuel-mccarthy-shift-138-officers-from-jail-lockups-to-beat-patrol-20111006_1_mayor-rahm-emanuel-officers-on-city-streets-patrol).

100. See CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 23 (noting that the civilianization

### 3. Combining or Regionalizing Police Service

Some cities and suburbs have explored the idea of combining or regionalizing police service. Modeled after regional police service approaches in San Francisco, California; Denver, Colorado; Las Vegas, Nevada; and San Antonio, Texas, many communities have sought to either merge city police departments and county sheriff departments or merge small suburban police forces into a regional police force.<sup>101</sup> In one survey, twenty-six percent of responding police departments reported that their county partnered with a neighboring county to consolidate police service, while another thirty-one percent of respondents have had discussions with other localities regarding such consolidation.<sup>102</sup> Other cities have even disbanded their police departments and contracted with their local sheriff's department for police services.<sup>103</sup> While such proposals to combine or regionalize police services are often met with resistance and controversy—because of concerns about centralizing a government service as community-tailored as policing and crime prevention—consolidation, regionalization, or even outsourcing policing services to the local sheriff's department may be the most

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program in San Francisco saves up to \$40,000 per civilian in training, equipment, and benefit costs compared to hiring a police officer for the position). Some cities have also used volunteers to do clerical work and to serve as reserve officers to help save money. *See id.* at 24–25.

101. *See, e.g.*, Roberto Acosta, *Police Chiefs in Burton and Grand Blanc Township Talk About Consolidation*, FLINT J. (July 30, 2011, 12:00 PM), [http://www.mlive.com/news/flint/index.ssf/2011/07/police\\_chiefs\\_in\\_burton\\_and\\_gr.html](http://www.mlive.com/news/flint/index.ssf/2011/07/police_chiefs_in_burton_and_gr.html) (discussing the possible consolidation of two townships); Ken Carlson, *Tepid Response Meets Idea to Combine Modesto Police, County Sheriff*, MODESTO BEE (Apr. 7, 2010), <http://www.modbee.com/2011/04/06/1633647/merge-police-sheriff.html> (detailing a proposed merger of the Modesto Police Department and the Stanislaus County Sheriff's Department). *See also* CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 30 (noting other consolidation arrangements in various localities).

102. *See* CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 29 (citing the 2011 National Survey of County Elected Officials).

103. *See, e.g.*, Katie Dunn, *Hoschton Dissolves Police Department to Save Money*, GAINESVILLE TIMES, Jan. 14, 2010, <http://www.gainesvilletimes.com/archives/28321/> (detailing the defunding of the City of Hoschton, Florida's police department and the contract with the Jackson County Sheriff's Office for police service); Ashley McNamee, *Roanoke Police Department Disbanded*, CINEWSNOW.COM (July 15, 2010, 11:55 AM), <http://www.cinewsnow.com/news/local/46678142.html> (noting that the village of Roanoke, Illinois, disbanded its police department and contracted with the Woodford County Sheriff's Department for police services).

cost-effective way for some communities to deal with the current economic times.

#### 4. *Cost-Cutting Measures and New Revenue Sources*

Some cities are attempting to counter budget reductions through various cost-saving measures. For example, Chicago is seeking to curtail the police department's current sick leave policy and to close underutilized police stations.<sup>104</sup> Many police departments have been forced to cut back or eliminate plans to acquire technology to aid in their work.<sup>105</sup> Other local governments have sought to reduce expenses at their jails. Given that medical costs are the largest service costs for most local government jails, it is unsurprising that cities have sought to save money on these expenses.<sup>106</sup> Some counties have begun treating patients inside of the jails instead of transferring them to external facilities; switching from name-brand medications to generic ones; and creating better monitoring of inmate medication distribution and use to decrease the amount of unused medicine.<sup>107</sup> Other local governments have privatized the medical services that they provide in their jails in an attempt to save money.<sup>108</sup>

Some counties have sought to reduce the cost of feeding their inmates. For example, fourteen counties in New York are saving

104. See Frank Main, *Chicago Police Department Cracks Down on Sick Leave Abuse*, CHI. SUN-TIMES (Sept. 6, 2011, 10:02 PM), <http://www.suntimes.com/news/crime/7506385-418/chicago-police-department-cracks-down-on-sick-leave-abuse.html>; Charles Thomas, *City May Close Some Police Stations to Save Money*, ABC 7 NEWS (Sept. 19, 2011), <http://abclocal.go.com/wls/story?section=news/local&id=8359789>.

105. See POLICE EXEC. RESEARCH FORUM, *supra* note 72, at 2.

106. See Matt Cecil, *The Costs of Living, In Jail*, OR. CAPITAL NEWS (July 26, 2011), <http://oregoncapitolnews.com/blog/2011/07/26/the-cost-of-living-in-jail/>.

107. See, e.g., Mark Wiggins, *McLennan County's Jail Doctor Outlines Ambitious Plan for Cuts*, KXXV.COM (Jan. 14, 2011, 5:11 PM), <http://www.kxxv.com/story/13846656/mclennan-countys-jail-doc-outlines-ambitious-plans-for-savings?redirected=true> (noting McLennan County's attempt to save money on medical costs); see also OFFICE OF THE N.Y. STATE COMPTROLLER, *COST-SAVING AND COST-CONTAINMENT STRATEGIES FOR NEW YORK STATE'S LOCAL GOVERNMENTS 13* (June 2009), <http://www.osc.state.ny.us/localgov/pubs/research/costsavingscontainment.pdf> (noting and explaining the use of telemedicine—the practice of treating inmates over a closed-circuit Internet video or data feed—by many New York localities to save money on medical services).

108. See, e.g., Steve Schultze, *Jail Health Care Change Announced*, JSONLINE (Sept. 28, 2011), <http://www.jsonline.com/news/milwaukee/130731963.html> (explaining Milwaukee County's privatizing of its jail medical services).

money by purchasing “Cook Chill” food products that allow a mere reheating of the food to be served to inmates.<sup>109</sup> The switch to this type of food preparation model is estimated to save these counties an average of \$730 per inmate per year.<sup>110</sup> Sauk County, Wisconsin, no longer provides warm breakfast for inmates and instead serves only cold cereal—saving approximately \$50,000 per year.<sup>111</sup> Polk County, Florida, eliminated peanut butter and jelly sandwiches, cornbread, coffee, and juice from its jail menu to save money.<sup>112</sup> The Sandusky County Jail in Ohio grows produce in a garden to use for meals in the jail—an effort that has saved \$20,000 in food costs.<sup>113</sup> Some counties have also pursued privatization of their food services, which will save one county at least \$700,000 per year.<sup>114</sup>

Local governments have also attempted a hodgepodge of other cost-cutting measures to address the financial strains their budgets face. To save on electricity costs, Hays County Jail in Texas moved lights out from 1:30 a.m. to 11:00 p.m.<sup>115</sup> The Barrow County Detention Center in Georgia mandated that all incoming and outgoing mail be in the form of postcards to reduce the time spent on opening and inspecting mail.<sup>116</sup> Some localities have used inmates for

109. See OFFICE OF THE N.Y. STATE COMPTROLLER, *supra* note 106, at 12.

110. *Id.*

111. See Steven Elbow, *Hot Breakfast Nixed for Sauk County Inmates*, CAP TIMES (Jan. 28, 2011, 7:00 AM), [http://host.madison.com/ct/news/local/crime\\_and\\_courts/blog/article\\_6e6fbb14-2a4b-11e0-bf08-001cc4c002e0.html](http://host.madison.com/ct/news/local/crime_and_courts/blog/article_6e6fbb14-2a4b-11e0-bf08-001cc4c002e0.html). The County of Chippewa Falls, Wisconsin, no longer provides milk with every meal, but rather gives inmates a glass of water with a packet of fruit punch powder for lunch and dinner—saving the county approximately \$16,000 per year. See Krista Hostetler, *Chippewa County Jail Reducing Milk Intake for Inmates*, WQOW.COM (Mar. 29, 2011, 7:17 PM), <http://www.wqow.com/Global/story.asp?S=14345401>.

112. Colleen Jenkins, *Florida Jail Ends Free Underwear for Jail Costs*, REUTERS (July 15, 2011, 11:27 AM), <http://www.reuters.com/article/2011/07/15/us-florida-jail-underwear-idUSTRE76E3XS20110715>.

113. See Lisa Cornwell, *Program Gives Inmates Green Thumbs*, COLUMBUS DISPATCH (Aug. 1, 2011, 5:51 AM), <http://www.dispatch.com/content/stories/local/2011/08/01/program-gives-inmates-green-thumbs.html>.

114. See Carol Demare, *Jail Food Goes Private in Cost Test*, TIMESUNION.COM (Nov. 12, 2010, 12:00 AM), <http://www.timesunion.com/local/article/Jail-food-goes-private-in-cost-test-809437.php> (explaining the privatization of food service at the Albany County Jail).

115. See Patrick George, *Hays Sheriff Puts Inmates to Work at Jail to Save Money*, STATESMAN.COM (Jan. 30, 2011, 8:49 PM), <http://www.statesman.com/news/local/hays-sheriff-puts-inmates-to-work-at-jail-1220705.html>.

116. See *Sheriff: Jail Mail Policy Working Well*, BARROW J. (Oct. 2, 2010),

general labor—such as mowing lawns, shoveling snow, picking up litter, weeding, maintaining parks, and caring for buildings—which enables them to cut the costs of these services from their respective budgets.<sup>117</sup> Finally, some localities are considering consolidating jails and jail services in order to save money.<sup>118</sup> These are just some examples of the lengths that local governments are going to in order to cut costs given the current budget cuts to public safety spending.

Cities are also looking to nontraditional revenue sources in an attempt to maintain current staffing and service levels. For example, Chicago proposes raising \$25 million in new revenue through the reallocation of tax increment financing (TIF) funds in order to hire 250 new police officers.<sup>119</sup> Many localities have used fundraising and community philanthropic efforts to raise additional revenue.<sup>120</sup> Several counties in Michigan, Wood County in Wisconsin, and Riverside County in California have all started billing inmates for their stay in jail.<sup>121</sup> Polk County, Florida, now charges male inmates

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<http://www.barrowjournal.com/archives/3838-Sheriff-Jail-mail-policy-working-well.html>.

117. See, e.g., *Jail Work Release Program Expands in Brown County*, WTVB.COM (Aug. 24, 2011, 10:39 AM), <http://wtvb.com/news/articles/2011/aug/24/jail-work-release-program-expands-in-brown-county/> (noting the general labor that inmates perform in Brown County, Wisconsin); Joe Moszczynski, *Requests for N.J. Inmate Labor Increase as Cash-Strapped Towns Look to Cut Costs*, STAR-LEDGER (Mar. 14, 2011, 9:45 PM), [http://www.nj.com/news/index.ssf/2011/03/requests\\_for\\_nj\\_inmate\\_labor\\_i.html](http://www.nj.com/news/index.ssf/2011/03/requests_for_nj_inmate_labor_i.html) (detailing the Sheriff's Work Assistance Program (SWAP) in several New Jersey counties).

118. See Domingo Ramirez Jr., *Four Northeast Tarrant Cities to Share Jail*, COMMUNICATIONS CENTER, STAR-TELEGRAM.COM (Sept. 25, 2011), [http://www.startelegram.com/2011/09/25/v-touch/3395826\\_four-northeast-tarrant-cities.html](http://www.startelegram.com/2011/09/25/v-touch/3395826_four-northeast-tarrant-cities.html) (detailing how the cities of North Richland Hills, Richland Hills, Haltom, and Watauga agreed to a consolidation plan for their jails, and how these communities expect to save from \$260,000 to \$335,000 with this move).

119. See Thelma Sardin, *Emanuel Unveils Crime Plan*, WKLY. CITIZEN (Jan. 12, 2011), <http://www.thechicagocitizen.com/community-focus/emanuel-unveils-crime-plan/>. Questions have been raised regarding whether Illinois' TIF statute would allow for such a reallocation of TIF funds. For general information regarding the TIF districts, funding, and issues surrounding them, see generally Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65 (2010).

120. See Mark Ambrogì, *Lions Fish Fry Nets \$3,400*, INDYSTAR.COM (Sept. 15, 2010), <http://www.indystar.com/article/20100916/LOCAL0103/9160395/Lions-fish-fry-nets-3-400> (noting that the County of Hamilton, Ohio, receives money from the Westfield Lions Club's fish fry and Texas Hold 'Em Poker fundraiser to pay for inmate reading glasses); Deena Yellin, *Budget Cuts Force N.J. Police Departments to Get Creative*, HERALD NEWS (Sept. 21, 2011), <http://www.lawofficer.com/article/news/budget-cuts-force-nj-police-de> (explaining how the Mahwah Police Department has used various fundraising activities, including a fashion show, to raise money to help meet its budget).

121. See Christina Hall, *Jail Inmates Get Billed for Stay—But Few Pay*, DETROIT FREE PRESS, Feb. 7,

for underwear—a move that has an estimated savings of \$45,000 per year.<sup>122</sup> Riverside County, California, also plans on charging inmates for using public defenders.<sup>123</sup>

### *B. Creative Alternatives to Traditional Incarceration*

Other local governments are using the current budget crises to rethink their traditional approaches to policing (including the broken windows approach to community policing), which have focused heavily on incarceration. Indeed, the financial realities of an incarceration-dominant approach to policing pose an expensive challenge for most local governments. To illustrate the point: A city or county often spends \$100 or more per day to house a criminal (or someone accused of a crime)—a daunting figure given the increase in the number of incarcerated individuals in most jails.<sup>124</sup> It is no wonder, then, that many localities are rethinking an incarceration-dominated approach to community policing. But to simply look at the creative alternatives, described below, as solely money-based would be to oversimplify these cities' and counties' motivations. As this sub-section and the Milwaukee County experience (detailed below) demonstrate, those in the criminal justice system in many localities are seeking to approach the problems of crime and disorder in a smarter and, arguably, more effective manner than the traditional “tough on crime” ethos that has pervaded the criminal justice system—and political discourse more generally—for decades. While the costs of the current system may be a significant motivating factor

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2011, at A1, available at 2011 WLNR 2407421 (noting the counties in Michigan); Kathleen Miles, *Riverside Charges Inmates for Stays in “Prison Hotels”*, HUFFINGTON POST (Nov. 4, 2011, 1:46 AM), [http://www.huffingtonpost.com/2011/11/03/riverside-charges-inmates\\_n\\_1075129.html](http://www.huffingtonpost.com/2011/11/03/riverside-charges-inmates_n_1075129.html) (noting the billing system in Riverside County); *Wood County to Start Charging Inmates for Jail Stays*, JSONLINE (Aug. 17, 2011), <http://www.jsonline.com/news/wisconsin/127934438.html> (noting the billing system in Wood County).

122. See Jenkins, *supra* note 112.

123. See Miles, *supra* note 121. To collect the legal fees, the county intends to place a lien against the inmate's personal property and then collect the money when that property is sold. *Id.*

124. See, e.g., Cecil, *supra* note 106 (explaining that Multnomah County, Oregon, spends approximately \$127 per day to house the average inmate); Leon Fooksman & Rachael Joyner, *Remedies Sought for Crowded Jail: Costs of Incarceration Rising Fast*, SUNSENTINEL.COM (Jan. 10, 2008), [http://articles.sun-sentinel.com/2008-01-10/news/0801100032\\_1\\_jail-inmate-jail-population-fights](http://articles.sun-sentinel.com/2008-01-10/news/0801100032_1_jail-inmate-jail-population-fights) (noting that Palm Beach County, Florida, spends almost \$100 per day to house an inmate).

for why these communities are rethinking their approach to the criminal justice system, the communities' impetus also stems from a desire to better achieve their goals for a safe community and to help those who may need social service support to avoid recidivism and problems in the future.

Many localities are using house arrest for pretrial detainees, for parolees, and even as a criminal sentence.<sup>125</sup> Local governments design these programs to enable those who commit, or are accused of committing, certain low-level, nonviolent crimes to serve their sentences at home, monitored by an electronic ankle bracelet.<sup>126</sup> One obvious benefit for these localities comes in the form of cost savings, such as not having to pay for an inmate's health care, food, and other related expenses. In this regard, the results have been promising thus far. Scottsdale, Arizona, for example, saved \$200,000 in the first five weeks of its electronic monitoring program for drunk driving cases, and Cook County, Illinois, cut its cost per detainee from \$142.60 per day to \$64.74 with electronic monitoring.<sup>127</sup>

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125. See, e.g., Michael Miller, *Southern New Jersey Jail Inmates Serving More Sentences at Home, Easing Overcrowding and Saving Counties Money*, PRESS OF ATLANTIC CITY (Feb. 13, 2011, 7:47 PM), [http://www.pressofatlanticcity.com/news/press/atlantic/southern-new-jersey-jail-inmates-serving-more-sentences-at-home/article\\_2e873422-37d5-11e0-8192-001cc4c03286.html](http://www.pressofatlanticcity.com/news/press/atlantic/southern-new-jersey-jail-inmates-serving-more-sentences-at-home/article_2e873422-37d5-11e0-8192-001cc4c03286.html) (detailing the use of electronic monitoring in Atlantic City, New Jersey, for its day-reporting program, home detentions, and pretrial release of suspects).

126. See Amanda Boardman, *For Criminals, No Place Like Home*, DALLASNEWS.COM (Aug. 23, 2010, 2:27 AM), <http://www.dallasnews.com/news/crime/headlines/20100823-Dallas-County-s-alternative-sentencing-program-5942.ece> (detailing the alternative sentencing plan in Dallas County, Texas); see also Kayla Anderson, *County Resumes Controversial House Arrest Program*, KOB.COM (Mar. 31, 2011, 9:49 PM), <http://www.kob.com/article/stories/S2045476.shtml> (explaining the house arrest program in Bernalillo County, New Mexico, in which inmates are on an ankle monitoring system instead of behind bars); Kathy Coffa Sims, *Bracelets that Track Criminals*, THE POST-STANDARD (Syracuse, NY), Feb. 12, 2008, at B1 (noting a similar program in Madison County, New York).

127. See Ofelia Madrid, *Electronic Monitoring Saves Money*, ARIZ. REPUBLIC (Nov. 23, 2010, 12:00 AM), <http://www.azcentral.com/arizonarepublic/local/articles/2010/11/23/20101123nehousearrest1123.html> (detailing Scottsdale's cost savings); *Number of County Criminal Suspects on Electronic Monitoring Surges*, THE DOINGS OAKBROOK (Oct. 6, 2011, 9:10AM), <http://oakbrook.suntimes.com/news/8064224-418/number-of-county-criminal-suspects-on-electronic-monitoring-surges.html> (noting the cost savings for Cook County, Illinois). Electronic monitoring in drunk driving cases has become more prevalent because of such cost savings. See, e.g., Matthew Kemeny, *Counties Turn to Electronic Monitoring to Cut Costs, Curb Overcrowding in Prisons*, PENNLIVE.COM (Feb. 24, 2010, 7:17 PM), [http://www.pennlive.com/midstate/index.ssf/2010/02/counties\\_turn\\_to\\_electronic\\_mo.html](http://www.pennlive.com/midstate/index.ssf/2010/02/counties_turn_to_electronic_mo.html) (detailing the use of electronic monitoring for drunk driving cases in Perry County, Pennsylvania); Jennifer Sullivan, *Seattle Courts to Trade Jail for Ankle*

However, such programs also seek to avoid substantially disrupting the lives of those accused of crimes or those who have committed low-level crimes. In doing so, these programs aim to help these people avoid a downward spiral of more frequent and more serious criminal acts because they have lost their jobs and support systems. For example, house arrest and electronic monitoring programs aim to allow these low-risk criminals to hold (or continue to hold) jobs and enjoy the help and support of their families—factors that can help these criminals avoid recidivism.<sup>128</sup> For example, Dallas County, Texas, saved \$400,000 in the first year of its house arrest program, and it also saw 273 out of the 281 offenders successfully complete the program.<sup>129</sup> Through such programs, local governments seek to help ensure that those accused or convicted of minor crimes—who are not serious threats to the community—can maintain some semblance of their normal lives and thus avoid the significant costs and disruptions that often come with being arrested or convicted of such low-level crimes.

Localities are also adopting or expanding alternatives to traditional incarceration, such as work release and halfway houses. Work release programs allow nonviolent misdemeanor and low-level felony offenders to maintain jobs in the community while serving their ordered jail sentence.<sup>130</sup> In order to be eligible for and complete a work release program, the convicted criminal must obtain a written order from a judge, comport with the rules of the program, and maintain a job.<sup>131</sup> Some counties have used weekend incarceration and work release—in conjunction with electronic monitoring—to

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*Bracelets*, SEATTLE TIMES (May 10, 2011, 10:02 PM), [http://seattletimes.nwsourc.com/html/localnews/2015017712\\_duibracelet11m.html](http://seattletimes.nwsourc.com/html/localnews/2015017712_duibracelet11m.html) (noting the Seattle Municipal Court's use of electronic monitoring). Other counties have saved even more money by moving to an electronic monitoring system for low-level offenders by charging the criminal or the accused for most, if not all, of the electronic monitoring costs. See, e.g., Boardman, *supra* note 126 (explaining that those participating in the electronic monitoring program pay for ninety percent of the costs).

128. See Boardman, *supra* note 126.

129. *Id.*

130. See, e.g., SEDGWICK CNTY. PUB. SAFETY, WORK RELEASE PROGRAM 1 (June 2010), [http://www.sedgwickcounty.org/Criminal\\_Justice/Fact%20Sheets/Work%20Release%20Program.pdf](http://www.sedgwickcounty.org/Criminal_Justice/Fact%20Sheets/Work%20Release%20Program.pdf) (detailing the work release program in Sedgwick County, Kansas).

131. *Id.*

enable inmates to work at county facilities, such as the zoo or veterans' cemetery, and also allow them to sleep at home after work.<sup>132</sup> Other counties have linked work release with halfway homes—a scenario where inmates sleep at the halfway house at night but leave during the day for their court-approved work.<sup>133</sup> Finally, some counties have established day reporting centers for nonviolent offenders—usually alcohol and drug abusers—who cannot make bail.<sup>134</sup> Under a traditional system, these offenders would spend weeks in jail waiting for court hearings for failure to post bail. Under the day reporting center programs, these offenders report daily to the center and are subject to random drug tests.<sup>135</sup> In addition, these offenders receive vocational training and, if they complete the

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132. See Miller, *supra* note 125. This work release program in Cape May County, New Jersey, saved taxpayers \$357,964 through 29,032 hours of work by the inmates in 2010. *Id.*

133. See Tom Barnes, *Prison Head: Release Short-Term State Inmates to Halfway Houses*, POST-GAZETTE.COM (Mar. 2, 2010, 11:53 AM), <http://www.post-gazette.com/pg/10061/1039687-100.stm>. Other counties have dealt with jail overcrowding and the need for cost control by simply releasing nonviolent criminals from jail earlier than their scheduled release date. See Don Hamilton, *County: Have Jail, Will Share*, PORTLAND TRIB. (Feb. 4, 2005), [http://www.portlandtribune.com/news/story.php?story\\_id=28215](http://www.portlandtribune.com/news/story.php?story_id=28215) (noting how Multnomah County, Oregon has been forced to release some inmates that it would rather keep imprisoned, due to financial constraints). Overcrowding and cost control pressures have forced some counties to rely on citations as sole punitive measures for low-level criminal acts. See, e.g., Michelle Hillen, *Rx for Jail Crunch: More State Money*, ARK. DEMOCRAT-GAZETTE, Aug. 24, 2008, at 19, available at <http://www.arkansasonline.com/news/2008/aug/24/rx-jail-crunch-more-state-money-20080824/?subscriber-arkansas> (noting that Pulaski County, Arkansas, started giving citations to nonviolent offenders instead of jail time). To be sure, this is one approach that local governments could take to save money yet still remain consistent to the principles of the broken windows approach to community policing: that is, to decriminalize certain low-level, order maintenance offenses. See Howell, *supra* note 46, at 316–18. Cities could create meaningful civil penalties, such as fines, to address and discourage such undesirable behavior. See *id.* at 317. This potential option should not be mistaken as an acceptance of such disorder or of moving away from the social norms-based approach that community policing embraces. Rather, it could be seen as a conscious effort to enforce such community norms in a manner that is less expensive but may be as effective. In decriminalizing such offenses, local governments “open[] up possibilities for re-integrative and non-adversarial solutions that can strengthen rather than undermine social order.” *Id.* It may also reduce the costs—financial and otherwise—to the violator and the criminal justice system as detailed above. In these regards, decriminalization of certain offenses may save money while remaining true to the tenets of the broken windows theory and community policing more generally.

134. See Richard F. Belisle, *Day Reporting Center Aims to Save Counties Jail Money*, HERALD-MAIL.COM (Apr. 19, 2009), [http://articles.herald-mail.com/2009-04-19/news/25164957\\_1\\_jail-counties-prisoners](http://articles.herald-mail.com/2009-04-19/news/25164957_1_jail-counties-prisoners) (detailing the day reporting centers established in 2009 by the counties of Berkeley and Jefferson in West Virginia).

135. See *id.*

program successfully, they can avoid jail altogether and hopefully avoid recidivism in the future.<sup>136</sup>

Counties have similarly adopted specialty courts to complement such diversion programs, in an attempt to help offenders with their underlying problems through social service programs and to avoid recidivism. Many counties set up these courts to help channel those whose criminal acts stem from drug addiction or mental health issues into treatment programs that will help them deal with their underlying problem. These programs serve as alternatives to simply incarcerating these individuals and then, in all likelihood, releasing them to commit the same types of crimes because their underlying disorder was not addressed while in jail.<sup>137</sup> For example, the City of Greenwood, Minnesota, uses a program in which substance abusers enter a recovery court program where the abuser lives at home but cannot use drugs or alcohol and cannot live with anyone who uses drugs.<sup>138</sup> Recovery court supervisors randomly show up at the participant's house to check for alcohol or drug use and ensure compliance with the program's requirements.<sup>139</sup> The program also forbids participants from going to locations where drugs or alcohol are used.<sup>140</sup> If participants break these rules, they become subjected to more restrictive rules and may ultimately be sent to jail.<sup>141</sup> As this example demonstrates, the purpose of such specialty courts is to reduce recidivism by helping treat the criminal offender's underlying

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136. *See id.* DeKalb County, Georgia, instituted a similar diversion program for first-time offenders charged with shoplifting, disorderly conduct, and other low-level offenses. If the offenders successfully complete the diversion program, they can avoid jail time and save the county money through the attendant reduced inmate costs. Daniel Beauregard, *DeKalb Solicitor-General Kicks Off New Pre-Trial Diversion Program*, CHAMPION NEWSPAPER (Nov. 4, 2011), <http://www.championnewspaper.com/news/articles/1158dekalb-solicitor-general-kicks-off-new-pre-trial-diversion-program1158.html>.

137. *See* Eric J. Miller, *Drugs, Courts, and the New Penology*, 20 STAN. L. & POL'Y REV. 417, 420–24 (2009).

138. *Minnesota Program Gets Recovering Substance Abusers Back to Work*, 17 WORKPLACE SUBSTANCE ABUSE ADVISOR 20 (Sept. 19, 2003).

139. *Id.*

140. *Id.*

141. *See id.*

problem, while at the same time saving money by keeping them out of jail initially.<sup>142</sup>

As described further below, some local governments are moving to evidence-based practices to make “smarter” decisions as to how to police their communities and how to administer their criminal justice system. For example, Napa County, California, designed a matrix program that rates prisoners on certain factors to determine who is too dangerous to release before their sentences end and who is truly nonviolent and could be eligible for diversion or early release programs.<sup>143</sup> “Graduates” of the Napa County matrix program have a 70% employment rate and only a 24% recidivism rate, compared to the statewide recidivism rate of approximately 70%.<sup>144</sup> The Napa County model has been so successful that the American Civil Liberties Union has called upon other California counties to develop “evidence-based solutions for alternatives to incarceration and reentry, instead of adding jail beds.”<sup>145</sup>

Finally, many local governments have shifted their operational models to include enhanced technology that allows police departments to improve their outcomes and increase efficiency.<sup>146</sup> Some police departments have begun to use certain public surveillance systems—such as closed circuit televisions and light-based intervention systems—that “can act as force multipliers through incident intervention and crime prevention, without requiring

142. See Joyce Wheeler, *Witness for the Client: A Judge's Role in Increasing Awareness in the Defendant*, 57 ME. L. REV. 463, 466–67 (2005).

143. See James Noonan, *Napa Held Up as Example for Jail Strategies*, NAPA VALLEY REG. (Sept. 21, 2011, 6:17 PM), [http://napavalleyregister.com/news/local/napa-held-up-as-example-for-jail-strategies/article\\_ba265284-e4b8-11e0-ab0e-001cc4c03286.html](http://napavalleyregister.com/news/local/napa-held-up-as-example-for-jail-strategies/article_ba265284-e4b8-11e0-ab0e-001cc4c03286.html). Napa County adopted such a matrix program in response to jail overcrowding and funding issues. See *id.* Sedgwick County, Kansas, also adopted a matrix program called Metatomix, which is “a multi-database search tool that provides authorized individuals the capability to view historical and current information from many agencies about individuals passing through the criminal justice system.” SEDGWICK CNTY. PUB. SAFETY, *supra* note 130, at 2. Metatomix allows officials to determine which inmates would be best suited for incarceration alternatives such as drug courts, day reporting centers, and mental health courts. See *id.*

144. Noonan, *supra* note 143.

145. Letter from Abdi Soltani, Exec. Director of ACLU of N. Cal., to Exec. Comm. Members of the Cmty. Corrections P'ship (July 12, 2011), [http://www.aclunc.org/issues/criminal\\_justice/asset\\_upload\\_file541\\_10684.pdf](http://www.aclunc.org/issues/criminal_justice/asset_upload_file541_10684.pdf).

146. CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 26.

the immediate presence of an officer.”<sup>147</sup> Other police departments are using geographical technology such as the Tactical Automatic Vehicle Locator, which reduces response times by providing the locations of patrol cars and allowing commanders to dispatch the closest patrol car with far greater precision and efficiency.<sup>148</sup>

Other police departments have taken greater leaps of faith with technology due to severe budget cuts. For example, the Santa Cruz Police Department (SCPD) has lost twenty percent of its force since 2000 due to budget cuts.<sup>149</sup> To help meet the needs of its community, the SCPD started experimenting with a predictive policing model.<sup>150</sup> Based on technology that helps predict aftershocks of earthquakes, this predictive policing model uses crime data to identify specific areas, and even specific times, in which crime is most likely to occur.<sup>151</sup> This model enables the SCPD to send patrols to certain “hotspots” each day, which it believes serves as a deterrent and allows for better responsiveness—and thus likelihood of arrest—when a crime occurs.<sup>152</sup> Based on the perceived success of the SCPD’s predictive policing model, other cities—such as Los Angeles—are hoping to develop similar models, including ones that model both property crimes and violent crimes.<sup>153</sup> In an era of budget cuts and reduced staffing, such technological advances and other evidence-based strategies may help evolve community policing from its historical model to an approach similar in theory, but different in execution.

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147. *Id.*

148. *Id.* at 27.

149. Erica Goode, *Sending the Police Before There’s a Crime*, N.Y. TIMES (Aug. 15, 2011), <http://www.nytimes.com/2011/08/16/us/16police.html>.

150. *Id.*

151. *Id.* This model is similar to the CompStat model developed by the New York City Police Department, but many argue that it is far more sophisticated because it is forward-looking in nature, while CompStat is backward-looking. *Id.*

152. *Id.*

153. *Id.*

## VII. EVIDENCE-BASED DECISION-MAKING AND MILWAUKEE COUNTY

*A. Evidence-Based Decision-Making*

With the changes and challenges that they have faced during the past several years, some localities have concluded that they must change their approach to community policing to continue to be effective in the future. The economic realities of the Great Recession coalesced with a national sentencing reform movement—led by the National Center for State Courts (NCSC)—entitled “Getting Smarter About Sentencing.”<sup>154</sup> Two of the key objectives to this movement were “to reduce reliance on long-term incarceration as a criminal sanction for those not posing a substantial danger to the community or committing the most serious offenders” and “to promote the development, funding, and utilization of community-based alternatives to incarceration for appropriate offenses.”<sup>155</sup> At the same time, the National Institute of Corrections (NIC) launched its “Evidence-Based Decision Making in Local Criminal Justice Systems” initiative.<sup>156</sup> The NIC’s initiative was driven by the belief that research could better inform decision-making in the criminal justice system and that it would lead to better outcomes for public safety and the community more generally.<sup>157</sup> In this regard, the confluence of these events helped bring greater clarity to the problems, challenges, and needs of many communities and their criminal justice systems. The goals were also similar and clear: keeping communities safe, reducing recidivism, being mindful of the costs of an incarceration-first approach to criminal justice, offender rehabilitation, and providing community-based alternatives to

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154. See generally NAT’L CTR. FOR STATE COURTS, GETTING SMARTER ABOUT SENTENCING: NCSC’S SENTENCING REFORM STUDY (2006), available at [http://www.ncsconline.org/d\\_research/Documents/Senten\\_GettingSmarter\\_SentencingReformSurvey\\_FinalPub.pdf](http://www.ncsconline.org/d_research/Documents/Senten_GettingSmarter_SentencingReformSurvey_FinalPub.pdf). The NCSC began this project in 2006 with the support of the Conference of Chief Justices and the Conference of State Court Administrators. *Id.* at 2.

155. *Id.* at 10.

156. See CTR. FOR EFFECTIVE PUB. POLICY ET AL., A FRAMEWORK FOR EVIDENCED-BASED DECISION MAKING IN LOCAL CRIMINAL JUSTICE SYSTEMS 2 (2010), available at <http://www.cepp.com/documents/EBDM%20Framework.pdf>.

157. *Id.*

incarceration to help low-level offenders address their underlying problems (such as mental illness or drug or alcohol addiction).<sup>158</sup> In short, “How can communities be smarter about running their criminal justice systems?” Given the changes and movements in the criminal justice system, evidenced-based decision-making began to gain traction in some localities.<sup>159</sup>

Evidence-based decision-making in policing and in the criminal justice system is modeled on the concept of evidence-based medicine that has been popular in the health care field and human services fields more broadly.<sup>160</sup> Evidence-based decision-making seeks to apply the best available evidence from empirically sound social science research to decision-making in policing and the criminal justice system more generally.<sup>161</sup> Through experimentation, data collection, and qualitative and quantitative analysis, evidence-based decision-making seeks to identify the exact problem, propose possible solutions that will address the problem, and analyze and weigh the costs and impacts of the different solutions before implementation.<sup>162</sup> In this regard, evidence-based decision-making

158. See Roger K. Warren, *Evidence-Based Practices and State Sentencing Policy: Ten Policy Initiatives to Reduce Recidivism*, 82 IND. L.J. 1307, 1307 (2007).

159. Evidence-based decision-making is sometimes linked to, or interchangeably described as, evidence-based practices, Problem-Oriented Policing, Intelligence-led Policing, or HotSpot policing. See Criminal Justice Policy Research Inst., *Crime Analysis*, PORTLAND ST. U.: HARTSFIELD SCH. GOV'T, <http://pdx.edu/cjpri/crime-analysis> (last visited March 26, 2012).

160. See CRIME & JUSTICE INST., IMPLEMENTING EVIDENCE-BASED PRACTICE IN COMMUNITY CORRECTIONS: THE PRINCIPLES OF EFFECTIVE INTERVENTION 2 (2004), <http://static.nicic.gov/Library/019342.pdf>. For more information on evidenced-based medicine, see generally STEFAN TIMMERMANS & MARC BERG, THE GOLD STANDARD: THE CHALLENGE OF EVIDENCE-BASED MEDICINE AND STANDARDIZATION IN HEALTH CARE 1 (2003).

161. See CTR. FOR EFFECTIVE PUB. POLICY ET AL., *supra* note 156, at 7. Not all evidence has equal weight, of course, as the strength and validity will vary depending on a number of factors, including methodology of the study. *Id.* at 42. See also EDWARD T. JENNINGS, JR. & JEREMY L. HALL, EVIDENCE-BASED PRACTICE AND THE USE OF INFORMATION IN STATE AGENCY DECISION-MAKING 8 (2009), <http://www.ifigr.org/workshop/spring09/jennings.pdf> (listing a variety of factors to consider when determining the strength of the evidence provided by social science research).

162. See URBAN INST., BEYOND IDEOLOGY, POLITICS, AND GUESSWORK: THE CASE FOR EVIDENCE-BASED POLICY 1 (2008), [http://www.urban.org/UploadedPDF/901189\\_evidencebased.pdf](http://www.urban.org/UploadedPDF/901189_evidencebased.pdf). The solutions can be judged by the various research and data related to categories such as increases in public safety (including reduced recidivism, longer time periods between new offenses for released offenders, fewer crimes from neighborhood “hotspots,” and the like); improved community wellness (fewer drug or alcohol accidents or fatalities, fewer emergency room visits for crime-related injuries, and fewer people going to jail or prison with mental health issues, to name but a few); increased satisfaction with

seeks to use data and research of historical outcomes of previous cases and decisions—such as releasing an offender on bail and on what terms—and then using this information and those outcomes to improve decision-making in similar cases in the future.<sup>163</sup> By using empirical findings to drive better-informed policies and practices in the criminal justice system, localities can use evidence-based decision-making in all aspects of public safety—from policing to arrest to final disposition and discharge—to alter, and in some cases retool, long-held approaches that are no longer economically sustainable nor, perhaps, normatively desirable.<sup>164</sup>

In order to thoroughly inculcate evidence-based decision-making in this manner, local governments must foster meaningful collaboration between the partners in the criminal justice system and those entities providing various social services to the community. There are numerous key decision points with regard to those who come into contact with the criminal justice system: contact with a police officer (whether leading to an arrest, detention, treatment, citation, or release); pretrial status matters (including release on recognizance, bail, conditions of supervised release, and the like); prosecutorial discretion (charging, diversion, deferred prosecution, or dismissal); potential plea bargains; sentencing (length, conditions, etc.); institutional intervention (for example, regarding treatment); early release (both with regard to timing and conditions); community intervention (decisions involving, for example, conditions and supervision); violations of parole or probation (sanctions, treatment, and the like); and discharge from the criminal justice system.<sup>165</sup> There are numerous decision-makers and key stakeholders in the criminal justice system and the social service system that may have important overlap with problems experienced in the realm of public

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the criminal justice system (improvement in survey responses, increased participation by victims, and the like); and improvements in monetary and social costs of the criminal justice system (reduction in crime rate, cost-savings for incarceration, and similar measurements). CTR. FOR EFFECTIVE PUB. POLICY ET AL., *supra* note 156, at 22–24.

163. See Alan J. Borsuk, *Get Smart?*, MARQ. LAW., Fall 2011, at 22, <http://law.marquette.edu/assets/marquette-lawyers/pdf/marquette-lawyer/2011-fall/2011-fall-p20.pdf>.

164. See CTR. FOR EFFECTIVE PUB. POLICY ET AL., *supra* note 156, at 6–7.

165. *Id.* at 19.

safety: law enforcement officers (police, sheriffs, and the like); attorneys (prosecutors, public defenders, and other defense attorneys); pretrial officials; court administrators; judges; victim advocates; probation and parole officers; local elected and appointed officials; state legislators; social service providers (for example, those who treat alcohol and drug addiction); other local government agencies that collaborate with those in the criminal justice system or are affected by their decisions; and community stakeholders (such as civic leaders, faith-based groups, and the like).<sup>166</sup> Given these various and interconnected decision points and the significant number of decision-makers and stakeholder groups, a locality's emphasis on collaboration is critical to achieving the effectiveness and efficiency sought by evidence-based decision-making.

Such collaboration may involve the police working with prosecutors and other law enforcement professionals to solve a problem—oftentimes a solution along the lines of a traditional enforcement strategy such as arresting an individual and prosecuting a crime.<sup>167</sup> However, under the evidence-based decision-making approach, law enforcement will also look to other governmental agencies for assistance in solving various problems. For example, a community prosecutor might work with a city's building department to identify code violations when targeting a drug house.<sup>168</sup> However, under this model, interagency collaboration also seeks to be proactive to solve a community's problems before they occur or in a manner that addresses the underlying cause of the externalized problems so that they dissipate over time. For example, having identified that almost half of the violent crime victims in the city are teenagers, Chicago has sought to expand after-school and summer programs to engage at-risk youth in positive activities.<sup>169</sup> Moreover, as discussed

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166. *Id.*

167. See JOHN S. GOLDKAMP ET AL., COMMUNITY PROSECUTION STRATEGIES: MEASURING IMPACT 7 (2002), <https://www.ncjrs.gov/pdffiles1/bja/192826.pdf>.

168. See Nugent-Borakove & Fanflik, *supra* note 4, at 223. Other interagency coordination may well include schools, fire departments, health departments, and other city agencies that can help address problems in the community. *Id.*

169. Emanuel *Outlines Crime-Fighting Plan*, CBSCHICAGO.COM (Jan. 10, 2011, 6:58 AM),

above, the alternatives to incarceration for those offenders who are mentally ill or suffer from drug or alcohol addiction also provide examples of such collaboration between those in the criminal justice system and social service providers. Finally, and perhaps most relevant from a macro-level perspective, these various stakeholders and decision-makers must collaborate to determine how the research they have compiled and analyzed guides their decision-making at the various decision points in the criminal justice system to further their goals, set their priorities, and allocate their resources. Such collaboration can lead to many of the types of alternatives to incarceration—described above—that localities have implemented.

There is no doubt that part of what drives this evidence-based decision-making approach is the recognition that with declining revenues and budget cuts, police departments and criminal justice systems must stretch their resources to do more with less.<sup>170</sup> In doing so, evidence-based decision-making strives to improve the outcomes—and the efficiency and effectiveness—of the criminal justice system while also saving money. In this regard, evidence-based decision-making may help local governments remain consistent with the broken windows theory of community policing, while addressing the problems presented by the Great Recession.<sup>171</sup>

### *B. Questions, Concerns, Criticisms, and Challenges*

To be sure, with evidence-based decision-making still in its infancy in policing and in the criminal justice system, there are still many questions, concerns, and challenges that must be answered and resolved.<sup>172</sup> For example, politics still plays—and will likely continue

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<http://chicago.cbslocal.com/2011/01/10/emanuel-outlines-crime-fighting-plan/>.

170. See CRIME & JUSTICE INST., *supra* note 160, at 2–3.

171. See *id.* at 2.

172. See, e.g., Michael M. O’Hear, *Evidence-Based Decision Making: Where are Defendants and Their Families?*, LIFE SENTENCES BLOG (Mar. 20, 2011, 8:58 PM), <http://www.lifesentencesblog.com/?p=1870> (detailing costs imposed on defendants and their families because of evidence-based decision-making); Michael M. O’Hear, *Some Doubts About “Evidence-Based” Decision Making in Criminal Justice*, LIFE SENTENCES BLOG (Feb. 2, 2011, 11:19 PM), <http://www.lifesentencesblog.com/?p=1471> (noting various concerns about evidence-based decision-making).

to play—a critical role in policing and the criminal justice system, as politicians do not want to be labeled “soft on crime.” Political decision-making on public safety matters does not always comport with decisions based on social science research. Indeed, political decisions regarding public safety matters can be spurred by irrational public “moral panics”—that is, a horrible crime that leads to “an emotional wave of public repugnance and a demand for quick political action.”<sup>173</sup> Such reactive political decision-making may not always be grounded in social science research, but rather a popular political fix that assures the community that its public officials are doing what constituents think is best—whether or not the data and research support that reaction.

Another challenge for the adoption of evidence-based decision-making—either from a normative and/or logistical standpoint—is that there are such divergent visions and philosophies for the optimal approach to public safety and the criminal justice system.<sup>174</sup> This reality is exacerbated by the fact that there is a power imbalance among the various agencies and stakeholders in the criminal justice system, which makes the collaboration described above even more challenging.<sup>175</sup> To add to this difficulty, there is systemic fragmentation in the way that various states and local governments choose to structure and run their respective criminal justice systems.<sup>176</sup> This lack of uniformity creates a logistical impediment to the emergence of a broad evidence-based decision-making movement, as one model cannot be so easily replicated in most, if not every, jurisdiction.<sup>177</sup>

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173. NAT'L INST. OF CORR., WHITE PAPER: INNOVATORS' GROUP VIDEO CONFERENCE #1, at 3 (2008), [http://evidence-basedmanagement.com/wp-content/uploads/2011/11/innovators\\_group\\_white\\_paper\\_1-5-09.pdf](http://evidence-basedmanagement.com/wp-content/uploads/2011/11/innovators_group_white_paper_1-5-09.pdf).

174. *Id.* at 3–4.

175. *Id.* at 5.

176. *Id.*

177. *But see* CTR. FOR EFFECTIVE PUB. POLICY ET AL., *supra* note 156, at 2 (noting that the framework for evidence-based decision-making in local criminal justice systems is not aimed at a one-size-fits-all approach, but rather a broader framework with guiding principles that can be tailored to meet the needs and structures of a particular locality's criminal justice system).

Finally, evidence is not always clear and can even be contradictory at times, so there is still a need for good old-fashioned judgment in making decisions involving policies, programs, resources, and the like in policing and the criminal justice system—judgment that will, no doubt, draw criticism from those who do not favor the decisions made. Moreover, in the criminal justice field, there has not been a deeply embedded research and knowledge-based culture, which may lead to great resistance in adopting evidence-based decision-making.<sup>178</sup> Even if desired, such a cultural shift may prove even more difficult because the leadership in many criminal justice organizations do not have the training necessary to effect organizational change.<sup>179</sup> Nevertheless, despite these criticisms, questions, and challenges—for the reasons detailed above—several localities have moved to adopt evidence-based decision-making in their police departments and criminal justice systems more generally as part of an evolution of their approach to community policing.

### *C. Milwaukee County: A Leader in Evidence-Based Decision-Making*

Milwaukee County in Wisconsin (Milwaukee) is one of three local governments from around the country that won a grant competition sponsored by the U.S. Department of Justice's National Institute of Corrections (NIC) to encourage and help fund the adoption of more evidence-based decision-making in the local criminal justice system.<sup>180</sup> Through the Milwaukee County Community Justice

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178. NAT'L INST. OF CORR., *supra* note 173, at 4. This resistance may be particularly acute because police departments and other governmental agencies involved in the criminal justice system are accustomed to making decisions based on accepted practices, instinct, and self-interest. *Id.*

179. *Id.* Moreover, judges may resist such changes as they may view it as curtailing their discretion and independence. See Borsuk, *supra* note 163, at 25 (noting that some judges in Milwaukee County have resisted evidence-based decision-making because it might affect their latitude in sentencing and independence in other areas where they traditionally have had great discretion).

180. Steve Schultze, *Milwaukee County Wins Federal Aid for Justice Programs*, JSONLINE (Aug. 10, 2011), <http://www.jsonline.com/news/milwaukee/127464633.html>. The other two awardees are Eau Claire County, Wisconsin, and Mesa County, Colorado. *Id.* For a copy of Eau Claire's application, see EAU CLAIRE CNTY. CRIMINAL JUSTICE COLLABORATING COUNCIL, EVIDENCE-BASED DECISION MAKING IN LOCAL CRIMINAL JUSTICE SYSTEMS: PHASE III APPLICATION (2011), [http://www.co.eau-claire.wi.us/CountyDepartments/cjcc/docs/Eau\\_Claire\\_County\\_EBDM\\_Phase\\_III\\_application.pdf](http://www.co.eau-claire.wi.us/CountyDepartments/cjcc/docs/Eau_Claire_County_EBDM_Phase_III_application.pdf).

Council (MCCJC)—a collaboration and partnership between the various partners in the criminal justice system—Milwaukee has sought to adopt and implement evidence-based decision-making over the past few years.<sup>181</sup> The MCCJC’s guiding principle in this endeavor has been the following: “[I]n assessing an offender’s risk of reoffense and criminogenic needs, and in matching offenders with the appropriate supervision, treatment and jail resources, systems like ours should employ instruments built on actuarial data, as opposed to professional judgment alone.”<sup>182</sup> Indeed, by using data and research—described further below—Milwaukee believes it can reduce the number of people being held in jails or prisons, save significant amounts of money, and maintain or even improve the level of public safety to which the community is accustomed.<sup>183</sup> Moreover, consistent with one of the key tenets of evidence-based decision-making, the MCCJC brings together a vast array of partners and stakeholders in the Milwaukee criminal justice system: the Chief Judge of the Milwaukee County Courts; the City Attorney of Milwaukee; the District Attorney of Milwaukee County; the Sheriff of Milwaukee County; the Mayor of Milwaukee; the Chief Executive of Milwaukee County; the Health and Human Services Director of the County; the Chief of the Milwaukee Police Department; and representatives from community organizations, social service providers, and the state legislature.<sup>184</sup> While the collaborative group’s members have not agreed on all matters at all times, they are united

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181. Borsuk, *supra* note 163, at 20. The Milwaukee County Community Justice Council (MCCJC) was formed in 2007 and states its mission to be “to efficiently and collaboratively coordinate services and to effectively allocate financial resources to ensure crime reduction, victim support, offender accountability, and restorative community-based programs.” MILWAUKEE CNTY. CMTY. JUSTICE COUNCIL BYLAWS art. III, *available at* <http://www.milwaukee.gov/ImageLibrary/Groups/cjcouncil/byLaws.pdf>. The various stakeholders that founded the MCCJC—which include the County Executive, District Attorney, Sheriff, and Chief Judge—did so as part of a settlement of lawsuits regarding overcrowding in the county jails. Borsuk, *supra* note 163, at 20.

182. MILWAUKEE CNTY. CMTY. JUSTICE COUNCIL, EVIDENCE-BASED DECISION MAKING IN LOCAL CRIMINAL JUSTICE SYSTEMS: PHASE III APPLICATION OF THE MILWAUKEE COLLABORATIVE 1, 8 (2011), <http://www.publicpolicyforum.org/pdfs/EBDMMilwaukeeApplication.pdf>.

183. Borsuk, *supra* note 163, at 22.

184. *Full CJC Membership*, GOMILWAUKEE, <http://milwaukee.gov/cjc/CJCWholeCommittee.htm> (last visited Nov. 30, 2011).

in advancing a meaningful and ambitious evidence-based decision-making approach to the criminal justice system.<sup>185</sup>

With the NIC grant, Milwaukee seeks to dramatically expand its evidence-based decision-making, particularly in four key areas. First, based on promising results from pilot projects in previous years, the Milwaukee Police Department will train more of its field officers, booking officers, and dispatchers as to how to respond effectively to those who are mentally ill and to improve communication with others in the criminal justice system—those in jails, prosecutors, defense attorneys, and court officials—regarding the challenges that these individuals will face as they progress through the system.<sup>186</sup> The MCCJC will also be able to identify those chronic offenders with mental illness who account for the majority of police service calls and help them seek treatment for their underlying condition to avoid future problems.<sup>187</sup> To gauge its success in this effort, the MCCJC has set a goal that by the end of 2013 it will have reduced by 25% those suffering from a mental illness who lose their benefits or housing for being jailed, and increase by 25% those who have a mental illness who reconnect with services they need within twenty days of arrest.<sup>188</sup>

Second, the MCCJC intends to use and enhance the information it has to help identify cases that will likely be successful in a diversion program or in a deferred prosecution scenario.<sup>189</sup> The MCCJC will use assessment tools to gauge the risks and needs of offenders and negotiate the diversion or deferred prosecution agreement accordingly.<sup>190</sup> In addition, it will create an evidence-based matrix

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185. See David A. Clarke Jr., Op-Ed, *Let's Treat Criminals Like . . . Criminals*, JSONLINE (Feb. 19, 2011), <http://www.jsonline.com/news/opinion/116508233.html> (Sheriff Clark, one of the Executive Committee members of the MCCJC, expressing his opposition to some of the proposals put forth by the MCCJC); MILWAUKEE CNTY. CMTY. JUSTICE COUNCIL, *supra* note 181, at 4 and App. 111 (noting Sheriff Clark's continued support for the work of the MCCJC and its pursuit to implement evidence-based decision-making).

186. MILWAUKEE CNTY. CMTY. JUSTICE COUNCIL, *supra* note 182, at 8–9.

187. *Id.* at 9.

188. *Id.* at 13.

189. *Id.* at 9.

190. *Id.*

that delineates incentives and sanctions to ensure compliance with this approach.<sup>191</sup> To evaluate the efficacy of this program, the MCCJC has set a three-fold goal by the end of 2013: (1) increasing by 15% the number of pretrial detainees safely released and/or supervised in the community as opposed to jail; (2) saving \$1 million in the process; and (3) reducing by a minimum of 40% the number of defendants who fail to follow pretrial rules.<sup>192</sup>

Third, the MCCJC seeks to aggressively change its risk-needs management of its pretrial population. Currently, Milwaukee's bail hearings are done in an *ad hoc* fashion where decisions are made largely on the basis of the current charge, the defendant's criminal history, and the judge's intuition and professional judgment.<sup>193</sup> The MCCJC has studied other jurisdictions' approaches to pretrial decisions and has developed a new protocol for conducting a risk assessment for each individual as he or she enters the criminal justice system.<sup>194</sup> Based on the data and evidence from other jurisdictions, this protocol will award points to a person based on factors such as the number of previous criminal cases in which the person was involved, the person's record for appearing in court in those cases, and whether he or she is employed or is a primary caregiver.<sup>195</sup> Depending on the number of points the person gets, he or she will fall into one of four categories that represents the risk level associated with that person under the protocol.<sup>196</sup> This categorization will then be considered against the nature of the crime the person allegedly committed.<sup>197</sup> Judges will be equipped with a grid that helps them determine whether (and at what amount) to set bail and what conditions, if any, should be placed on a defendant's release.<sup>198</sup> The MCCJC envisions this type of informed evidence-based decision-

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191. *Id.* at 10.

192. MILWAUKEE CNTY. CMTY. JUSTICE COUNCIL, *supra* note 182, at 13.

193. *Id.* at 10.

194. *See* Borsuk, *supra* note 163, at 22.

195. *Id.* at 24.

196. *Id.*

197. *Id.*

198. *Id.*

making will ensure maximization of the various pretrial supervision and detention options.<sup>199</sup> In order to gauge whether it has been successful with this program, the MCCJC has set a goal of increasing by ten percent the number of successful diversions or deferred prosecutions and saving a minimum of \$350,000 in doing so by the end of 2013.<sup>200</sup>

Finally, the MCJCC wants to adopt a “dosage-based” probation plan.<sup>201</sup> Based on research demonstrating that probation services are unnecessary after a certain period of time, Milwaukee seeks to begin a pilot program that provides early termination of probation for probationers who accomplish certain risk-reducing objectives.<sup>202</sup> The MCCJC will do so by creating a program based on evidence from this research, developing a profile of the type of probationer that might be successful in such a program, tracking the group, and comparing it to other probationers to test the efficacy of the program.<sup>203</sup> Probation, then, would be terminated early once the offender received sufficient treatment as defined by this program. To measure its success with this plan, the MCCJC has set a goal to be able to prove by the end of 2013 that Milwaukee can cut probation costs and reduce recidivism by a minimum of fifty percent.<sup>204</sup>

In these regards, Milwaukee seeks to not just be tough on crime, but also be “smart” on crime.<sup>205</sup> For example, twenty-six percent of those in Milwaukee County jails awaiting trial have bail set at \$500 or less, but they cannot afford to pay it to be released.<sup>206</sup> However, it costs Milwaukee \$141 per person per night to keep these individuals in jail.<sup>207</sup> Moreover, and perhaps more importantly, the evidence

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199. *See id.* at 22.

200. MILWAUKEE CNTY. CMTY. JUSTICE COUNCIL, *supra* note 182, at 13.

201. Borsuk, *supra* note 163, at 22.

202. MILWAUKEE CNTY. CMTY. JUSTICE COUNCIL, *supra* note 182, at 11–12.

203. *Id.* at 12.

204. *Id.* at 13.

205. *See* Borsuk, *supra* note 162, at 20 (quoting Milwaukee County District Attorney John T. Chisolm: “Both sides of the political spectrum must acknowledge that talking tough on crime has reached its limits. Being smart on crime is the solution.”).

206. *Id.* at 26.

207. *Id.*

collected by the MCCJC demonstrates that these individuals would not pose even a moderate risk to the community if released—as demonstrated by their incredibly low bail.<sup>208</sup> This problem demonstrates economic inefficiencies in the current system that do not protect the community from any meaningful risk. The aforementioned reforms in pretrial decision-making attempt to create a “smarter” criminal justice system in Milwaukee based on evidence that informs those in the system as to how to treat, on the one hand, the large majority of cases that involve low-level, non-dangerous offenders and, on the other hand, those that involve violent or dangerous defendants.<sup>209</sup> In this regard, the MCCJC endeavors to protect the public, but make sensible, cost-effective, and evidence-based decisions regarding those offenders who do not pose a meaningful risk to the community and who have a high likelihood of reform through various interventions. In doing so, Milwaukee strives to stay consistent with the broken windows approach to community policing, while also grappling with the financial realities it faces.

#### VIII. CONCLUSION

Will the Great Recession mark the beginning of the end of community policing and the broken windows theory? It is highly unlikely. On the other hand, there is no doubt that the financial and budgetary realities that cities and police departments currently face—and may face for some time—pose challenges to continuing a broken windows theory approach to community policing in most localities. While some of the non-essential, cost-cutting measures may help maintain a good portion of the police and criminal justice infrastructure necessary to continue this approach in some communities, the reality is that most cities are experiencing deep

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208. *Id.*

209. *Id.* at 25 (quoting Milwaukee County District Attorney John T. Chisolm: “Risk evaluation presumes that some offenders must be incapacitated and removed from the community in an appropriate way for an appropriate time, but it also allows, based on validated experience, that the majority of offenders can respond effectively to intervention and not consume justice resources without changing behavior.”).

enough cuts in their officer ranks, non-officer personnel, and other resources that some impact will occur. Police departments may have to do more with less, but they may also have to determine that certain aspects of police services that they used to provide—e.g., responses to non-bodily injury traffic accidents, illegal parking, every burglar alarm (whether it is confirmed that a burglar entered the home or building), and the like—are no longer sustainable at current staffing and funding levels. An interesting possibility to watch in the coming years is whether the police's non-responsiveness to such low-level crimes and signs of disorder wind up signaling a lack of social order in those communities that have adopted such policies and whether that leads to a devolution in crime consistent with the broken windows theory.

These difficult economic times pose such a challenge for many communities because the broken windows approach to community policing is a resource- and time-intensive model for dealing with crime. While some question whether this approach has contributed to—or is responsible for—the reduction in crime during the past two decades, it is clear that the law enforcement community has embraced this approach and is likely unwilling to abandon it unless absolutely necessary.<sup>210</sup> However, as detailed above, changes in police structuring and practices have already begun, and they may continue for years into the future, as the effects of the economic downturn are still impacting local governments today.<sup>211</sup> These tumultuous times may provide an opportunity for many communities to rethink their broken windows theory approach to community policing and restructure it in a manner that remains consistent with the theory, but properly balances the economic realities that they

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210. Howell, *supra* note 46, at 276. See also Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHI. L. REV. 271, 277 (2006) (arguing that empirical evidence does not support the broken windows theory of community policing).

211. See CMTY. ORIENTED POLICING SERVS., *supra* note 75, at 10–11 (citing statistics that many police departments anticipate more budget cuts in 2011 and that ninety-eight percent of responding police departments anticipate that the current economic downturn will be at least somewhat problematic in 2012).

face. The evidence-based decision-making approach in Milwaukee is by no means a singular example of the types of creative and potentially more efficacious responses to the criminal justice and social service needs in a community that attempt to comport with tighter and smaller budgets. Indeed, it is one of many examples that could become a trend given current circumstances. For in such challenges may lie opportunity for police departments and the criminal justice and social service systems more generally to innovate, become more efficient, and still remain true to the broken windows approach to community policing.