



# Want to Reduce Drugs in Your Community? You Might Want to Deflect Instead of Arrest

By **Jac Charlier**, Director of Consulting and Training, Center for Health and Justice

**W**hile on patrol, police officers routinely encounter people who have substance use disorders (SUDs). In the United States, adults who were arrested in the past year for any serious offense were four times more likely to have used an illicit drug than those who were not arrested.<sup>1</sup> Additional research shows that 87 percent of males tested positive for at least one illicit drug at the time of arrest and 40 percent tested positive for two or more.<sup>2</sup> Following arrest, in part or directly related to their drug use, those arrested might land in jail or prison. While it is estimated that SUDs occur in 68 percent of the jail population and 53 percent of the state prison population (compared to just 9 percent of the general U.S. population), only 12 percent of the incarcerated population will actually receive drug treatment while in custody.<sup>3</sup> This usually means they will soon be back in their communities (disproportionately communities of color) without having received treatment for the disease of addiction, will start re-using drugs, and may soon have

their next contact with police. We have also come to understand the harmful, unintended collateral consequences of repeated and extended contact with the justice system for those low-risk citizens who, due to their addiction, might be better treated in the community. To address this pervasive and costly situation, our citizens, our communities, and our police need solutions that call upon the resources of both the public safety and the public health systems, as well as reflect the desires and concerns of the local community; solutions that reduce crime, reduce drug use, save dollars, and seek to build a more just justice system that enhances police legitimacy in the community.

Building on the White House Office of National Drug Control Policy (ONDCP) Justice Leaders Systems Change Initiative (JLSCI), the Center for Health and Justice (CHJ) at TASC, the Montgomery County (Maryland) Police Department (MCPD), and the Police Executive Research Forum (PERF) have jointly developed a system

solution to this persistent challenge faced every day by police across the United States. The solution, known as the Montgomery County Deflection Model (the Model), is a pre-booking deflection (diversion) model focused on the SUD populations who have a high likelihood of repeated contact with police due to their untreated addictions and the attendant criminogenic effects (i.e., those effects statistically related to criminal activity).

The Montgomery County Model brings evidence-based practices currently used in other parts of the criminal justice system to policing at the front end of the justice continuum, such as risk-need, screening and assessment, rapid access to and retention in treatment, neutral case management, peer mentoring, and data-driven deflection decision making. “Front end” justice deflection is a still uncharted area of policing, but it is receiving more attention daily. This is due to the simple fact that the only way into the justice system is through the police at the front end in the form of 14 million arrests a year. This scenario is ripe for innovation and a wide variety of entrepreneurial efforts are critical to developing the pieces that will ultimately form comprehensive solutions that work in a variety of jurisdictions. None of the few known existing efforts are yet proven to be effective, although Seattle LEAD is the furthest along operationally and recently released its first evaluation (March 2015). As such, it is important for the field to implement a variety of innovative models and strategies and to evaluate these various efforts rigorously.

The Model contains both prevention and intervention aspects. If no criminal charges are present, the focus is on prevention. If criminal charges are present (from a list of eligible offenses), then the focus is on intervention. Prevention stops *future entry* into the criminal justice system following police contact by providing the individual with a case manager and peer mentor and access within two days to treatment that will reduce criminogenic (criminal) behavior. Intervention stops *immediate entry* into the criminal justice system (because there are



criminal charges that could be otherwise brought against the person) following police contact by providing a case manager and peer mentor and real-time access to treatment to reduce the likelihood of repeat criminal activity (i.e., future contact with the police, possibly of a more severe nature), while safely retaining the person in the community. Intervention also reduces the likelihood of collateral consequences from justice processing and the negative impacts associated with even short-term incarceration for low-risk individuals. Both prevention and intervention involve voluntary entry into treatment. Those entering through the intervention contact also involve some level of coercion (charges held in abeyance can be filed) to retain them in treatment.

The Model begins when a police officer observes behaviors that might indicate behaviors related to drug use, with or without criminal activity necessarily being present. Following this, the police officer screens the individual to determine that person's criminogenic risk (using the Proxy Risk Tool) and treatment need (using TCUDS) profile. Certain individuals (Prevention–High Need; Intervention–Low Risk, High Need) would be deflected to community-based case management services for full assessment and

referral to treatment resources to address their underlying SUDs. Neutral case managers, working 24/7/365, monitor individuals' treatment program compliance and share this information with system partners. Decisions on cases are made using a collaborative model. Case managers focus on rapid treatment access, retention, motivation, engagement, and completion. In addition, case managers make referrals to ancillary services, such as housing, employment, food, clothing, and recovery support. Finally, deflection participants are offered linkage to a peer mentoring network.

The Model represents an innovative solution that will reduce drug use in the community and, hence, reduce the demand for drugs, a main driver of crime in many local jurisdictions. ❖

#### Notes:

<sup>1</sup>Larry J. Siegel, *Criminology: Theories, Patterns, and Typologies*, 11th ed. (Belmont, CA: Wadsworth, 2013), 502.

<sup>2</sup>Dana Hunt and William Rhodes, *Arrestee Drug Abuse Monitoring Study Program II in the United States, 2008* (Ann Arbor, MI: Inter-university Consortium for Political and Social Research, 2010).

<sup>3</sup>The numbers vary for adults but range from 7.6 percent to 12 percent. Jennifer C. Karberg and Doris J. James, *Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002* (Bureau of Justice Statistics, July 2005), NCJ 209588, <http://bjs.ojp.usdoj.gov/content/pub/pdf/sdatji02.pdf>; Faye Taxman et al., "The National Criminal Justice Treatment Practices Survey: Multilevel Survey Methods and Procedures," *Journal of Substance Abuse Treatment* 32, no. 3 (April 2007): 225–238, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2266083/pdf/nihms21104.pdf> (both accessed August 7, 2015).

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# A Modern, Simple, No-Cost Solution to Ensure Reasonable Use of Force

By **Chuck Joyner**, Special Agent (Ret.), Federal Bureau of Investigation

Many officers are hesitant to use proper, legal, and reasonable force against a resisting subject. A few officers may use excessive force, not because of evil intentions, but due to not understanding the laws regarding reasonable use of force. Both situations are potentially devastating for police departments and the communities they serve. The answer to these issues is to provide practical, clear, and thorough training and to properly document this training. Officers must be confident and committed when a situation requires use of force. This confidence comes from a comprehensive understanding of laws dictating what constitutes reasonable force.

A majority of current officers were trained using a traditional use-of-force continuum model and continue to think of a use-of-force encounter in those terms. This has had devastating effects in the courtroom and on public perception. Many agencies have discontinued using a continuum, recognizing that it is outdated, has no legal basis, and does not accurately reflect the dynamic encounter between an officer and a resisting subject. The continuum model misleads an officer to continuously move up the continuum until he or she finds a tool that works. This is acceptable until the legal line has been crossed and the use of that tool is no longer "reasonable." The continuum depicts an ever-escalating use of force, which is certainly not the desired outcome. It also encourages a jury and the public to view a use-of-force incident in a "scorecard" mind-set (e.g., "The bad guy was unarmed, so why did the officer shoot him?"), rather than correctly examining the threat posed to the officer.

A modern use-of-force model, which has been adopted throughout the United States, including at the Texas Department of Public Safety and the Texas Commission on Law Enforcement, is the Dynamic Resistance-Response Model (DRM). The DRM was first introduced in the September 2007 issue of the *FBI Law Enforcement Bulletin*. The DRM was created to accurately reflect the dynamic encounter between a resisting subject and an officer and is based entirely on court decisions. The courts have generally recognized

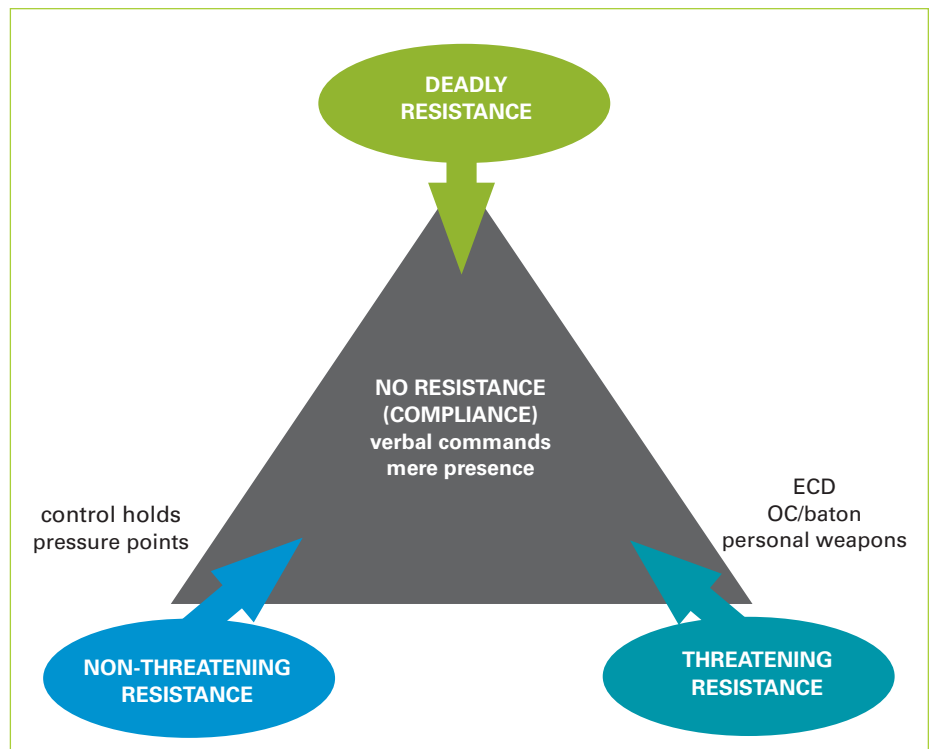
four levels of resistance. These are listed below, as well as the law enforcement tools deemed appropriate to overcome each level of resistance.

1. No Resistance; lawful tools: presence, commands, and control techniques
2. Non-Threatening Resistance; lawful tools: pressure points, control holds, take-downs, and come-along techniques
3. Threatening Resistance; lawful tools: electronic control weapons (ECWs), pepper spray, impact weapons, and personal weapons
4. Deadly Resistance; lawful tools: firearms or any other available tools

There are several advantages of the DRM. As dictated by the U.S. Supreme Court decisions in *Graham v. Connor* and *Tennessee v. Garner*, a reasonable response is based upon the officer's perception of the threat. The DRM also adheres to the three-prong test established by *Graham v. Connor*. The DRM

emphasizes that the objective of every officer is to obtain control or compliance, and the model depicts every encounter moving to a successful resolution rather than a constant escalation. For example, if an officer is using a self-defense tool (ECW, pepper spray, etc.), it is because the officer has encountered a threatening resistance. The use of those tools is not to punish, but to obtain control or compliance. Once that objective has been accomplished, then the administration of the self-defense tools ceases.

By adopting the DRM, teaching lawful, effective defensive tactics (DT) is simplified. Officers have been provided with an array of secondary weapons to make them and the subject safer. By incorporating the use of secondary weapons into training, correlated with the threat level of the subject, officers can make confident, committed, and lawful decisions regarding the appropriate use of force. ❖







# Two-Step Solution to Fractured Police-Community Relationships

By **Ernest Brown**, Chief of Police, Darien, Illinois, Police Department

The greatest singular threat to the law enforcement community in the United States is likely not the ever-increasing number of violent assaults on police officers. Instead, the greatest threat is the perception of the police by the public that we serve. The way to mitigate this threat is to start at the beginning.

In most law enforcement agencies, especially the medium to large metropolitan areas, rookie police officers following academy training are generally assigned to the busiest areas of the city. As a result, the young officers fall prey to the volume of calls for service, preconceived notions of incumbent and senior officers, and the need for acculturation.

In communities across the United States that are deemed busy from a law enforcement standpoint, a lot of shortcuts are undertaken by police officers. These shortcuts are not based upon a lack of professionalism or an absence of inclination to serve. They are based upon several factors: volume of work; desire to impress peers and supervisors; and a flood of negative information that is positively reinforced, often through social profiling rather than criminal profiling.

Stated in another way, the negative information from incumbent officers and, frequently, academy instructors frame a way of thinking that is not based upon police science (i.e., criminal profiling). The result is social profiling, and, ultimately, the new officer will develop behaviors that will positively reinforce the negative information received. The volume of work simply does not allow the new officer to develop those skills necessary to identify the precursor behaviors that precede most, if not all, criminal conduct, and the new officer develops practices that result in encounters that are not in the best interest of law enforcement or relationship building. Last, but certainly not least, one of the greatest desires of a new officer is to gain acceptance from his or her new family in terms of both colleagues and superior officers.

When these factors are all taken in tandem, the result is a continuing fractured

relationship with the public that is already suspicious of the motivations of municipal police, and a polarization of the new officer with an “us-against-them” attitude. This process ultimately ensures a continuation of the flawed relationships between the citizens and the law enforcement agency that years of community-oriented policing was intended to correct.

The remedy for this problem is relatively simple, but the police administrator and city governors will need to be willing to endure a painful transition period in terms of reallocation of resources while the new protocol matures. The first step is to have instructional designers work in tandem with behavioral analysts to develop academy blocks of instruction on criminal profiling. The second step is to initially assign all new officers to the slowest areas of the municipality.

Assigning newly hired officers to the least busy segments of the city allows them a period of unrushed acculturation where the officers can be legitimately groomed on becoming efficient crime fighters and community engagement specialists. This slower pace will allow the new hire to become acclimated to varying needs and expectations by the public. It will allow the officer to understand the nuances of the core processes associated with the arrest and booking of arrested persons. The result will be a higher level of respect for the great responsibility placed upon members of society who can deny another citizen freedom. It will also allow for a practical application of criminal profiling principles and eliminate blanket police actions that often deny basic civil rights and result in law enforcement decision making that is not framed constitutionally.

The benefits to the agency and the police administrator are a better trained officer; better community relations; a decrease in complaints; an increase in the “right” people being stopped, detained, or arrested; and, ultimately, a more positive perception of the agency and a positive sense by the public because the law enforcement community is getting the right people. For the

sake of this discussion, the right people should be construed to be those individuals, who based upon past history and behaviors, are most likely to be actively engaged in the commission of criminal acts or have a high propensity to do so. This represents police legitimacy and procedural justice at their highest application. Clearly, there is also a benefit to city governors in reduced litigation, reduced payments based upon litigation, and an overall increase in customer satisfaction.

This is an exhaustive process and will require an exceedingly great amount of patience. It will serve every community well, but will be significantly productive for those communities with large ethnic minority populations, where relationships are, in many cases, already strained and getting worse.

The merit in moving to such best practice is more than likely already evident in each department. There are a small and fairly select number of officers in each department that have mastered the art of criminal profiling. These officers, in general, have very high arrest and conviction rates; very low to non-existent complaint histories; and are highly respected by peers, superiors, and prosecutors because their cases always result in quality prosecutions.

Both phases of this protocol are equally important and should complement each other. However, I believe it important to implement such practices as swiftly as possible, even if done separately. ❖

In response to events in Ferguson (MO), New York City (NY), and Cleveland (OH), the IACP held a National Policy Summit on Community-Police Relations in October 2014 to open dialogue on community-police relationships.

Find the report from this summit, released in January 2015, at [www.theiacp.org/Portals/0/documents/pdfs/CommunityPoliceRelationsSummitReport\\_web.pdf](http://www.theiacp.org/Portals/0/documents/pdfs/CommunityPoliceRelationsSummitReport_web.pdf).



# Adult Civil Citations: A Practical Tool in the Sea of Reform

By **Greg Frost**, President, Civil Citation Network

The criminal justice system, specifically law enforcement, is in the midst of extensive calls for reform. The recommendations are coming from almost every part of the political spectrum and every sector of our communities. In the middle of this sea of reform, the President's Task Force on 21st Century Policing has recommended that "Law enforcement agencies should consider adopting preferences for seeking 'least harm' resolutions, such as diversion programs or warnings and citations in lieu of arrest for minor infractions." Since March 2013, two law enforcement agencies in Florida's Second Judicial Circuit have been involved in a pilot project that created a new practical tool that addresses this specific recommendation.

The Adult Civil Citation program is a partnership between the Tallahassee Police Department; Leon County Sheriff's Office; and DISC Village, a non-profit human services provider. The program was started in reaction to emerging research that shows first-time misdemeanor arrests lead defendants into a system where the administration of justice is a rapidly moving assembly line. In a study conducted by the Department of Criminology and Criminal Justice at University of Tampa, it was documented that in Florida's misdemeanor courts, overloaded dockets result in 85 percent of arraignments being completed in three minutes or less, with 70 percent of the defendants pleading guilty or no contest.<sup>1</sup> One of the study's conclusions is that misdemeanor defendants who are not a threat to public safety should be diverted to penalties that are less costly to taxpayers. Also addressing the cost of criminally prosecuting minor offenses, the Florida Taxwatch Center for Smart Justice recently recommended implementation of adult civil citation programs as a diversion tool for low-level offenders.<sup>2</sup>

A policy project conducted by the American Bar Association recommends that, because of costs associated with the growing number of misdemeanor cases and the negative impact the criminal justice system has on offenders, "first-time adult offenders are in need of rehabilitation

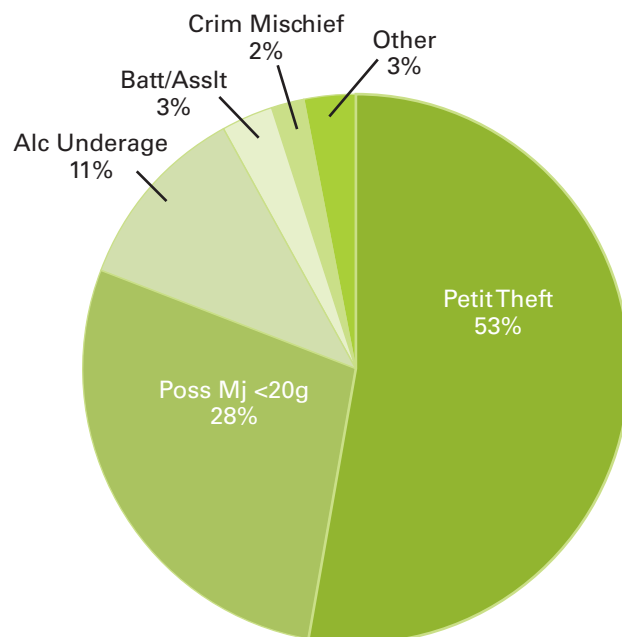
and treatment, as opposed to a conviction and incarceration."<sup>3</sup> Their recommendation recognizes the harm that is done to individuals who are arrested for a minor offense. In many cases, even when the person is not convicted, just having an arrest record results in serious consequences, including loss of employment, difficulty acquiring future employment, loss of housing, and family problems.

The Tallahassee/Leon County Adult Civil Citation program, managed through the Civil Citation Network, emphasizes public safety with accountability that acknowledges there is a victim for every crime committed. At the same time, the program focuses on intervention strategies that reduce the likelihood of offender recidivism. Issuing a civil citation in lieu of arrest provides Tallahassee police officers and Leon County deputies a new tool that leads to a positive outcome. Through

the use of sanctions and sophisticated, evidence-based early intervention strategies, participants are equipped with skills to correct inappropriate behavior patterns, thereby reducing future recidivism.

Through the network's online program application, law enforcement and community agencies assign, track, and manage participants' in-person or online engagement. Required sanctions and interventions are individualized based upon a full needs assessment and can include drug screenings, community service, targeted behavior change interventions, and other relevant sanctions. Initial results of an informal 24-month study show approximately 80 percent of the Adult Civil Citation program participants successfully completed it. Of those who successfully completed the program, only 5 percent were arrested locally for a new offense during the 12-month period following program completion.

**Adult Civil Citations Issued March 2013–January 2015**





What makes the Adult Civil Citation program different from other diversion programs is that it is “pre-arrest.” Law enforcement officers have the discretion to issue eligible first-time misdemeanor offenders a citation that diverts the person away from the criminal justice system. If the offender accepts responsibility, voluntarily agrees to participate in the program, and successfully completes all sanctions, he or she avoids having an arrest record. Traditional pretrial diversion programs start when the offender is arrested and criminally charged. While adjudication can be withheld or charges can be dropped by the prosecutor upon completion of a pretrial diversion program, the defendant still has an arrest record. In most jurisdictions, if defendants are not convicted, there is an expungement process to remove their arrest record. The process, however, can be complicated and the associated expense usually means lower-income individuals are excluded.

Many of the criminal justice reforms being recommended seek ways to bring fairness to individuals who previously would have been marginalized by the criminal justice system. Justice demands accountability;

but it also demands fairness and balance. Adult civil citation programs provide this equilibrium in a way that improves public safety without jeopardizing a person’s future because he or she committed a minor offense. ❖

**Notes:**

<sup>1</sup>Alisa Smith and Sean Madden, *Three-Minute Justice: Haste and Waste in Florida’s Misdemeanor Courts* (Washington, D.C.: National Association of Criminal Defense Lawyers, July 2011), <http://www.nacdl.org/WorkArea/DownloadAsset.aspx?id=20794> (accessed July 17, 2015).

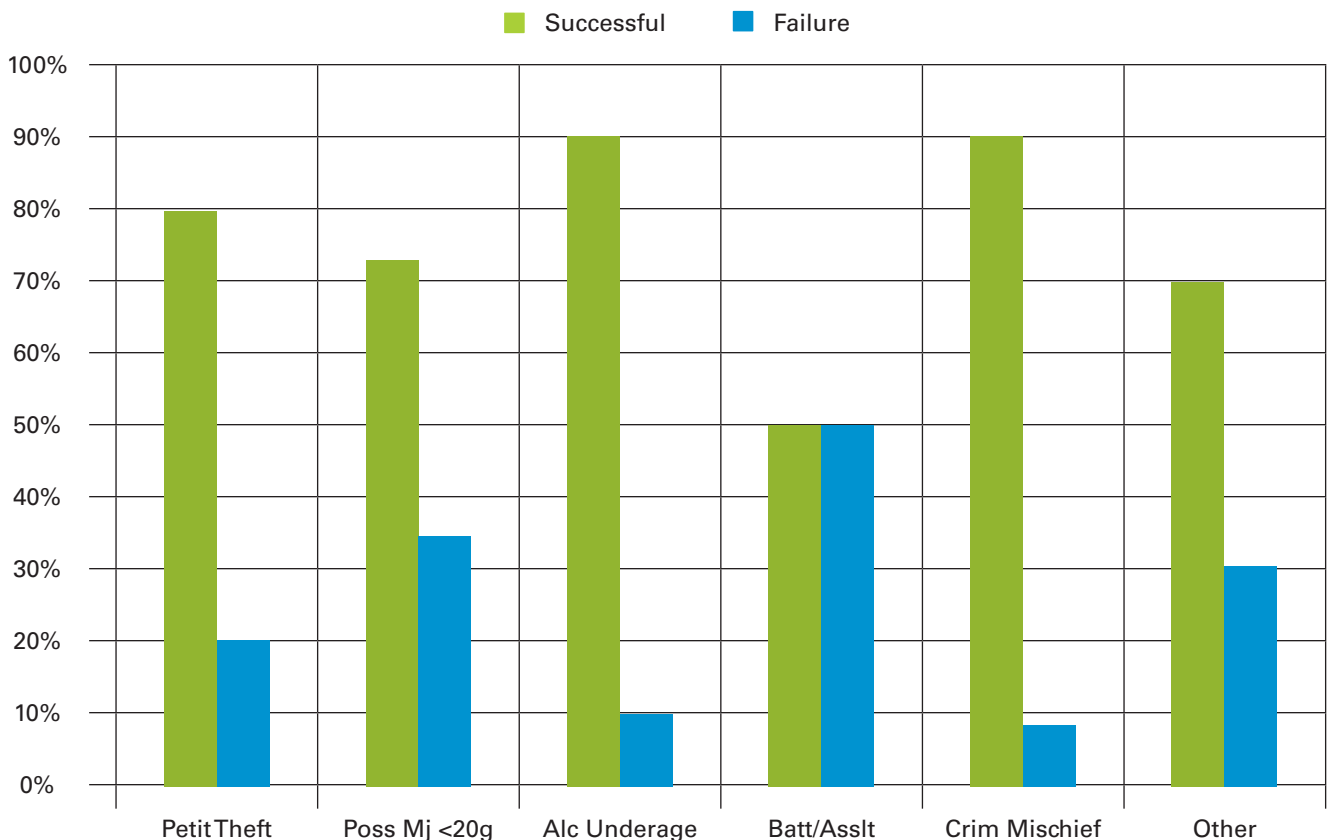
<sup>2</sup>Dan McCarthy, *Over-Criminalization in Florida: An Analysis of Nonviolent Third-Degree Felonies* (Tallahassee, FL: Florida TaxWatch, April 2014), <http://floridataxwatch.org/resources/pdf/ThirdDegreeFINAL.pdf> (accessed July 17, 2015).

<sup>3</sup>American Bar Association Criminal Justice Section, *State Policy Implementation Project: Civil Citations for Minor Offenses*, 2012, [http://www.americanbar.org/content/dam/aba/administrative/criminal\\_justice/spip\\_civilcitations.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations.authcheckdam.pdf) (accessed July 17, 2015).

Additional details about the program are available at [www.civilcitationnetwork.org](http://www.civilcitationnetwork.org).

The Civil Citation Network is a non-profit organization created and supported through a private foundation. Its mission is to advocate the use of adult and juvenile civil citations with integrated intervention services. Communities across the United States have access to the Network’s research and evaluation services, website data resources, integrated technology platform, and technical assistance related to the implementation of civil citation programs. Through participating, communities’ civil citation programs improve public safety and reduce criminal justice system costs. Equally important, through the Civil Citation model, individuals are held accountable for committing a minor crime without the lifelong negative consequences of being arrested.

**Program Completion Rate by Offense Type – January 2015**





# Blending Procedural Justice and Police Legitimacy into Police Culture

By **Jacinta M. Gau**, Associate Professor, University of Central Florida, Orlando, Florida, and **David Gorby**, Patrol Sergeant, Perry, Florida, Police Department

Employees of all types of organizations work under informal behavioral guidelines that spring from shared attitudes toward the demands of the job. In policing, occupational cultural attitudes are largely grounded in the ways officers feel toward civilians. Officers are trained and socialized to maintain the edge when interacting with civilians. In addition, officers tend to band together fraternally, both on and off the job. While some elements of the police occupational culture are beneficial or even indispensable, this set of attitudes can hamper police-community relations. Civilians may interpret officers' demeanors, tones of voice, and actions differently than officers intend. The command presence, for instance, may seem to the officer to be correct in light of his or her training and experience; however, to the civilian, it can seem cold or intimidating. Likewise, officers' desire to support one another can outwardly appear like overzealousness or insularity.

In the past few years, the idea of police legitimacy has gained ground in academic writings, police leadership circles, and popular discourse. Police legitimacy revolves around governance by consent—under this framework, officers garner widespread voluntary compliance not through threats of arrest or force but, rather, by convincing the public that obeying the police is the right thing to do. Research confirms that people are more likely to comply with officer commands during encounters and to cooperate with police on a broader scale (such as by providing information about crimes and offenders) when they believe that officers work hard to do what is right for the community.

The theory of procedural justice predicts that the quality of treatment officers lend to complainants, victims, and suspects indicates the level of respect those officers have for civilians and, indeed, the extent to which they respect the law itself. Procedural justice increases the likelihood that civilians comply with officers' commands. Indifferent, disrespectful, or unduly coercive actions delegitimize police in the eyes of the community, making it difficult

for police to obtain compliance because civilians feel no internalized obligation to obey. Officers may be left having to resort to threats or force to secure cooperation, but this can backfire—coercion used in the absence of legitimacy breeds defiance.

Police legitimacy, then, is won or lost on the street according to the precepts of procedural justice, yet it is also on the street where cultural attitudes shape officers' responses to members of the public. At face value, procedural justice and police culture appear to stand in direct opposition to one another. Officers may find it incongruous—even hypocritical—for them to be expected to demonstrate concern for people's needs while simultaneously meeting departmental rules and protecting their own safety. Attitudinal indoctrinations begin in police academies. Trainers reinforce the necessity for safety, sometimes at the expense of respectful and dignified discourse during civilian interactions. Additionally, organizational pressures to complete tasks quickly so officers can move on to the next call for service, combined with often over-encumbering paperwork and data entry, impede officers' ability to focus on procedural justice; in this way, these organizational performance pressures can hinder positive socialization with civilians. The prioritization of case solving over human relations may also lead officers to wonder who has time to engage in seemingly arbitrary conversations with civilians concerning points that are often unimportant to the case at hand.

The solution is to weave the tenets of procedural justice into the occupational culture so that they become part of the norms and values officers internalize. There are methods to mitigate organizational and cultural pressures and get officers into the habit of using justice-based principles. First, academy and in-service trainers, along with first-line supervisors, must stress the long-term benefits of procedural justice. They must explain to officers that procedural justice will make their encounters safer and more productive.

Second, trainers, management, and direct supervisors must dispense with organizational pressures for quantity and begin

to stress the quality of encounters. The policy dubbed the "numbers game" emphasizes arrests and citations as measures of officers' activities and performance. More progressive performance measures would account for officers' ability to deliver high-quality services to the community.

Third, management should think about paperwork reduction as a means of alleviating conversational restraints in the field. Officers would feel less pressure to terminate encounters quickly if they did not have to devote so much time to paperwork.

Lastly, and possibly most importantly, police leaders should use the socialization process to ingrain the tenets of procedural justice into the occupational culture. Police organizations are made up of humans, and humans require socialization to learn and grow. Management must demonstrate a commitment to procedural justice by personally endorsing it and encouraging enlightened field supervisors to engage in group socialization of their subordinates. Subordinates' beliefs are heavily influenced by informal discussions with supervisors, so pro-procedural justice attitudes can have trickle-down impacts. Over time, police leaders can use the socialization process to convince officers of the merits of procedural justice, especially in a fraternal setting complete with a backdrop of comradery conducive to group acceptance.

These strategies—along with others police leaders may devise—will help ingrain the police culture with the importance of high-quality treatment of civilians. Police leaders, managers, and supervisors are key to infusing police culture with the conviction that procedural justice improves officer safety and effectiveness. This merging of culture and justice will ensure that police are both fair and effective. ♦





# Arrests and Pretrial Detention for Minor Offenses Should Be a Last Resort

By **Cherise Fanno Burdeen**, Executive Director, Pretrial Justice Institute

The law enforcement community carries both tremendous responsibility and great pride in protecting public safety in a manner that is fair and even-handed. In recent years, police have become increasingly charged with serving communities and individuals who have drug use and mental health issues and who are struggling in poverty. Current policies and practices that rely on a full custodial arrest process for even minor, nonviolent charges are counterproductive to addressing the needs of these individuals and achieving public safety. More fundamentally, these practices erode community trust. There are practical and effective ways to address the issue.

Right now, law enforcement arrests more than twice as many people for nonviolent drug crimes than for violent crimes. Statistics show that officers encounter far more people who engage in drug use or disorderly conduct than people who have allegedly committed violent crimes.<sup>1</sup> Yet, officers routinely make arrests for such low-level charges, needlessly pushing millions of people deeper into the system, creating arrest records, and jailing them pretrial, sometimes for periods longer than they would face upon conviction.

These practices are ineffective at addressing what are often the underlying drivers of low-level crime: substance abuse, mental health issues, and chronic poverty. Individuals who are charged with nonviolent offenses in these situations should be directed to relevant services, while still being held accountable for any alleged offense. Even short periods of pretrial incarceration yield negative outcomes, particularly for those suffering from behavioral and health problems. When people are needlessly arrested and jailed, every passing day increases the chances that they will lose their jobs, housing, and family connections and increases their likelihood to commit a crime in the future.

The overuse of arrest for minor offenses also damages the public faith in law enforcement institutions that officers work so hard to create. The fear of arrest, and all the harms that come with it, for even minor infractions,

alienates communities that see a system that rewards individuals who can buy their freedom, penalizes those so poor they must remain behind bars until their trials, and takes time away from police who need to investigate violent crimes and real threats to public safety. Our men and women in uniform know firsthand that high arrest rates have not been the primary drivers for recent decreases in crime and, in fact, act as system stressors that hinder effectiveness. Meeting the needs of the community—safety, trust, equity—requires fewer and more targeted arrests.

We all expect accountability for law violations, but we also expect proportionality; what happens to a person arrested for a crime should match the severity of that alleged offense. The public has begun to question the legitimacy of systems that are overly harsh and that subject individuals to the damaging impact of arrest and detention for no clear reason.

There are options that lie between arresting a suspect and taking no action. Increasingly, jurisdictions issue citations or summonses that do not require booking and custodial arrest. To help make the decision whether to arrest or to cite and release, police can use field-based risk assessment tools to supplement their discretion. These instruments are easy to administer and are more accurate than subjective judgement in helping officers determine which individuals, because of their alleged offense or offense history, can be safely released and, in some cases, if they need to be directed to behavioral health treatment.

Leadership from the law enforcement community to acquire and use the latest tools to aid officer discretion is essential. Making the best decisions possible in the field will help stem the cycle of re-offending and restore public trust in law enforcement institutions.

Law enforcement must also work to change the belief held by many lawmakers and members of the public that more arrests and fuller jails are signs of success. Such measures aren't justice or common sense and don't make us safer.

Public safety is best achieved when officers have the most effective tools to make the right decisions to reach the best outcome for each individual encountered. When we operate this way, it ensures that those who need help get it, those who present a danger are handled appropriately, and the public sees the authority of law enforcement institutions as fair and legitimate. It's time to reduce arrests and bookings and restore peace and order. ❖

#### Note:

<sup>1</sup>Federal Bureau of Investigation, *Crime in the United States, 2013* (Washington, D.C.: 2014), table 32, Ten-Year Arrest Trends, [https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2013/crime-in-the-u.s.-2013/tables/table-32/table\\_32\\_ten\\_year\\_arrest\\_trends\\_totals\\_2013.xls](https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s./2013/crime-in-the-u.s.-2013/tables/table-32/table_32_ten_year_arrest_trends_totals_2013.xls) (accessed July 24, 2015).

#### THE PRETRIAL JUSTICE INSTITUTE

The Pretrial Justice Institute (PJI), opened its doors on March 1, 1977, as the Pretrial Services Resource Center. PJI's core purpose is to advance safe, fair, and effective juvenile and adult pretrial justice practices and policies that honor and protect all people. PJI works to achieve its core purpose by moving policy makers and justice system stakeholders to adopt and implement practices and policies through

- educating key stakeholders;
- moving stakeholders to action;
- working in key states to advocate for change;
- developing messages, stories, and media coverage in support of change; and
- connecting local jurisdictions to assistance.

Learn more at [www.pretrial.org](http://www.pretrial.org).





# Unjust Arrest: Means of Police Harassment

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There are three principal functionaries in the administration of the criminal justice system: the police, the judiciary, and the correctional services. Each component complements the others to reach the common goal of social defense for keeping peace in society. Police officers, as the frontline component of the criminal justice system, are the protectors of law and order and the “finders of truth.” Fundamental functions of the police are protection of people’s lives and property, enforcement of laws, prevention and detection of crime, and maintenance of public order. One of the important functions of the police is to bring offenders before justice. This does not necessarily mean just to arrest a person and place him or her before the judge; rather, it means collecting sufficient evidence against the suspect through investigation and presenting the evidence before the court to secure a conviction. Arresting an individual without logical, genuine, and sufficient grounds is contrary to the protection and promotion of human rights. All human beings, whatever their rank or status in the society, have the right to live with dignity in a free, democratic society. Police have to protect human rights in line with the establishment of rule of law and the principle of democratic policing. Democratic policing—as opposed to regime policing—is based on norms and values derived from democratic principles and is a widely accepted approach to contemporary policing.

Arrested persons should not be the victims of wrongful, illegal, and unjust arrest by the police. Wrongful arrest is physically detaining someone without proper legal authority. Other common wrongful arrest situations include arrest by a police officer of the wrong person. This may not be a big problem in an economically developed democratic society, but it can be a severe problem in developing countries, especially those that are characterized by colonial pasts, political unrest and instability, fledgling democracy, poverty, conflict, weak and ineffective state institutions, inequitable distribution of state wealth, lacking rule of law and good governance, and poor human rights conditions.

Police are seen there as serving the regime and not the people and more often associated with violations of laws and individual rights with impunity, rather than the protection of them, and a lack of accountability. They are facing accusations of abusing authority to harm innocent people through torture, extrajudicial killings, disappearances, excessive use of force, failure to follow due process, bias, corruption, and the arrest of innocent people for the purpose of extortion.

In some regions, abuse of police’s power to arrest is one of the prominent sources of corruption in the police. The National Police Commission report, India, pointed out that nearly 60 percent of the arrests are unnecessary and unjustified.<sup>1</sup> Such unwarranted arrests are also causing huge additional expenditures for the country to maintain prisoners in the jail.

Investigation of a case is a part of the judicial process; therefore, the police must be independent in the discharge of such functions. A capable investigator has acquired knowledge and skill through training and experience, but he or she must also strictly adhere to the code of ethics in his or her investigations.

Police exercise their discretion to enforce the law of the land. The power to exercise discretion is limited by the law and administrative policy, as any decision that falls outside the parameters of the law is illegal. The question arises whether police discretion should come into control in order to prevent abuse of police authority. It may be dangerous to control police discretion because officers may face challenges from the suspects to arrest them. Training and socialization to help officers develop professionalism and ethical decision making could be the better solution to manage police discretionary powers.

Causes of unfounded and unjust arrests could also be viewed from a different angle. They might be caused by

1. **Ill intentions:** The arrest is made with an intention of personal gain. This amounts to a criminal act of wrongful confinement and should be dealt with accordingly.

## 2. Inefficiency and inexperience:

Innocent people become the victim of the incompetency of the officer and appropriate action should be taken for a consequence of incompetency.

## 3. Influence or pressure from outside, powerful, and influential quarters:

The officer could not resist the pressure of powerful individuals to make an unjust arrest. This is an act of cowardice that should be dealt with appropriately.

The training is the foundation on which the general efficiency of the police rests. Discipline is an integral part of basic training and can fall into two categories: self-imposed and enforced. Self-imposed is self-guided, based on high morals and strong ethical values; enforced discipline is imposed by rules and regulations with the provision of punishment to violators. Strict enforcement of discipline could be established following two basic principles: (1) establishment of individual accountability and (2) moving the punishment of wrongdoers outside the police force. Setting a mechanism for “policing the police” is imperative.

A police officer should have developed from the very onset of his police career a philosophy and an ideological base that arrests are made to deliver true justice, not driven by any bias, emotion, or other illegal force.

Political commitment is a critical and fundamental factor in the campaign for just arrests. Active rights groups play an important role in the discourse, and incorporating and addressing the issue with all associated stakeholders, though challenging, is crucial. ❖

### Note:

<sup>1</sup>Law Commission of India, *Consultation Paper on Law Relating to Arrest: Part 1; Law of Arrest*, 9, <http://lawcommissionofindia.nic.in/reports/177rptp2.pdf> (accessed July 24, 2015).