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## Prevention Beyond Deterrence

Benjamin A. Barsky

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## PREVENTION BEYOND DETERRENCE

*Benjamin A. Barsky\**

### ABSTRACT

*This Article reconceptualizes preventive justice—the public safety paradigm that seeks to prevent harm before it occurs. Scholars have long documented how cities have advanced this paradigm through largely punitive measures, notably variants of broken windows policing, which posit that aggressive misdemeanor enforcement deters more serious crime. Yet in the aftermath of the 2020 George Floyd protests, and as underscored recently in City of Grants Pass v. Johnson, these measures have faced a legitimacy crisis—prompting calls for nonpunitive responses to nonviolent incidents.*

*This Article establishes a preventive justice approach that advances health and safety without emphasizing crime deterrence. It draws on fieldwork research on alternative emergency response programs (“Alternative Responses”) that proliferated after the 2020 protests to replace police in health crises and other nonviolent incidents. Data include interviews with fifty individuals and over two hundred hours of observations in Oakland, California; Dayton, Ohio; and Madison, Wisconsin.*

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*The findings reveal a paradox. Although government officials claimed Alternative Responses to be separate from police, these programs are in fact institutionally enmeshed with law enforcement agencies. But despite this enmeshment, Alternative Responses employ distinct preventive methods at the street level: While police deter crime via traditional enforcement actions, these programs prevent harm through various nonpunitive means, notably the provision of life-sustaining resources and connections to needed services.*

*This research illuminates a preventive justice approach called “supported crisis response.” Grounded in a revised, health-centered understanding of rehabilitation, this approach ensures that people have agency to make decisions, resources to bring those decisions to fruition, and support to sustain the fruits of those choices. This approach also suggests a model for public safety governance—one that requires near-term reforms and long-term structural changes to expand Alternative Responses’ involvement in nonviolent incidents and to limit the role of police.*

## TABLE OF CONTENTS

INTRODUCTION .....	356
I. THE PUNITIVE PREVENTIVE STATE .....	362
A. <i>Harm, Prevention, and the State</i> .....	362
B. <i>Broken Windows Policing and Its Varieties</i> .....	364
1. <i>Criminalization as Prevention</i> .....	364
2. <i>Practices and Target Offenses</i> .....	366
3. <i>The Enduring Faith in Deterrence</i> .....	369
II. ALTERNATIVE EMERGENCY RESPONSE PROGRAMS .....	370
A. <i>Claiming a Health-Affirming Public Safety Paradigm</i> .....	371
B. <i>Enmeshments with Police</i> .....	374
1. <i>Alternative Responses Address Quintessential</i> <i>Broken Windows Offenses</i> .....	375
2. <i>Public Safety Technologies Tether Alternative</i> <i>Responses to Police</i> .....	383
3. <i>Intricate Interagency Dynamics Bind Alternative</i> <i>Responses to Police</i> .....	387
III. SUPPORTED CRISIS RESPONSE .....	391
A. <i>A Nonpunitive Orientation</i> .....	395
B. <i>Redefining Rehabilitation</i> .....	398
1. <i>Against Rehabilitation as Treatment</i> .....	399
2. <i>Agency, Resources, and Support</i> .....	401
IV. IMPLICATIONS FOR PUBLIC SAFETY GOVERNANCE .....	408
A. <i>Deterrence Policing</i> .....	409
B. <i>Preventive Policing Consolidation</i> .....	409
C. <i>Toward Integration</i> .....	411
CONCLUSION .....	418
APPENDIX – DATA AND METHODS .....	420

## INTRODUCTION

Preventive justice—the public safety paradigm that aims to prevent harm before it occurs—stands at an impasse.<sup>1</sup> Scholars have long documented how cities have advanced this paradigm through largely punitive measures, notably variants of broken windows policing, which posit that aggressive misdemeanor enforcement deters more serious crime.<sup>2</sup> Yet following George Floyd’s murder in May 2020, nationwide protests called for a now popular public safety intervention: alternative emergency response programs (“Alternative Responses”).<sup>3</sup> These programs, which operate in over one hundred jurisdictions, deploy unarmed responders in health emergencies and other nonviolent incidents.<sup>4</sup> Though groundbreaking, this development has raised underexplored questions: Do Alternative Responses work? Do they enhance the public’s safety? And, crucially, are they capable of challenging the prevailing regime of punitive preventive justice?

Drawing on first-of-its-kind data on Alternative Responses, this Article establishes a preventive justice approach that promotes health and safety without emphasizing crime deterrence.<sup>5</sup> It intervenes in a debate over the necessity of

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<sup>1</sup> For foundational scholarly treatments of this paradigm, see generally, for example, Carol S. Steiker, *Foreword: The Limits of the Preventive State*, 88 J. CRIM. L. & CRIMINOL 771, 774 (1997); ANDREW ASHWORTH & LUCIA ZEDNER, *PREVENTIVE JUSTICE* (2014); Lucia Zedner & Andrew Ashworth, *The Rise and Restraint of the Preventive State*, 2 ANN. REV. CRIMINOLOGY 429, 435–36 (2019).

<sup>2</sup> This understanding follows that of Bernard Harcourt, who has persuasively connected punitive preventive justice with broken windows policing. See Bernard Harcourt, *Punitive Preventive Justice: A Critique*, in PREVENTION AND THE LIMITS OF THE CRIMINAL LAW 252, 256 (Andrew Ashworth, Lucia Zedner & Patrick Tomlin eds., 2013) (“[P]unitive prevention also includes the use of order-maintenance techniques, such as broken-windows policing . . . , zero-tolerance approaches . . . [and] the use of profiling measures . . .” (footnote omitted)). This understanding echoes in much of the literature on preventive justice. See, e.g., Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1231 (2015) (contrasting broken windows policing with nonpunitive forms of prevention). But scholars have adopted different understandings of preventive justice, and the connection between deterrence theory and broken windows policing in these accounts is often absent. See generally, e.g., CHRISTOPHER SLOBOGIN, *JUST ALGORITHMS: USING SCIENCE TO REDUCE INCARCERATION AND INFORM A JURISPRUDENCE OF RISK* (2021) (applying preventive justice to many aspects of criminal law adjudication, including plea bargaining and sentencing).

<sup>3</sup> See Ram Subramanian & Leily Arzy, *Rethinking How Law Enforcement Is Deployed*, BRENNAN CTR. FOR JUST. (Nov. 17, 2022), <https://www.brennancenter.org/our-work/research-reports/rethinking-how-law-enforcement-deployed> [<https://perma.cc/X2XD-U5TV>]; see also discussion *infra* Section II.A.

<sup>4</sup> See Christie Thompson, *Sending Unarmed Responders Instead of Police: What We’ve Learned*, MARSHALL PROJECT (July 25, 2024, at 15:00 ET), <https://www.themarshallproject.org/2024/07/25/police-mental-health-alternative-911> [<https://perma.cc/ABS8-FZG4>].

<sup>5</sup> This empirically informed approach builds on Allegra McLeod’s concept of “grounded preventive justice,” which stands in opposition to punitive preventive justice. See McLeod, *supra* note 2, at 1167. In McLeod’s words, grounded preventive justice focuses on “addressing violence and social discord through socially integrative and transformative projects” and “expanding the space in which people are safe from

armed police to promote public safety. One camp holds that police must enforce laws to deter and interdict crime;<sup>6</sup> abolitionists and others who envision a society without institutions of punishment maintain that police's reliance on coercion and criminalization is itself harmful and a driver of race–class inequality.<sup>7</sup> Historically, of course, the pro-deterrence position has prevailed. After police departments professionalized around the Civil Rights Era, they increasingly adopted proactive enforcement strategies aimed at crime prevention but punitive in design and effect.<sup>8</sup> Many of these strategies—often organized under the rubric of broken windows policing—posit that relatively minor penalties, such as citations or arrests, for low-level wrongs today will deter more serious crimes tomorrow.<sup>9</sup> Although many of these strategies have fallen into disrepute, their underlying logics continue to shape public safety governance to this day.<sup>10</sup> *City*

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interpersonal harm and are able to forge relationships of greater equality,” all the while existing completely outside of traditional criminal processes. *Id.* at 1166–67.

<sup>6</sup> For an exposition of this position, see Christopher Slobogin, *The Minimalist Alternative to Abolitionism: Focusing on the Non-Dangerous Many*, 77 VAND. L. REV. 531, 556–59 (2024).

<sup>7</sup> See, e.g., McLeod, *supra* note 2, at 1161–62, 1169–70; Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 24–27 (2019); see also Thomas Ward Frampton, *The Dangerous Few: Taking Seriously Prison Abolition and Its Skeptics*, 135 HARV. L. REV. 2013, 2015 (2022) (documenting the “small flood of related scholarship — either expressly adopting an abolitionist lens, or at least responding to abolitionist critiques”).

<sup>8</sup> See discussion *infra* Section I.A. See generally JONATHAN SIMON, GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR 75–110 (2007) (analyzing the Omnibus Crime Control and Safe Streets Act of 1968’s impact on American criminal justice and democracy).

<sup>9</sup> Originally, in work published in the 1990s, Dan Kahan and Tracey Meares prominently wrote that a particular deterrence conception—the social influence conception—undergirded broken windows theory. See generally, e.g., Dan M. Kahan, *Social Influence, Social Meaning, and Deterrence*, 83 VA. L. REV. 349 (1997); Tracey L. Meares & Dan M. Kahan, *Law and (Norms of) Order in the Inner City*, 32 LAW & SOC’Y REV. 805 (1998); Dan M. Kahan & Tracey L. Meares, *Foreword: The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153 (1998). As detailed in Part I, broken windows policing has become synonymous with a variety of police strategies that have different names (e.g., order maintenance policing and quality-of-life policing) but share the same deterrent ethos. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 AM. SOCIO. REV. 769, 772 (2019); see also discussion *infra* Section I.B. For a sample of highly influential works on broken windows policing listed chronologically, see generally DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY (2002); BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING (2001); KATHERINE BECKETT & STEVE HERBERT, BANISHED: THE NEW SOCIAL CONTROL IN URBAN AMERICA (2009); ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING (2018); ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL (2018).

<sup>10</sup> Tom Tyler & Tracey Meares, *Revisiting Broken Windows: The Role of the Community and the Police in Promoting Community Engagement*, 76 N.Y.U. ANN. SURV. AM. L. 637, 638 (2021) (“[T]he broken windows model . . . has led to problems, including public distrust and a lack of cooperation with the police.” (footnote omitted)).

of *Grants Pass v. Johnson*<sup>11</sup>—which decided whether bans on camping on public property violate the Eighth Amendment—offers a window into this reality.<sup>12</sup> Law enforcement officials nationwide filed amici curiae briefs in support of Grants Pass, exclaiming the need to criminalize public camping as a way of deterring “assaults,” “rape,” “drug deals,” and “prostitution,” among other crimes.<sup>13</sup> The Court, in turn, foregrounded many of those assertions in its majority decision, lending authority to the claim that encampments and homelessness can breed crime and disorder.<sup>14</sup> Nor is *Grants Pass* the only recent high-profile example of broken-windows logics shaping U.S. public safety law and policy.<sup>15</sup>

Yet despite their continued influence, broken windows tactics face criticism. Opponents argue and research documents that they rarely achieve their crime-deterrence aims.<sup>16</sup> In addition, they come at significant social cost—namely, the intensification of inequalities experienced by marginalized groups.<sup>17</sup> Such

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<sup>11</sup> 603 U.S. 520 (2024).

<sup>12</sup> *Id.* at 527–28.

<sup>13</sup> See *infra* notes 57–58 and accompanying text.

<sup>14</sup> See *City of Grants Pass*, 603 U.S. at 529–30 (“As the number and size of these encampments have grown, so have the challenges they can pose for the homeless and others,” including an increase in crimes like sexual assaults and drug trafficking as well as shootings).

<sup>15</sup> For example, on July 24, 2025, President Donald Trump issued an executive order entitled “Ending Crime and Disorder on America’s Streets” that proposed bolstering the use of involuntary civil commitment laws to curb “[e]ndemic vagrancy, disorderly behavior, sudden confrontations, and violent attacks.” Exec. Order No. 14,321, 90 Fed. Reg. 35817 (July 24, 2025) [hereinafter *Ending Crime and Disorder on America’s Streets*]. For more examples, see discussion *infra* Section I.B.

<sup>16</sup> See 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, 276–77 (2006); Anthony A. Braga, Cory Schnell & Brandon C. Welsh, *Disorder Policing To Reduce Crime: An Updated Systematic Review and Meta-Analysis*, 23 CRIMINOL & PUB. POL’Y 745, 764–65 (2024). For a rigorous canonical analysis of this issue, see generally HARCOURT, *supra* note 9.

<sup>17</sup> See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2061 (2017) (synthesizing the view that one of criminal law enforcement’s most important functions “is the management and control of disfavored groups such as African Americans, Latin Americans, the poor, certain immigrant groups, and groups who exist at the intersection of those identities”); Jamelia N. Morgan, *Essay: Policing Marginality in Public Space*, 81 OHIO ST. L.J. 1045, 1051 (2020) (“In more contemporary times, order-maintenance policing has continued to serve to reinforce racist norms.”); Sunita Patel, *Transinstitutional Policing*, 137 HARV. L. REV. 808, 842 (2024) (detailing how scholars have identified order maintenance as a tool for managing people with disabilities and actions associated with disability). The health consequences of aggressive street-level policing are also well-documented. See discussion *infra* Section II.A. See generally, e.g., J. E. DeVlyder, H. Y. Oh, B. Nam, T. L. Sharpe, M. Lehmann et al., *Prevalence, Demographic Variation and Psychological Correlates of Exposure to Police Victimization in Four US Cities*, 26 EPIDEMIOL & PSYCHIATR SCIS. 466 (2017) (finding victimization by police is widespread, unevenly distributed across race and ethnicity, and significantly associated with increased psychological distress and depression); AMY E. LERMAN & VESLA M. WEAVER, *ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL* (2014) (studying how policing shapes how individuals, especially people of color, interact with and understand

critiques reached a crescendo of sorts in the context of the 2020 George Floyd protests,<sup>18</sup> arguably the largest antipolice mobilization effort in U.S. history.<sup>19</sup> And under the pressure of this movement, jurisdictions widely created Alternative Responses as part of public safety reforms.<sup>20</sup> Government officials claimed that these programs would replace police in nonviolent incidents, namely as a way to prevent racialized criminalization and police brutality.<sup>21</sup>

This Article reconceptualizes the relationship between public safety and harm prevention by studying Alternative Responses in three cities: Oakland, California; Dayton, Ohio; and Madison, Wisconsin. It draws on interviews with fifty individuals with on-the-ground experiences with these programs as well as over two hundred hours of ethnographic participant observations.<sup>22</sup>

The findings from this research uncover a paradox. On the one hand, they show that Alternative Responses do not truly function as “alternatives” to police.<sup>23</sup> These programs are in reality closely connected to law enforcement agencies and even depend on them to operate effectively. Three sets of results support this proposition. (1) Alternative Responses must, often at the direction of police, respond to incidents that have historically been criminalized under broken windows laws.<sup>24</sup> These incidents, usually classified as misdemeanors, include indecent exposure, loitering, low-level drug consumption, panhandling, disorderly conduct, and trespassing.<sup>25</sup> (2) Public safety technologies tether Alternative Responses to police. These programs rely on 9-1-1 emergency communication systems, which are often governed by police protocols.<sup>26</sup> They also use tools, such as computer-aided dispatch (CAD) systems and radios, that police rely on to inform criminal enforcement decision-making.<sup>27</sup> (3) Intricate

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the state); FRANKLIN E. ZIMRING, *WHEN POLICE KILL* (2017) (investigating why police kill comparatively more people in the United States than in other countries).

<sup>18</sup> See Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 *STAN. L. REV.* 821, 831 (2021); Shawn E. Fields, *The Fourth Amendment Without Police*, 90 *U. CHI. L. REV.* 1023, 1025–26 (2023).

<sup>19</sup> See Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, *N.Y. TIMES* (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/NLP8-QXSR>].

<sup>20</sup> See discussion *infra* Section II.A.

<sup>21</sup> See *infra* notes 115–16 and accompanying text.

<sup>22</sup> For details on the data and methodology employed in this Article, see *infra* Appendix. The names of all interviewees have been changed to preserve anonymity and confidentiality.

<sup>23</sup> See discussion *infra* Section II.B.

<sup>24</sup> See discussion *infra* Section II.B.3.

<sup>25</sup> See discussion *infra* Section II.B.3.

<sup>26</sup> See discussion *infra* Section II.B.2.

<sup>27</sup> See discussion *infra* Section II.B.2.

interagency dynamics bind Alternative Responses to law enforcement departments. These programs are often created in partnership with law enforcement officials in ways that benefit police.<sup>28</sup> They also require approval from and mutuality with law enforcement departments to operate effectively, rendering their success contingent on the goodwill and support of police.<sup>29</sup> These findings, considered together, reveal the complex intragovernmental terrain in which Alternative Responses operate. Their viability turns not only on the effectiveness of their street-level interventions but also on their ability to negotiate their standing in the eyes of police. This negotiation shapes these programs' ability to fulfill a mission aimed at mitigating policing harms, even as they remain constrained by traditional policing structures.

On the other hand, despite this intricate institutional enmeshment, the findings show that Alternative Responses employ methods at the street level that are fundamentally distinct from those of police.<sup>30</sup> Rather than employ traditional law enforcement methods, these programs generally focus their attention and resources on assisting people experiencing health and other vulnerabilities through a variety of nonpunitive modalities. Most distinctly, Alternative Responses (1) employ crisis response strategies that do not implicate penalties or sanctions; (2) offer, to the extent feasible, life-sustaining resources, such as clothes, food, and sometimes even life-saving medications (e.g., naloxone); and (3) routinely refer people to community-based providers for services like behavioral health care, housing, and nutrition assistance.<sup>31</sup> More generally, a growing literature shows that Alternative Responses have prevented criminal enforcement actions in places where they have been active and that they have done so without negatively impacting the public's safety.<sup>32</sup>

These findings provide the foundation for a preventive justice approach that this Article calls "supported crisis response." Eschewing deterrence principles, this approach turns to rehabilitation as an alternative theoretical framework.<sup>33</sup> Yet this turn is not naïve. Aware of the distinctly punitive impulses that have come to shape rehabilitation theory and practice, this Article departs from

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<sup>28</sup> See discussion *infra* Section II.B.3.

<sup>29</sup> See discussion *infra* Section II.B.3.

<sup>30</sup> See discussion *infra* Part III.

<sup>31</sup> See discussion *infra* Section III.A.

<sup>32</sup> See *infra* notes 278–80 and accompanying text.

<sup>33</sup> See discussion *infra* Section III.B.1.

prevailing understandings within the academic literature.<sup>34</sup> Among other things, it rejects the commonly cited idea that wrongdoers should get treatment to reduce their risk of future criminal behavior, often under the threat of punishment for “non-compliance.”<sup>35</sup> Rather, this Article looks to scholarship on disability and health ethics for more useful conceptual resources—an inquiry that reveals that the very idea of rehabilitation can align with a commitment to noncoercive harm prevention. Importantly, to substantiate this turn toward rehabilitation, this Article draws on how Alternative Responses intervene in community incidents as well as on how personnel conceptualize their work.<sup>36</sup> This analysis shows how supported crisis response, at its core, seeks to promote health and safety through a three-pronged process: ensuring that people have (1) the agency to make decisions, (2) the resources to bring those decisions to fruition, and (3) the support to sustain the fruits of those choices.<sup>37</sup> Ultimately, this approach diverges sharply from punitive preventive methods, for it offers a vision of health and safety that prioritizes people’s well-being over an overly narrow focus on crime reduction.

This research yields a model for public safety governance that contrasts with two others that have recently come to shape policy debates. One of them doubles down on police’s deterrence function and abandons alternative preventive frameworks.<sup>38</sup> Another entrusts police with the dual task of deterrence and rehabilitation, rendering them responsible for navigating the tensions between both approaches.<sup>39</sup> After addressing limitations of both of these models, this Article proposes a more integrative model for prevention. Under this proposal, Alternative Responses would play expanded first-response roles in nonviolent incidents, while police would assume, correspondingly, more limited responsibilities.<sup>40</sup> Yet achieving this level of change will require jurisdictions to implement near-term operational reforms, such as increasing the number of Alternative Response call types; it will also necessitate building long-term

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<sup>34</sup> Francis Allen recognized as much decades ago in his classic 1981 book, *The Decline of the Rehabilitative Ideal*: “One consequence, frequently remarked, is the tendency of rehabilitative regimes to inflict larger deprivations of liberty and volition on its subjects than is sometimes exacted from prisoners in more overtly punitive programs.” FRANCIS A. ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL: PENAL POLICY AND SOCIAL PURPOSE* 49 (1981).

<sup>35</sup> See discussion *infra* Section III.B.1.

<sup>36</sup> See discussion *infra* Section III.B.2.

<sup>37</sup> See discussion *infra* Section III.B.2.

<sup>38</sup> See discussion *infra* Section IV.A.

<sup>39</sup> See discussion *infra* Section IV.B.

<sup>40</sup> See discussion *infra* Section IV.C.

institutional capacity, including through nontraditional forms of financing.<sup>41</sup> This Article claims that, if adopted, these measures would help build a foundation for governance that can meaningfully promote health and safety.

This Article makes two central contributions. By offering a detailed empirical examination of the close institutional connection between Alternative Responses and police, it extends scholarship on the influence of police in public safety governance.<sup>42</sup> Additionally, through the concept of supported crisis response, this Article synthesizes works across a variety of disciplines to offer a reimagination of harm prevention and public safety governance. This Article proceeds as follows. Part I describes the punitive preventive turn in American public safety governance. Part II details the advent of Alternative Responses and their connections with police. Part III introduces supported crisis response. Part IV distills policy insights that flow from this preventive justice approach. The Appendix provides details about the data and employed analytical methodology.

## I. THE PUNITIVE PREVENTIVE STATE

This Part discusses the punitive preventive turn in U.S. public safety governance. Section A situates this discussion within scholarship on the “preventive state,” a term used to describe the government’s shift from punishing crime *ex post* toward using its enforcement powers to prevent harm *ex ante*. Section B details how the ethos of broken windows policing, notably its focus on deterrence, animates public safety law and policy to this day. All considered, this Part sets the stage for understanding the contrasting role that Alternative Responses play within the modern preventive state.

### A. Harm, Prevention, and the State

American policing experienced a transformation during the Civil Rights Era.<sup>43</sup> Through unprecedented congressional support, police departments

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<sup>41</sup> See discussion *infra* Section IV.C.

<sup>42</sup> Ji Seon Song, *Policing the Emergency Room*, 134 HARV. L. REV. 2646, 2649 (2021) (“Problems of policing . . . go beyond the streets and into areas that may be hidden from view.”). See generally Patel, *supra* note 17 (analyzing how policing permeates core institutional settings in the United States); Matthew Bakko, *Carceral Separation: Challenges in Disentangling Police from Social Services*, 72 SOC. PROBS. 1 (2025) (showing that programs grounded in anti-carceral movements remain dominated by police and carcerality).

<sup>43</sup> See NAOMI MURAKAWA, *THE FIRST CIVIL RIGHT: HOW LIBERALS BUILT PRISON AMERICA* 149 (2014); ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* 11 (2016).

became hyper-resourced and grew in muscularity and size.<sup>44</sup> They also morphed into forward-looking, proactive, and problem-solving institutions.<sup>45</sup> Because of this shift in focus, the relationship between the state and its subjects simultaneously changed; more particularly, the state increasingly assumed, as part of its responsibilities, the task of identifying people who pose a risk of harm to others or themselves and coercively depriving them of liberty as a way to preserve the public's safety.<sup>46</sup>

In her now-canonical article in the *Journal of Criminal Law and Criminology*, Carol Steiker expressed concern about the preventive state's scope and sweep.<sup>47</sup> She emphasized, as many have echoed afterward, that preventive state logics permeate disparate legal realms, including substantive criminal law, thereby complicating efforts to articulate clear, cohesive principles that can constrain the state's ability to coerce arbitrarily in the name of prevention.<sup>48</sup> To name a few examples, first-year law students must typically study inchoate criminal offenses, which serve the goal of prevention.<sup>49</sup> A rather large literature has also scrutinized preventive detention laws that target categories of potentially dangerous people, including, most notably, suspected terrorists, so-called sexually violent predators, and people with behavioral health conditions.<sup>50</sup> Much of this latter literature has focused on delineating, often formally, when the enforcement of preventive detention laws crosses over from being largely benign and "civil" to constitutionally constrained and "criminal."<sup>51</sup>

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<sup>44</sup> See HINTON, *supra* note 43, at 87.

<sup>45</sup> See GARLAND, *supra* note 9, at 169.

<sup>46</sup> See *supra* note 1 and accompanying text.

<sup>47</sup> See Steiker, *supra* note 1, at 777–79.

<sup>48</sup> See *id.* at 777–78; see also Sandra G. Mayson, *Collateral Consequences and the Preventive State*, 91 NOTRE DAME L. REV. 301, 303–04 (2015) (echoing the concern about the difficulty of constraining the preventive state as applied to the various collateral consequences of being criminally convicted).

<sup>49</sup> See Kimberly Kessler Ferzan, *Inchoate Crimes at the Prevention/Punishment Divide*, 48 S.D. L. REV. 1273, 1276–77 (2011).

<sup>50</sup> See Zedner & Ashworth, *supra* note 1, at 435–36; Sandra G. Mayson, *Bias In, Bias Out*, 128 YALE L.J. 2218, 2282 (2019) (quoting Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 CRIMINOLOGY 449, 456 (1992)). For literature on the relationship between dangerousness and prevention, see generally, for example, Paul H. Robinson, *Punishing Dangerousness: Cloaking Preventive Detention as Criminal Justice*, 114 HARV. L. REV. 1429 (2001); Kimberly Kessler Ferzan, *Beyond Crime and Commitment: Justifying Liberty Deprivations of the Dangerous and Responsible*, 96 MINN. L. REV. 141 (2011); Larry Alexander & Kimberly Kessler Ferzan, *Danger: The Ethics of Preemptive Action*, 9 OHIO ST. J. CRIM. L. 637 (2012).

<sup>51</sup> See Carol S. Steiker, *Proportionality as a Limit on Preventive Justice: Promises and Pitfalls*, in PREVENTION AND THE LIMITS OF THE CRIMINAL LAW 194, 194 (Andrew Ashworth, Lucia Zedner & Patrick Tomlin eds., 2013).

This Article moves upstream from this body of law by focusing more closely on the connection between policing and prevention. In doing so, it proceeds in keeping with Steiker’s call for clarity about the turn toward prevention in street-level law enforcement—a domain that raises questions that are distinct from other crime prevention schemes, such as involuntary commitment laws and “pure” preventive detention regimes.<sup>52</sup> Against this backdrop, the next section describes several analytically distinct elements of the punitive preventive state: its basic operational premises and its core animating legal theories.

### B. *Broken Windows Policing and Its Varieties*

The punitive preventive turn took shape through a revolution in thinking about the relationship between crime, disorder, and safety. Broken windows policing—which “package[s]” tactics like “order maintenance” policing, “quality-of-life policing,” and so on—represents arguably the most consequential embodiment of this shift.<sup>53</sup> In their highly influential article in *The Atlantic*, George Kelling and James Wilson described one of the movement’s main conceptual premises: “[S]erious street crime flourishes in areas in which [low-level] disorderly behavior goes unchecked.”<sup>54</sup>

#### 1. *Criminalization as Prevention*

As such, criminalization has been a highly durable feature of broken windows policing. Many scholars, for example, have commented on New York City’s stop-and-frisk regime, which disproportionately targeted communities of color.<sup>55</sup> Yet, to this day, the criminalization-as-prevention logic of broken windows policing drives public safety thinking at the very highest levels. Rather conspicuously, before the April 2024 arguments in *Grants Pass*, state officials

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<sup>52</sup> See generally, e.g., Christopher Slobogin, *The Civilization of the Criminal Law*, 58 VAND. L. REV. 121 (2005) (discussing civil commitment laws in the context of preventive justice); Sandra G. Mayson, *A Consequentialist Framework for Prevention*, 41 LAW & PHIL. 219 (2022) (discussing pure preventive detention).

<sup>53</sup> See Herring, *supra* note 9, at 772; see also Spencer Piston, Kanecsha R. Johnson, Selma Hedlund & Chas Walker, *The Study of Racism and Policing in the United States*, 28 ANN. REV. POL. SCI. 499, 502 (2025) (“Broken windows ideology underwrote a massive expansion of policing in the late twentieth century.”).

<sup>54</sup> George L. Kelling & James Q. Wilson, *Broken Windows*, ATLANTIC (Mar. 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/> [https://perma.cc/QPK3-2QAH].

<sup>55</sup> Rachel A. Harmon & Andrew Manns, *Proactive Policing and the Legacy of Terry*, 15 OHIO ST. J. CRIM. L. 49, 58 (2017) (“Broken Windows and Zero Tolerance Policing so often target stops and frisks on those involved in low-level crime and disorder that the strategies are conflated with Stop, Question, and Frisk.”); see also *Floyd v. City of New York*, 959 F. Supp. 2d 540, 572–76 (S.D.N.Y. 2013) (discussing statistics of New York’s stop-and-frisk policy).

from across the country filed amici curiae briefs in support of the petitioner.<sup>56</sup> These parties made claims, later echoed by the majority of the Supreme Court, about the necessity of enforcing low-level disorder, like homeless encampments, as a way of preventing more serious crime and harm.

“Defecation, urination, drug deals, assaults, sexual acts, and rape . . . occur in the open air with increasing impunity,” claimed Speaker of the Arizona House of Representatives Ben Toma and President of the Arizona State Senate Warren Petersen.<sup>57</sup> Similarly, quoting a report from the U.S. Department of Housing and Urban Development, a coalition of twenty attorneys general lamented the hazards of encampments that “include ‘human waste, used needles, rodents, disease, and criminal activity (primarily drug use and prostitution).’”<sup>58</sup> “In short,” wrote a group of California-based law enforcement departments and sheriffs, “the exponential increase in the homeless population and encampments in recent years has resulted in an increase in crimes both against the homeless and by the homeless.”<sup>59</sup>

The broken windows instinct toward coercion and enforcement has also manifested itself in various high-profile initiatives beyond the particular legal context of *Grants Pass*. Then-New York City Mayor Eric Adams issued a directive in 2022 to remove people with behavioral health disabilities experiencing homelessness from the streets if they are considered to “conduct[] themselves in a manner likely to result in serious harm to self or others . . . .”<sup>60</sup> Jurisdictions across the country have conducted numerous unhoused encampment sweeps—including in Denver, Las Vegas, Los Angeles, San Francisco, Phoenix, and Portland—on the idea that doing so would prevent the

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<sup>56</sup> See *City of Grants Pass, Oregon v. Johnson*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/city-of-grants-pass-oregon-v-johnson/> [<https://perma.cc/523J-YUPT>] (last visited Oct. 12, 2025).

<sup>57</sup> Brief for the Speaker of the Arizona House of Representatives Ben Toma and President of the Arizona State Senate Warren Petersen as Amici Curiae Supporting Petitioner at 15, *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024) (No. 23-175).

<sup>58</sup> Brief for the Washington State Ass’n of Sheriffs and Police Chiefs as Amicus Curiae Supporting Petitioner at 6, *Grants Pass*, 603 U.S. 520 (No. 23-175) (quoting U.S. DEP’T OF HOUS. & URB. DEV., *EXPLORING HOMELESSNESS AMONG PEOPLE LIVING IN ENCAMPMENTS AND ASSOCIATED COST: CITY APPROACHES TO ENCAMPMENTS AND WHAT THEY COST* 18 (2020)).

<sup>59</sup> Brief for California State Sheriffs’ Ass’n et al. as Amici Curiae Supporting Petitioner at 19, *Grants Pass*, 603 U.S. 520 (No. 23-175).

<sup>60</sup> *Testimony of Jason Hansman Regarding Mental Health Involuntary Removals and Mayor Adams’ Recently Announced Plan*, MAYOR’S OFF. OF CMTY. MENTAL HEALTH (Feb. 7, 2023), <https://mentalhealth.cityofnewyork.us/news/testimony/testimony-of-jason-hansman-regarding-mental-health-involuntary-removals-and-mayor-adams-recently-announced-plan> [<https://perma.cc/B6TN-8WA8>].

trafficking of street-level controlled substances.<sup>61</sup> And in July 2025, President Donald Trump issued an executive order calling for, among other measures, the enforcement of prohibitions on “open illicit drug use,” “urban camping and loitering,” and “urban squatting,” all in the name of “protecting public safety.”<sup>62</sup>

## 2. Practices and Target Offenses

Broken windows tactics are heterogeneous. They include the policing of “crime hot spots,” “complaint-oriented policing,” and pretextual traffic stops. They also apply to several categories of low-level criminal offenses typically punished as misdemeanors, such as drug-related offenses, disorderly conduct, and trespass. These practices and offense categories are briefly described below.

The policing of crime hot spots, facilitated by the Court’s decision in *Terry v. Ohio*,<sup>63</sup> occurs when police workforces are deployed to small, very delineated areas.<sup>64</sup> This practice generally focuses on “high-crime” areas, often predominantly inhabited by people of color living in situations of poverty.<sup>65</sup> Such areas can include distressed urban neighborhoods, high-volume transportation hubs, and large apartment buildings.<sup>66</sup> Other practices include what Chris Herring describes as complaint-oriented policing, which targets the enforcement of incidents that are reported through third-party complaints,

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<sup>61</sup> See Claire Rush, Janie Har & Michael Casey, *Cities Crack Down on Homeless Encampments. Advocates Say That’s Not the Answer*, ASSOCIATED PRESS (Nov. 28, 2023, at 16:46 ET), <https://apnews.com/article/homelessness-encampment-sweeps-cities-08ff74489ba00cfa927fe1cf54e0d401> [<https://perma.cc/PMG8-9S2M>].

<sup>62</sup> Ending Crime and Disorder on America’s Streets, *supra* note 15, at 35817.

<sup>63</sup> 392 U.S. 1 (1968).

<sup>64</sup> See David Weisburd, Anthony A. Braga, Elizabeth R. Groff & Alese Wooditch, *Can Hot Spots Policing Reduce Crime in Urban Areas? An Agent-Based Simulation*, 55 CRIMINOLOGY 137, 138 (2017); Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457, 488 n.139, 489–96 (2000). Note, however, that not all stop-and-frisk practices are a form of broken windows policing. Aziz Z. Huq, *The Consequences of Disparate Policing: Evaluating Stop and Frisk as a Modality of Urban Policing*, 101 MINN. L. REV. 2397, 2411 (2017).

<sup>65</sup> See Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 708–09 (2020); see also David Weisburd & Clair White, *Hot Spots of Crime Are Not Just Hot Spots of Crime: Examining Health Outcomes at Street Segments*, 35 J. CONTEMP. CRIM. JUST. 142, 143 (2019) (finding that physical and mental health problems are more likely to be found on hot spot streets than streets with little crime). For a critique of the idea of “high-crime areas” in the Fourth Amendment context, see Andrew Manuel Crespo, *Systemic Facts: Toward Institutional Awareness in Criminal Courts*, 129 HARV. L. REV. 2049, 2078 (2016).

<sup>66</sup> See generally Anthony A. Braga & David L. Weisburd, *Does Hot Spots Policing Have Meaningful Impacts on Crime? Findings from an Alternative Approach to Estimating Effect Sizes from Place-Based Program Evaluations*, 38 J. QUANT. CRIMINOL. 1 (2020) (noting persistent concentration of crime in specific locations such as stores, apartment buildings, clusters of street addresses, street blocks, and street segments).

primarily via 9-1-1.<sup>67</sup> It involves resolving these complaints by coercively displacing individuals who are generally unhoused or otherwise visibly poor “spatially, temporally, or bureaucratically,” rather than through incarceration.<sup>68</sup> Farhang Heydari also documents pretextual traffic stops as being part of the state’s broken windows armamentarium.<sup>69</sup> These stops occur when police pull over a vehicle for a minor traffic violation “to investigate unrelated criminal activity for which the officer has no individualized suspicion.”<sup>70</sup>

Broken windows policing also targets low-level criminal offenses chiefly punished as misdemeanors.<sup>71</sup> Controlled substance-related crimes may be the most aggressively enforced.<sup>72</sup> The concern, fueled by failed war-on-drugs policies, is that serious criminal activity will flourish in places where “drugs [can] change hands” without being criminalized.<sup>73</sup> As such, one of the punitive preventive state’s mandates has been to suppress activities indicative of controlled substance trafficking, with race and economic status representing indicia of guilt.<sup>74</sup> Referencing decades of literature, Douglas Husak writes that “drug offenses constitute the single most important manifestation of our tendency to criminalize too much and to punish too many.”<sup>75</sup>

The second category concerns disorderly conduct violations.<sup>76</sup> Legislatures have defined these offenses broadly; for example, New York’s disorderly conduct statute criminalizes “unreasonable noise,” “obscene language,” and “obscene gesture[s].”<sup>77</sup> Importantly, this category encompasses incidents that often implicate people exhibiting behavioral health symptomology (e.g.,

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<sup>67</sup> Herring, *supra* note 9, at 771.

<sup>68</sup> *Id.*

<sup>69</sup> Farhang Heydari, *The Invisible Driver of Policing*, 76 STAN. L. REV. 1, 19 (2024). The Court legalized this practice in *Whren v. United States*, holding that officers are allowed to stop drivers if they have a legitimate legal basis for doing so. See *Whren v. United States*, 517 U.S. 806, 813 (1996). The Court added that motive is irrelevant to the inquiry. *Id.*

<sup>70</sup> Heydari, *supra* note 69, at 11.

<sup>71</sup> For a sample of foundational legal scholarship on this issue, see generally Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313 (2012) [hereinafter *Misdemeanors 2012*]; Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611 (2014); Alexandra Natapoff, *Misdemeanors*, 11 ANN. REV. L. & SOC. SCI. 255 (2015) [hereinafter *Misdemeanors 2015*]; Sandra G. Mayson & Megan T. Stevenson, *Misdemeanors by the Numbers*, 61 B.C. L. REV. 971 (2020).

<sup>72</sup> See *Misdemeanors 2012*, *supra* note 71, at 1321.

<sup>73</sup> See Kelling & Wilson, *supra* note 54.

<sup>74</sup> See Dorothy E. Roberts, *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOL 775, 809–10 (1999).

<sup>75</sup> DOUGLAS HUSAK, *OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW* 16 (2007).

<sup>76</sup> See *Misdemeanors 2015*, *supra* note 71, at 258.

<sup>77</sup> N.Y. PENAL LAW § 240.20 (McKinney 2025).

agitation, delusions, and mania) that can be perceived as threatening to others.<sup>78</sup> As Jamelia Morgan writes: “[I]ndividuals in mental crises have been charged with disorderly conduct for behaviors that are likely public manifestations of their psychiatric disabilities.”<sup>79</sup>

The third category concerns trespassing, which generally involves entering or remaining on property without appropriate legal authority.<sup>80</sup> Scholars have noted that New York City’s Operation Clean Halls, a program where landlords gave police permission to patrol properties predominantly situated in high-crime neighborhoods, encapsulates what can go wrong with enforcing broad trespassing laws.<sup>81</sup> The initiative, often carried out unconstitutionally, led to thousands of arrests in a matter of years.<sup>82</sup> Its execution resulted in “[m]ultiple lawsuits [that] have generated new rules and police practices.”<sup>83</sup> Yet, as Alexandra Natapoff documents, “other cities maintain comparable policies.”<sup>84</sup> Tens of thousands of people have been arrested per year for minor trespassing violations.<sup>85</sup>

The fourth category is somewhat more amorphous and, like the ones above, traces back to offenses predating the rise of broken windows theory. It includes situations where people are in publicly accessible spaces, such as libraries, parks, and street corners, and are behaving in ways that are discomfiting or suspicious. For example, states criminalize aggressively soliciting people for goods or money (i.e., panhandling).<sup>86</sup> Similarly, states criminalize people who are in spaces without any readily apparent purpose (i.e., loitering).<sup>87</sup> Loitering laws can be defined broadly or aimed at specific target behaviors, such as controlled substance consumption and prostitution.<sup>88</sup>

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<sup>78</sup> See Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. 1637, 1652 (2021).

<sup>79</sup> *Id.*; see Jeffrey W. Swanson, Marvin S. Swartz & Brandon Garrett, *Policing and Behavioral Health Conditions*, 86 LAW & CONTEMP. PROBS., at i (2023).

<sup>80</sup> See NATAPOFF, *supra* note 9, at 99.

<sup>81</sup> See Alexis Karteron, *When Stop and Frisk Comes Home: Policing Public and Patrolled Housing*, 69 CASE W. RESV. L. REV. 669, 683–84 (2019); Deborah N. Archer, *Exile from Main Street*, 55 HARV. C.R.-C.L. L. REV. 788, 811 (2020).

<sup>82</sup> NATAPOFF, *supra* note 9, at 100.

<sup>83</sup> *Id.* at 100–01.

<sup>84</sup> *Id.* at 101.

<sup>85</sup> See *id.* at 100.

<sup>86</sup> See BECKETT & HERBERT, *supra* note 9, at 24.

<sup>87</sup> See *id.* at 41–42.

<sup>88</sup> See *id.* at 42–45 (explaining how Seattle’s ordinance against loitering has targeted controlled substance use and prostitution). Delaware defines loitering as being “in a place at a time or in a manner not usual for law abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity . . . .” DEL. CODE ANN. tit. 11, § 1321(6) (West 2025). Similarly, Georgia defines loitering as being “in

### 3. *The Enduring Faith in Deterrence*

Today's variants of broken windows tactics generally rest on deterrence theory—or, as Herring puts it, “a faith in deterrence to curb low-level criminality.”<sup>89</sup> As Tracey Meares explains, this theorizing emerged from contested debates about behavior and criminality, with law-and-economics thinkers pitted against social norms theorists.<sup>90</sup> Since then, many scholars—even those who supported the broken windows theory at its inception—have recognized the limitations and consequences of those debates.<sup>91</sup> Still, as the *Grants Pass* litigation illustrates, the allure of deterrence endures not necessarily because it offers an intellectually or morally sound basis for crime prevention but because it functions as a rhetorically durable justification for enforcing low-level disorder.<sup>92</sup>

In addition, many researchers, particularly those attentive to the entanglements between policing and the U.S. welfare system, have captured how many broken windows strategies incorporate rehabilitation theory as part of their overarching operational framework.<sup>93</sup> These strategies are “rehabilitative” insofar as they instrumentalize modalities, notably health care modalities, that are not in the traditional policing wheelhouse. Yet rehabilitation in this context has been distorted and reshaped to further deterrence objectives. Illustratively, Forrest Stuart’s ethnography of Los Angeles’s Skid Row district shows how police have subsumed rehabilitation in a deterrence-centric mode of enforcement.<sup>94</sup> Police in Skid Row, according to Stuart, use their authority to coerce and funnel residents into social service programs as a way of

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a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.” GA. CODE ANN. § 16-11-36(a) (West 2025).

<sup>89</sup> Herring, *supra* note 9, at 772; HARCOURT, *supra* note 9, at 27 (highlighting the idea that “fighting minor disorder deters serious crime”).

<sup>90</sup> Tracey Meares, *The Strange History and Impact of Broken Windows*, VITAL CITY (Oct. 25, 2022), <https://www.vitalcitynyc.org/articles/policings-hidden-curriculum> [https://perma.cc/EFW5-7YXD].

<sup>91</sup> *See id.*

<sup>92</sup> *See supra* notes 11–16 and accompanying text.

<sup>93</sup> *See, e.g.*, Wendy A. Bach, *Prosecuting Poverty, Criminalizing Care*, 60 WM. & MARY L. REV. 809, 877 (2019) (documenting how “criminal systems (and criminal system logic) has moved into the social welfare arena and distorted central notions of care that should be at the heart of our social welfare system”). Many of these strategies could indeed be termed “neorehabilitative” insofar as they are coercive and disciplinary in character; for an analysis of this concept, see generally Jessica M. Eaglin, *Against Neorehabilitation*, 66 SMU L. REV. 189 (2013). For an analysis on how to mitigate the risks of this approach, see generally Mary Fan, *Street Diversion and Decarceration*, 50 AM. CRIM. L. REV. 165 (2013).

<sup>94</sup> *See generally* FORREST STUART, *DOWN, OUT, AND UNDER ARREST: POLICING AND EVERYDAY LIFE IN SKID ROW* (2016) (providing a rich ethnographic account of policing in Skid Row).

“restructur[ing] [their] range of potential decisions, deincentiviz[ing] behaviors deemed irresponsible, and compel[ling] the self-discipline that residents have supposedly shirked.”<sup>95</sup> In particular, they leverage their immense enforcement discretion in addition to the threat of sanctions, such as citations, fines, and incarceration, “to try to compel individuals to avail themselves of various social services that might alleviate their poverty or reduce their dependence on controlled substances.”<sup>96</sup>

Accordingly, the ostensible rehabilitative goals of this type of “therapeutic policing” are compatible with the broken windows conception of deterrence. As already established, broken windows interventions seek to alter potential criminal behavior through incentives that are themselves shaped by the threat of sanction.<sup>97</sup> Such is especially true in places like Skid Row, where the success of therapeutic policing efforts is measured primarily based on their crime deterrence effects.<sup>98</sup> This dynamic renders policing a domain in which deterrence and rehabilitation can cohabitate, with the former predominating over the latter. It is, as Stuart writes, “designed to ‘cure’ those at the bottom of the social hierarchy of the individual pathologies deemed responsible for their abject circumstances.”<sup>99</sup>

All in all, Bernard Harcourt is certainly right that broken windows policing is not “modeled on the rehabilitative ideal central to many disciplinary projects, especially that of the mental hospital or welfare and social work institutions.”<sup>100</sup> Nevertheless, rehabilitation reveals itself as a defining feature of the punitive preventive state, despite having been used in service of deterrence goals.

## II. ALTERNATIVE EMERGENCY RESPONSE PROGRAMS

This Part introduces Alternative Responses’ emerging role in the modern American preventive state. Section A describes the nationwide proliferation of Alternative Responses that occurred after the George Floyd protests. Afterward, drawing from fieldwork research in three cities with Alternative Responses, section B analyzes how Alternative Responses do not appear to be “alternatives” to police, as many of their proponents have claimed. Findings reveal that these

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<sup>95</sup> *Id.* at 255.

<sup>96</sup> Herring, *supra* note 9, at 772.

<sup>97</sup> *See supra* notes 86–89 and accompanying text.

<sup>98</sup> *See supra* notes 95–96 and accompanying text.

<sup>99</sup> STUART, *supra* note 94, at 6.

<sup>100</sup> HARCOURT, *supra* note 9, at 149.

programs are in reality entangled with law enforcement agencies and even depend on police to operate successfully.

*A. Claiming a Health-Affirming Public Safety Paradigm*

The murder of George Floyd sparked arguably the largest antipolice movement in the history of the United States.<sup>101</sup> The peak of the protests happened around two weeks after the murder, when some five hundred thousand individuals took to the streets in around 550 jurisdictions; overall, estimates suggest as many as twenty-six million people participated in the mobilization effort.<sup>102</sup> During this movement, advocates leveraged a public health frame to denounce police-inflicted harms against historically marginalized communities.<sup>103</sup> In lockstep with these calls, several jurisdictions formally declared racism as a public health crisis, marking a historically significant step in identifying policing as a determinant of health inequality in the United States.<sup>104</sup> What appeared to emerge was a convergence of activists and policymakers jointly leveraging health and, in particular, public health language as a framework for changing the American policing institution.

Jurisdictions nationwide created Alternative Responses to decrease the footprint of policing in their communities.<sup>105</sup> This development was enthusiastically supported by activists and scholars, including leading abolitionist thinkers who had long advocated for a model of public safety governance that moves away from coercive law enforcement.<sup>106</sup> The speed at which Alternative Responses have been created is also breathtaking. Dozens of jurisdictions have created Alternative Responses since May 2020, spanning towns of a few thousand people to major metropolitan areas.<sup>107</sup>

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<sup>101</sup> See Buchanan, Bui & Patel, *supra* note 19.

<sup>102</sup> *Id.*

<sup>103</sup> See Thalia González, *Race, School Policing, and Public Health*, 73 STAN. L. REV. ONLINE 180, 182–83 (2021).

<sup>104</sup> Dara D. Mendez, Jewel Scott, Linda Adoadaji, Cristina Toval, Monica McNeil et al., *Racism as Public Health Crisis: Assessment and Review of Municipal Declarations and Resolutions Across the United States*, 9 FRONTIERS PUB. HEALTH 78, 80 (2021).

<sup>105</sup> See Tahir Duckett, *The Overlooked, Enduring Legacy of the George Floyd Protests*, TIME (July 12, 2023, at 07:00 ET), <https://time.com/6293747/alternative-first-response-legacy-george-floyd/> [<https://perma.cc/V4R7-8YHL>].

<sup>106</sup> See *supra* note 7 and accompanying text. For an analysis of this issue and a very concrete proposal, see generally Taled El-Sabawi & Jennifer J. Carroll, *A Model for Defunding: An Evidence-Based Statute for Behavioral Health Crisis Response*, 94 TEMP. L. REV. 1 (2021).

<sup>107</sup> See generally INDIVISIBLE EASTSIDE, ALTERNATIVE CRISIS RESPONSE PROGRAMS (2024) (detailing jurisdictions that have implemented Alternative Response programs).

Generally, Alternative Responses are composed of unarmed community workers and licensed health care personnel, such as emergency medical technicians, licensed clinical social workers, and paramedics.<sup>108</sup> Many are inspired by the Crisis Assistance Helping Out On The Streets (CAHOOTS) program in Eugene, Oregon, which was created in 1989 as a partnership between the City of Oregon and the White Bird Clinic, a community-based crisis response provider.<sup>109</sup> Placing responders in community mobile teams, Alternative Responses offer on-the-ground assistance to individuals experiencing nonviolent, often health-related emergencies, including behavioral health crises.<sup>110</sup> Their personnel do not have the authority to arrest or detain people, nor can they give citations or issue formal criminal sanctions.<sup>111</sup>

Commentators have described these “civilian-led” programs as existing outside the domain of policing.<sup>112</sup> These accounts have emphasized the importance of moving away from police-dominated, co-response models in which clinicians and law enforcement jointly respond to incidents.<sup>113</sup> In this way, the narrative about these programs—perhaps driven by the intuition that situating them within law enforcement agencies would ultimately be self-defeating—has attempted to sever Alternative Responses from traditional public safety systems. For instance, in contrast to unarmed crisis response programs created within law enforcement departments during the twentieth century, the public expectation was not that Alternative Responses would aim to improve community–police relationships.<sup>114</sup> Quite the contrary, jurisdictions created Alternative Responses to prevent unnecessary confrontational interactions

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<sup>108</sup> See Katherine Beckett, Forrest Stuart & Monica Bell, *Decarceral Pathways: From Crisis to Care*, INQUEST (Sep. 2, 2021), <https://inquest.org/from-crisis-to-care/> [<https://perma.cc/VG74-7UFB>]; *Civilian Crisis Response: A Toolkit for Equitable Alternatives to Police*, VERA INST. OF JUST. (Apr. 2022) [hereinafter *Civilian Crisis Response*], <https://www.vera.org/civilian-crisis-response-toolkit> [<https://perma.cc/68GU-HD6M>].

<sup>109</sup> Beckett, Stuart & Bell, *supra* note 108; see *What is CAHOOTS?*, WHITE BIRD CLINIC (Oct. 29, 2020), <https://whitebirdclinic.org/what-is-cahoots/> [<https://perma.cc/6SDT-RSJ7>].

<sup>110</sup> See Beckett, Stuart & Bell, *supra* note 108.

<sup>111</sup> See discussion *infra* Section II.B.

<sup>112</sup> See *Civilian Crisis Response*, *supra* note 108.

<sup>113</sup> See *id.*

<sup>114</sup> For an analysis of unarmed crisis response programs created within law enforcement agencies, see generally JEROME H. SKOLNICK & DAVID H. BAYLEY, *THE NEW BLUE LINE: POLICE INNOVATION IN SIX AMERICAN CITIES* (1986).

between police and members of the community<sup>115</sup> and to address the consequences of aggressive policing practices.<sup>116</sup>

Key among these consequences is the risk of detention and incarceration, which are associated with negative health outcomes.<sup>117</sup> Another aim was to mitigate the health-related impacts inherent in policing itself, particularly in the context of behavioral health crises.<sup>118</sup> In the words of the resolution passed by the Oakland City Council to set aside money for the Mobile Assistance Community Responders of Oakland (MACRO): “[A]s many times as police are called for cases with individuals who have mental health issues, a police response can go seriously wrong and even lead to death. Interactions with police add unnecessary stress and tension to a difficult situation . . . .”<sup>119</sup> Accordingly, the movement toward Alternative Responses was evidence-based, insofar as it found support in a growing body of research showing policing to be a driver of health inequality. In their book synthesizing this research, Hannah Cooper and Mindy Thompson Fullilove show that aggressive policing practices have reinforced such inequities across many health domains, with Black people in particular bearing the brunt of these impacts.<sup>120</sup> Police, on Cooper and Fullilove’s account, have carried out their inequity-propagating function through practices that have been deployed in the context of broken windows policing efforts.<sup>121</sup>

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<sup>115</sup> See *Expanding First Response: A Toolkit for Community Responder Programs*, JUST. CTR., <https://csgjusticecenter.org/publications/expanding-first-response/> [<https://perma.cc/SV6T-XL9A>] (last visited Oct. 31, 2025).

<sup>116</sup> See generally, e.g., Maren M. Spolum, William D. Lopez, Daphne C. Watkins & Paul J. Fleming, *Police Violence: Reducing the Harms of Policing Through Public Health-Informed Alternative Response Programs*, 113 AM. J. PUB. HEALTH S37 (2023) (documenting how Alternative Responses were created in response to police-inflicted violence).

<sup>117</sup> See Jamelia N. Morgan, *Psychiatric Holds and the Fourth Amendment*, 124 COLUM. L. REV. 1363, 1384–87 (2024); see, e.g., Michael Massoglia & William Alex Pridemore, *Incarceration and Health*, 41 ANN. REV. SOCIO. 291, 293 (2015); Christopher Wildeman & Emily A. Wang, *Mass Incarceration, Public Health, and Widening Inequality in the USA*, 389 LANCET 1464, 1467 (2017).

<sup>118</sup> See, e.g., Beckett, Stuart & Bell, *supra* note 108 (suggesting Alternative Responses can prevent police from killing people experiencing behavioral health crises); Eric Raffla-Yuan, Divya K. Chhabra & Michael O. Mensah, *Decoupling Crisis Response from Policing—A Step Toward Equitable Psychiatric Emergency Services*, 384 NEJM 1769, 1771 (2021) (noting Alternative Responses can improve outcomes in psychiatric emergencies).

<sup>119</sup> C.M.S. Res. 88433, Oakland City Council (2020).

<sup>120</sup> See generally HANNAH L. F. COOPER & MINDY THOMPSON FULLILOVE, FROM ENFORCERS TO GUARDIANS: A PUBLIC HEALTH PRIMER ON ENDING POLICE VIOLENCE (2020) (detailing the health consequences of aggressive policing practices).

<sup>121</sup> See *id.* at 8.

More specifically, research shows multiple pathways through which these practices harm human health.<sup>122</sup> For example, fatal police violence in the United States—disproportionately involving people with behavioral health conditions<sup>123</sup>—is more prevalent than in other peer countries and accounts for “an exceptionally high proportion” of homicides per year (i.e., around eight percent).<sup>124</sup> Research also shows a very strong association between physical police violence and elevated suicide risk.<sup>125</sup> Additionally, these outcomes spill over into non-law enforcement institutions—most notably health care—when those institutions are perceived to be aligned with police authority.<sup>126</sup> Policing also has public health consequences at the community and neighborhood levels. For example, police violence is associated with worse physical health (e.g., diabetes and high blood pressure) and behavioral health outcomes (e.g., hypervigilance and feelings of worthlessness), “*regardless of whether [residents] personally experienced this kind of violence.*”<sup>127</sup>

### B. *Enmeshments with Police*

“Our overall goal of the program is, number one, to improve positive community–police relations. Okay? But with that, we have to maintain that fine line of neutrality.”<sup>128</sup>

—ALTERNATIVE RESPONSE COORDINATOR, *Dayton, Ohio*

<sup>122</sup> For a sample of research on the association between police practices and health outcomes, see generally Amanda Geller, Jeffrey Fagan & Tom R. Tyler, *Police Contact and Mental Health* (Dec. 2017) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3096076](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3096076) [<https://perma.cc/8HUS-RCTC>]; Pieter Baker, Leo Beletsky, Liliana Avalos, Christopher Venegas, Carlos Rivera et al., *Policing Practices and Risk of HIV Infection Among People Who Inject Drugs*, 42 *EPIDEMIOLOGICAL REVIEWS* 27 (2020); Hedwig Lee, Savannah Larimore & Michael Esposito, *Policing and Population Health: Past, Present, and Future*, *MILBANK Q.*, S1 2023, at 444, 447.

<sup>123</sup> Amam Z. Saleh, Paul S. Appelbaum, Xiaoyu Liu, T. Scott Stroup & Melanie Wall, *Deaths of People with Mental Illness During Interactions with Law Enforcement*, 58 *INT'L J.L. & PSYCHIATRY* 110, 110 (2018). For an account of how the contested diagnosis of excited delirium has been used to explain police killings of people with behavioral health conditions, see generally Osagie K. Obasogie, *Excited Delirium, Policing, and the Law of Evidence*, 138 *HARV. L. REV.* 1497 (2025).

<sup>124</sup> Jordan E. DeVlyder, Deidre M. Anglin, Lisa Bowleg, Lisa Fedina & Bruce G. Link, *Police Violence and Public Health*, 18 *ANN. REV. CLIN. PSYCH.* 527, 533 (2022).

<sup>125</sup> Jordan E. DeVlyder, Jodi J. Frey, Courtney D. Cogburn, Holly C. Wilcox, Tanya L. Sharpe et al., *Elevated Prevalence of Suicide Attempts Among Victims of Police Violence in the USA*, 94 *J. URB. HEALTH* 629, 631 (2017) (reporting “a drastically elevated 12-month prevalence of attempts among adults exposed to sexual or physical police victimization”).

<sup>126</sup> See Sirry Alang, Donna D. McAlpine & Rachel Hardeman, *Police Brutality and Mistrust in Medical Institutions*, 7 *J. RACIAL & ETHN HEALTH DISPARITIES* 760, 763 (2020).

<sup>127</sup> COOPER & FULLILOVE, *supra* note 120, at 94–95 (emphasis added).

<sup>128</sup> Interview with JU (Feb. 2023) (on file with author).

This section demonstrates that Alternative Responses are in reality institutionally enmeshed with police and even depend on them to operate successfully. Accordingly, these programs have become increasingly integral components of the U.S. preventive state, complicating assertions that they would substantively disrupt the status quo.

To support this claim, this section draws on data from forty-eight interviews with fifty individuals with on-the-ground experience with Alternative Responses in three cities: Oakland, California; Dayton, Ohio; and Madison, Wisconsin. Interviewees included Alternative Response personnel themselves, law enforcement officers, 9-1-1 call takers and dispatchers, and community-based social service providers. This section also draws on more than two hundred hours of ethnographic participant observations, including observations in a 9-1-1 call center, formal Alternative Response training sessions, and ride-alongs in Alternative Response vans during live first responses. The Appendix describes the methodology followed for the interviews and observations.

### *1. Alternative Responses Address Quintessential Broken Windows Offenses*

This subsection details how public safety policy requires Alternative Responses to intervene in situations that historically have been the target of broken windows policing efforts. For certain categories of minor, nonviolent incidents, Alternative Response officials and police widely agree that armed law enforcement responses are unnecessary and often counterproductive. Yet other categories are far more controversial. These categories include incidents that are perceived to be potentially more dangerous and hence better suited for police. Several key categories are identified below; real-life examples of Alternative Response interventions are also described to add specificity to the kinds of interventions that Alternative Responses provide.

*Uncontroversial Alternative Response Interventions.* One category that is squarely in Alternative Responses' wheelhouse includes situations that have a "mental health aspect."<sup>129</sup> By and large, these situations include when people exhibit telltale signs of behavioral health distress (e.g., talking to themselves and acting erratically without provocation) but are, in other respects, harmless and nonviolent. Consider this example: An Oakland-based syringe exchange provider reported having interacted with a person during a community outreach

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<sup>129</sup> See, e.g., Interview with CN (Mar. 2023) (on file with author). This term is not technical, and it is not the only one that officials use. It is simply one of many used to denote calls or incidents where someone appears to be experiencing behavioral health symptoms.

session who ended up requiring a response from MACRO because her behavior was making “other participants really uncomfortable.”<sup>130</sup> “[S]he was talking about . . . all of this stuff about Noah’s Ark,” the provider explained.<sup>131</sup> “[S]he was doing a lot of really intense hand movements while screaming—and using a lot of colorful language, shall we say.”<sup>132</sup> She also ended up running “into the middle of a really busy street,” prompting other participants to say that she needed to be controlled and removed from the session immediately.<sup>133</sup>

California’s broadly worded criminal statutes authorize police to intervene in this kind of situation. One such offense might be a misdemeanor public disturbance, defined as “[a]ny person who maliciously and willfully disturbs another person by loud and unreasonable noise.”<sup>134</sup> That definition appears, at least on its face, consistent with the provider’s description of the incident; as already noted, scholars have written at length about how people in behavioral health distress are disproportionately criminalized under public disturbance laws.<sup>135</sup> Yet this incident never prompted a response from the Oakland Police Department (OPD); instead, MACRO was called on to intervene.<sup>136</sup> Responders “[t]ook the time to just work with this person[,] . . . not actually forcing her to do anything,” the provider explained; rather, they “[were] just making sure she stayed safe while she was in this really unsafe mindset.”<sup>137</sup>

A second category of incidents includes simple “well-being checks,” colloquially called “welfare calls” or “check person.”<sup>138</sup> These incidents are heterogeneous. They can include a number of issues, such as when people are sitting or sleeping on sidewalks or simply when members of the community are worried about someone else’s health, safety, or well-being.<sup>139</sup> Consider this example: Staff at a coffee shop in downtown Oakland contacted MACRO to report concerns about a person who seemed to be experiencing behavioral health

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<sup>130</sup> Interview with ZE (Feb. 2023) (on file with author).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> CAL. PENAL CODE § 415(2) (West 2025).

<sup>135</sup> See, e.g., LIAT BEN-MOSHE, *DECARCERATING DISABILITY: DEINSTITUTIONALIZATION AND PRISON ABOLITION* 145–47 (2020); see also *supra* notes 76–79 and accompanying text (discussing the criminalization of disorderly conduct).

<sup>136</sup> Interview with ZE, *supra* note 130.

<sup>137</sup> *Id.*

<sup>138</sup> See Interview with BM (Mar. 2023) (on file with author).

<sup>139</sup> See *Welfare Checks*, POLICING PROJECT, <https://www.safetyreimagined.org/papers/welfare-checks> [<https://perma.cc/89DC-HEV4>] (last visited Oct. 16, 2025).

issues.<sup>140</sup> Once on scene, MACRO responders found the woman, who identified herself as having a history of schizophrenia, sitting on a chair on the sidewalk.<sup>141</sup> She did not appear to be in distress.<sup>142</sup> Yet the coffee shop staff reported having observed her sitting outside most of the day, at times being loud and exhibiting signs of delusions or hallucinations.<sup>143</sup> Following a brief medical check, and at the woman's request, MACRO transported her to Amber House, a crisis residential facility that provides behavioral health services, for assistance.<sup>144</sup>

This situation might also have been resolved differently with a response from the OPD rather than MACRO. California law criminalizes anybody who "loiters . . . upon the private property of another, at any time, without visible or lawful business with the owner or occupant."<sup>145</sup> Similarly, Oakland municipal law criminalizes people who "loiter or stand in or upon any . . . sidewalk . . . in such manner as to obstruct or unreasonably interfere with the free passage of pedestrians . . ." <sup>146</sup> Yet, rather than interacting with police and possibly being penalized for her conduct, the woman received noncoercive, proactive assistance from MACRO responders.<sup>147</sup>

*Controversial Alternative Response Interventions.* Although agreement exists about the appropriateness of Alternative Response interventions for behavioral health issues and well-being checks, other incident categories are controversial. These categories, which themselves often implicate people in the midst of health-related crises or unwellness, remain contested due to their presumed threat level as well as the perceived legal necessity for armed police responses. That said, they are increasingly understood as manifestations of socially determined conditions like illness and poverty.<sup>148</sup> Furthermore, the

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<sup>140</sup> The Mobile Assistance Community Responders of Oakland Response Data (Aug. 29, 2023) [hereinafter MACRO Data] (on file with author).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> CAL. PENAL CODE § 647(h) (West 2025).

<sup>146</sup> OAKLAND CODE OF ORDINANCES § 9.08.170 (2025).

<sup>147</sup> See MACRO Data, *supra* note 140.

<sup>148</sup> See, e.g., Dan Werb, *Post-War Prevention: Emerging Frameworks To Prevent Drug Use After the War on Drugs*, 51 INT'L J. DRUG POL'Y 161, 161 (2017) (discussing controlled substance use as being socially determined); CHARLEY E. WILLISON, *UNGOVERNED AND OUT OF SIGHT: PUBLIC HEALTH AND THE POLITICAL CRISIS OF HOMELESSNESS IN THE UNITED STATES* 28 (2021) (discussing how the preferences of political-economic elites impact citywide decision-making, including homeless policy).

public more generally increasingly recognizes that these problems necessitate noncoercive public safety responses rather than criminalization.<sup>149</sup>

Situations implicating people under the influence of alcohol or illicit controlled substances constitute one such category. Consider this example: MACRO responded to a complaint in the middle of a sunny June afternoon that involved a man of no more than fifty years of age who had fallen asleep on a stranger's lawn.<sup>150</sup> The man was lying on his back with his shirt up, revealing his stomach; his shoes were off.<sup>151</sup> The responders agreed that the man "seem[ed] to be high on drugs," not least because he had difficulty staying awake and answering questions.<sup>152</sup> He also had track marks on his arms and scabs on his hands in addition to rather conspicuous hand swelling—a well-known symptom of persistent intravenous drug use.<sup>153</sup> After being told that he could not stay on the property and that doing so might eventually prompt a response from the OPD, the man eventually appeared to be responsive and requested to be brought to the nearest subway station.<sup>154</sup> MACRO agreed with this plan and drove the man to a nearby station.<sup>155</sup>

In California, much like in Ohio, Wisconsin, and many other states, controlled substance possession and use continue to be crimes, with marijuana being an exception under many state criminal codes.<sup>156</sup> Drug paraphernalia laws can also be enforced; for example, California law makes it "unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking . . . a controlled substance."<sup>157</sup> Furthermore, possession and use of certain controlled substances that are otherwise legalized in many states (e.g., marijuana) continue to be criminalized under the federal

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<sup>149</sup> See, e.g., Gary Langer, *Biden Is Rated Poorly on Handling Crime; Alternative Approaches Win Broad Favor: POLL*, ABC NEWS (July 2, 2021, at 06:00 ET), <https://abcnews.go.com/Politics/biden-rated-poorly-handling-crime-alternative-approaches-win/story?id=78609540> [<https://perma.cc/D892-F7AB>] (showing that sixty-five percent of respondents in the United States generally support replacing police in "situations with people having emotional problems").

<sup>150</sup> Benjamin A. Barsky, Field Notes from Oakland, California (June 19, 2023) (on file with author).

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *See id.*

<sup>154</sup> *See id.*

<sup>155</sup> *Id.*

<sup>156</sup> See *Drug Criminalization Impacts*, DRUG POL'Y ALL., <https://drugpolicy.org/decriminalization-legislation/> [<https://perma.cc/854N-9DDP>] (last visited Oct. 13, 2025); see also Jennifer D. Oliva, *Decriminalizing Cannabis*, 134 YALE L.J.F. 942, 943–44, 948 (2025) (noting legalized medicinal cannabis use in thirty-eight states and recreational use in twenty-four states).

<sup>157</sup> CAL. HEALTH & SAFETY CODE § 11364(a) (West 2025).

Controlled Substances Act.<sup>158</sup> As previously noted, enforcement of these laws has historically been a focus of broken windows policing efforts.<sup>159</sup>

The persistent widespread criminalization of illicit controlled substances complicates Alternative Response interventions. On the one hand, the example of the man lying on the lawn illustrates how some Alternative Responses can intervene in situations that implicate controlled substance use.<sup>160</sup> That authority may be exercised most frequently in cities where rates of controlled substance use and drug-related overdoses are known to be high, including among people experiencing homelessness.<sup>161</sup> Moreover, research suggests that even in states where all illicit controlled substances are illegal, emergency communicators have some discretion to dispatch Alternative Responses for minor substance-related incidents. As a 9-1-1 official explained, “that is totally a sliding scale”<sup>162</sup>:

[F]or instance, in my city, . . . weed is decriminalized, nobody gives a fuck about it. . . . [I]f somebody found a small amount of weed in their teenager’s room, I am not sending cops. I am not going to do that. Now, if you say that you found crack cocaine in your son’s room, we have a different problem.<sup>163</sup>

At the same time, evidence reveals variation in how emergency communications officials treat such situations. For instance, another official from the very same jurisdiction emphasized the following: “Anything with drugs, we always treat as a police response. . . . [W]e need to send officers to get the drugs at least[;] at the very basic of it, they have to confiscate the drugs.”<sup>164</sup> Accordingly, communicators themselves appear to perceive the dangerousness of illicit controlled substances differently. Some may fear that they can be sold to youth or other vulnerable people, or that they can lead to problems like

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<sup>158</sup> See Benjamin A. Barsky, *Internet Drug Prohibition and the Opioid Overdose Crisis*, 99 WASH. L. REV. 361, 390–91 (2024); see also Eileen Sullivan, *The U.S. Is Easing Marijuana Restrictions. Here’s How It Works.*, N.Y. TIMES (May 16, 2024), <https://www.nytimes.com/2024/05/16/us/politics/marijuana-schedule-drug-biden.html> [<https://perma.cc/A979-QPQ3>] (noting that efforts to reschedule marijuana from Schedule I of the Controlled Substances Act to Schedule III are underway).

<sup>159</sup> See *supra* notes 71–77 and accompanying text.

<sup>160</sup> See *supra* notes 150–55 and accompanying text.

<sup>161</sup> See, e.g., Ariel Boone, *Special Report on Opioid Crisis in Oakland’s Unhoused Community: Voices of Overdose and Survival*, USC ANNENBERG CTR. FOR HEALTH JOURNALISM (Oct. 11, 2021), <https://centerforhealthjournalism.org/our-work/reporting/special-report-opioid-crisis-oaklands-unhoused-community-voices-overdose-and> [<https://perma.cc/M2FQ-NQAY>] (documenting controlled substance use and drug-related overdoses in Alameda County).

<sup>162</sup> Interview with RK (Nov. 2023) (on file with author).

<sup>163</sup> *Id.*

<sup>164</sup> Interview with ED (Sep. 2023) (on file with author).

overdoses. Or the contradiction may relate to the persistent moral dilemma surrounding the appropriateness of nonprescription controlled substance use. Whatever the reason, heterogeneity exists in how Alternative Responses address drug-related offenses across and within jurisdictions. This heterogeneity is consistent with broader legal debates and tensions around illicit controlled substances, with some jurisdictions defaulting to armed law enforcement approaches and others turning to noncoercive first-response approaches.<sup>165</sup>

The second controversial category of incidents involves complaints of trespassing, which overlap with a range of Alternative Response interventions, including those described above (e.g., well-being checks and controlled substance incidents). Consider this example: MACRO was dispatched to an early morning call implicating a person sleeping in a private parking spot.<sup>166</sup> Once arrived, the responders encountered a middle-aged man lying on the ground seemingly asleep next to a bike.<sup>167</sup> The emergency medical technician approached him to gauge his well-being.<sup>168</sup> After slowly waking up, evidently frazzled by the interaction, the man appeared responsive.<sup>169</sup> He ultimately informed the responder that he was off his medications; he reported having a history of psychiatric hospitalizations, including for bipolar disorder and schizophrenia.<sup>170</sup> More urgently, because he had been off his medications for a long time, he informed the responder that he wanted to harm himself.<sup>171</sup> Per program protocols, the responder initiated emergency psychiatric hospitalization procedures, which necessitated calling the OPD to take over the scene.<sup>172</sup> Two police officers arrived within ten minutes, followed shortly by the ambulance that would eventually bring the man to a hospital.<sup>173</sup>

Situations such as this one are *prima facie* covered under state trespassing laws. California prohibits “[e]ntering and occupying real property or structures of any kind without the consent of the owner, the owner’s agent, or the person

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<sup>165</sup> See generally Katherine Beckett, Monica Bell & Forrest Stuart, *Beyond Harm Reduction Policing, in* DRUG LAW ENFORCEMENT, POLICING AND HARM REDUCTION: ENDING THE STALEMATE 215, 215–33 (Matthew Bacon & Jack Spicer eds., 2023) (detailing differences in public safety responses to drug-related issues).

<sup>166</sup> Benjamin A. Barsky, Field Notes from Oakland, California (Oct. 30, 2023) [hereinafter Field Notes from Oakland] (on file with author).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

in lawful possession.”<sup>174</sup> The state also criminalizes “[e]ntering upon private property . . . after having been informed . . . that the property is not open to the particular person” or “refusing or failing to leave the property upon being asked to leave the property in the manner provided . . . .”<sup>175</sup> Like controlled substance offenses, misdemeanor trespassing violations represent some of the most common broken windows offenses.<sup>176</sup>

That situation, which occurs frequently in the world of Alternative Responses, demonstrates the very challenging role that these programs must assume in health-related emergencies. Bringing someone to an institutional psychiatric setting is not necessarily an outcome to celebrate, given the well-documented quality of care deficiencies that occur in these settings more generally.<sup>177</sup> At the same time, had MACRO not been available, police would likely have been the ones responding to the incident, increasing the likelihood that an outcome other than emergency psychiatric hospitalization would have occurred, such as an arrest, a citation, or another formal legal sanction. Instead, MACRO’s responders were able to stay on scene throughout the man’s interaction with the officers, making sure that he was safe.<sup>178</sup>

A third category of highly controversial offenses includes indecent exposure allegations, which can also implicate people in health-related distress. Consider this scenario: MACRO responded to a request from the OPD to respond to a complaint about a man alleged to be naked under a blanket near a school.<sup>179</sup> The responders eventually found a man matching the description in a nearby school parking lot.<sup>180</sup> They attempted to speak with him, but he proved agitated, screaming to the responders about needing money for food.<sup>181</sup> Despite attempting to refer him to nutrition assistance programs, the man declined the offer, insisting that he wanted money rather than services.<sup>182</sup> The team informed him of laws against nudity, and, ultimately, he put on clothes while protesting and hurling epithets at the responders before leaving the scene.<sup>183</sup>

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<sup>174</sup> CAL. PENAL CODE § 602(m) (West 2025).

<sup>175</sup> *Id.* § 602(t)(1) (West 2025).

<sup>176</sup> See *supra* notes 80–85 and accompanying text.

<sup>177</sup> See Morgan C. Shields, Maureen T. Stewart & Kathleen R. Delaney, *Patient Safety in Inpatient Psychiatry: A Remaining Frontier for Health Policy*, 37 HEALTH AFFS. 1853, 1854 (2018).

<sup>178</sup> Field Notes from Oakland, *supra* note 166.

<sup>179</sup> MACRO Data, *supra* note 140.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

California criminal law prohibits anyone from “expos[ing] his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby.”<sup>184</sup> Similarly, Oakland’s Code of Ordinances prohibits any person from “[e]xpos[ing] his or her private parts or buttocks” in a “place open to the public” or “open to the public view.”<sup>185</sup> Persons, including misdemeanants, who are found guilty of an indecent exposure violation in California are required to be on the state’s sex offender registry for at least ten years.<sup>186</sup> Registered sex offenders usually must have, among other things, their names and offenses available online.<sup>187</sup> The literature suggests that having publicly available information on registered sex offender registries can lead to a suite of outcomes, including harassment, job-related difficulties, and significant psychosocial distress.<sup>188</sup> Failure to register on the sex offender registry can also trigger further criminal penalties.<sup>189</sup>

Part I described how broken windows policing efforts have focused on offenses like controlled substance use, loitering, and trespassing.<sup>190</sup> However, amid growing public concern over the U.S. homelessness crisis, enforcement of broken windows laws has increasingly targeted minor indecent exposure incidents.<sup>191</sup> Sara Rankin observes that this trend is fueled by “laws that prohibit or severely restrict one’s ability to engage in necessary life-sustaining activities in public, even when that person has no reasonable alternative,” which includes “going to the bathroom.”<sup>192</sup> As a result, in contexts, such as Oakland, where homelessness is prevalent, urinating or defecating in public is a common, everyday occurrence.<sup>193</sup> Perhaps unsurprisingly, many homeless sex offenders

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<sup>184</sup> CAL. PENAL CODE § 314(1) (West 2025).

<sup>185</sup> OAKLAND CODE OF ORDINANCES § 9.28.040 (2025).

<sup>186</sup> CAL. PENAL CODE § 290(d) (West 2025).

<sup>187</sup> See, e.g., Mary P. Brewster, Philip A. DeLong & Joseph T. Moloney, *Sex Offender Registries: A Content Analysis*, 24 CRIM. JUST. POL’Y REV. 695, 703–04 (2013) (documenting what must be made available on online sex offender registries).

<sup>188</sup> See, e.g., Richard Tewksbury & Matthew Lees, *Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences*, 26 SOCIO. SPECTR 309, 332 (2006) (documenting repercussions of registration and discussing resulting stigmatization); Jill S. Levenson, David A. D’Amora & Andrea L. Hern, *Megan’s Law and Its Impact on Community Re-Entry for Sex Offenders*, 25 BEHAV. SCI. & L. 587, 590–91 (2007) (noting collateral consequences of registration on convicted sex offenders).

<sup>189</sup> See, e.g., CAL. PENAL CODE § 290(e) (West 2025) (describing penalties for failing to register on the sex offender registry).

<sup>190</sup> See discussion *supra* Section I.B.

<sup>191</sup> See Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 106–07, 127 n.161 (2019).

<sup>192</sup> *Id.* at 107.

<sup>193</sup> See Anna Gorman & Kaiser Health News, *Medieval Diseases Are Infecting California’s Homeless*, ATLANTIC (Mar. 11, 2019, at 16:23 ET), <https://www.theatlantic.com/health/archive/2019/03/typhus-tuberculosis-medieval-diseases-spreading-homeless/584380> [<https://perma.cc/2MWJ-R7RF>]; Eliza Partika,

also reside in California<sup>194</sup> despite a Supreme Court of California decision intended to improve housing accessibility for this population.<sup>195</sup>

The example above suggests that Alternative Responses, like MACRO, have authority to respond to some indecent exposure incidents.<sup>196</sup> That said, fieldwork in Dayton and Madison has revealed that their Alternative Responses have not explicitly focused on such incidents, once again underscoring heterogeneity in the incidents that programs focus on. The upshot, then, seems to be that Alternative Responses may be called on to respond to indecent exposure incidents in some but not all contexts, including those where indicia of behavioral health distress or other health-related needs may be at issue. But the boundaries defining when such interventions are appropriate versus armed law enforcement responses are ambiguous and contested.

## 2. *Public Safety Technologies Tether Alternative Responses to Police*

This subsection substantiates how public safety technologies tether Alternative Responses to police. First, it examines how 9-1-1—an emergency communication technology that is vital to everyday police work—shapes Alternative Response interventions and operations. Second, it analyzes how Alternative Response personnel and police use the same technologies when providing on-the-ground responses to people in crisis.

*Dependence on Police-Centric Emergency Communication Systems.* Many Alternative Responses depend on the 9-1-1 emergency communication infrastructure, which is governed by law enforcement logics and police-created protocols. The 9-1-1 dispatching process—beginning in 9-1-1 call centers that

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*How Three Cities Are Struggling To Provide Restrooms for the Unhoused*, BAY NEWS RISING (Sep. 21, 2021), <https://baynewsrising.org/2021/09/21/how-three-cities-are-struggling-to-provide-restrooms-for-the-unhoused/> [<https://perma.cc/W8KR-UBDJ>]. For a discussion on how the lack of publicly accessible bathrooms is a determinant of this issue, see generally Richard Weinmeyer, *Lavatories of Democracy: Recognizing a Right to Public Toilets Through International Human Rights and State Constitutional Law*, 26 U. PA. J. CONST. L. 123 (2023).

<sup>194</sup> See *California Seeks to Solutions to Homeless Sex Offender Rate*, CBS NEWS: SACRAMENTO (July 29, 2017, at 11:54 PT), <https://www.cbsnews.com/sacramento/news/homeless-california-sex-offender-rate/> [<https://perma.cc/7G6H-2LK3>].

<sup>195</sup> See *id.*; *In re Taylor*, 60 Cal. 4th 1019, 1042 (Cal. 2015) (finding mandatory residency restrictions on registered sex offenders unconstitutional).

<sup>196</sup> See *supra* notes 179–83 and accompanying text; see also *Mobile Assistance Community Responders of Oakland (MACRO)*, CITY OF OAKLAND [hereinafter *MACRO*], <https://www.oaklandca.gov/projects/macro-mobile-assistance-community-responders-of-oakland> [<https://perma.cc/YKQ9-MJEN>] (last visited Oct. 13, 2025) (listing indecent exposure as an issue to which MACRO can respond).

are sometimes located in law enforcement departments—is crucial for Alternative Response operations because it dictates the allocation of interventions by police versus Alternative Responses.<sup>197</sup> That process follows a broadly accepted principle: If a call is interpreted as presenting a sufficiently high risk of danger (e.g., assault, domestic violence allegations, or robbery), then police must respond; Alternative Response interventions are ruled out.<sup>198</sup>

To assess the level and risk of danger, 9-1-1 personnel screen incoming calls for factors like threats of violence to self or others.<sup>199</sup> By and large, emergency communications personnel will err on the side of caution and call on police to make a response.<sup>200</sup> One communicator reflected on the complexity of dispatching an Alternative Response for seemingly innocuous situations that can theoretically be dangerous, such as when “checking on someone whose mail is piling up and they are not answering the door.”<sup>201</sup> “I still cannot wrap my head around that at all,” they emphasized.<sup>202</sup> “I am thinking, as a dispatcher, what if I send [Community Alternative Response Emergency Services (CARES)] out to that and the person inside of there is still in the middle of being murdered and now they are attacked? We are always trying to look for the worst, and now they want us to not do that.”<sup>203</sup>

Outside of situations that are interpreted as dangerous, however, 9-1-1 personnel have latitude to dispatch Alternative Responses on scene.<sup>204</sup> What is more, police themselves are authorized to ask 9-1-1 to divert calls away from them and toward Alternative Responses, making police constitutive of the 9-1-1 dispatching process.<sup>205</sup> One officer in Madison explained during an interview:

“[O]fficers are dispatched to things that they recognize as being CARES appropriate, but because dispatch starts by dispatching police, the police officer’s first question is, . . . is CARES

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<sup>197</sup> See AMOS IRWIN & RACHAEL EISENBERG, DISPATCHING COMMUNITY RESPONDERS TO 911 CALLS 2, 4–5 (2023) (detailing the police dispatch process and providing guidelines for cities to adapt systems to integrate community responder models into first response services).

<sup>198</sup> See Benjamin A. Barsky, Craig Konnoth & Michael Ashley Stein, *Disability, Race, and Health Beyond the Carceral State*, 122 MICH. L. REV. 1261, 1267 (2024).

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* One emergency communication official summarized this idea crisply: “When in doubt, send them out.” Interview with BG (Mar. 2023) (on file with author).

<sup>201</sup> Interview with BG, *supra* note 200.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> Barsky, Konnoth & Stein, *supra* note 198, at 1276.

<sup>205</sup> See, e.g., Interview with BG, *supra* note 200.

available? . . . [T]he officer will sometimes be asking the dispatcher, can you hold that call for CARES?”<sup>206</sup>

What results is a system of triaging where danger is the metric on which 9-1-1 decisions turn. Dangerousness, however, is not value-free—it “permeate[s] the government’s implementation of its police power,” explains Christopher Slobogin.<sup>207</sup> More to the point, dangerousness is precisely what distinguishes less serious disorder from more serious disorder.<sup>208</sup> Emergency communication personnel have thus internalized, as part of their everyday work responsibilities, the task of distinguishing gradients of disorder and allocating the lowest-risk kind to Alternative Responses. At the same time, broken windows policing rests on the idea that criminal law enforcement should focus on exactly these kinds of low-risk, nonviolent incidents. Consequently, Alternative Responses end up responding to precisely the kinds of offenses that have been targeted by broken windows efforts.<sup>209</sup>

*Sharing of Identical Technological Tools.* Alternative Responses also use many of the same technologies that police rely on to inform criminal enforcement decision-making. This very peculiar form of “embeddedness,” in which Alternative Response operations are integrated into preexisting law enforcement infrastructure through technology, ultimately blurs the line between the two entities.<sup>210</sup> Perhaps most saliently, many Alternative Responses and police are connected through CAD systems.<sup>211</sup> CAD is foundational to emergency communication and public safety administration because it enables officials across agencies to communicate with one another.<sup>212</sup>

Officials use CAD systems to record calls, assign priority levels to these calls, locate available first responders, and dispatch the most appropriate

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<sup>206</sup> Interview with NM (May 2023) (on file with author).

<sup>207</sup> Christopher Slobogin, *A Jurisprudence of Dangerousness*, 98 NW. U. L. REV. 1, 1 (2003).

<sup>208</sup> Avlana Eisenberg notes that “[r]isk and danger are often used synonymously in policing discourse.” Avlana K. Eisenberg, *Policing the Danger Narrative*, 113 J. CRIM. L. & CRIMINOL 473, 518 n.240 (2023) (citing Michael Sierra-Arevalo, *American Policing and the Danger Imperative*, 55 LAW & SOC’Y REV. 70, 73–74 (2021)).

<sup>209</sup> See discussion *supra* Section II.B.1.

<sup>210</sup> Embeddedness refers specifically to the integration of and access to police-generated information and resources. See Interview with KM (Aug. 2023) (on file with author). At the same time, the level of embeddedness can mean that “in the long term [Alternative Response personnel] just become mini police officers.” *Id.*

<sup>211</sup> See IRWIN & EISENBERG, *supra* note 197, at 4–5; Second Interview with TW (Jan. 2023) (on file with author) (describing that CAD can allow Alternative Responses to ascertain information about callers).

<sup>212</sup> See LAW ENF’T INFO. TECH. STANDARDS COUNCIL, STANDARD FUNCTIONAL SPECIFICATIONS FOR LAW ENFORCEMENT COMPUTER AIDED DISPATCH (CAD) SYSTEMS, at vii–viii, 2 (2006) (explaining the purpose of CAD systems and how they work).

personnel on scene.<sup>213</sup> CAD systems also keep a history of calls—including who made them and the addresses referenced—which is information that 9-1-1 emergency communication personnel use to determine the appropriateness of Alternative Responses versus police.<sup>214</sup> Alternative Response personnel and police, for their part, may receive messages created by CAD systems via their mobile data terminals or radios.<sup>215</sup> That way, they are aware of the specifics of complaints, allowing them to be more prepared and effective once on scene.<sup>216</sup>

Furthermore, in jurisdictions like Dayton, Alternative Response personnel and police can communicate with one another directly via their radios. One official emphasized: “[W]e have the same computer and radio system as police, so the portable laptops that they have in their cars we have those in ours.”<sup>217</sup> That feature was described as a significant operational advantage:

[I]n Dayton, it was . . . kind of best-case scenario for ease of implementation that Mediation Center is actually a city agency. . . . [O]ne of the things that that meant was that we could get them integrated into . . . police radios without going through a lot of [complications] . . . .<sup>218</sup>

Even in other cities, such as Madison and Oakland, where Alternative Responses and police cannot communicate with each other via radio directly, 9-1-1 communicators are able to manage and mediate conversations between both parties if they are needed.<sup>219</sup> In fact, personnel who work within 9-1-1 are accustomed to managing conversations between police and other public safety agencies like firefighters and emergency medical service providers because law enforcement radios are usually inaccessible to other parties.<sup>220</sup>

Because Alternative Responses and police are connected through foundational emergency communication systems like CAD and sometimes even radios, police can theoretically know where Alternative Responses are at all

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<sup>213</sup> *See id.* at 3.

<sup>214</sup> *See id.* at 4, 15–16.

<sup>215</sup> *See id.* at 25–26.

<sup>216</sup> *Id.* at 8.

<sup>217</sup> Interview with JU, *supra* note 128.

<sup>218</sup> Interview with IG (Jan. 2023) (on file with author).

<sup>219</sup> *See* TRANSFORM 911, TRANSFORMING 911: ASSESSING THE LANDSCAPE AND IDENTIFYING NEW AREAS OF ACTION AND INQUIRY 8 (2025) (detailing how 9-1-1 officials communicate with Alternative Responses and police and triage calls).

<sup>220</sup> *See* B.S. Manoj & Alexandra Hubenko Baker, *Communication Challenges in Emergency Response*, COMM’NS ACM, Mar. 2007, at 51, 51.

times and vice versa. That proximity, mediated by technology, complicates the extent to which Alternative Responses can operate autonomously from police. If anything, police maintain a kind of omnipresence during Alternative Response interventions, doing so often—if not always—on the logic that danger and violence are always around the corner. That logic shapes the protocols and first-response intervention modalities that Alternative Responses follow when responding to incidents.

### 3. *Intricate Interagency Dynamics Bind Alternative Responses to Police*

This subsection details how intricate interagency relationships and structures bind Alternative Responses to law enforcement departments. First, it details how law enforcement officials can have a very important role in the creation, design, and implementation of Alternative Responses. Second, it explains how and why Alternative Responses must acquire the approval and goodwill of police to operate effectively and efficiently. These findings highlight the relationship of dependence that Alternative Responses have with police, which renders them vulnerable to continued police support for their endurance and survival as public safety interventions.

*Police Involvement in Alternative Response Creation.* Law enforcement departments have been intimately involved in the creation of Alternative Responses, even in contexts where communities called for an intervention completely separate from the law enforcement apparatus. Consequently, the scope of these programs is bound by law enforcement decision-making authority and legitimated by the preferences of police. Take Dayton’s Mediation Response Unit (MRU) as an illustrative case study.<sup>221</sup> Shortly after the murder of George Floyd, the Dayton City Commission announced a multipronged initiative centered on law enforcement reform that included various constituents, including members of the community and the Dayton Police Department (DPD).<sup>222</sup> One group, the Community Engagement Working Group, ultimately advocated for an initiative that would “dispatch[] alternative responders for nonviolent calls on issues including . . . mental health, homelessness, drug addiction, panhandling, and intoxication.”<sup>223</sup> The City of Dayton accepted that

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<sup>221</sup> *Police Reform*, DAYTON, <https://www.daytonohio.gov/policereform> [<https://perma.cc/U8TU-JLJA>] (last visited Oct. 13, 2025).

<sup>222</sup> *See id.*

<sup>223</sup> Memorandum from Comm’r Christopher L. Shaw to Mayor Nan Whaley, Comm’r Matt Joseph, Comm’r Jeffrey J. Mims, Jr. & Comm’r Darryl Fairchild, Police Reform Working Grp. Recommendations (Oct.

group's recommendation and approved the creation of what would become the MRU and eventually be housed within the Dayton Mediation Center.<sup>224</sup>

On the one hand, policymakers "wanted to ensure that [the MRU] did not look like a lot of the other programs that existed [across the country] in that they would primarily only be responding to mental health and White individuals," explained a senior Dayton official who was involved in the Community Engagement Working Group.<sup>225</sup> "They did not want the goal to be lost in the work," the official explained, "which was to decrease the instances of the police interacting with the Black community."<sup>226</sup> At the same time, the city's law enforcement department insisted that it derive benefits from the program if it was to exist: "[F]or [the MRU] to get the support that it needed from police, some people felt like [it] needed to be touted as how it would help them instead of touting the goal of less police will be interacting in a negative way with the Black community."<sup>227</sup>

As such, when the time came for the MRU's implementation, law enforcement officials were called on to make key design decisions. That process started with leadership from the Dayton Mediation Center, the DPD, and the Montgomery County Sheriff's Office coming together to address foundational programmatic matters.<sup>228</sup> "[T]hat working group built really tight relationships" meeting every week for several months, explained an interviewee who was engaged in the MRU's implementation.<sup>229</sup> Furthermore, when leadership encountered questions that had legally relevant facets, they would seek guidance from a senior law enforcement lawyer.<sup>230</sup> Those questions related to a variety of domains relevant to the MRU, including determining whether responders could possess means (e.g., pepper spray) to defend themselves, identifying appropriate call types, and implementing particular training protocols.<sup>231</sup> As recounted by the lawyer: "They would ask me questions, and then they would build around

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27, 2020), <https://www.daytonohio.gov/DocumentCenter/View/10020/October-22-2020-Engagement-Working-Group-Recommendation-Memo> [<https://perma.cc/377L-63VA>].

<sup>224</sup> See Memorandum from Ariel Walker, Dir., Off. of the City Comm'r, to Police Reform Working Grp., Recommendation on Alt. Dispatch 1 (Nov. 24, 2020), <https://daytonohio.gov/DocumentCenter/View/10152/November-24-2020-Engagement-Working-Group-Recommendation-Response> [<https://perma.cc/KE79-U3Z5>].

<sup>225</sup> Interview with PH (Jan. 2023) (on file with author).

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> Interview with IG, *supra* note 218.

<sup>229</sup> *Id.*

<sup>230</sup> See Interview with QD (Mar. 2023) (on file with author).

<sup>231</sup> See *id.* (describing the need to receive police-style training before carrying pepper spray).

my answer. And then over time, it became a thing . . . .”<sup>232</sup> That process, in which law enforcement officials had great decision-making authority over the direction of the MRU, occurred over the span of at least two years.<sup>233</sup>

Crucially, evidence reveals that law enforcement personnel tasked the MRU directly to respond to incidents that are covered by state criminal codes. In Dayton, the rule of thumb used to determine appropriate MRU responses was whether a “crime of violence” is at issue, in which case police officers have to respond.<sup>234</sup> Accordingly, the question is not whether a crime per se is in process but whether responders would be subjecting themselves or the public to any risk of violence. Counsel from DPD recognized as much: “[The city] had certain crimes . . . , very low-end stuff . . . that someone could be charged with . . . . [T]hey are not major things. And those are things that we did not have any issues [with].”<sup>235</sup>

Finally, early partnerships between Alternative Response leadership and police are not unique to Dayton. Evidence from Madison and Oakland shows active law enforcement involvement at the start of Alternative Response implementation. For example, before the launch of Madison’s CARES, the Madison Police Department had conducted a behavioral health needs assessment in the city that ultimately shaped where the program would focus its attention.<sup>236</sup> Likewise, OPD leadership was key in deciding what types of calls would be appropriate for MACRO and what calls would be beyond its scope.<sup>237</sup> Other evidence reveals police involvement in initial program evaluation efforts and in supervision structures integrating crisis personnel into both Alternative Responses and police units.<sup>238</sup>

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<sup>232</sup> *Id.*

<sup>233</sup> *Id.* (“[T]hey would say, ‘I think this is a legal issue that we should ask [me] about,’ and then we’d have that conversation. Now, we had that conversation . . . over a two-year period, right? And so if you think about two years of a question here and there, . . . I think about [my involvement] a little differently.”).

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> See Interview with QP (May 2023) (on file with author).

<sup>237</sup> See Haaziq Madyun, *New First Response Program Hits Oakland Streets*, KRON4 (Apr. 18, 2022, at 20:04 PT), <https://www.kron4.com/news/bay-area/new-first-response-program-hits-oakland-streets/> [<https://perma.cc/CG4R-FST5>].

<sup>238</sup> See Interview with QP, *supra* note 236 (describing the work of a steering committee focused on early data and evaluation, which involved meetings with police representatives and analysts for behavioral-health call data); Interview with FV (May 2023) (on file with author) (describing “supervis[ing] the crisis workers that are embedded with Madison Police and Dane County Sheriff as well as the crisis workers on the CARES team”).

*Necessity of Approval from and Cooperation with Police.* Alternative Responses require approval from and cooperation with law enforcement departments to operate effectively on a day-to-day basis. An Alternative Response official crisply articulated that reality: “[I]t has been a tight rope to walk . . . [W]e want to leave politics out as much as possible because it is already a political football . . .”<sup>239</sup> “[W]e do not want to antagonize the police,” the official continued, “[W]e have to cooperate with the police.”<sup>240</sup> But this tension raises complicated programmatic considerations, another official emphasized:

How do we maintain our independence and integrity yet fully work in collaboration with the police yet know [some] community members . . . are anti-police or pro-abolition of the police or some other variation of that? The importance of us being clear about our role . . . becomes important because it can be very easy . . . in the long term just [to] become mini police officers.<sup>241</sup>

Yet appearances of independence and integrity in this context are contingent in the sense that Alternative Responses have to prove, and even subordinate, themselves to police to acquire legitimacy. That dynamic necessarily exposes these programs to the goodwill of police. If police come to trust Alternative Responses’ ability to deploy successful first-response interventions, then they will be more likely to approve their operations and even rely on them for incidents that they themselves encounter. But the opposite is just as true: If Alternative Responses do not actively cultivate healthy, positive relationships with their law enforcement counterparts, then they are jeopardizing their ability to increase their impact and footprint.<sup>242</sup> For example, their long-term funding could become compromised, their designated call types may never expand beyond the lowest urgency incidents, and so on.

Core to this dynamic is the previously discussed notion that Alternative Responses exist to help law enforcement agencies with their workload.<sup>243</sup> The significance of that notion, repeated frequently during fieldwork, cannot be overstated.<sup>244</sup> In the same way that health care systems have to implement

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<sup>239</sup> Interview with BH (June 2023) (on file with author).

<sup>240</sup> *Id.*

<sup>241</sup> Interview with KM, *supra* note 210.

<sup>242</sup> For example, I document in Part III how frictions between Alternative Responses and police can jeopardize the long-term viability of the former.

<sup>243</sup> See discussion *supra* Section II.B.3.

<sup>244</sup> See, e.g., Interview with TW (Jan. 2023) (on file with author) (describing how CARES helps “free[] up” time so police can tackle more serious calls); Interview with FW (Mar. 2023) (on file with author) (“I really,

protocols that allocate physicians to the most urgent medical cases, public safety systems are designed to ensure that police can respond when people’s lives are in danger. At the same time, one officer emphasized: “We are equipped to handle the high-level school shooting, and yet most of that equipment that we bring with us, we do not need for the whole day.”<sup>245</sup> Instead, “[w]e are equipped for the high level, frequently going to the low level in absence of there being somebody else that just goes to [the] low level.”<sup>246</sup> As such, for Alternative Responses to have sufficiently proper standing in the eyes of police, the expectation is that they will enable police to prioritize those “high-level” calls.

In the end, the burden falls on Alternative Response personnel to engage in what was described during an interview as a “dance” with police.<sup>247</sup> That dance involves, at once, educating police about the services that Alternative Responses are equipped to deliver, understanding how police work, and responding to the preferences of police.<sup>248</sup> Importantly, “not talk[ing] to our dance partners . . . creates such a nightmare,” explained an interviewee who was active in training Alternative Response personnel.<sup>249</sup> “That is why we go to roll call,” he continued, “We answer [the police’s] questions because . . . they often do not know it is such a complicated and convoluted [first-response] system. . . . [J]ust like we do not understand the fact that . . . an arrest is just the ‘front door,’ but then the Attorney General’s office has to charge and then blah, blah, blah . . . .”<sup>250</sup>

### III. SUPPORTED CRISIS RESPONSE

[A]nother . . . interesting piece about this [Alternative Response] . . . is the amount of preventive work we could do before it gets to a situation where there is a crime involved, . . . where it is irreparable almost.<sup>251</sup>

—ALTERNATIVE RESPONSE DIRECTOR, *Dayton, Ohio*

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really hope that [CARES] expands. It is taking pressure off the police officers.”); Interview with NM, *supra* note 206 (agreeing that “one of the most unifying arguments around CARES and programs like it is that they are able to free up [police’s] time for the higher-level things”).

<sup>245</sup> Interview with NM, *supra* note 206.

<sup>246</sup> *Id.*

<sup>247</sup> Interview with FD (Feb. 2023) (on file with author).

<sup>248</sup> *See id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> Interview with YP (Mar. 2023) (on file with author).

This Article has so far established that many Alternative Responses lack formal institutional independence from police.<sup>252</sup> This lack of independence is not value-neutral. Consider insights that emerge from the research presented in Part II. Perhaps most notably, Alternative Responses have proliferated amid demands for public safety interventions that do not involve police.<sup>253</sup> Yet law enforcement actors have often played a leading role in both the design and implementation of these programs.<sup>254</sup> This dynamic underscores the entrenched dominance of police in local government reform efforts, even—or perhaps especially—when those reforms are aimed at shrinking their footprint.<sup>255</sup> Relatedly, Alternative Responses and police do not operate as institutional coequals.<sup>256</sup> This dynamic manifests itself saliently when police formally assign call types to Alternative Responses.<sup>257</sup> More to the point, Alternative Responses, on budgets that represent a fraction of those of law enforcement departments, must prove their effectiveness based on expectations and outcomes imposed by police.<sup>258</sup> Consequently, these programs, which are already politically vulnerable, must serve a constituency beyond the public to which they are formally accountable—their law enforcement counterparts.

Technology further entrenches this unequal relational interdependence. Emergency communication systems, and 9-1-1 in particular, are key in this regard.<sup>259</sup> Folding Alternative Responses into the 9-1-1 architecture has become crucial for residents to report incidents.<sup>260</sup> Otherwise, they must rely on other forms of communication (e.g., email) that can create significant operational frictions.<sup>261</sup> As a result, 9-1-1 officials retain immense decision-making power over the triaging of calls between Alternative Responses and police.<sup>262</sup> This

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<sup>252</sup> See discussion *supra* Section II.B.

<sup>253</sup> See *supra* notes 221–24 and accompanying text.

<sup>254</sup> See discussion *supra* Section II.B.3.

<sup>255</sup> For a highly incisive analysis of this issue in the context of public safety reform, see generally TONY CHENG, *THE POLICING MACHINE: ENFORCEMENT, ENDORSEMENTS, AND THE ILLUSION OF PUBLIC INPUT* (2024).

<sup>256</sup> Careful empirical research has documented this unequal power dynamic. See Bocar Ba, Meghna Baskar, Tony Cheng & Rei Mariman, *Understanding Demand for Police Alternatives 27* (Nat'l Bureau of Econ. Rsch., Working Paper No. 32418, 2024).

<sup>257</sup> See *supra* notes 239–46 and accompanying text.

<sup>258</sup> See *supra* notes 239–50 and accompanying text.

<sup>259</sup> See discussion *supra* Section II.B.2.

<sup>260</sup> TRANSFORM 911, *supra* note 219, at 8.

<sup>261</sup> See, e.g., Nik Altenberg, *Is Oakland's Community Response Team a Successful Alternative to Police?*, KQED (Jan. 3, 2024), <https://www.kqed.org/news/11971369/is-oaklands-community-response-team-a-successful-alternative-to-police> [<https://perma.cc/RH7S-Z3D8>] (describing an email address as a hindrance to equitable Alternative Response interventions).

<sup>262</sup> See *supra* notes 199–206 and accompanying text.

degree of discretion raises a host of risks: Those officials may disproportionately, and unjustifiably, send police to certain disfavored callers; they may interpret Alternative Response candidate calls too narrowly, namely by misinterpreting the degree of risk associated with certain calls; or they may co-dispatch Alternative Responses and police in situations where only the former would be appropriate. Radios and other technologies, such as the CAD system, are also important to this configuration.<sup>263</sup> Yes, these modalities may create efficiencies in high-urgency situations, including where a risk of violence is genuinely present. But they also risk diverting the workflow of Alternative Responses toward calls that more closely serve the interests of police.

Of course, these observations may not generalize to the dozens of Alternative Responses across the country. In other jurisdictions, none or some of these entanglements may exist; and even in the studied jurisdictions, dynamics may have changed over time in ways that the fieldwork research could not capture. Nonetheless, these observations must be taken seriously, particularly because they support recently published commentary detailing growing frictions between Alternative Responses and police. For example, early in 2025, the City of Eugene discontinued its contract with the White Bird Clinic, which was responsible for operating CAHOOTS.<sup>264</sup> The *Wall Street Journal* reported that CAHOOTS's "relations with Eugene police . . . soured" since 2020, with tensions arising when "workers became outspoken at 'defund the police' rallies . . ."<sup>265</sup> Reports from other cities, such as Cambridge, Massachusetts, have also suggested similarly worsened relationships between Alternative Responses and police.<sup>266</sup> These observations can be squared with how changing politics have impacted public safety governance, especially the emerging backlash against the very movement that led to Alternative Responses.

At the same time, these developments demonstrate other under-recognized insights about Alternative Responses' relationship with law and governance. In particular, the intricate institutional interdependence described above helps to clarify the role that these programs play within modern public safety

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<sup>263</sup> See *supra* notes 209–20 and accompanying text.

<sup>264</sup> Zusha Elinson, *A Hippie-Cop Alliance Reformed Crisis Response. 'Defund the Police' Brought It Down.*, WALL ST. J. (Apr. 27, 2025, at 10:00 ET), <https://www.wsj.com/us-news/oregon-cahoots-police-mental-health-7573cd61> [<https://perma.cc/ZZ2F-YJMD>].

<sup>265</sup> *Id.*

<sup>266</sup> See Matan H. Josephy & Laurel M. Shugart, *Behind Closed Doors, A Turf War over 'Alternative Response' to Policing in Cambridge City Hall*, HARV. CRIMSON (Apr. 25, 2025), <https://www.thecrimson.com/article/2025/4/25/cambridge-emergency-response-programs/> [<https://perma.cc/UGR3-GH9A>].

governance. Most obviously, these programs are not extrinsic to the umbrella of public safety services that exist in localities nationwide; they are structurally situated within it. Jurisdictions have implemented Alternative Responses precisely because they address well-documented mismatches between traditional public safety institutions and the needs of certain community members.<sup>267</sup> Furthermore, to achieve their core programmatic missions, these programs must coordinate and often operate alongside these institutions.<sup>268</sup> Understood through this lens, Alternative Responses are policy manifestations of the state's police powers; they are, formally speaking, designed "to safeguard the public health and the public safety"—and, more particularly, the health and safety of the people they serve and the community more broadly.<sup>269</sup>

Yet to characterize Alternative Responses as manifestations of the state's police powers—or as structurally situated within the more general domain of the preventive state—is not to conflate them with instruments of the state's criminal punishment apparatus. Or, at a very minimum, it does not necessarily render these programs subservient to criminal law ends. Police powers, after all, embody the duality between care and coercion—between the state's "first" and "second" face.<sup>270</sup> In other words, they are, with careful operational design, capable of expressing themselves beyond the bounds of law enforcement interventionism.

This analysis offers a much broader context in which to understand the enmeshments between Alternative Responses and police. In particular, it raises larger normative questions that require a deeper, on-the-ground understanding of these programs. How do they navigate thorny interpersonal situations and operate in their communities? Are their entanglements with police sufficient to lose hope in their potential, given the failures of broken windows policing? Put in other words, do these entanglements mean that these programs de facto fail the test that demarcates "non-reformist" reforms from "reformist" reforms?<sup>271</sup>

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<sup>267</sup> See *supra* notes 103–07.

<sup>268</sup> See discussion *supra* Section II.B.3.

<sup>269</sup> See *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905).

<sup>270</sup> See Joe Soss & Vesla M. Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race–Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565, 567–68 (2017).

<sup>271</sup> Jamelia Morgan, *Abolition in the Interstices*, LPE PROJECT (Dec. 14, 2023), <https://lpeproject.org/blog/abolition-in-the-interstices/> [<https://perma.cc/4T5C-ZAGB>] (“Over the past decade, non-reformist reforms have taken hold of abolitionist movements and discourse. For many, the idea serves as a kind of litmus test for assessing campaign goals and strategies: interventions that qualify as a non-reformist reform are to be pursued, while reformist reforms are to be avoided.”). See generally Amna A. Akbar, *Non-*

These questions are necessary to address because of the need to work toward a future where armed police interventionism is no longer the solution to everyday problems. Doing so is also necessary because it requires learning from and building on present-day efforts that may lead us to that future.

This Part begins to answer these questions by showing how Alternative Responses employ methods that have proven to be distinctively nonpunitive and preventive. Section A explicates the nonpunitive approach that these programs employ when responding to incidents. Then, drawing on how these programs practically intervene in incidents as well as on evidence detailing how personnel conceptualize their work, section B details how this approach is informed by a rehabilitative preventive ethic—what this Article calls supported crisis response<sup>272</sup>—that eschews deterrence logics. Against this backdrop, Part IV pursues this analysis even further by identifying ways to scale the benefits of this revised approach to preventive justice.

#### A. A Nonpunitive Orientation

Several mechanisms undergird Alternative Responses' nonpunitive approach to crisis response.<sup>273</sup> The most obvious mechanism is that once these

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*Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 *YALE L.J.* 2497 (2022) (theorizing the non-reformist reform).

<sup>272</sup> This term finds inspiration in the disability rights concept of supported decision-making. The concept, generally employed in the health care context, occurs when a person “with impaired capacity . . . enters freely into an agreement with a closely trusted person or persons . . . who assist the beneficiary in exercising and enhancing self-determination.” Andrew Peterson, Jason Karlawish & Emily Largent, *Supported Decision Making with People at the Margins of Autonomy*, *AM. J. BIOETH.*, Nov. 2021, at 4, 4–5. But normatively, the concept and supported decision-making legal movement fundamentally oppose forms of paternalism that give clinicians and other decision-makers power over people with disabilities. See Benjamin A. Barsky, *Dual Federalism, Constitutional Openings, and the Convention on the Rights of Persons with Disabilities*, 24 *U. PA. J. CONST. L.* 345, 351 (2022). As explored thoroughly in this Part, the approach taken by Alternative Responses and supported decision-making practices share much in common and are grounded in the idea that all people should have agency and dignity in how they live their lives.

<sup>273</sup> Indeed, an emerging social scientific literature has documented the impact of this nonpunitive approach. Perhaps most notably, a study in *Science Advances* investigated how the Alternative Response in Denver, Colorado, called the Support Team Assistance Response (STAR), caused a reduction in low-level criminal enforcement. See Thomas S. Dee & Jaymes Pyne, *A Community Response Approach to Mental Health and Substance Abuse Crises Reduced Crime*, *SCI. ADV.*, June 2022, at 1, 6. Importantly, these findings are also reflected more generally in the literature on Alternative Responses and initiatives similar to them. See generally, e.g., Jackson Beck, Melissa Reuland & Leah Pope, *Case Study: CAHOOTS*, *VERA INST. OF JUST.* (Nov. 2020), <https://www.vera.org/behavioral-health-crisis-alternatives/cahoots> [<https://perma.cc/C5YA-T79M>] (discussing how CAHOOTS prevents contact with police); Forrest Stuart & Katherine Beckett, *Addressing Urban Disorder Without Police: How Seattle's LEAD Program Responds to Behavioral-Health-Related Disruptions, Resolves Business Complaints, and Reconfigures the Field of Public Safety*, 43 *LAW & POL'Y* 390 (2021) (analyzing the

programs are formally dispatched, the resulting responses are neither classified nor treated as crimes.<sup>274</sup> This approach contrasts with that of police, who are institutionally expected to document criminal enforcement activity, including in the National Incident-Based Reporting System.<sup>275</sup> Indeed, police often have incentives, driven at times by quota requirements or other such “performance goals,” to impose sanctions for behaviors that should not be penalized at all.<sup>276</sup> These requirements can “turn[] officers into automatons,” thus “distract[ing] from serious crimes and preclud[ing] the ostensible services that law enforcement holds itself out as offering . . . .”<sup>277</sup>

Additionally, and crucially, other research has found that Alternative Response interventions do not simply deflect calls away from police (i.e., an incident is assigned an Alternative Response intervention rather than police); rather, these programs prevent overall criminal law enforcement actions.<sup>278</sup> For instance, research has found that the implementation of an Alternative Response in Denver, Colorado, caused a decrease in enforcement even when the program was off-duty.<sup>279</sup> That finding may be because timely on-duty Alternative Response interventions to, say, behavioral health crises prevent the need for police action later in time. This dynamic “is consistent with the hypothesis that [Alternative Responses] provide[] helpful services to individuals in crises that were somewhat persistent rather than brief and episodic.”<sup>280</sup>

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promise of Seattle’s Let Everyone Advance with Dignity program, which replaces police in behavioral health-related calls); Natania Marcus & Vicky Stergiopoulos, *Re-Examining Mental Health Crisis Intervention: A Rapid Review Comparing Outcomes Across Police, Co-Responder and Non-Police Models*, 30 HEALTH & SOC. CARE CMTY. 1665 (2022) (overviewing how unarmed crisis response programs can short-circuit the need for police involvement in health-related crises); Jonathan Davis, Samuel Norris, Jadon Schmitt, Yotam Shem-Tov & Chelsea Strickland, *Mobile Crisis Response Teams Support Better Policing: Evidence from CAHOOTS* (Nat’l Bureau of Econ. Rsch., Working Paper No. 33761, 2025) (finding CAHOOTS led to a reduction in the likelihood that 9-1-1 calls concluded in arrests).

<sup>274</sup> See Dee & Pyne, *supra* note 273, at 3.

<sup>275</sup> See generally *National Incident-Based Reporting System (NIBRS)*, BUREAU JUST. STAT., <https://bjs.ojp.gov/national-incident-based-reporting-system-nibrs> [<https://perma.cc/E32B-Z92P>] (last visited Oct. 14, 2025) (describing type of data captured by NIBRS and state law enforcement sources from which data is collected).

<sup>276</sup> Shaun Ossei-Owusu, *Police Quotas*, N.Y.U. L. REV. 529, 556 (2021).

<sup>277</sup> *Id.* at 582–83 (footnote omitted).

<sup>278</sup> Dee & Pyne, *supra* note 273, at 6. The research on STAR found that the reduction in crimes “attributable to STAR . . . clearly exceeds the highest number of criminal offenses likely to have been confronted by STAR staff . . . .” *Id.* (emphasis added).

<sup>279</sup> See *id.*

<sup>280</sup> *Id.* at 5.

Alternative Responses' nonpunitive impact is linked to their focus on providing basic life necessities (e.g., blankets, clothes, and food) to people in need and referring them to community services, particularly health care and housing, all of which are protective against criminalization.<sup>281</sup> In terms of health care services, Alternative Responses have a record of bringing individuals to a hospital or clinic or connecting them with health service providers (e.g., substance use treatment) when they have given their consent.<sup>282</sup> Furthermore, Alternative Responses are able to instruct people about getting connected to public health insurance programs, especially Medicaid, if they report being uninsured.<sup>283</sup> Much of the same can be said about housing. Especially in situations that involve people who are unhoused, Alternative Responses routinely bring them to emergency shelters.<sup>284</sup> In fact, shelters are often the first line of recourse because they usually have flexible opening hours.<sup>285</sup> Respite housing facilities, which offer shelter to individuals in crisis, have also been used to provide opportunities for recovery, safety, and stability.<sup>286</sup> Alternative Responses have also had some success in connecting people to long-term housing opportunities, but such instances are rare, in part due to structural institutional barriers, including tedious application processes, restrictions on eligibility, and waitlists.<sup>287</sup>

A second mechanism is that Alternative Responses can respond to people's needs on their own accord without having been formally dispatched. These responses, colloquially called "on-views," allow responders to be agile, nimble,

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<sup>281</sup> See discussion *infra* Section III.B.2. See generally L. Hawks, E. Lopoo, L. Puglisi, J. Cellini, K. Thompson et al., *Community Investment Interventions as a Means for Decarceration: A Scoping Review*, LANCET REG'L HEALTH-AMS., Apr. 2022, at 1, 1 (examining community-based programs aimed at reducing "interactions with the criminal legal system").

<sup>282</sup> See Interview with QF (May 2023) (on file with author) (describing handing off calls to ambulances to ensure that people can get the permissions needed for treatment-related needs).

<sup>283</sup> For example, one response implicating a middle-aged man "reclined on the grounds of a public park underneath a sleeping bag" involved "provid[ing] information about options through Medi-Cal as well as 211 and social services." MACRO Data, *supra* note 140. Another response directed to another man in a "tent in a park next to a lake" required "provid[ing] information for the nearest social service office and medical clinic where [the man] could sign up for Medi-Cal." *Id.*

<sup>284</sup> Interview with AM (July 2023) (on file with author) ("[I]n terms of the shelters and housing, God bless the people at St. Vincent DePaul. I know they get a lot of hate but [that shelter is] doing more than anyone.").

<sup>285</sup> See *id.*

<sup>286</sup> See Interview with FM (June 2023) (on file with author) (describing connecting a "community member into medical respite that [MACRO] has been working with for a year").

<sup>287</sup> See, e.g., John Ecker, Molly Brown, Tim Aubry, Katherine Francombe Pridham & Stephen W. Hwang, *Coordinated Access and Coordinated Entry System Processes in the Housing and Homelessness Sector: A Critical Commentary on Current Practices*, 32 HOUS. POL'Y DEBATE 876, 880–81, 884 (2022) (critiquing coordinated entry systems that are designed to provide housing to people experiencing homelessness).

and proactive in that they offer responders the opportunity to approach individuals who may appear to need assistance or help but who have not been the subject of a 9-1-1 call.<sup>288</sup> This proactivity also allows Alternative Responses to cultivate longer-term relationships with individuals, many of whom may be unhoused, if those individuals regularly stay or sleep in specific areas in the community.<sup>289</sup> That said, the trend in Dayton, Madison, and Oakland has been to move away from conducting on-views and toward primarily focusing on calls dispatched through 9-1-1. In Dayton and Madison, responses are generally initiated through 9-1-1.<sup>290</sup> By contrast, in Oakland, while on-views constituted virtually all responses (i.e., ninety-eight percent) in August 2022, they represented approximately half of all responses in July 2023.<sup>291</sup>

A third mechanism, as Part II explained, is that police can refer calls directly to Alternative Responses. For example, police on certain beats are comfortable directly calling Alternative Responses in situations they deem to be appropriate.<sup>292</sup> They may also feel like Alternative Responses are better equipped to handle situations (e.g., individuals displaying signs of behavioral health distress) that are poorly addressed through traditional policing methods.

### B. Redefining Rehabilitation

Section A outlined several mechanisms through which Alternative Responses prevent punitive carceral entanglements. Yet these mechanisms do

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<sup>288</sup> For example, one MACRO responder reflected on how on-views were perceived by the public as a type of street-level outreach. See Interview with PI (June 2023) (on file with author) (“[S]ince we did a lot of outreach or on-view in the beginning, [that] kind of changed the perspective of how MACRO is because now a lot of people think we do outreach.”).

<sup>289</sup> See *id.* (“We started taking 911 calls, I think, on October, November, December. . . . So that was like . . . six to eight months of just doing on-view. And of course, with on-view, the only thing that we had was just the high-populated area, which were the encampments.”).

<sup>290</sup> See Meg O’Connor, *Non-Police Crisis Response Programs Have Been Working. Here’s How.*, THE APPEAL (Jan. 24, 2024), <https://theappeal.org/non-police-crisis-response-programs-have-been-working-heres-how/> [<https://perma.cc/G6BW-SYQG>] (describing Dayton’s program); *Community Alternative Response Emergency Services (CARES)*, CITY OF MADISON [hereinafter *CARES*], <https://www.cityofmadison.com/fire/emergency-medical-services/community-alternative-response-emergency-services-cares> [<https://perma.cc/X2XK-EX7T>] (last visited Oct. 14, 2025) (describing Madison’s program).

<sup>291</sup> Compare CITY OF OAKLAND, MACRO IMPACT FOR AUGUST 2022 (2022), <https://cao-94612.s3.us-west-2.amazonaws.com/documents/August-2022-MACRO-Report.pdf> [<https://perma.cc/7H22-3Y3H>] (noting on-views as the source for ninety-eight percent of dispatches), with CITY OF OAKLAND, MACRO IMPACT JULY 2023 (2023), <https://cao-94612.s3.us-west-2.amazonaws.com/documents/July-2023-Report.pdf> [<https://perma.cc/V3CA-TZQM>] (noting on-views as roughly half of total dispatches in July 2023).

<sup>292</sup> See discussion *supra* Section II.B.2.

not operate automatically. Alternative Response personnel must put them into motion by applying a set of intuitions and skills that will influence the denouement of incidents to which they respond. This section argues that a preventive first-response approach grounded in rehabilitation theory typifies these intuitions and skills. This approach—which this Article calls supported crisis response—aims to provide long-term social support structures to people in need and to reduce exposure to harm. This account, the contours of which are derived from interviews with Alternative Response personnel and those who work closely with them, is foundational to these programs’ prevention potential.

### *1. Against Rehabilitation as Treatment*

In its most traditional form, rehabilitation stands for the idea “that penal institutions might ‘so modify people’s dispositions and motives that they will in [the] future refrain from crime willingly—rather than, as with deterrence, doing so reluctantly from fear of punishment.’”<sup>293</sup> Yet in the context of U.S. policing, the language and rhetoric of rehabilitation have become linked with having people participate in social service programming—often through coercion—as a way of transforming them into law-abiding members of society.<sup>294</sup> Many scholars indeed have conceded that rehabilitation should treat the well-being of wrongdoers as secondary to the goal of reducing their risk of future criminal behavior.<sup>295</sup> Rehabilitation, as dominantly conceived, thus rests on inherently paternalistic notions of responsibility, with the state instrumentalizing ostensibly rehabilitative programs to prevent recidivism as opposed to achieving other outcomes such as health or well-being.<sup>296</sup>

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<sup>293</sup> JOHN RAPPAPORT & ANDREW MANUEL CRESPO, CRIMINAL LAW AND THE AMERICAN PENAL SYSTEM 84 (2025) (alteration in original) (quoting R. A. DUFF, PUNISHMENT, COMMUNICATION, AND COMMUNITY 5 (2001)).

<sup>294</sup> See discussion *supra* Section I.B.3; see also Fan, *supra* note 93, at 184 (describing the various mental health pre-arrest diversion models and the shifting popularity among them).

<sup>295</sup> See, e.g., TONY WARD & SHADD MARUNA, REHABILITATION: BEYOND THE RISK PARADIGM 67 (2007) (“[T]he primary aim of offender rehabilitation [within the risk-need-responsivity model] is to reduce the amount of harm inflicted on members of the public and on society by offenders. Considerations of the offender’s welfare are secondary to this . . . .”); Jeffrey W. Howard, *Punishment as Moral Fortification*, 36 LAW & PHIL. 45, 62 (2017) (addressing the critique that rehabilitation is overly “paternalistic” in the sense that it “objectionably coerce[s] individuals for the sake of their own good”).

<sup>296</sup> For a parallel account of the repurposing of rehabilitation in the reentry context, see Michelle S. Phelps, *Rehabilitation in the Punitive Era: The Gap Between Rhetoric and Reality in U.S. Prison Programs*, 45 LAW & SOC’Y REV. 33, 61 (2011) (arguing that rehabilitation’s “focus on internal management and practical tools for reentry is consistent with the recent shift back toward the rational-actor model of crime and the neoliberal emphasis on personal responsibility in contemporary politics” (citations omitted)).

As applied to people with health vulnerabilities, this rehabilitation account is typically grounded in an inherently medical model of delinquency and disorder. That observation appears explicitly in Stuart's research on therapeutic policing practices in Los Angeles's Skid Row district.<sup>297</sup> It also appears in a much larger body of scholarship critiquing rehabilitation for being "based on the assumption that . . . offenders can be changed into conforming citizens if each one's pathological, criminogenic condition is treated and cured."<sup>298</sup> Interestingly, that critique aligns with the idea at the core of disability antidiscrimination law—that addressing disability, be it behavioral or physical, should not rest solely on seeking cures and treatments.<sup>299</sup> It should instead center on understanding how foundational social structures inhibit people with disabilities from living integratively within their communities.<sup>300</sup>

At the same time, criminal rehabilitation theory is far more capacious than this narrow, medicalized conception of rehabilitation. Lisa Forsberg and Thomas Douglas explain that a perfectly defensible theory of rehabilitation is one that simply aims to reduce harm, particularly "the kinds of harms that are legitimately the business of the criminal law . . . ."<sup>301</sup> That category of harms broadly includes "conduct with negative effects on the well-being of others . . . [and] the offender himself."<sup>302</sup> What is more, the reduction of harm does not need to be "the immediate or ultimate goal of an intervention" but rather "simply be a goal."<sup>303</sup>

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<sup>297</sup> See *supra* notes 94–95 and accompanying text.

<sup>298</sup> FRANCIS T. CULLEN & KAREN E. GILBERT, REAFFIRMING REHABILITATION 68 (Ellen Boyne ed., 2013).

<sup>299</sup> See Michael Ashley Stein, *Disability Human Rights*, 95 CALIF. L. REV. 75, 88 (2007).

<sup>300</sup> See *id.* at 86.

<sup>301</sup> Lisa Forsberg & Thomas Douglas, *What is Criminal Rehabilitation?*, 16 CRIM. L. & PHIL. 103, 111 (2022). This Article assumes without substantively analyzing the proposition that broken windows offenses, like low-level public disturbances and drug use, are indeed "legitimately the business of criminal law." See *id.* This proposition is the topic of fierce academic debate. Scholars have questioned whether *mala prohibita* offenses—offenses that are not wrong in and of themselves but rather simply prohibited, as is the case of most, perhaps even all, broken windows offenses—ought to be criminalized at all. See, e.g., Youngjae Lee, *Mala Prohibita, the Wrongfulness Constraint, and the Problem of Overcriminalization*, 41 LAW & PHIL. 375, 376 (2022) ("*Mala prohibita* offenses look problematic because it is not clear how their existence can be squared with the wrongfulness constraint. Douglas Husak . . . even floated the idea that most *mala prohibita* offenses 'should be repealed as incompatible with our best theory of criminalization and punishment,' while adding that he is 'a bit reluctant to endorse this sweeping and radical conclusion.'" (quoting Douglas Husak, *Malum Prohibitum and Retributivism*, in *DEFINING CRIMES: ESSAYS ON THE SPECIAL PART OF THE CRIMINAL LAW* 65–90 (R.A. Duff & Stuart Green eds., 2005))). Wading into that debate is beyond the bounds of this Article. That said, if some broken windows offenses lack a normatively justifiable basis in criminal law jurisprudence, then that idea could affect the choice of grounding the work of Alternative Responses in rehabilitation theory.

<sup>302</sup> Forsberg & Douglas, *supra* note 301, at 111.

<sup>303</sup> *Id.*

As detailed below, evidence from fieldwork reveals that Alternative Responses apply a first-response approach that lends itself to such an account of rehabilitation. Generally, that approach is grounded in the recognition that individuals cannot “treat” their way out of the criminalization of inherently structural problems, such as disfavored health conditions and poverty. It also places agency and well-being at the heart of its normative conceptual model rather than giving primacy to a focus on anti-recidivism. As one responder emphasized:

I have had someone be, like, we need [the Alternative Response] to solve every problem that police are on. . . . [T]hat is impossible. . . . [W]e can barely solve the problem that we are already given—it is a matter of respecting the autonomy and the agency of people. . . . [H]ow do you make help sound enticing when for the past fifty years, help has been a punishment, right?<sup>304</sup>

## 2. *Agency, Resources, and Support*

Alternative Response personnel often apply practice-oriented frameworks that align with the more capacious conception of rehabilitation described above. These frameworks differ substantively from one another. Yet when juxtaposed side by side and analyzed in tandem, they appear to necessitate a series of three key action steps that responders deploy when they are interacting with people in need of help. These steps have a crucial temporal dimension insofar as they usually cannot be accomplished directly and immediately during the interventions themselves. They are, in other words, rooted in a broadly shared awareness that responding to people’s needs is rarely, if ever, a one-time affair. In short, these steps aim successively to ensure that individuals have the *agency* to make decisions, the *resources* to bring those decisions to fruition, and the *support* to sustain the fruits of those choices.

*Agency.* Let us begin with the first of these steps, which is attitudinal at its core. Responders will address incidents with the intention of affirming the desires and needs of people rather than imposing a more prescriptive approach. Accomplishing that intention, at least initially, depends on their interlocutors’ state of mind. If they are agitated or “in this really hot red spot,” as one responder put it, then the priority becomes crisis stabilization.<sup>305</sup> That process entails

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<sup>304</sup> Interview with AM, *supra* note 284.

<sup>305</sup> Interview with JU, *supra* note 128.

helping “people shift from survivor brain to thinking brain,” or from “red to blue,” as a means of “be[ing] open to a conversation so [the Alternative Response personnel] can work through some of the challenges that may be present.”<sup>306</sup> “[T]hat alone is literally life-changing,” emphasized the responder.<sup>307</sup>

Crucially, the process of stabilization and the interaction that unfolds thereafter should proceed on terms that affirm people’s freedom of choice. For instance, in Dayton, the MRU has implemented a transformative mediation approach to its responses<sup>308</sup> that itself is anchored in principles of autonomy and dignity.<sup>309</sup> Responders working in this specific mediation tradition are those “whose actions (intervention strategies, activities, etc.) imply ‘no judgment’ of others’ ways and are respectful of others’ humanity, capabilities, processes and decisions.”<sup>310</sup> A high-level Alternative Response official put the idea more concretely: “[W]e can help people shift . . . to a place where you are more calm, more clear about what is wrong, what you want to do about the situation, more open. Then you can make better decisions for yourself.”<sup>311</sup>

Similarly, in Oakland, many responders have operationalized first-response notions centered on the promotion of agency. One responder emphasized the need to extend “dignity and risk”<sup>312</sup>—an idea closely related to the otherwise well-theorized doctrine of the “dignity of risk” in the disability rights and harm reduction literature.<sup>313</sup> That idea, the responder explained, rests on “honor[ing]” people’s decisions and preferences even when they are in distress, pain, or “uncomfortable situations.”<sup>314</sup> Another responder cited the idea of “radical hospitality,” which “is not necessarily doing the most you possibly can all the time . . . but just making sure that when you do provide something, . . . you are destigmatizing the process along with just providing the best experience you can

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<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> See IRWIN & EISENBERG, *supra* note 197, at 31.

<sup>309</sup> See ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT 53, 60 (2004) (describing the benefits of the transformative mediation approach, which include the ability of parties to “recapture” their “dual sense of both individual autonomy and social connection”).

<sup>310</sup> *Id.* at 113.

<sup>311</sup> Interview with YP, *supra* note 251.

<sup>312</sup> Interview with QF, *supra* note 282.

<sup>313</sup> See Debjani Mukherjee, *Editor’s Introduction: Disability, Social Justice, and Dignity of Risk at 50 Years*, 65 PERSPS. BIOL. & MED. 157, 157 (2022) (“[T]he dignity of risk embraces respecting or honoring an individual’s choices or decisions even in the face of potential harms.”).

<sup>314</sup> Interview with QF, *supra* note 282.

through it . . . .”<sup>315</sup> A third reflected on their experience working in a harm reduction program before joining MACRO, noting the Alternative Response’s focus on noncoercion: “All we can do is ask, suggest it, offer it. That is it. And I feel like [in harm reduction], it is the same way. . . . [T]hese are the supplies we have—you can either accept it, not accept it.”<sup>316</sup>

Of course, Alternative Responses cannot always conduct agency-promoting responses. People may have diminished decision-making capacity, hindering their ability to express desires and preferences; the case of the man who needed to be psychiatrically hospitalized documented in Part II is illustrative.<sup>317</sup> Relatedly, specific legal requirements, such as civil commitment statutes and mandatory reporting rules, may constrain how Alternative Responses can conduct their interventions—especially when call subjects are minors.<sup>318</sup> People may simply refuse assistance altogether.<sup>319</sup> And Alternative Response personnel themselves may lack the needed resources to address people’s life needs immediately.<sup>320</sup> Nonetheless, even as personnel occasionally fall short of meeting people’s needs or preferences, they consistently identify the promotion of agency as central to their street-level response approach.<sup>321</sup>

Conceptually, what is striking about Alternative Responses’ agency-promoting frameworks is their resonance with theories of rehabilitation originating outside criminal law theory—namely, in disability and health ethics. This insight helps recover an account of rehabilitation that not only rejects outdated, paternalistic understandings of the concept but also grounds it in practices that advance people’s capabilities and life possibilities. As such, these programs show how the concept of rehabilitation is both contestable and, indeed, generative in informing an actually supportive public safety infrastructure.

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<sup>315</sup> Interview with FM, *supra* note 286.

<sup>316</sup> Interview with PL, *supra* note 288.

<sup>317</sup> See *supra* notes 166–73 and accompanying text.

<sup>318</sup> See, e.g., Interview with KV (Jan. 2023) (on file with author) (“If a juvenile is reported as runaway or missing in the state of Ohio, it is a mandated law enforcement response.”); Interview with IG, *supra* note 218 (describing the same issue).

<sup>319</sup> See, e.g., Interview with AU (June 2023) (on file with author) (“[L]ook, man—the cliché thing is like, well, if they want help, they will get it. If they do not, they do not. . . . You have to continue to follow up with people.”); Interview with ZS (May 2023) (on file with author) (describing that someone “just started running away as [the responder] tried to approach him”).

<sup>320</sup> One responder put this idea rather bluntly: “[T]he entire infrastructure of our country is completely fucked up, and so there [are] limitations in terms of that on a larger scale, providing adequate housing for people and mental health care support because we just do not have it.” Interview with KP (Feb. 2023) (on file with author).

<sup>321</sup> See Interview with FM, *supra* note 286.

In the disability studies literature, rehabilitation is often understood literally—as health care treatment aimed at addressing or remedying some kind of impairment.<sup>322</sup> Rehabilitation on this account maps squarely onto the medical model paradigm, which, as previously mentioned, much of the disability rights movement opposes.<sup>323</sup> Yet that account alone only partially captures the concept’s potential normative meaning. As Tom Shakespeare and his coauthors explain, “[R]ehabilitation can be a tool for inclusion and for an equal life.”<sup>324</sup> On this “right-based approach,” advanced by the Convention on the Rights of Disabilities, rehabilitation is not merely about the delivery of health services but is a health-promoting process that centers other people’s agency.<sup>325</sup> In health care contexts, this approach demands recognition of the dignity of risk, even when that decision-making may conflict with specific professional judgments.<sup>326</sup> This principle, of course, can translate across domains. In first-response contexts, people ought to be afforded the same degree of deference even if they may be perceived as impaired.<sup>327</sup> In such cases, rehabilitation can align with what Alexander Boni-Saenz describes as the idea that “it is normatively desirable for individuals to be able to make their own choices and experience the positive or negative consequences of those choices.”<sup>328</sup>

Likewise, within the health ethics literature, rehabilitation is frequently equated with “tertiary prevention”—a term that also carries distinctly medicalized connotations.<sup>329</sup> Generally speaking, it “refers to care aimed at reducing morbidity and disability in people diagnosed with, and being treated

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<sup>322</sup> See, e.g., WORLD HEALTH ORG. & WORLD BANK, WORLD REPORT ON DISABILITY 96 (2011) (defining rehabilitation as “a set of measures that assist individuals who experience, or are likely to experience, disability to achieve and maintain optimal functioning in interaction with their environments”).

<sup>323</sup> See *supra* notes 297–300 and accompanying text.

<sup>324</sup> Tom Shakespeare, Harriet Cooper, Dikmen Bezmez & Fiona Poland, *Rehabilitation as a Disability Equality Issue: A Conceptual Shift for Disability Studies?*, SOC. INCLUSION, Mar. 2018, at 61, 64.

<sup>325</sup> See U.N. Convention on the Rights of Persons with Disabilities, May 3, 2008, 2515 U.N.T.S. 3. For example, Article 26 requires “States Parties [to] take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.” *Id.* at art. 26.

<sup>326</sup> See, e.g., Lisa I. Iezzoni, *Dignity of Risk and Living at Home Despite Severe Disability*, 65 PERSPS. BIOL & MED. 252, 257–58 (2022); Preya S. Tarsney, *Dignity of Risk in Rehabilitation: Theory and Practice*, 65 PERSPS. BIOL & MED. 199, 201–02 (2022).

<sup>327</sup> See *supra* notes 305–16 and accompanying text.

<sup>328</sup> Alexander A. Boni-Saenz, *The Right to Fail*, 77 OKLA. L. REV. 11, 11 (2024).

<sup>329</sup> Doron Dorfman, *Penalizing Prevention: The Paradoxical Legal Treatment of Preventative Medicine*, 109 CORN. L. REV. 311, 317 (2024).

for, disease.”<sup>330</sup> Yet, as with the right-based conception of rehabilitation articulated above, tertiary prevention need not be rooted in illness-centered understandings. For instance, the Prevention, Treatment, and Recovery Services Working Group of the National Academy of Medicine has advanced one such model of tertiary prevention tailored to the care of people who use drugs.<sup>331</sup> This model embraces harm reduction strategies—designed to make available health and other essential resources noncoercively to people who use drugs, consistent with their preferences and without assuming that they are “disordered” or “ill”—as paradigmatic of tertiary prevention.<sup>332</sup>

In the Alternative Response context, responders frequently described such strategies as foundational to their street-level approaches. For many, as previously suggested, this orientation stemmed from work experiences caring for people who use drugs before transitioning to Alternative Response work; the harm reduction ethos also informed responders’ work because of the frequency with which they engaged with people who use drugs.<sup>333</sup> In this way, this harm reduction conception of tertiary prevention—which is broadly applicable to many other stigmatized health conditions—shifts the focus from preventing the consequences of illness to preventing the escalation of health-related risk.

*Resources.* The second key action step, which proceeds naturally from the first, focuses on providing concrete, material resources to people who need assistance. Overwhelmingly, as outlined above, those resources come in the form of life-sustaining supplies like blankets, clothes, food, and even medications, as well as referrals to trusted community-based social service providers (e.g., health care treatment and housing).<sup>334</sup> Because the health and life needs of the individuals served by Alternative Responses vary widely—from no obviously urgent needs to life-threatening crises, including drug overdoses—responders require an inventory of supplies and a network of reliable community

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<sup>330</sup> Paul B. Jacobsen & Michael A. Andrykowski, *Tertiary Prevention in Cancer Care: Understanding and Addressing the Psychological Dimensions of Cancer During the Active Treatment Period*, 70 AM. PSYCH. 134, 134 (2015).

<sup>331</sup> See Amanda D. Latimore, Elizabeth Salisbury-Afshar, Noah Duff, Emma Freiling, Brett Kellett et al., *Primary, Secondary, and Tertiary Prevention of Substance Use Disorders Through Socioecological Strategies*, 9 NAT’L ACAD. MED. PERSPS. 1, 1 (2023).

<sup>332</sup> See *id.* at 9.

<sup>333</sup> See *supra* notes 163–64 and accompanying text; see also Interview with PH, *supra* note 225 (describing the Alternative Response responding to someone who had become unresponsive because of drug use).

<sup>334</sup> See Barsky, Konnoth & Stein, *supra* note 198, at 1278–79, 1279 n.100.

partners.<sup>335</sup> While ultimately the goal is for people to utilize these resources to the fullest extent possible, achieving this objective is unrealistic in most cases.<sup>336</sup> Accordingly, the second-best objective is to assess people's needs through conversation and to connect them toward services in the community that they can choose to utilize as they see fit.

Illustratively, one of the responders in Oakland acquired a reputation for developing a rather comprehensive source of community-based service providers across the city.<sup>337</sup> The "MACRO Public Resource Guide" includes names, addresses, key contact information, hours of operation, and threshold eligibility requirements for providers across at least ten categories of services (e.g., food, hygiene, mental health services, and shelter).<sup>338</sup> That said, this guide is not considered an end unto itself. As indicated above, responders are aware of the fragmentation, limitations, and weaknesses of community-based service providers, which are oftentimes reflected in providers' lack of capacity, unresponsiveness, and even stigma against people in situations of health vulnerability.<sup>339</sup> In fact, these very problems concord with the recognition that only a fraction of community-based referrals will be successful.<sup>340</sup> Instead, the guide, updated periodically, exists as a way of mapping the many ways in which responders can concretely attend to the needs of the people they assist and make that information available to as many stakeholders as possible.<sup>341</sup> Accordingly, despite the challenges associated with referring people to community-based resources, this step remains core to Alternative Responses' commitment to preventing harm and fostering longer-term well-being.

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<sup>335</sup> Indeed, personnel have reported having and using Narcan, which is an overdose-reversing medication. *Id.* at 1277.

<sup>336</sup> See, e.g., Interview with KP, *supra* note 320 ("[T]he entire infrastructure of our country is completely fucked up, and so there is limitations in terms of . . . providing adequate housing for people and mental health care support because we just do not have it."); Interview with AM, *supra* note 284 ("[T]here [are] a lot of barriers no matter where you send places because everything requires money and documentation.").

<sup>337</sup> See Interview with AU, *supra* note 319 (lauding one responder for being "our resource guy").

<sup>338</sup> See *MACRO Public Resource Guide – V.1, CITY OF OAKLAND*, <https://www.oaklandca.gov/files/assets/city/v/1/fire/documents/macro/operational/public-macro-resource-guide-v.1-08.2022.pdf> [<https://perma.cc/2VRW-2NF6>] (last visited Oct. 14, 2025).

<sup>339</sup> One responder put the idea this way: "There is this whole gray area of social issues that people have asked us to try and fix. And sometimes we get lucky, and sometimes it is like, this is no one's problem. This is the system being broken and no one knows how to solve this problem." Interview with AM, *supra* note 284.

<sup>340</sup> See *supra* note 336 and accompanying text.

<sup>341</sup> See Crystal Bailey, *MACRO Growing Ahead of Busy Summer in Oakland*, FOX KTVU 2 (Apr. 17, 2024, at 18:33 PT), <https://www.ktvu.com/news/macro-growing-ahead-of-busy-summer-in-oakland> [<https://perma.cc/UCV2-JKEG>].

*Support.* The final action step is geared toward furnishing longer-term support. This step implicates providing ongoing resources to individuals after their first interactions with Alternative Responses. During these interventions, personnel reassert their commitment to affirming people's agency and referring them to services, all the while attempting to deepen rapport and trust as well as "nudg[ing] them a little bit in the right direction."<sup>342</sup> One responder summarized that effort: "You have to continue to follow up with people. You got to understand people . . . [Many among them] have been in the streets the last fifteen, twenty years, . . . so that is where we come in, . . . make that impact, and lead them in the right direction."<sup>343</sup>

Alternative Responses appear to offer this kind of support in a multitude of ad hoc ways. Personnel might choose to engage with individuals shortly after their initial street-level responses to gauge whether their needs are being met.<sup>344</sup> They might develop more personal relationships with individuals over time, including those who are frequently the subject of 9-1-1 calls, and incorporate check-ins with them into their work routines.<sup>345</sup> This kind of relationship-building can be particularly effective with individuals who are unhoused, as those individuals may visibly be located in one place for longer time periods. Or they might stay in contact with social service providers who have assumed some form of assistance for people who previously were the subject of an Alternative Response intervention.

Other programs have the potential to be more systematic in how they offer this kind of support. For example, in Madison, CARES possesses a workforce that has the capacity to offer robust follow-up services to people who have received interventions in the past.<sup>346</sup> The teams that comprise CARES include both paramedics and crisis-focused clinicians employed by a county-funded organization called Journey Mental Health.<sup>347</sup> Together, the paramedics and clinicians can monitor whether individuals are connected to primary health care services and offer ongoing mental health support, individual medication

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<sup>342</sup> Interview with ZS, *supra* note 319.

<sup>343</sup> Interview with AU, *supra* note 319.

<sup>344</sup> *See, e.g.*, Interview with JU, *supra* note 128 ("If . . . the issue may have been resolved at the time, but we also want to know if it is ongoing . . . [W]e will say, 'You know what? We will check back with you in a week or two and see how things are going. If there is [sic] any additional issues, we can address those at those time [sic].'").

<sup>345</sup> *See, e.g.*, Interview with AU, *supra* note 319 (explaining that he and his team would see a "gentleman that had a bad, bad scar . . . every day to clean his wound" and help him get connected to health care resources).

<sup>346</sup> *See CARES, supra* note 290.

<sup>347</sup> *See id.*

management, and connections to other forms of services.<sup>348</sup> This comparatively robust follow-up capacity is key to how CARES may be able to create a foundation for long-term well-being.

At the same time, the capacity to follow up with people does not mean that these programs do so consistently. Several factors may influence Alternative Responses' follow-up success—some within the control of programs and others external. For example, program design, including the degree to which programs are tethered to 9-1-1 and their hours of operation, can prevent them from being maximally proactive.<sup>349</sup> Personnel may also feel the pressure to respond to situations as expeditiously as possible.<sup>350</sup> Conversely, people may lack the means (e.g., phones and access to email) to be contacted after the fact.<sup>351</sup> Despite these limitations, many responders described the importance of maintaining contact with service recipients, especially those with acute health needs.



This three-step process—characterized by affirming people's agency, offering them resources, and working toward ensuring their long-term well-being—helps to delineate an account of supportive crisis response that departs strikingly from more traditional modes of street-level criminal law enforcement. It also seeks to equip and empower persons with opportunities and resources that are welfare-enhancing. This mutually reinforcing dynamic is key to how Alternative Responses operationalize a first-response ethic that prevents short-term and long-term harm.

#### IV. IMPLICATIONS FOR PUBLIC SAFETY GOVERNANCE

This Part identifies a model for public safety governance that derives from the supported crisis response framework. This model contrasts with two alternatives that have recently shaped public safety decision-making. One of

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<sup>348</sup> See Interview with QF, *supra* note 282 (describing the postintervention approach taken by paramedics in the Madison Fire Department).

<sup>349</sup> See discussion *supra* Section II.B.3.

<sup>350</sup> For example, one interviewee in Madison explained that the expectation is that “CARES teams are not going out there intending to be stuck on one call or helping one person for their whole shift.” Interview with NM, *supra* note 206.

<sup>351</sup> Unhoused people disproportionately lack the means to be contacted after an intervention. See Maria C. Raven, Lauren M. Kaplan, Marina Rosenberg, Lina Tieu, David Guzman et al., *Mobile Phone, Computer, and Internet Use Among Older Homeless Adults: Results from the HOPE HOME Cohort Study*, JMIR MHEALTH & UHEALTH, Dec. 2018, at 1, 1 (“Older homeless adults . . . had a lower prevalence of smartphone and internet access than adults aged over 65 years in the general public or low-income adults.”).

these alternatives, described in section A, favors traditional deterrence modalities. Another, analyzed in section B, entrusts police with the dual task of deterrence and rehabilitation, making them responsible for balancing the demands of both approaches. Section C defends a third possibility in which Alternative Responses play expanded first-response roles in nonviolent incidents, while police assume much more limited responsibilities.

#### A. *Deterrence Policing*

Many jurisdictions have recently doubled down on the presumptive deterrence function of policing and abandoned preventive rehabilitation practices.<sup>352</sup> This trend has been fueled by the retrenchment in public safety policy that is occurring nationwide.<sup>353</sup> Indeed, the amici curiae briefs in *Grants Pass*—submitted by cities, states, and influential advocacy organizations—signaled renewed commitment to aggressive broken windows enforcement.<sup>354</sup>

Part II highlighted the harms of this mode of policing.<sup>355</sup> The burden of proof to show that these harms are outweighed by public safety benefits is very high—perhaps impossibly so. Public opinion about the need to “get tough” will inevitably ebb and flow, but that volatility does not mean that punitive deterrence tactics should persist as the norm. The research discussed above, together with the promise of interventions like Alternative Responses, suggests that deterrence need not be the cornerstone of public safety governance.<sup>356</sup>

#### B. *Preventive Policing Consolidation*

Instead of doubling down on policing’s presumptive deterrence function, jurisdictions have also handed police the dual task of deterrence and rehabilitation. This framework most closely resembles the therapeutic policing model discussed in Part I.<sup>357</sup> This scheme entrusts police with the discretion to employ various crime prevention practices: They can lean on traditional enforcement tools such as arrests or citations, or they can incentivize people to

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<sup>352</sup> See Jamiles Lartey, *These States Are Once Again Embracing ‘Tough-on-Crime’ Laws*, MARSHALL PROJECT (Mar. 9, 2024, at 12:00 ET), <https://www.themarshallproject.org/2024/03/09/louisiana-georgia-kentucky-tough-on-crime> [<https://perma.cc/RE92-MMRY>].

<sup>353</sup> See *id.*

<sup>354</sup> See *supra* notes 56–59 and accompanying text.

<sup>355</sup> See discussion *supra* Section II.A.

<sup>356</sup> See discussion *supra* Section II.A, Part III.

<sup>357</sup> See *supra* notes 93–99 and accompanying text.

enter into specific rehabilitative programs that have the capacity to serve people who are referred through law enforcement channels.<sup>358</sup>

One exemplar policy program that aligns with this scheme is Law Enforcement Assisted Diversion (LEAD), which has been implemented in at least seventy jurisdictions across more than twenty states.<sup>359</sup> LEAD was created to divert people who have committed low-level criminal offenses away from the criminal system and into community-based social services.<sup>360</sup> Historically, it has comprised three main programmatic components.<sup>361</sup> The first is a prebooking program administered by law enforcement agencies; this process includes diversion from any form of incarceration or institutionalization, but participants may be arrested or incarcerated if they commit certain offenses while going through programming.<sup>362</sup> The second is an emphasis on harm-reduction case management, including low-barrier counseling and connection to social and clinical services that are offered with neither requirement nor pressure for substance use treatment or abstinence.<sup>363</sup> The third is coordination between participants, law enforcement actors, and social service providers.<sup>364</sup> Significantly, after the murder of George Floyd, officials at LEAD decided to move away from a model where law enforcement departments are gatekeepers and renamed the program Let Everyone Advance with Dignity.<sup>365</sup>

Recent controlled substance decriminalization efforts in Oregon also align with this specific policy pathway. In particular, Oregon's Measure 110, which was approved in 2021, decriminalized low-level controlled substance possession for drugs like cocaine, heroin, fentanyl, and methamphetamine.<sup>366</sup> The law allowed individuals charged with possession to get a "treatment needs screening" within forty-five days to get charges dismissed.<sup>367</sup> That said, implementation of the measure proved to be difficult in part because of a lack of

<sup>358</sup> See discussion *supra* Section I.B.3.

<sup>359</sup> See *LEAD Sites*, LEAD SUPPORT BUREAU, <https://leadbureau.org/lead-sites/> [<https://perma.cc/N4K6-VV4H>] (last visited Oct. 15, 2025).

<sup>360</sup> See Katherine Beckett, *Diversion and/as Decarceration*, 86 LAW & CONTEMP. PROBS. 103, 112 (2023).

<sup>361</sup> *Id.* at 104–06.

<sup>362</sup> See *id.* at 105; Katherine Beckett, *The Uses and Abuses of Police Discretion: Toward Harm Reduction Policing*, 10 HARV. L. & POL'Y REV. 77, 90 (2016).

<sup>363</sup> See Beckett, *supra* note 360, at 113.

<sup>364</sup> See *id.* at 116.

<sup>365</sup> See Stuart & Beckett, *supra* note 273, at 411 n.1.

<sup>366</sup> See *Measure 110*, OR. JUST. DEP'T, <https://www.courts.oregon.gov/about/Documents/BM110Statistics.pdf> [<https://perma.cc/6C74-QBAQ>] (last visited Oct. 15, 2025); OR. REV. STAT. § 430.383 (West 2025).

<sup>367</sup> *Measure 110*, *supra* note 366.

collaboration and communication between police, courts, and health care providers.<sup>368</sup> Those issues hampered the state's ability to connect individuals with necessary health services, and because of the law's lack of success, Oregon reverted to criminalizing low-level controlled substance possession.<sup>369</sup>

The efforts by LEAD and the State of Oregon to decriminalize low-level drug offenses are part of a much broader landscape of seemingly decarceral initiatives that have been criticized for integrating deterrence-centric logics. Other initiatives, such as problem-solving courts and restorative justice initiatives housed within law enforcement departments, have been core to this landscape.<sup>370</sup> From one perspective, the literature frequently shows the benefits of some of these initiatives, including with respect to recidivism and certain health service outcomes.<sup>371</sup> At the same time, these programs hardly help to move beyond the problems associated with law enforcement departments acting as key decision-makers for ostensibly rehabilitative services, often perpetuating the problems they aim to resolve.

### C. *Toward Integration*

The increasingly salient role that Alternative Responses play across the country points to a model of public safety governance that contrasts with the two models outlined above. More particularly, jurisdictions should opt for an

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<sup>368</sup> See Tony Schick & Conrad Wilson, *Oregon's Drug Decriminalization Aimed to Make Cops a Gateway to Rehab, Not Jail. State Leaders Failed To Make It Work.*, PROPUBLICA (Feb. 14, 2024, at 05:00 ET), <https://www.propublica.org/article/oregon-leaders-hampered-drug-decriminalization-effort> [<https://perma.cc/UAD7-ZPEF>].

<sup>369</sup> See *id.*; Conrad Wilson & Michelle Wiley, *After Rolling Back Ballot Measure 110, Oregon's Drug Recriminalization Plans Come into Focus*, OPB (Aug. 21, 2024, at 09:00 PT), <https://www.opb.org/article/2024/08/29/measure-110-drug-law-deflection-possession-crime-law-oregon-recriminalization-decriminalization/> [<https://perma.cc/W59J-QL23>].

<sup>370</sup> For work I have written with coauthors about problem-solving courts, see generally Benjamin A. Barsky, Heather Ellis Cucolo & Dominic A. Sisti, *Expanding Therapeutic Jurisprudence Across the Federal Judiciary*, 49 J. AM. ACAD. PSYCHIATRY & L. 96, 97–98 (2021). For analyses of restorative justice initiatives in the United States, see generally Thalia González, *The State of Restorative Justice in American Criminal Law*, 2020 WIS. L. REV. 1147 (2020); Adriaan Lanni, *Taking Restorative Justice Seriously*, 69 BUFF. L. REV. 635, 649 (2021).

<sup>371</sup> See generally, e.g., Sheryl Kubiak, Erin B. Comartin, Bradley Ray & Elizabeth Tillander, *The Effect of Systems Collaboration on the Individual Outcomes of Mental Health Court Participants: A Multi-Site Study*, 60 INT'L J.L. & PSYCHIATRY 64 (2018) (discussing the influence of mental health courts on emergency psychiatric hospitalizations); Desmond Loong, Sarah Bonato, Jan Barnsley & Carolyn S. Dewa, *The Effectiveness of Mental Health Courts in Reducing Recidivism and Police Contact: A Systematic Review*, 55 CMTY. MENT HEALTH J. 1073 (2019) (discussing the influence of mental health courts on recidivism); Lindsay Fulham, Julie Blais, Tanya Ruge & Elizabeth A. Schultheis, *The Effectiveness of Restorative Justice Programs: A Meta-Analysis of Recidivism and Other Relevant Outcomes*, CRIMINOLOGY & CRIM. JUST., Nov. 2023, at 1, 1 (discussing the influence of restorative justice initiatives on recidivism).

approach to prevention under which Alternative Responses play significantly expanded first-response roles in nonviolent incidents, while police take on correspondingly minimized responsibilities. The principle of *integration*—which dictates that public safety responses ought to be diffused and shared across a range of government bodies and civil society organizations rather than dominated by police—lies at the heart of this model.<sup>372</sup> After all, Alternative Responses exist within the preventive state’s architecture, despite being situated outside of law enforcement agencies (e.g., in fire departments).<sup>373</sup> These programs, in other words, have already created a blueprint where agencies beyond law enforcement departments can be charged with first-response interventions that have historically been conducted by police.

On this account, integration is the product of concerted administrative decisions that are coordinated among various stakeholders, many of whom act in official state capacities and many of whom are situated outside of government. Integration thus arises from interagency policymaking—mediated and shaped by feedback and responses from civil society stakeholders. As an example, the City of Oakland’s decision to place MACRO in the Oakland Fire Department occurred after years of activism and advocacy, with George Floyd’s murder serving as the catalyst rather than the primary root cause.<sup>374</sup> The program’s first-response methods were designed and molded based on the feedback from stakeholders within and outside of the city government.<sup>375</sup> And MACRO’s success depends almost entirely on its ability to work not only in accordance with Oakland Fire Department protocols but also in line with expectations from the OPD, in partnership with social service providers throughout the city, and in alignment with demands from the public.<sup>376</sup> Accordingly, integration is a matter of administrative policy design, constructed under democratic pressure and rendered operational through the work of policymakers and state workers.

Normatively, a model of public safety governance that favors integration is inherently not neutral about police. It embeds the idea that police are poorly equipped to handle a number of everyday emergency incidents that are better served through unarmed first-response modalities. As such, even under a more

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<sup>372</sup> This feature is consistent with Barry Friedman’s call for an “entirely new form of central coordination to deal with chronic public health and public safety issues.” Barry Friedman, *Disaggregating the Policing Function*, 169 U. PA. L. REV. 925, 990 (2021).

<sup>373</sup> See discussion *supra* Section II.B.

<sup>374</sup> See Barsky, Konnoth & Stein, *supra* note 198, at 1273.

<sup>375</sup> See *id.* at 1273, 1275.

<sup>376</sup> See *id.* at 1275; discussion *supra* Section II.B.

conservative articulation of this model, law enforcement involvement would be reserved for situations that reach a threshold risk of danger or violence that is far more exacting than the exceptionally loose threshold that is routinely applied today. Tentatively, a rule of decision could dictate that in situations with clear, unobjectionable risks of danger or violence, police would be first-responders by default; in other situations, Alternative Responses would be assumed to be the default responders. But any standard must be subject to vigorous public scrutiny.

This kind of integration is also consistent with calls to expand public safety governance beyond a cramped, unimaginative focus on traditional criminal outcomes. Monica Bell persuasively makes the case that the literature on “policing and public safety has focused on crime rates (especially felonies), fear of crime, and internal police department dynamics . . . .”<sup>377</sup> That focus has narrowed the study and operation of public safety governance, overlooking other measures that are equally, if not more, relevant to community well-being and safety, including public health indices.<sup>378</sup> Given that Alternative Responses already are serving traditional law enforcement objectives (e.g., the reduction of crime) while promoting different ends as well (e.g., community health outcomes), they have the potential to embody this more expansive governance framework.<sup>379</sup>

Concretely, a suite of policy changes could help operationalize the principle of integration both in the near term and moving forward. These changes should facilitate integration across jurisdictions and within them. To that end, a multilayered policy agenda should expand Alternative Responses beyond their current institutional constraints; at present, many cities lack the resources to launch programs, hire and retain staff, and sustain the support necessary to demonstrate their effectiveness and navigate early-stage challenges.<sup>380</sup> A viable policy agenda should address these constraints to enable integration at scale.

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<sup>377</sup> Monica C. Bell, *Next-Generation Policing Research: Three Propositions*, J. ECON. PERSPS., Fall 2021, at 29, 30–31. David Knight and Vesla Weaver have similarly argued that “by attending to legal infractions and arrests (not safety deprivation) and crime control or enforcement (not broader safety provision), conventional scholarship has simultaneously inflated the role of the state in producing safety and promoting ‘crime control’ and deflated its role in producing harm.” David J. Knight & Vesla M. Weaver, *Black Political Mobilization and the US Carceral State: How Tracing Community Struggles for Safety Changes the Policing Narrative*, 8 ANN. REV. CRIMINOL 25, 35 (2025).

<sup>378</sup> See *id.* at 30–31.

<sup>379</sup> See discussion *supra* Part III.

<sup>380</sup> See, e.g., Yucel Ors, *How Local Governments Are Building Alternative Public Safety Models*, NAT’L LEAGUE OF CITIES (May 18, 2023), <https://www.nlc.org/article/2023/05/18/how-local-governments-are-building-alternative-public-safety-models/> [<https://perma.cc/FXR8-XFBG>] (“Changing how local governments respond to non-criminal and nonviolent incidents will not happen overnight. . . . [U]ntil there are more federal,

In the near term, jurisdictions should take steps to minimize police interference in Alternative Response operations. Several options are at their disposal. First, jurisdictions should create independent phone numbers that community members can use instead of 9-1-1. Doing so would accomplish at least two objectives. It would empower callers who may not want police involvement but nonetheless perceive the need for a crisis response intervention. Relatedly, it would limit discretion among 9-1-1 call takers and dispatchers, who may default to police responses even when they are unnecessary. This redesign of emergency communication systems has occurred in one studied city, Oakland, where MACRO has established an independent phone number routed through the Oakland Fire Department.<sup>381</sup> Other jurisdictions should assess whether MACRO's model can be adapted to their own particular institutional contexts; if so, they must ensure that the public is made aware of the Alternative Response phone number. In addition, the National Suicide Hotline Designation Act of 2020 created 9-8-8—a national phone number established to assist people experiencing behavioral health crises.<sup>382</sup> One hope for the initiative was its ability to connect callers directly to Alternative Responses.<sup>383</sup> Yet progress has been bumpy, not least given the recent federal disinvestments in the 9-8-8 architecture.<sup>384</sup> Nonetheless, connecting 9-8-8 to Alternative Responses remains an underutilized tool for advancing integration.

Second, jurisdictions should commit, ideally through law or executive action, to sending Alternative Responses to call types that frequently occur and do not require armed police responses. As established above, Alternative Responses have the capacity to respond to low-level drug incidents.<sup>385</sup> Yet many

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state, and local investments in social and mental health response programs, police will continue to be the primary responders to these types of incidents.”); Thompson, *supra* note 4 (“Many programs have struggled to find sustainable funding. . . . Experts also say these jobs need to be a viable career path, and that cities need to ensure there is a pipeline of people to staff the new agencies.”).

<sup>381</sup> Eli Wolfe, *MACRO, Oakland's Non-Emergency Crisis Response Team, Now Has a Phone Number*, OAKLANDSIDE (Mar. 21, 2024, at 14:00 ET), <http://oaklandside.org/2024/03/21/oakland-macro-crisis-response-phone-number-contact/> [<https://perma.cc/K8HB-RYD6>].

<sup>382</sup> National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, 134 Stat. 832.

<sup>383</sup> For coverage of this issue by the National Alliance on Mental Illness, see *988: Reimagining Crisis Response*, NAT'L ALL. ON MENTAL ILLNESS, <https://www.nami.org/advocacy/crisis-intervention/988-reimagining-crisis-response/> [<https://perma.cc/69N5-J78C>] (last visited Oct. 15, 2025).

<sup>384</sup> See, e.g., Devi Shastri, *Trump Administration Removing 988 Hotline Service Tailored to LGBTQ+ Youth in July*, ASSOCIATED PRESS (June 18, 2025, at 17:28 ET), <https://apnews.com/article/988-lgbtq-suicide-prevention-hotline-trump-382342828b381b6a32964f09fe9aa59c> [<https://perma.cc/T4J6-LP8S>] (“The 988 National Suicide & Crisis Lifeline will stop providing tailored support options to LGBTQ+ youth and young adults on July 17, according to a statement on a federal agency’s website.”).

<sup>385</sup> See *supra* notes 150–55 and accompanying text.

jurisdictions continue to have strict enforcement rules in such cases.<sup>386</sup> Jurisdictions should prioritize the needs of people who use drugs through Alternative Response interventions rather than defer to law enforcement interventionism. This proposal finds support in a well-developed literature emphasizing the health and other harms of criminalizing drug use.<sup>387</sup>

Low-level trespass and indecent exposure incidents follow the same general logic. In many high-frequency cases of trespass—including cases in which people are temporarily seeking shelter on privately owned property (e.g., lawns or parking lots)—police interventionism will often exacerbate harms rather than prevent them.<sup>388</sup> The potential deterrent effect of arrests, citations, and fines is also probably too indeterminate to justify their use.<sup>389</sup> By contrast, Alternative Responses have the tools, such as the ability to connect people to resources like shelters or temporary housing resources, to remedy the problem.<sup>390</sup> The difficulty lies in determining what trespassing cases are appropriate for Alternative Response interventions—a challenge that directly pits the interests of property owners against those with fewer resources.<sup>391</sup> At the very minimum, situations where people lack the means for shelter due to poverty or other life constraints should be candidates for Alternative Response interventions.

Likewise, police action is not necessary for all indecent exposure incidents. Such incidents are commonplace, especially in populated urban centers where sanitation infrastructures are insufficient to meet basic human needs.<sup>392</sup> They

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<sup>386</sup> See *supra* notes 156–59 and accompanying text.

<sup>387</sup> See generally Barbara Fedders, *Opioid Policing*, 94 IND. L.J. 389 (2019) (discussing myriad of harms resulting from drug arrests); Jennifer D. Oliva & Taled El-Sabawi, *The “New” Drug War*, 110 VA. L. REV. 1103 (2024) (noting shift in drug policy rhetoric to public-health-centric approach).

<sup>388</sup> See *supra* notes 166–73 and accompanying text.

<sup>389</sup> See *supra* notes 166–73 and accompanying text.

<sup>390</sup> See *supra* notes 281–87 and accompanying text.

<sup>391</sup> Cf. Ezra Rosser, *The Ambition and Transformative Potential of Progressive Property*, 101 CALIF. L. REV. 107, 121 (2013) (“The owner of a good generally can expect to be protected by the state against trespass or theft even if the so-called thief is a homeless person and the good is a loaf of bread or an unused patch of land.”).

<sup>392</sup> See, e.g., Aldo Toledo & Jenny Kwon, *S.F. Feces Complaints Rise Again Despite City Spending Millions on Public Toilets*, S.F. CHRON. (Apr. 24, 2024, at 10:13 ET), <https://www.sfchronicle.com/projects/2024/public-toilets-sf/> [https://perma.cc/YEL8-FPDF]; Matt Flegenheimer & J. David Goodman, *Public Urination in New York Becomes Test Case for Policing*, N.Y. TIMES (July 15, 2015), <https://www.nytimes.com/2015/07/16/nyregion/public-urination-in-new-york-becomes-test-case-for-policing.html> [https://perma.cc/N4VM-9SG8]; Emily Hoerner, *Everybody Needs Access to Bathrooms. Chicago Doesn’t Provide Nearly Enough of Them.*, CHI. TRIB. (June 14, 2024, at 18:47 CT), <https://www.chicagotribune.com/2021/10/21/everybody-needs-access-to-bathrooms-chicago-doesnt-provide-nearly-enough-of-them/> [https://perma.cc/FKG5-TPG2].

can also attract much public attention due to their perceived connection to homelessness, crime, and disorder.<sup>393</sup> At the same time, as noted previously, precedent exists for Alternative Response involvement in such cases. For example, programs like MACRO and Los Angeles's Unarmed Model of Crisis Response explicitly include indecent exposure issues in their list of assigned call types.<sup>394</sup> As in trespass cases, however, the challenge lies in drawing the line between low-risk (e.g., urinating in alleyways) and potentially high-risk situations (e.g., incidents in close proximity to schools) and defining that line clearly for decision-makers, including within 9-1-1.

Third, jurisdictions should evaluate their programs in ways that are democratically responsive and analytically sound; the goal should be to provide meaningful public insight into whether Alternative Responses are delivering on their stated goals. Of course, challenges to doing so are substantial. Jurisdictions often lack the capacity as well as the funding to conduct evaluations effectively and rigorously.<sup>395</sup> Furthermore, because programs change and evolve quickly, evaluation raises difficult empirical challenges. The type of evidence brought to bear (i.e., qualitative versus quantitative) will be contested. For example, debates persist about whether nonrandomized controlled trials can provide clear, meaningful information about program impacts.<sup>396</sup> Finally, communities and governments may be tempted to disinvest in the face of short-term failures or shortcomings. Addressing these problems is equally complex. It requires creating and securing long-term funding opportunities, including through government funding agencies and private grant-providing organizations. It also necessitates collaboration across civil society, government, and private sector actors. Alternative Responses, as with public safety interventions more generally, connect directly or indirectly with all facets of local social life. As such, all constituencies should be represented in evaluation efforts.

Moving forward, scaling the principle of integration will require sustained financial support. As noted above, Alternative Response operations are resource

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<sup>393</sup> See April M. Ballard, Hannah L. F. Cooper, April M. Young & Bethany A. Caruso, 'You Feel How You Look': Exploring the Impacts of Unmet Water, Sanitation, and Hygiene Needs Among Rural People Experiencing Homelessness and Their Intersection with Drug Use, PLOS WATER, May 2022, at 1, 2.

<sup>394</sup> MACRO, *supra* note 196; Chris Lindahl & Patch Staff, *LA Expands Unarmed 911-Response Program to More Neighborhoods*, PATCH (Sep. 23, 2024, at 10:40 PT), <https://patch.com/california/los-angeles/la-expands-unarmed-model-crisis-response-pilot-program> [<https://perma.cc/EM5P-M2C8>].

<sup>395</sup> See, e.g., CRIME & JUST. INST., BEHAVIORAL HEALTH CRISIS RESPONSE LANDSCAPE ANALYSIS 8 (2024).

<sup>396</sup> For a very cogent analysis of this issue in the context of criminal system reform, see generally Jonathan Ben-Menachem, *Our Evidence-Based Obsession*, INQUEST (Sep. 19, 2023), <https://inquest.org/our-evidence-based-obsession/> [<https://perma.cc/T8T5-CS3S>].

intensive. Medicaid has a potentially important role to play in this regard.<sup>397</sup> Notably, the American Rescue Plan Act of 2021 enabled states to implement “qualifying community-based mobile crisis intervention services” as reimbursable Medicaid benefits from April 2022 through March 2027.<sup>398</sup> The statute also guaranteed that the U.S. government would cover eighty-five percent of the cost of these services for the initial twelve fiscal quarters as long as states followed the specific statutory requirements.<sup>399</sup> CARES implemented this mechanism by having Medicaid reimburse crisis services.<sup>400</sup> The success of such financing efforts will depend not only on ensuring that programs can survive precarious local budgetary situations but also on the workforce and service models they incentivize. One point of variation among Alternative Responses is whether personnel without formal training backgrounds or credentials are eligible for recruitment. For example, one category of responders in Oakland does not require any licensing, while every responder in Madison must be formally licensed either as clinicians or paramedics.<sup>401</sup> If, for example, Medicaid conditions its funding on the provision of services that only licensed personnel can furnish, then it may disincentivize the development of a workforce of people with relevant life experiences but who lack specific clinical credentials.

Second, jurisdictions must establish mechanisms for community responsiveness beyond the point of Alternative Response creation. The research presented above reveals engagement on the front end of program implementation.<sup>402</sup> But past that point, mechanisms for feedback appear limited. This asymmetry limits opportunities for participation in ongoing

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<sup>397</sup> See Andrew Anderson & Jacob Jorem, *Mobile Crisis Teams and Medicaid Funding: Advancing Behavioral Health Crisis Response Across the United States*, MILBANK Q. (Apr. 1, 2025), <https://www.milbank.org/quarterly/opinions/mobile-crisis-teams-and-medicaid-funding-advancing-behavioral-health-crisis-response-across-the-united-states/> [https://perma.cc/LKJ8-LWLE].

<sup>398</sup> American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9813(a), 135 Stat. 9, 213; Heather Saunders, *A Look at State Take-Up of ARPA Mobile Crisis Services in Medicaid*, KFF (Nov. 30, 2023), <https://www.kff.org/medicaid/issue-brief/a-look-at-state-take-up-of-arpa-mobile-crisis-services-in-medicaid/> [https://perma.cc/N6M5-4MVA].

<sup>399</sup> American Rescue Plan Act of 2021 § 9813(c).

<sup>400</sup> Interview with QF, *supra* note 282 (“[O]ur folks are now all licensed through the state as community paramedics, not just paramedics, [meaning] we have the opportunity to start billing for Medicaid and things like that because they are actual service providers that are licensed in that area.”).

<sup>401</sup> Compare CITY OF OAKLAND, MACRO POLICIES AND PROCEDURES 17 (2022), <https://www.oaklandca.gov/files/assets/city/v1/fire/documents/macro/operational/macro-policies-procedures-v.1-3.2022.pdf> [https://perma.cc/T62G-W8NB] (describing teams comprising of Community Intervention Specialists and Emergency Medical Technicians), with CARES, *supra* note 290 (“CARES teams consist of one Madison Fire Department community paramedic and one Journey Mental Health Center crisis worker.”).

<sup>402</sup> See *supra* notes 222–30 and accompanying text.

implementation and weakens the foundations necessary for long-term programmatic viability.

Third, scholars must continue developing theories that challenge crime or treatment-centric paradigms of public safety governance.<sup>403</sup> This Article has taken one such step by identifying rehabilitation as a locus for this type of theorizing, given its capaciousness and reciprocity with autonomy-centric frameworks in disability and health ethics.<sup>404</sup> Yet this effort may prove incomplete or conceptually limited. Still, the aim is to catalyze broader scholarly engagement with public safety theories that move beyond an emphasis on crime and treatment and toward approaches grounded in empowerment and support.

### CONCLUSION

For decades, jurisdictions have pursued preventive justice through punitive deterrence tactics, including variants of broken windows policing. *Grants Pass* illustrates this enduring approach, where a majority of the Supreme Court lent authority to the idea that criminalizing nonviolent behavior—such as sleeping outdoors—can deter more serious crime.

Drawing on fieldwork research, this Article argues that Alternative Responses reveal a preventive justice approach that moves beyond deterrence. These programs are institutionally enmeshed with police departments, making them integral to the preventive state's architecture. Yet they employ a fundamentally distinct approach from police at the street level—what this Article calls supported crisis response—that aims to ensure people have the agency, resources, and support necessary to achieve health and safety.

These findings demonstrate the promise of expanding Alternative Response interventions in nonviolent incidents and limiting the role of police. Yet achieving this transformation depends on the continued integration and implementation of these programs in jurisdictions nationwide—and on strengthening their capacity to withstand pressures to revert to a deterrence-centric ethos of harm prevention. Fundamentally, doing so will require cultivating specific organizational norms that can durably and strategically adapt

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<sup>403</sup> Monica Bell has been among the most influential theorists in this respect. *See supra* note 17 and accompanying text; *see also* Monica C. Bell, *Safety, Friendship, and Dreams*, 54 HARV. C.R.-C.L. L. REV. 703, 708 (2019) (embracing a “vision of justice . . . in which the state recognizes collective and individual humanity and thus, through various means, aims to promote social inclusion and social solidarity”).

<sup>404</sup> *See* discussion *supra* Section III.B.

to law enforcement demands and influence. In the end, this Article defends a vision of public safety governance that embraces and invests in supported crisis response—one that can create a more equitable foundation for health and safety.

## APPENDIX – DATA AND METHODS

This Article was completed in the context of a research project supported by the Robert Wood Johnson Foundation’s Evidence for Action Program entitled “A New Crisis Intervention Model? Non-Police Alternative Emergency Response Programs, Racial Equity, and Health Justice” (“A New Crisis Intervention Model”).<sup>405</sup> One prong of this project focuses on studying whether “policy responsiveness (in an institutional context) affect[s] [Alternative Responses] design as non-police and non-carceral interventions.”<sup>406</sup> To carry out this prong, our research team partnered with three cities that implemented Alternative Responses after George Floyd’s murder: Dayton, Ohio, which created the Mediation Response Unit (MRU); Madison, Wisconsin, which created Community Alternative Response Emergency Services (CARES); and Oakland, California, which created the Mobile Assistance Community Responders of Oakland (MACRO). Our relationship with these programs generated opportunities for connections with people and organizations familiar with their work. A New Crisis Intervention Model also includes an advisory board composed of public health advocates, directly impacted individuals, and researchers. The research team worked with the advisory board as well to foster connections with individuals who have experience with and knowledge of Alternative Responses.

This Article leverages two types of data: semi-structured interviews and ethnographic participant observations. Interviews constitute the primary data source, and observations serve as complements to these data. Interviews and observations occurred concurrently. This process meant that the researchers did not wait until one type of data was fully collected before beginning data collection for the other type of data. This process also meant that interviews helped to inform how to approach observations and vice versa. Data collection occurred primarily in Oakland, followed by Madison and Dayton, respectively. This distribution happened partly because the research team’s partnership with Oakland preceded the other partnerships, providing more time for interviews and observations. Consequently, interviewees disproportionately reside in Oakland, and observations disproportionately occurred in Oakland as well. Despite this imbalance, the sample of interviews and overall time conducting observations

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<sup>405</sup> See *A New Crisis Intervention Model? Non-Police Alternative Emergency Response Programs, Racial Equity, and Health Justice*, EVIDENCE FOR ACTION, <https://www.evidenceforaction.org/grant/new-crisis-intervention-model-non-police-alternative-emergency-response-programs-racial> [https://perma.cc/U76N-YY49] (last visited Nov. 2, 2025).

<sup>406</sup> *Id.*

were large enough to enable textured analytic comparisons between each city. All interviews and observations were conducted between January 2023 and May 2024. The institutional review boards at Harvard University and Columbia University approved these data collection processes.

*Semi-Structured Interviews.* Interviews served as windows into the structures and processes of Alternative Response interventions, and into the individual, institutional, and community-level characteristics that influence program operations. My colleague David Knight and I conducted most interviews together. Knight also led some interviews alone, and so did I. Generally speaking, interviews focused on the views of a cross section of Alternative Response staff and community-based providers who have carried out these interventions themselves or experienced them firsthand. They tended to center on interviewees' perceptions of both Alternative Response effectiveness and the larger sociolegal institutions (e.g., law enforcement departments and health service providers) with which these programs interact. Interviews also focused on insights from law enforcement officers who have learned intimately about or worked with Alternative Responses in their jurisdictions. An interview guide served as a basis for all interviews.<sup>407</sup> Because of the semi-structured nature of the interviews, however, interviewees were able to shape the direction of conversations. The result is that not all topics in the interview guide were covered in each conversation. Yet this flexibility allowed the sharing of unexpected information and insights. Table 1 describes the recorded sociodemographic information among interviewees who disclosed that information.

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<sup>407</sup> The interview guide is available upon request.

**Table 1 – Recorded Sociodemographic Information Among Interviewees**

	<b>Count</b>	<b>%</b>
<b>City</b>		
Oakland	27	54
Madison	14	28
Dayton	9	18
<b>Gender</b>		
Male	21	42
Female	18	36
Agender	1	2
Genderqueer	1	2
Nonbinary	1	2
Undisclosed	8	16
<b>Race/Ethnicity</b>		
White	20	40
Black	7	14
African American	2	4
Latino	2	4
Asian American	1	2
Black/White	1	2
Hispanic	1	2
Latino/Hispanic	1	2
Middle Eastern	1	2
Puerto Rican/Hispanic	1	2
Vietnamese	1	2
White/Hispanic	3	6
Undisclosed	9	18
<b>First Language</b>		
English	27	54
English/Portuguese	2	4
English/Spanish	2	4
English/Vietnamese	1	2
Farsi	1	2
Spanish	1	2
Undisclosed	16	24

A professional transcription company transcribed each interview. Once transcriptions were completed, I uploaded them into the NVivo data analysis software and followed a “flexible coding process” for analysis.<sup>408</sup> To begin, I read every transcript and coded chunks of text that related to Alternative Responses. I assigned a word or term for each coded chunk of text. This step enabled me to create a first rough codebook. I then reviewed that codebook to identify quotations bearing on whether and how respondents perceived Alternative Responses as performing police-like or public health functions. Finally, I disaggregated text chunks into more specific codes and assigned them newer, more accurate words or terms. Through this process, I was able to refine my first rough codebook into a version that was better suited to analyzing the themes and topics emerging from the data. Analytically, this approach aligned with established norms in qualitative social science, alternating iteratively between the interview data and the literature while using largely abductive reasoning to develop concepts and overarching empirical findings.<sup>409</sup>

*Ethnographic Participant Observations.* Interviews occurred alongside ethnographic participant observations. As with interviews, Knight and I conducted many observations together; we also conducted some observations independently. During these observations, I immersed myself in the “social life” of a group of people without strong a priori expectations about what I would observe.<sup>410</sup> Accordingly, I sought to observe how the work of Alternative Responses unfolds in real time. Analytically, when appropriate, as with the semi-structured interviews, I transcribed field notes that I had recorded orally before analyzing them using the approach described above.

In Dayton, at least thirty-two hours of observations were conducted in August 2023 at the Dayton Mediation Center or with MRU staff during ride-alongs. In Madison, at least forty hours of observations were conducted at Dane County Public Safety Communications in February 2023. In that context, the focus was on understanding the technicalities associated with 9-1-1 emergency

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<sup>408</sup> See Nicole M. Deterding & Mary C. Waters, *Flexible Coding of In-Depth Interviews: A Twenty-First-Century Approach*, 50 SOCIO. METHODS & RSCH. 708, 720 (2021).

<sup>409</sup> See Stefan Timmermans & Iddo Tavory, *Theory Construction in Qualitative Research: From Grounded Theory to Abductive Analysis*, 30 SOCIO. THEORY 167, 170 (2012) (defining abduction in the context of research as an “inferential creative process of producing new hypotheses and theories based on surprising research evidence”).

<sup>410</sup> Jan Kubik, *Ethnography of Politics: Foundations, Applications, Prospects*, in POLITICAL ETHNOGRAPHY: WHAT IMMERSION CONTRIBUTES TO THE STUDY OF POWER 25, 30 (Edward Schatz ed., 2009). In this case, the “group of people” constitutes those who operate and work with Alternative Responses together with the constituents that Alternative Responses serve.

call taking and dispatching, including the process through which 9-1-1 phone calls are converted into Alternative Response interventions. In Oakland, at least 180 hours of observations were conducted across five time periods: March 2023, April 2023, June 2023, October 2023, and May 2024. These periods were divided between observing the work of MACRO and community-based organizations that interface with the program. The March 2023 period of fieldwork focused on observations alongside harm-reduction resource providers. By contrast, the April 2023, June 2023, October 2023, and May 2024 periods of fieldwork were focused on MACRO. I conducted ride-alongs with responders during which I observed responses from start to finish. I was also part of team-focused meetings convened by MACRO's leadership. Finally, in May 2024, I was included in a weeklong training academy for MACRO designed for a new responder cohort that would begin their work in mid-to-late 2024.