

Changing Police Norms

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ON SEPTEMBER 15, 2015, Debra Silvestri tested positive for alcohol during a routine evaluation at the drug court in Lowell, Massachusetts. Shortly afterwards, she collapsed in the courtroom, and was pronounced dead later that day at the Lowell General Hospital. A medical examiner ruled her death a suicide.

The mother of three had long struggled with addiction, schizophrenia, and bipolar disorder, and had been imprisoned in 2012 for drunk driving. On the day she tested positive, Silvestri had already been coming to the drug court on a weekly basis for over a year as a condition of her probation. While these evaluations were meant to be a compassionate alternative to incarceration, the weekly threat of being sent back to jail, along with an array of court-ordered requirements, left Silvestri feeling overwhelmed; she often told family members that she couldn't "take it anymore." Her death garnered national attention, and many argued that the Lowell drug court unjustly criminalized addiction and mental illness.

In hindsight, it is difficult to conclude that Silvestri belonged in Lowell's drug-court system; if she had instead been treated by people who could make sense of her conditions and treat her accordingly, her death could have been prevented. While the drug court in Lowell was in principle designed to divert people with substance-abuse problems from prison, no one operating within it seemed to properly take Silvestri's mental illness into account. Police and probation officers rarely asked Silvestri about her mental well-being, focusing instead on administering random alcohol tests and encouraging her to attend

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Alcoholics Anonymous meetings. Before judges in the courtroom, Silvestri was not in a position to speak honestly about her struggles; in that context, she was primarily viewed as a past offender at risk of re-offending, and she felt compelled to demonstrate that she was recovering successfully. It was only after Silvestri's fatal public overdose that she was seen as a victim who suffered from a vicious combination of mental illness and alcoholism.

Even if there had been alternatives to drug courts in Lowell, it would have mattered only if the officials working with Silvestri had been able to determine when she needed help and been empowered to act accordingly. There are many people like Debra Silvestri in the criminal-justice system: those who have medical, behavioral, or other needs but remain unidentified by legal officials and therefore go unsupported. Often, these struggles are related: Mental-health problems, substance-abuse disorders, learning disabilities, and even physical conditions are frequently linked. Such issues are often also connected to poverty and chronic homelessness. People who suffer from any of the above may not be able to refrain from disruptive or risky behavior. The proper response, however, often involves rehabilitation rather than punishment.

While there are many community organizations in place to root out the causes of substance-abuse and mental-health issues, standard law-enforcement procedures rarely connect people to appropriate behavioral-health services. Often, the justice system fails to identify particular vulnerabilities in transgressors, which can lead to severe consequences. For example, incarcerated individuals struggling with addiction might be forced to go "cold turkey" and contend with the physical symptoms of detoxification while being denied access to medications that subdue cravings and minimize withdrawal symptoms. Even when formal programs that account for such vulnerabilities are available, the justice system frequently fails to refer those who need treatment. In some cases, the available treatment programs simply lack the necessary capacity. For example, in the United States, less than 20% of inmates who are clinically diagnosed with a substance-use disorder receive formal treatment, and the median level of access to such programs for all offenders is less than 10%.

This situation is not unique to the U.S.—the United Kingdom has been working to improve access to services for at least 25 years, and member states of the European Union have been looking for alternatives

to coercive sanctions through education, treatment, rehabilitation, aftercare, and social integration. But American debates on the issue have a special urgency given the country's extremely high incarceration rate, which includes many repeat and non-violent offenders. Widespread concerns about overcrowded prisons and school-to-prison pipelines also play a role in these discussions.

Of the various criminal-justice models that connect vulnerable people to mental-health and substance-abuse treatment, police deflection methods have arguably been garnering the most support. Although the idea is not new — police departments have been experimenting with such strategies since at least the 1960s — the term “deflection” was coined in 2014 by the Center for Health and Justice at Treatment Alternatives for Safe Communities to describe this increasingly popular approach to law enforcement. Until recently, deflection programs were rarely used, tended to be short-lived in their operation, or were made impossible by legislation. Such programs represent an underused tool to counteract the most pressing issues of the U.S. criminal-justice system, which often do not concern strict justice as much as public health.

AN ALTERNATIVE TO ARRESTS

Deflection programs allow police officers, the first line of defense in the criminal-justice system, to exercise judgment regarding treatment options before any other authority steps in. Unlike programs that give discretion to prosecutors, judges, and prison officials, police deflection allows treatment decisions to happen before booking or even before arrest. This approach tends to benefit public health, as it helps guide vulnerable individuals toward help and away from the criminal-justice system — preferably before they even enter it. This is particularly valuable because trials can be unpredictable and stressful, and prison sentences can interfere with vital treatment for individuals struggling with addiction or mental illness.

Deflection programs are more than just another arrangement to protect at-risk offenders. Beyond controlling for the effects of a jurisdiction's criminal-justice system, police deflection promises to address behavioral-health challenges that, if left untreated, can result in the stigmatization and mistreatment of vulnerable people. By presenting officers with and attuning them to options that go beyond either arresting suspects or doing nothing, these programs can allow police to better

respond to the needs of struggling individuals. These changes can also scale up to shift patterns of behavior throughout the criminal-justice system and beyond, since police officers are the most visible representatives of that system.

Street-level officers often encounter low-level offenders with mental-health or substance-abuse disorders, and are faced with the question of whether to arrest them for crimes like drug possession, prostitution, petty theft, or vagrancy. Among other things, this is a question of resource allocation, as arresting and apprehending suspects requires a substantial amount of work. Moreover, officers are often not eager to see people receive long sentences for low-level offenses. And when such arrests are made and vulnerable people are prosecuted, it frequently means they will be arrested again. When confronted with people in need of treatment, officers generally find themselves in the uncomfortable position of being unable to offer substantive help. They cannot ignore even minor crimes without the risk of encouraging further disorderly, disruptive, and potentially dangerous behavior, but they may be reluctant to take punitive action. Having the legally sanctioned option to send low-level offenders to treatment rather than jail could improve this situation for both law enforcement and the people they would ordinarily consider arresting.

To illustrate the challenges police face in carrying out their mission “to protect and to serve,” consider the following scenario: An officer notices a flickering light from an apartment window that, according to the officer’s training and experience, indicates possible drug use. The officer checks the apartment and finds someone who, by any standard, is at risk—visibly impaired from chronic substance abuse and on the verge of a physical and mental crisis. However, the same person in need of compassionate aid is also in possession of drug paraphernalia. For an attuned officer, it would seem obvious that getting this person into a short-term treatment facility is the appropriate action. However, that option wouldn’t be available to the officer in this hypothetical jurisdiction because of a rule mandating that the person be arrested and apprehended for possession. Whatever happened after arrest would be up to the court to decide.

While many officers would understandably feel conflicted in such a situation—after all, surveys have shown that helping people is one of the most commonly cited reasons for joining the profession—it is also

likely that after years of being confronted with the same scenario and the same limited options, they may never even entertain the thought that treatment is the appropriate course of action. After all, for legal officials in most jurisdictions, the norm is to catch, apprehend, and punish offenders, and their habits are shaped accordingly. However, the go-to mode of arresting suspects rather than diverting them to treatment may well lead offenders to escalate confrontations with police, and to commit crimes that are much more severe than a minor case of drug possession. In such situations, the safety of both the officer and the suspect are at risk.

Police deflection methods promise to reduce the hostility and the potential for misunderstanding between officers and suspects. They can also function on a larger scale to help communities better address substance-abuse and mental-health problems. In many jurisdictions without police deflection, officers' routines neither require nor incentivize tailored treatment for people with severe challenges. At best, law-enforcement officials feel poorly equipped to assess the mental health of offenders; at worst, such considerations are ignored entirely.

But consider how the hypothetical described above might change if the police officer in question were able to connect the victim to an appropriate rehabilitation program. In that case, an officer would be allowed discretion in determining whether an at-risk person belongs in the criminal-justice system or in treatment. If the officer proceeded with a standard booking, the apprehended person might eventually be offered treatment options, but could also face prosecution, sentencing, or prison. If, however, the officer opted to pursue treatment, it would be coordinated with a mental-health professional based upon the individual's desire to receive help. Under those circumstances, the officer would act merely as a referral source for community-based services.

In the vast majority of deflection initiatives, criminal charges are not required to begin a referral to treatment. This is called "prevention deflection," as it seeks to prevent future criminal-justice contact. Cases that do include charges are called "intervention deflections," as they seek to prevent further entrenchment in the justice system. Both of these options allow police to provide pathways that were previously unavailable to those in need. Considering that an estimated 68 million citizens come into contact with law enforcement every year, the number of referrals to community-based treatment could be transformative.

Seattle's Law Enforcement Assisted Diversion (LEAD) in the Belltown neighborhood is one example of a successful deflection initiative. Launched in 2011, the pilot program lets officers decide whether to deflect certain suspects from the criminal-justice system. People struggling with substance abuse, mental-health problems, poverty, and homelessness qualify, as do individuals involved in prostitution or drug dealing (within certain parameters prescribed by law). Those taken to treatment are assigned caseworkers, who place participants in short-term treatment facilities and ensure that their immediate basic needs are met. Patients are permitted to leave when they wish, but with the warning that they will likely return to police custody. Once their acute needs have been met, caseworkers help develop an "action plan" for each individual, which may include providing assistance with housing, employment, treatment, childcare, and other services. This allows caregiver services to be consistent and specifically tailored to individual needs.

LEAD was one of the first such programs, and it is frequently credited with having reduced recidivism by around 60% among its target demographic (though it is important to note that research concerning deflection programs is in its infancy and no definitive studies exist for any such initiatives, including LEAD). Since its inception, similar models have begun operation throughout the country, and the available evidence from the LEAD program suggests that carrots work far better than sticks when dealing with vulnerable individuals. This kind of program also has the potential to improve relationships between law enforcement and at-risk groups.

Debra Silvestri's case presented a tragic contrast to LEAD. The standard policing model used in Lowell was aimed primarily at deterring and incapacitating offenders, and seems to have encouraged resentment and mistrust between legal officials and offenders. It also seems to have discouraged honest speech and to have fostered a sense of alienation and guilt even among vulnerable people like Silvestri who were ostensibly being guided out of the criminal-justice system via drug-court programs. If encounters with law enforcement resulted in immediate, meaningful treatment options rather than custody, people like Silvestri might be able to stay hopeful even while struggling with addiction and mental illness.

It is perhaps for this reason that police officers and the public alike tend to support police deflection. It promises officers another strategy

when confronting transgressors in need of treatment, while promoting a fairer police force. And it promises to strengthen community relations through repeated encounters with citizens that result in treatment rather than arrest.

Despite widespread support and a steady rate of adoption, however, progress has been slower than one might expect. This is because deflection methods are still largely experimental, and thus there are reasons to remain skeptical as to how much will change at the street level and what the unintended consequences might be. Indeed, no one wants the initiative to end up as a “panacea phenomenon” that is quickly embraced and imposed wholesale without a full understanding of its effects. For example, could police deflection programs lead to harmful offenders not being incarcerated? Might the promise of avoiding jail time lead more people to engage in crime? Another common concern is that these programs may not substantively alter interactions between civilians and police. Questions remain as to how exactly these programs will change the norms and habits of officers. It isn’t enough for a justice system to have diversion programs if legal officials do not act in accordance with the spirit of it. And since most officers are trained to make arrests, order tests, and issue deadlines, they may consider themselves ill-suited to employ methods that are tailored, in both tone and execution, toward support rather than incarceration.

Put simply, we don’t yet know the answers to these questions. What we do know from decades of research and practice, however, is that getting a person into treatment at the right time is effective at reducing drug use and, in turn, reducing crime. And since plenty of legitimate social, economic, and political questions remain about the impact of these programs, we must consider the ways in which implementing them could generate new social norms that condition officers’ behaviors. To do so, it will be necessary to get a clear understanding of the psychology of norms and what causes them to shift.

CHANGING NORMS IN LAW ENFORCEMENT

Norms, of course, are the tacit “rules of the game” — the social and linguistic practices that affect people’s sense of what is expected of them in a variety of social situations. Police officers, judges, and neighbors all operate in ways that acknowledge what they “ought to do.” While norms relevant to a particular domain are always ensconced in other

structures—one cannot attend to a single role, such as father, without any regard to one’s other roles, such as citizen—particular roles are activated in particular situations, while others become secondary.

Norms are difficult to counteract. Beyond influencing our beliefs, they create habits, dispositions, and tastes, filling in the details of how to execute seemingly basic activities such as walking, standing, and smiling. Adherence to norms can become so automatic that it seems natural, so much so that we generally cannot determine when we are following norms at all. For example, “distance-standing” practices, which determine how far to stand from people with whom we are conversing, went largely unnoticed as a customary dimension of communication until the mid-20th century. Because norms structure how people orient themselves in the details of daily life, shifting policing practices will entail more than rhetoric or even clarifying policies. It must involve an understanding of the minute, concrete challenges inherent in reforming a profession.

Considering how entrenched norms can become, we must reflect on how law-enforcement officers view their own roles. If officers see their primary mission as preventing repeat offenses, it should not surprise us that they default to catching, apprehending, trying, and punishing people rather than seeking to rehabilitate them. And however compassionately those tasks might be performed, it shouldn’t surprise us that police officers, prosecutors, and judges will revert to their established routines when dealing with individuals who don’t fit neatly into one of two possible categories: recovering sufferer or repeat offender.

Despite this challenge, the beauty of norms is that they can be flexible. Given the right impetus, they can shift rapidly, even without the policymaking process required to change codified laws or institutions. Psychological studies have suggested that people can immerse themselves in newly assigned roles relatively quickly, even when the norms of those roles were previously unfamiliar to them. This remains true even when things that matter to the role were unknown beforehand. What’s more, norms can be “contagious” in the sense that the general behavioral patterns of individuals with the same role tend to resemble each other over time.

Studies have also shown that performing “prosocial” roles, which are meant to benefit others, can lead to greater ethical behavior in a wide variety of daily tasks. If this is the case, the entrenched practices of legal

officials could potentially be disrupted and re-oriented to allow for the formation of better habits. But achieving this will not merely be a matter of changing popular narratives about law enforcement, portraying officers as kinder and friendlier than they're generally perceived. Police departments will need to thoroughly uproot old habits and adopt new ones, which may be easier said than done.

This is partly a matter of changing how officers execute their basic mission to protect and serve. When an officer enters a hazardous situation, he is, ideally, not seeking to engage in indiscriminate violence. He is also unlikely to seek a nurturing relationship with a potentially dangerous felon. But the job does, or should, involve more than the traditional arrest, charging, and booking procedure. It has both a preventative as well as a restorative, rehabilitative component. Put simply, officers fail to protect and serve if they do not seek to repair harms in their communities. And a community—of which police are a part—cannot arrest its way out of social problems, or force vulnerable individuals to act in an orderly manner simply by making them anxious about the consequences of acting otherwise. While providing health services is not currently part of the core mission of law enforcement, because of their proximity to the communities they police, street-level officers are uniquely situated to evaluate at-risk individuals and refer them to treatment.

Police deflection programs enhance the rehabilitative dimension of the police mission, rather than automatically privileging corrective or punitive measures. An officer focused mainly on catching suspects will likely emphasize the latter; an officer trained in deflection will likely have enhanced sensitivity to the real risk presented by suspects, which in many cases can be better handled through rehabilitation.

CRIMES WITHOUT PUNISHMENT

Skeptics of police deflection may still wonder how pre-arrest deflection methods can deter criminal activity in the long run among those struggling with mental illnesses, addiction, or other chronic problems. According to the standard approach for modeling criminal behavior, a person will commit a crime if its expected benefit exceeds the severity of the punishment, multiplied by the probability of being punished. Under this framework, the purpose of police diversion for people who have not previously received treatment is clear: It offers those who are

compelled to commit a crime because of addiction or mental illness an alternative that promises to improve their lives, and with minimal law-enforcement involvement.

Skeptics could also ask how police deflection helps people as they are recovering. If the consequence of relapsing lacks some form of sanction, or if the sanction is simply re-entering a short-term treatment facility, then recovering individuals might be insufficiently deterred from criminal activity. This could also negatively affect their commitment to their own recovery. In order to assuage these concerns, we must understand the rehabilitative dimension of police deflection and how it can actually improve deterrence among at-risk individuals.

Mark Kleiman, a criminal-justice professor at New York University, has spent his career studying how deterrence regimes affect criminals, probationers, and potential offenders. His work demonstrates that effectively shaping a person's behavior does not entail severe punishment so much as consequences that are immediate, predictable, and consistent — or “swift, certain, and fair.” That is, people are more averse to mild or moderate harms that are guaranteed than to severe harms that are merely probable.

This idea is not new: As early as 1764, Cesare Beccaria, a Milanese philosopher and the godfather of criminology, argued that the surest way to deter crime is to enact clear, fair laws and to enforce them immediately and predictably. But despite the evidence in favor of this approach, it runs contrary to standard practices in the criminal-justice system. Supervised-release programs typically use an approach similar to the one famously endorsed by Nobel Prize recipient Gary Becker: They deter parolees and probationers from re-offending with harsh sanctions such as long sentences, and focus less overall on catching every violator. The problem with this strategy lies in individuals' knowing that they are unlikely to be caught if they violate the terms of their release.

Moreover, supervised-release initiatives like the Hawaii Opportunity Probation with Enforcement (HOPE) program and its equivalent in the state of Washington suggest that it doesn't matter how intense a probationary sanction is as long as the sanctions are applied consistently. It is also important to remember that parolees and probationers tend to suffer from impulsivity and other distorted thought patterns at much higher rates than the general population, which affects behaviors such as drug abuse. Taken together, these considerations suggest it is likely

that vulnerable individuals will transgress repeatedly, and with increasing intensity, if left to usual law-enforcement procedures.

Counter to standard supervised-release programs but in line with Kleiman's evidence, the treatment programs referred to during deflection typically handle probation violations with timely, assured, and transparent penalties. This approach reduces recidivism and overall incarceration more effectively than does deterrence via unpredictable sanctions of high intensity. Consistent and exacting responses to transgressions establish treatment centers as credible, identifiable authorities instead of improvisers who enforce the law on a seemingly arbitrary basis.

Moreover, brief and predictably enforced punishments are appealing to prisoners, at least when compared to a system that harshly punishes some transgressors and fails to detect others. The former method encourages trust in the judiciousness of the legal order. In particular, it can foster the sense that law-enforcement officials truly *want* past offenders to succeed on probation.

Implementing swift, certain, and fair responses can instill a sense of accountability among potential offenders. This approach can help probationers to clearly connect transgressions with resulting punishments, and to internalize the social costs associated with crimes. A proffered meth pipe may attain a new significance, the thinking goes, when it is linked to the prospect of immediate punishment. The goal of reinforcing this connection aligns with the reality of the rehabilitation process.

For example, specialists estimate that, on average, opioid addicts relapse five to six times before attaining full sobriety. If the aim of recovery is fostering self-control in individuals, it would be better for the justice system to point them toward a pathway that ends in realizing the concrete consequences of a relapse.

IMPROVING COMMUNITY NORMS

Police deflection methods promise to shift the norms of the profession by changing how officers assess problems while on duty. These methods will help communities as a whole address the behavioral health of those in need of treatment services, and, on a smaller scale, they promise to reduce the antagonism and risk of escalation in encounters between officers and vulnerable individuals. However, because they change the behavior of police officers, police deflection programs are likely to make a social impact beyond individual encounters with

offenders. In fact, they can improve the way entire communities regard officers. When deflection is grounded in the community, it is conceivable that, as the norms of the program scale up, police and community relations may improve.

As we have seen, introducing new duties and social roles for officers will influence their behavioral norms. But we can also expect changes in police norms to influence corresponding communal norms; people assimilate implicit social norms, including those in the behavior of authority figures as well as in their overall environments.

Such “environmental norms” might include the many examples cited in James Q. Wilson and George Kelling’s broken-windows theory. For instance, people are more likely to litter when public places are already dirty, and are less likely to help those in need when there are other unresponsive bystanders nearby. These studies suggest that disorderly conduct is partly the result of a disorderly social environment.

When police become a referral source to community-based treatment, there may be less incentive to cover up bad behavior. Community members and families may be more likely to reach out to authorities for help, and a new environmental norm may be established in which it is expected that someone will compassionately address the harmful behavior of offenders. This would help communities internalize a new mode of decision-making and shape the future behavior of past offenders. Further, even though deflection has no supervisory component, studies also suggest that community supervision is much more cost-effective than a prison sentence or jail term, as it allows offenders to work, care for their families, and pay taxes.

The behavior of authority figures also establishes norms to which others assimilate. Like politicians, pastors, teachers, and team captains, police officers are authority figures in their communities and as such model behavior not only for each other but for the neighborhood. Because people implicitly assume that specific behaviors are associated with power and that emulating them would be advantageous, those holding powerful positions can create behavioral standards. Introduced norms can then scale up by diffusing across social groups to shift community-wide patterns of behavior.

This effect is illustrated in an ongoing study by Elizabeth Levy Paluck, Hana Shepherd, and Peter Aronow of 56 public middle schools, in which several students from various peer groups were selected to take

a public stance against bullying and in support of making others feel more comfortable in school. There were two initial findings. First, the perceptions of bullying spread within peer groups, but the effect was stronger when the students making the suggestions had a high degree of popularity in their respective peer groups. Second, the anti-harassment norms of separate student groups seemed to scale up, with disciplinary reports falling by 30% within a year compared to the schools that received no treatment.

Likewise, when police model altruistic behavior by referring vulnerable individuals to treatment, their example can deeply influence others. Apart from the direct impact on at-risk people, such actions can also affect the families of deflected individuals and other legal officials who interact with police officers. While the behavior of officers won't necessarily change people's opinions about mental illness, addiction, and other topics, they could have a powerful effect on people's perceptions of what others think about these issues. After nationally significant events, polls have shown that people extrapolate the views of others from the opinions of relevant authorities. To encourage widespread norm changes along this path, we might begin with—at a minimum—rating officers, units, and departments on the number of deflections performed.

Police officers serving as referral sources could also help make the disease model of addiction—an understanding of substance abuse that was adopted by the American medical community over 20 years ago and yet is still marginal in criminal law—a broadly acceptable way of making sense of vulnerable individuals in a community. They can create the impression of an inclusive criminal-justice system that values and works for people even as the approach is in its early stages.

The shift to diversion policing should not come at the expense of adopting other police reforms that have helped contribute to the decrease in crime rates across the U.S. However, we should strive to move from a “warrior” model of policing to a “guardian” model. Put simply, diversion programs will likely result in fewer arrests and jail admissions for conduct that does not endanger the public.

The government's ability to arrest people is among its greatest powers. And despite declining rates of both crime and incarceration, the U.S. still has the highest prison population rate in the world. A shift in norms through diversion programs would encourage police to

partner with neighborhoods, thus strengthening the informal social controls that prevent crime. Such an adjustment could save the lives of people in need of mental-health or substance-abuse treatment or other services.

Currently, the challenges faced by at-risk individuals are largely unaccounted for in the criminal-justice system. Rather than simply criminalizing addiction, the legal system can better focus on true criminals and crime prevention by dealing with those suffering from mental illness and addiction as citizens in need. In designing law-enforcement methods that account for the needs of individuals who need help, we shouldn't discount the key role that police officers can play.