



Free markets. Real solutions.

R STREET SHORTS NO. 98

December 2020

## COVID-19 INSPIRED ALTERNATIVES TO ARREST AND THEIR PUBLIC RECEPTION

Lars Trautman and Camille Infantolino

### INTRODUCTION

As with so many facets of American life, the arrival of the COVID-19 pandemic hit the criminal justice system like a tsunami, upending existing practices and forcing leaders to rapidly consider new approaches. The fast-spreading, deadly contagion added new urgency to long-festered issues, especially the problems associated with the sheer number of individuals contained within and processed through the system. To protect those working within jails and prisons or those facing the prospect of becoming confined, jurisdictions adopted new policies to reduce the number of individuals entering the system altogether, or at least its correctional facilities.<sup>1</sup>

One of the primary ways in which jurisdictions grappled with that priority was by instituting new alternatives to arrest. Across the country, jurisdictions expanded citations in lieu of arrest, deprioritized police stops for minor transgressions, and changed how they received and responded to certain civilian complaints. In each of these instances, the

policy shifts suited the COVID-19 situation especially well because of their propensity to reduce unnecessary human contact, particularly in close quarters.

Of course, whether jurisdictions retain and even expand these measures, or whether additional jurisdictions follow suit, will depend on more than simply their immediate health benefits. In addition to considering how well the policies lived up to their promises of saving resources, avoiding unproductive police encounters and reducing government interference in individuals' lives, local authorities will have to weigh the political and public reaction to their introduction. Indeed, one obstacle to alternatives to arrest that has existed since long before the pandemic is fear about how the public will respond to their adoption. Accordingly, the present brief addresses some of these concerns by delving into COVID-19-inspired shifts in alternatives-to-arrest policy and examines how these changes were received in the popular press.

### BACKGROUND ON ALTERNATIVES TO ARREST

Alternatives to arrest are meant to restrict the arrest power to only those situations that require it in order to protect public safety. While unified by this goal, their actual form can vary significantly. They may, for example, convert an arrest into a citation or summons, thereby removing the need to book or detain the individual but not sparing them from the criminal process. This kind of policy may also seek to reduce civilian contacts with law enforcement altogether by shifting the response to other professionals or eliminating the response altogether. Many of these strategies depend upon legal authorities granted or funding provided at the state level, but overwhelmingly these are local initiatives.

The primary motivation in avoiding unnecessary arrests is a growing recognition of the incredible harm that they can do to the individual and the rest of society. An arrest significantly disrupts a person's life, temporarily removing them from the community and potentially impeding their current and future employment, education, housing and other vital aspects of life.<sup>2</sup> At the same time, arrests take valuable law enforcement time and resources,<sup>3</sup> and even short stays in jail can quickly amount to thousands in costs to taxpayers.<sup>4</sup> Furthermore, an arrest does not change to fit the crime; it creates essentially the same costs and issues regardless of whether the offense is murder or jaywalking. For lower-level offenses in particular, this can easily create a situation in which the consequences far outweigh the potential benefits. Even in ordinary times, then, providing a valuable means to avoid such situations is vital, but in the case of a pandemic, they are even more necessary to reduce the health risks associated with person-to-person contact and confinement, as well

as to reduce the attendant strain on state and local budgets.

## COVID-19-INSPIRED ALTERNATIVES

In line with our broad conception of alternatives to arrest, we centered our review on new policies with a primary goal or effect of reducing arrests. In practice, this meant looking at policies traditionally considered alternatives to arrest, including citation in lieu of arrest, as well as those limiting police-civilian interactions, such as reduced prosecution of lower-level offenses or changes to police response and crime reporting. Although a few agencies issued press releases detailing a policy shift, our primary source of information on these changes was a host of local news reports discussing the new strategies.<sup>5</sup>

Even with the obvious limitation that many policy changes inevitably go unannounced or unreported (few law enforcement policies are public to begin with), our review found at least one new COVID-19-inspired alternative-to-arrest policy in 40 states and the District of Columbia. Further, these policies took root across the country, spanning from typically conservative states such as Mississippi and Idaho to more liberal ones like Massachusetts and Oregon.<sup>6</sup> Likewise, the group included rural, suburban and urban jurisdictions.<sup>7</sup> The organizations issuing guidance or orders displayed a similar degree of diversity, with alternative-to-arrest measures promoted by nearly every part of government in at least one jurisdiction. The most common originator, as one might expect, was police departments, though judges, sheriffs and even prosecutors also utilized their various authorities to try to reduce arrests.<sup>8</sup>

The most commonly adopted strategy was some manner of expansion of citations in lieu of arrest, also known as ‘cite and release’ policies. One popular approach involved explicit guidance on additional offenses for which to employ a citation in lieu of arrest. In San Marcos, Texas, for example, the order to cite and release came from the city council and covered low-level crimes like marijuana possession under 4 oz., petty theft, graffiti, criminal mischief and other Class C misdemeanors.<sup>9</sup> Another common approach involved law enforcement leaders simply ordering or asking officers to utilize their discretion to issue citations more frequently, without further instructions on which offenses to consider.<sup>10</sup> Other jurisdictions effectively worked backwards, pressuring local police to increase cite and release policies or otherwise reduce arrests by limiting jail admissions or refusing to prosecute certain arrests.<sup>11</sup>

The bulk of the remaining changes were designed to reduce interactions between civilians and law enforcement officers altogether. One strategy, adopted by jurisdictions like Dallas and Burbank involved instructing civilians to use phone and online reporting whenever possible.<sup>12</sup> Typically, this shifted

some combination of traffic and property misdemeanors to these new portals. Other agencies altered enforcement priorities away from lower-level misconduct, especially traffic offenses and nonviolent misdemeanors. For example, officials instructed law enforcement officers in Wauconda, Illinois to handle as many calls as possible remotely and to respond in person only to high-priority or emergency calls such as motor vehicle crashes, forcible felonies, batteries or domestic violence.<sup>13</sup>

## POPULAR REACTIONS TO CHANGES IN ALTERNATIVES TO ARREST

Although many law enforcement leaders will never face the ballot box themselves, they nevertheless answer to those that do and frequently find their actions tried in the court of public opinion. As a result, the underlying metrics associated with a given policy—for example, whether or not it will reduce crime or save money—may not be enough to spur its adoption or retention. Indeed, the persistence of disproven “tough on crime” approaches highlights the resilience of policies with perceived popular or political support. The practical desirability and durability of these new COVID-19-inspired alternatives to arrest is thus dependent, in part, on their public reception.

News reports on these measures have generally taken one of two approaches. The first type of story details the full breadth of COVID-19-related criminal justice changes in a jurisdiction, with the new alternative to arrest packaged alongside measures such as bail reviews, early releases and shifts toward community supervision.<sup>14</sup> The second targets the alternative to arrest itself, either coinciding with its announcement (or discovery by the press) or following the release of arrest figures showing marked reductions.<sup>15</sup> Although a few of the reports assessing arrest figures occurred a little later, overwhelmingly the reports date from March or April 2020 with little follow-up in later months on the status or potential effects of the new strategies. In other words, even those changes initially deemed newsworthy rapidly fell out of public focus in most places.

The reports are frequently neutral or even slightly positive in their coverage of new alternatives-to-arrest policy.<sup>16</sup> In large part, this stems from a reliance on law enforcement sources to detail or explain policies. This allowed the officials in charge to frame the initiative and often meant highlighting its potential to reduce risks to law enforcement officers and the community at large.<sup>17</sup> Likewise, they were able to preempt perceived criticisms, especially those surrounding public safety implications.<sup>18</sup> In particular, the prevalence of quotes asserting that these policies would not degrade or jeopardize public safety suggests that the risk of being assailed as soft on crime appears to be front of mind for many of the law enforcement entities involved.

Outside of the law enforcement community, a common source of quotes was activist organizations and criminal justice practitioners, with relatively few pieces quoting outright critics of the policies.<sup>19</sup> This skew in non-law enforcement sources helped to push the tone of many of these pieces further into the realm of positive coverage. Quotes from activists generally were supportive of these changes or suggested that they did not go far enough; a stance that members of the defense bar echoed.<sup>20</sup> To the extent that criticism appeared, it was largely a manifestation of preexisting controversies surrounding other criminal justice policies or actors. In particular, California's move toward zero-cash bails, which fed into a broader bail reform debate, and measures supported by Philadelphia's District Attorney Larry Krasner, who has been a lodestone for criticism since his election, proved to be lightning rods in a way that virtually every other alternative-to-arrest policy shift did not.<sup>21</sup>

Of course, a lack of reporting or narrowly reported stories do not preclude reactions that are more turbulent. For example, San Marcos, Texas became the first jurisdiction in that state to pass a city ordinance in favor of cite and release policies. An article describing the change included quotes from individuals on both sides of the close 4-3 council vote, and even noted the opposition of the local police union's president.<sup>22</sup> In many respects, this initial reporting did not differ tremendously from the typical report mentioned above. A later deep dive, however, revealed that behind the scenes, that same police union president aggressively fought against the measure, running digital ads and emailing council members.<sup>23</sup>

Yet, the fact that this opposition generally failed to capture the media or public's attention is still significant; its newsworthiness usually paled in comparison to the policy itself and its proponents' rationales for adoption. Indeed, one of the other takeaways from the review of public reporting on these shifts was the relative dearth of it at all. In nearly every jurisdiction examined, alternatives to arrest were only a minor news story at best; articles discussing lockdown or mask enforcement, for example, dwarfed the number of those on alternative-to-arrest measures. Ultimately, not only did public outcry fail to materialize in most jurisdictions, sustained attention did too.

## CONCLUSION

Given how well alternatives to arrest fit the health and eventual financial imperatives of the COVID-19 pandemic, it should come as small surprise that jurisdictions across the United States turned to their novel or expanded use in response to the arrival of the novel coronavirus. Likewise, it makes sense that strategies that rely predominantly on how law enforcement exercises its discretion would dominate rapid responses. Perhaps less expected is the relatively

positive coverage of each of these policy shifts. Certainly, the defensiveness with which many law enforcement leaders spoke of these moves suggests that they may have been expecting a rockier reception. Yet, for the most part, the news cycle moved on with little-to-no criticism.

With so many of these new programs and strategies passing this initial optics and public opinion test, the next step for most departments will be to assess the future of these initiatives. Although spurred on by the pandemic, the benefits from many are likely to persist even after that threat subsides. COVID-19 has already served to accelerate all manner of preexisting shifts to norms, practices and cultures. Jurisdictions should strongly consider whether alternatives to arrest should be included on this list, with a reliance on arrests and face-to-face interactions similarly shelved in favor of innovations better suited to our times.

## ABOUT THE AUTHORS

**Lars Trautman** is a senior fellow of criminal justice and civil liberties policy at the R Street Institute. His research focuses primarily on reforms that affect our nation's jails and the front end of the criminal justice system, including prosecutorial issues. He previously served as an assistant district attorney in Essex County, Massachusetts.

**Camille Infantolino** is a criminal justice and civil liberties research and policy associate at the R Street Institute.

## ENDNOTES

1. See, e.g., "Responses to the COVID-19 pandemic," Prison Policy Initiative, last accessed Nov. 12, 2020. <https://www.prisonpolicy.org/virus/virusresponse.html>; and "How criminal justice systems are responding to the coronavirus outbreak," Crime and Justice Institute, last accessed Nov. 12, 2020. <https://www.cjinststitute.org/corona>.
2. S. Rebecca Neusteter et al., "Gatekeepers: The Role of Police in Ending Mass Incarceration," Vera Institute of Justice, August 2019, p. 3. <https://www.vera.org/downloads/publications/gatekeepers-police-and-mass-incarceration.pdf>.
3. One study, for example, found that the average arrest required 85.8 minutes of officer time compared to only 24.2 minutes for a citation. "Citation in Lieu of Arrest," International Association of Chiefs of Police, 2016. <https://www.theiacp.org/sites/default/files/all/i-i/IACP%20Citation%20Final%20Report%202016.pdf>.
4. The average daily jail cost per inmate in many jurisdictions is hundreds of dollars. See, Christian Henrichson et al., "The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration," Vera Institute of Justice, May 2015. <https://www.vera.org/downloads/publications/price-of-jails.pdf>.
5. A collection of criminal justice-oriented groups made the process of searching for new policies considerably easier by aggregating many of the public reports of policy changes. These organizations include the International Association of Chiefs of Police, Prison Policy Initiative, National Association of Counties, Crime and Justice Institute, the Brennan Center and Police Executive Research Forum.
6. See, e.g., Sarah Fowler, "Limiting arrests, issuing hand sanitizer: Mississippi police coronavirus responses vary," *Clarion Ledger*, March 24, 2020. <https://www.clarion-ledger.com/story/news/2020/03/24/coronavirus-update-mississippi-police-arrests-tickets-court-hand-sanitizer-masks-gloves-jails-prison/2898348001>; Olivia Heersink and Tommy Simmons, "Some Treasure Valley police may 'exercise discretion' in making arrests to slow COVID-19 spread," *KTVB7*, March 22, 2020. <https://www.ktvb.com/article/news/health/coronavirus/some-treasure-valley-police-may-exercise-discretion-in-making-arrests-to-slow-covid-19-spread/277-leeblefd-6fc4-4550-95c6-47434ca023ee>; Danny McDonald, "The coronavirus pandemic is changing how some Mass. authorities process certain crimes," *The Boston Globe*, March 18, 2020. <https://www.bostonglobe.com/2020/03/18/nation/coronavirus-pandemic-is-changing-how-some-mass-authorities-process-certain-crimes>; Tess Riski, "Portland Police Will Not Take Misdemeanor Arrests to Jail During the COVID-19 Outbreak, to Avoid Overcrowding," *Willamette Week*, March 20, 2020. <https://www.wweek.com/news/2020/03/20/ppb-will-not-take-misdemeanor-arrests-to-jail-during-covid-19-outbreak-to-avoid-overcrowding>.
7. See, e.g., Freddy Monares, "Gallatin County law enforcement not jailing people for nonviolent offenses," *Bozeman Daily Chronicle*, March 18, 2020. [https://www.bozemandailychronicle.com/news/crime/gallatin-county-law-enforcement-not-jailing-people-for-nonviolent-offenses/article\\_c4208221-33c2-5dea-beff-cc9d8c935a78.html](https://www.bozemandailychronicle.com/news/crime/gallatin-county-law-enforcement-not-jailing-people-for-nonviolent-offenses/article_c4208221-33c2-5dea-beff-cc9d8c935a78.html); Meghan Pierce, "Police enforcement has changed during pandemic," *Concord Monitor*, May 21, 2020. <https://www.concordmonitor.com/Local-police-say-enforcement-has-changed-during-pandemic-34430687>; and Amanda Michelle Gomez, "To Reduce Lock-Ups, MPD Agrees to Cite More People During Coronavirus Emergency," *Washington City Paper*, March 19, 2020. <https://washingtoncitypaper.com/article/175878/to-reduce-lockups-mpd-agrees-to-cite-more-people-during-coronavirus-emergency>.
8. See, e.g., Nichole Manna, "Fort Worth police will give citations for low-level crimes amid coronavirus outbreak," *Fort Worth Star-Telegram*, March 18, 2020. <https://www.star-telegram.com/news/coronavirus/article241254951.html>; Karla Ward, "People arrested for these crimes can skip jail under new Kentucky COVID-19 rules," *Lexington Herald Leader*, April 14, 2020. <https://www.kentucky.com/news/coronavirus/article242017831.html>; Kenneth Lipp, "Jail inmate roster halved," *Newport News Times*, April 16, 2020. <https://newportnewstimes.com/article/jail-inmate-roster-halved>; and Jonathan Raymond, "Fulton DA asks for citations for non-violent offenders instead of arrests during coronavirus court closures," *11 Alive*, March 30, 2020. <https://www.11alive.com/article/news/health/coronavirus/fulton-county-da-asks-for-citations-in-lieu-of-arrests-during-courthouse-closures/85-a8eba0b1-e990-49e3-b6a9-e191ab8d128f>.
9. Katie Hall, "San Marcos becomes 1st Texas city to OK cite-and-release law," *Austin Statesman*, April 23, 2020. <https://www.statesman.com/news/20200422/san-marcos-becomes-1st-texas-city-to-ok-cite-and-release-law>.
10. Jessica Anderson, "Baltimore Police officers to use discretion for low-level arrests to limit coronavirus exposure," *The Baltimore Sun*, March 19, 2020. <https://www.baltimoresun.com/coronavirus/bs-md-police-coronavirus-policy-20200319-7iz2zuwmn-bd25pnrkbq2r4dre-story.html>.
11. See, e.g., Monares. [https://www.bozemandailychronicle.com/news/crime/gallatin-county-law-enforcement-not-jailing-people-for-nonviolent-offenses/article\\_c4208221-33c2-5dea-beff-cc9d8c935a78.html](https://www.bozemandailychronicle.com/news/crime/gallatin-county-law-enforcement-not-jailing-people-for-nonviolent-offenses/article_c4208221-33c2-5dea-beff-cc9d8c935a78.html); Tim Prudente and Phillip Jackson, "Baltimore State's Attorney Mosby to stop prosecuting drug possession, prostitution, other crimes amid coronavirus," *The Baltimore Sun*, March 18, 2020. <https://www.baltimoresun.com/coronavirus/bs-md-ci-cr-mosby-prisoner-release-20200318-u7kne-b6059gvnqmtpejftavia-story.html>.
12. Sam Blum, "Dallas police ask residents to file some crime reports online during pandemic," *The Dallas Morning News*, April 1, 2020. <https://www.dallasnews.com/news/public-health/2020/04/01/heres-how-to-file-dallas-police-reports-online-amid-coronavirus-pandemic>; "Filing Police Reports During COVID-19 Pandemic," Burbank Police Department, April 8, 2020. <https://www.burbankpd.org/filing-police-reports-during-covid-19-pandemic>.
13. "Responding to COVID-19," Police Executive Research Forum, last accessed Nov. 9, 2020. <https://www.policeforum.org/covid-19-response>.
14. See, e.g., Tyler Davis, "'Prisons and jails are literally petri dishes': Inmates released, arrests relaxed across Iowa amid fears of coronavirus," *Des Moines Register*, March 23, 2020. <https://www.desmoinesregister.com/story/news/crime-and-courts/2020/03/23/coronavirus-iowa-jail-prison-inmates-released-amid-fears-covid-19-virus-polk-county-des-moines/2891117001>.
15. See, e.g., Joe Sneve and Danielle Ferguson, "Sioux Falls police opt for citations, not arrests to prevent coronavirus spread," *Argus Leader*, March 24, 2020. <https://www.argusleader.com/story/news/2020/03/24/sioux-falls-police-opt-citations-not-arrests-prevent-coronavirus-spread/2903428001>; Xerxes Wilson, "Arrest numbers have plummeted in Delaware during coronavirus. Here's a look at why," *Delaware Online*, April 30, 2020. <https://www.delawareonline.com/story/news/2020/04/30/delaware-police-arresting-and-citing-fewer-people-during-pandemic/3002184001>.
16. See, e.g., Lipp. <https://newportnewstimes.com/article/jail-inmate-roster-halved>; Stephanie Casanova, "Tucson officers citing minor offenders instead of taking them to jail to reduce coronavirus risk," *Arizona Daily Star*, March 27, 2020. [https://tucson.com/news/local/tucson-officers-citing-minor-offenders-instead-of-taking-them-to-jail-to-reduce-coronavirus-risk/article\\_7c4ddcd-fb552-5246-8bee-ff294068d461.html](https://tucson.com/news/local/tucson-officers-citing-minor-offenders-instead-of-taking-them-to-jail-to-reduce-coronavirus-risk/article_7c4ddcd-fb552-5246-8bee-ff294068d461.html); and Davis. <https://www.desmoinesregister.com/story/news/crime-and-courts/2020/03/23/coronavirus-iowa-jail-prison-inmates-released-amid-fears-covid-19-virus-polk-county-des-moines/2891117001>.
17. See, e.g., Taylor Durden, "Police departments make changes amid coronavirus outbreak," *Wave 3 News*, March 17, 2020. <https://www.wave3.com/2020/03/18/police-departments-make-changes-amid-coronavirus-outbreak>.
18. See, e.g., Elise Schmelzer, "Denver, Aurora police no longer sending officers to low-level crimes to minimize spread of coronavirus," *The Denver Post*, March 13, 2020. <https://www.denverpost.com/2020/03/13/denver-aurora-police-coronavirus>; Heersink and Simmons. <https://www.ktvb.com/article/news/health/coronavirus/some-treasure-valley-police-may-exercise-discretion-in-making-arrests-to-slow-covid-19-spread/277-leeblefd-6fc4-4550-95c6-47434ca023ee>.
19. See, e.g., Lipp. <https://newportnewstimes.com/article/jail-inmate-roster-halved>; Richard Kremer, "County Jails Reducing Inmate Populations To Prevent COVID-19 Outbreaks," *Wisconsin Public Radio*, April 10, 2020. <https://www.wpr.org/county-jails-reducing-inmate-populations-prevent-covid-19-outbreaks>; Patrick Smith, "Chicago Police Are Reducing Stops and Arrests During COVID-19. Activists Want Even Fewer," *WBEZ*, March 25, 2020. <https://www.wbez.org/stories/chicago-police-reducing-stops-and-arrests-during-covid-19-activists-want-even-fewer/5284579b-9611-4e0f-864b-baa1059619bc>.
20. See, e.g., Davis. <https://www.desmoinesregister.com/story/news/crime-and-courts/2020/03/23/coronavirus-iowa-jail-prison-inmates-released-amid-fears-covid-19-virus-polk-county-des-moines/2891117001>.
21. See, e.g., Jay Barmann, "Bay Area Law Enforcement Pushes Back on Jail Release Orders Citing Re-Arrests and Repeat Offenders," *SFist*, April 23, 2020. <https://sfist.com/2020/04/23/criminal-suspects-being-cited-and-released-in-the-bay-area>; Jennifer Stefano, "Anarchy is no cure for coronavirus - or injustice," *The Hill*, May 16, 2020. <https://thehill.com/opinion/criminal-justice/497747-anarchy-is-no-cure-for-coronavirus-or-injustice>.
22. Hall. <https://www.statesman.com/news/20200422/san-marcos-becomes-1st-texas-city-to-ok-cite-and-release-law>.
23. Leif Reigstad, "How San Marcos Went From 'Zero Tolerance' Policing to Requiring That Officers Release Low-Level Offenders," *Texas Monthly*, June 2, 2020. <https://www.texasmonthly.com/politics/san-marcos-cite-release-reform/#:~:text=In%20May%2C%20after%20months%20of,them%20before%20their%20court%20hearings>.