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COMBATING THE RISE IN HOMICIDES BY EXPANDING THE USE OF CITATIONS IN LIEU OF ARREST

By Maya Szilak

EXECUTIVE SUMMARY

The rise in homicide rates that began in 2020 continues to be a major source of public concern. Law enforcement agencies need effective strategies to deal with this issue without unduly burdening taxpayers or asking more of already cash-strapped state and local governments. Issuing citations to non-violent offenders who commit low-level crimes and present low flight risk is one method by which law enforcement agencies can address increased homicides. For instance, officers may summon offenders to appear in court at a later date and release them at the scene, in lieu of placing them under custodial arrest or jailing them. The use of citations in lieu of arrest enhances law enforcement capacity to address violent crime by reducing time and energy spent on low-level arrests. Reducing low-level arrests through citations can also lessen risk of harm to officers and citizens in street encounters, improve community relations and reduce overall recidivism. While the use of citations in lieu of arrest presents potential drawbacks, largely centered

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around increased rates of failure to appear and net widening effects, negative impacts can be minimized through data collection by law enforcement agencies to identify problems in citation programs and facilitate the development of practices to address these issues.

INTRODUCTION

Between 2019 and 2021, the United States experienced a historic rise in homicide rates that continues unabated.¹ Yet, meaningful and careful analysis of this phenomenon has been largely absent in the public sphere. In part, this is due to inadequate data collection, alongside a reduced case clearance rate of 54 percent for homicides in 2020, compared to 61 percent in 2019.² Consequently, important information is absent, including demographic information about offenders, victims, their relationships and the circumstances surrounding a homicide.³ In short, much data and information surrounding the homicide spike remains unknown.

Nevertheless, some things are certain. We know that in 2020, the number of homicides increased nationally by nearly 30 percent from 2019—the largest single-year increase seen since national data collection of homicides began in the 1960s.⁴ We also know from preliminary data analysis of 22 cities that homicide rates continued to climb in cities in the

1. Richard Rosenfeld, "Pandemic, Social Unrest, and Crime in U.S. Cities, 2021 Year-End Update," Council on Criminal Justice, Jan. 24, 2022. <https://counciloncj.org/crime-trends-yearend-2021-update>.

2. John Gramlich, "What we know about the increase in U.S. murders in 2020," Pew Research Center, Oct. 27, 2021. <https://www.pewresearch.org/fact-tank/2021/10/27/what-we-know-about-the-increase-in-u-s-murders-in-2020>.

3. See, e.g., "Expanded Homicide Offense Counts in the United States," Federal Bureau of Investigation, last accessed Jan. 26, 2022. <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/shr>; Josiah Bates, "FBI Data Shows a Surge in Murders in 2020. That's Not the Full Story," *Time*, Sept. 30, 2021. <https://time.com/6102149/fbi-homicide-stats-analysis>.

4. See, e.g., "Uniform Crime Reporting Program," Federal Bureau of Investigation, last accessed Jan. 26, 2022. <https://www.fbi.gov/services/cjis/ucr>; "Mortality Dashboard," National Center for Health Statistics, last accessed Jan. 26, 2022. <https://www.cdc.gov/nchs/nvss/vsrr/mortality-dashboard.htm>; Gramlich. <https://www.pewresearch.org/fact-tank/2021/10/27/what-we-know-about-the-increase-in-u-s-murders-in-2020>.

first six months of 2021, but at the less drastic rate of 16 percent, compared to the spike between 2019 and 2020.⁵

The United States is experiencing a homicide crisis. The critical question given the limited information at hand is what concrete actions can enhance the capacity of law enforcement to address this crisis. In times of crisis, policymakers and politicians tend to overreact or underreact by either imposing extreme measures to respond to a threat to quell public fear, or by failing to take necessary action to reduce risk of harm, thereby disavowing the extent or even the existence of a crisis to mitigate public perceptions of risk.⁶

Neither of these approaches is of practical help to law enforcement, who need pragmatic, concrete strategies to assist them in effectively addressing the surge in homicides. While no single strategy is likely to address the rise in homicides, modest, cost-effective reforms can help enhance law enforcement capacity on this front.

Chief among these is the expansion of written citations in place of custodial arrest for low-level, non-violent offenses, which can minimize costs; reduce jail crowding; increase institutional safety; improve trust between police officers and communities; reduce the risk of harm to officers and police-civilian shootings; and increase law enforcement capacity to focus on homicides. While there are challenges and potential drawbacks to expanding the use of citations in lieu of arrest, evidence suggests that the overall benefits may outweigh costs. In addition, planning and data collection can help law enforcement agencies overcome problems in expanding the use of citations and minimize setbacks, which include potential increases in rates of “failure to appear in court” of cited offenders, thereby allowing agencies to secure the greatest gains.

BENEFITS OF EXPANDING THE USE OF CITATIONS IN LIEU OF ARREST

Citation in lieu of arrest, (also known as field release, cite and release or summons in lieu of arrest) is the practice where an arresting officer, upon determining the eligibility and suitability of an offender, releases that offender on the scene instead of taking the person into custody. This requires offenders to present documentation verifying their identity and sign a written promise to appear in court at a

later specified date and time.⁷ While eligibility and suitability criteria can vary greatly across jurisdictions depending on departmental regulation or legislation, citation in lieu of arrest is generally reserved for offenders who: (1) commit traffic or ordinance violations, non-violent misdemeanors or non-violent, low-level felonies; and (2) reside in the jurisdiction. Further, citation in lieu of arrest is generally prohibited where: (1) there are reasonable grounds to believe a person poses a danger to the self, property or the community or will continue the offense upon release; (2) the offender has active warrants or a significant criminal history that weighs against release; (3) arrest is necessary to carry out a legitimate investigation; (4) the offender requires physical or mental healthcare; or (5) there are reasonable grounds to believe the offender will not appear in court, such as a history of prior failures to appear.⁸

Although citation in lieu of arrest has been around for many years, its use greatly expanded across the nation between 2019 and 2021 due to pandemic related efforts to reduce jail populations and crowding.⁹ In 2020, police officers in Denver and Boulder, Colorado instituted a mandated default practice of issuing citations instead of arresting offenders suspected of low-level, non-violent property and drug crimes.¹⁰ Ultimately, increasing the use of citations in lieu of arrest for low-level offenses in multiple jurisdictions was a key factor in Colorado reducing its statewide jail population by 46 percent in 2020.¹¹ Reducing jail populations was a proven critical factor in reducing risk of COVID-19 transmission among and between detainees and the larger community.¹²

In addition to mitigating COVID-19 risks, reducing jail populations via citation in lieu of arrest can significantly limit costs for County corrections. For instance, in Colorado, where the average daily cost of incarceration is \$98.83 per

5. Richard Rosenfeld and Ernesto Lopez, “Pandemic, Social Unrest, and Crime in U.S. Cities: September 2021 Update,” Council on Criminal Justice, October 2021. <https://counciloncj.org/wp-content/uploads/2021/10/Pandemic-Social-Unrest-and-Crime-in-US-Cities-September-2021-Update.pdf>.

6. Moshe Maor, “The implications of the emerging disproportionate policy perspective for the new policy design studies,” *Policy Sciences* 50:3 (July 19, 2016), pp. 383-398. <https://link.springer.com/article/10.1007/s11077-016-9259-8>.

7. See, e.g., “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” International Association of Chiefs of Police, 2016, pp. 1-29. <https://www.theiacp.org/sites/default/files/all/i-i/ACP%20Citation%20Final%20Report%202016.pdf>; “Citation in Lieu of Arrest,” National Conference of State Legislatures, March 18, 2019. <https://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.

8. “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” p. 7-8. <https://www.theiacp.org/sites/default/files/all/i-i/ACP%20Citation%20Final%20Report%202016.pdf>.

9. “The most significant criminal justice policy changes from the COVID-19 pandemic,” Prison Policy Initiative, Dec. 23, 2021. <https://www.prisonpolicy.org/virus/virusresponse.html>.

10. Elise Schmelzer, “Denver, Boulder law enforcement arresting fewer people to avoid introducing coronavirus to jails,” *The Denver Post*, March 16, 2020. <https://www.denverpost.com/2020/03/16/colorado-coronavirus-jails-arrests>.

11. “COVID-19 Jail Depopulation in Colorado: An Unexpected Path Forward,” ACLU Colorado, October, 2020, p. 7. https://www.aclu-co.org/sites/default/files/aclu_decarcerationreport_100720_final.pdf.

12. See, e.g., “New Study Finds Crowded Jails Seeded Millions of Covid-19 Cases,” Equal Justice Initiative, Sept. 7, 2021. <https://eji.org/news/new-study-finds-crowded-jails-seeded-millions-of-covid-19-cases>; Giovanni Malloy, et al., “Effectiveness of interventions to reduce COVID-19 transmission in a large urban jail: a model-based analysis,” *Health Policy BMJ Open Journals* 11:2 (Feb. 17, 2021). <https://bmjopen.bmj.com/content/11/2/e042898>.

person, the State stands to save \$210 million in taxpayer dollars per year by sustaining its 46 percent reduction in jail populations.¹³

Moreover, reductions in jail populations obviate the prohibitive cost of having to build new jails. For instance, having reduced its jail population by 40 percent in 2020, Mesa County in Colorado suspended plans to expand its jail because additional bed space was no longer necessary. In support of reducing jail populations through citation and other alternatives to arrest, the Mesa County Sheriff commented, “frankly, I didn’t want to build a larger jail in the first place . . . We can keep working together to help people who aren’t a threat to others stay out of jail and manage them in the community.”¹⁴

As a correctional management tool, reducing jail populations through increased use of citation also alleviates safety issues that correlate to jail crowding. Overpopulation undermines safe and effective jail management by increasing the incidence of inmate-on-staff and inmate-on inmate assaults. These issues negatively impacting staff morale leading to high staff turnover.¹⁵ Given severe jail staffing shortages reported across the country, instituting alternatives to arrest and detention to minimize jail crowding is essential to ensuring institutional safety.¹⁶

Homicide Rates

The COVID-19 pandemic presented law enforcement with unparalleled challenges, forcing rapid adoption of untested criminal justice reforms in many jurisdictions to reduce arrest and incarceration rates with the aim of suppressing the spread of the virus. In addition to the pandemic, law enforcement now faces a second crisis: an unprecedented rise in homicides.

Some of the largest issues that law enforcement faces when addressing violent crime include limited time, workforce and resources. While the public looks to police officers to prevent homicides and apprehend violent offenders, the reality is that the majority of officers’ time and attention is dedicated to arresting and processing low-level offenders for non-violent crimes. Of the more than 10.5 million average arrests made by law enforcement every year, 80 percent are for low-level offenses such as drug abuse violations and disorderly conduct.¹⁷ By contrast, arrests for violent crime account for only 5 percent of all arrests.¹⁸ Indeed, a recent review of open source police data from three metropolitan areas revealed that policer officers spent only 4 percent of their time addressing violent crime.¹⁹

Expanding the use of citations in lieu of arrest can greatly increase law enforcement efficiency by allowing officers to return to patrol sooner and devote more time to focusing on violent crime. An average arrest (including search, transport to booking facility, evidence collection and completing a case report) can take two hours or longer.²⁰ By contrast, issuing a citation in lieu of arrest takes an average of 24 minutes to complete, freeing up officers to spend more time on active patrol and monitoring or apprehending violent criminals.²¹

Likewise, the cost of issuing a citation is substantially less than the cost of executing a custodial arrest. Although the exact amount of savings a police department can accrue from using citations in lieu of arrest depends on existing arrest procedures and the kind of citation program implemented, studies consistently show that citation programs reduce costs and improve efficiency for police departments.²² Furthermore, while data is still lacking on the total cost savings accrued by jurisdictions that expanded the use of citations in response to the pandemic, preliminary findings are encouraging. For instance, expanded use of citations in Bexar County, Texas between July 1, 2019 and June 31, 2021 avoided 4,399 arrests and bookings, resulting in cost savings of 3.32

13. ACLU Colorado, p.9. https://www.aclu-co.org/sites/default/files/aclu_decarcerationreport_100720_final.pdf.

14. *Ibid.*, p. 9.

15. “Jail Overcrowding in Boulder County: A Comprehensive Assessment and Recommendations for Change,” Justice System Partners, October, 2016. <https://assets.bouldercounty.org/wp-content/uploads/2017/05/JSPBoulderReport2016.pdf>.

16. See, e.g., Danielle Kaeding, “Jails and prisons have always struggled to find and keep workers. COVID-19 and a nationwide labor shortage made it worse. A shortage of workers is burning out corrections officers and affecting inmates,” Wisconsin Public Radio, Dec. 21, 2021. <https://www.wpr.org/jails-and-prisons-have-always-struggled-find-and-keep-workers-covid-19-and-nationwide-labor-shortage>; Jonathan Limehouse and Michael Gordon, “Cut inmates at Mecklenburg jail by hundreds, NC safety report suggests,” *The Charlotte Observer*, Jan. 4, 2022. <https://www.charlotteobserver.com/news/local/article257022282.html>; Daniel J. Chacón, “As COVID-19 cases among inmates increase, county jails face staffing ‘crisis,’” *Sante Fe New Mexican*, Sept. 29, 2021. https://www.santafenewmexican.com/news/local/as-covid-19-cases-among-inmates-increase-county-jails-face-staffing-crisis/article_eedfbd24-213b-11ec-9a27-0f08b46c5d91.html; Ken Kalthoff, “Dallas County Jail Detention Officers Protest Pandemic Staff Shortage,” NBCDFW, Sept. 28, 2021. <https://www.nbcdfw.com/news/local/dallas-county-jail-detention-officers-protest-pandemic-staff-shortage/2753719>.

17. Rebecca Neusteter and Megan O’Toole, “Every Three Seconds: Unlocking Police Data on Arrests,” Vera Institute of Justice, January 2019. <https://www.vera.org/publications/arrest-trends-every-three-seconds-landing/arrest-trends-every-three-seconds/findings#drivers-of-arrests>.

18. *Ibid.*

19. Jeff Asher and Ben Horwitz, “How Do the Police Actually Spend Their Time?” *New York Times*, June 19, 2020. <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.

20. “The Impacts of Arrest: Lessons Learned from Research,” International Association of Chiefs of Police, last accessed Jan. 29, 2022. [https://www.theiacp.org/sites/default/files/Research%20Center/Impacts%20of%20Arrest%20\(infographic\).pdf](https://www.theiacp.org/sites/default/files/Research%20Center/Impacts%20of%20Arrest%20(infographic).pdf).

21. “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” p. 9. <https://www.theiacp.org/sites/default/files/all/c/Citation%20in%20Lieu%20of%20Arrest%20Literature%20Review.pdf>.

22. *Ibid.*, p. 13.

million dollars.²³ Over the course of one year, the program also saved police departments 4,239 officer hours that otherwise would have been directed at arresting and booking low-risk, non-violent offenders.²⁴

Dwindling tax revenues, record unemployment and rising health costs constitute a harsh reality for U.S. state and local governments, which are experiencing severe budget shortfalls due to the ongoing pandemic.²⁵ Simultaneously, law enforcement cannot begin to address the spike in homicides when lacking adequate resources. Faced with this double bind, expanding the use of citations in lieu of arrest is a practical, cost-conscious means for law enforcement to allocate greater money, workforce and time to homicide prevention and apprehension of violent offenders, rather than concentrating on low-level offenders who present minimal risk to the public.

Further, research indicates that violent crime is largely concentrated in a small number of circumscribed neighborhood “hot spots” and committed by a relatively small group of offenders (about 5 percent of criminal offenders in a city commit about 50 percent of violent crimes).²⁶ It follows that concentrating police resources on identifying and targeting violent offenders in identified hotspot areas of violence is more likely to reduce homicide rates than diluting resources concentrating time, money and workforce on arresting high numbers of low-level offenders.

Although the increase in homicides during the pandemic occurred concurrently with increased use of citations and reduced arrests in some jurisdictions, research indicates that reductions in arrests for low-level offenses bore no causal relationship to the spike in homicides and did not increase overall crime.²⁷ Rather, cities that reduced arrests for low-level offenses during the pandemic experienced

overall declines in non-violent crime.²⁸ While a large majority of Americans believe violent crime is a “major issue” and increasing, most also support using citations instead of arrest for nonviolent crimes.²⁹ In line with the concerns of the American public, law enforcement should prioritize the allocation of resources to address violent crime as its primary public safety issue.

Officer Injury Rates

Jurisdictions that reduce arrests for low-level offenses through expanded use of citations realize additional benefits. From the standpoint of protecting the safety of law enforcement officers, reducing arrests for low-level offenses can significantly reduce risk of harm. More officers are injured or killed during arrests than during any other police activity.³⁰ Studies show a strong relationship between the level of force used by an officer and the chance of officer injury, with increased levels of officer force corresponding with a higher probability of officer injury.³¹ Because citations are briefer in time and scope, involve less use of force and are less confrontational than custodial arrest, they present a reduced risk of injury to both officers and suspects.³²

Indeed, evidence also links reductions in arrests for low-level offenses with reductions in the number of police shootings. Between 2013 and 2019, Milwaukee, Philadelphia and Newark, New Jersey cut low-level arrests by 50 percent or more.³³ Over the course of that period, they also saw a reduction in police shootings by 57 percent on average.³⁴ In contrast, cities that made more low-level arrests, such as Jacksonville, Florida and Louisville, Kentucky, saw an increase in police shootings.³⁵

23. See, e.g., “Cite and Release 2021 Data Dashboard,” Bexar County, Texas District Attorney, last accessed Jan. 29, 2022. <https://www.bexar.org/3322/Cite-Release>; Marvin Hurst, “DA’s Cite and Release program yields savings, seeks expansion,” CBS KENS-5 News, July 28, 2020. <https://www.kens5.com/article/news/local/law-enforcement/das-cite-and-release-program-yields-savings-seeks-expansion/273-39005734-cc1f-447c-8d0b-f26570d90ab3>.

24. Justin Martinez, “Texas Criminal Justice Coalition 2021 Fact Sheet: A Common-Sense Approach to Expanding Cite and Release,” Texas Criminal Justice Coalition, last accessed Jan. 29, 2022. https://texascjce.org/system/files?file=publications/TCJC%20Fact%20Sheet%20HB%201388%20%28Cite%20and%20Release%29_2.pdf.

25. Anshu Siripurapu and Jonathan Masters, “How COVID-19 is Harming State and City Budgets,” Council on Foreign Relations, March 19, 2021. <https://www.cfr.org/backgrounder/how-covid-19-harming-state-and-city-budgets>.

26. John M. MacDonald and Thomas Hogan, “Concentrating on Crime: An outside share of lawbreaking occurs at certain places and times—and is perpetrated by a small group of people,” City Journal, Sept. 21, 2021. <https://www.city-journal.org/three-facts-about-crime>.

27. See, e.g., Samuel Sinyangwe, “Cities That Reduced Arrests For Minor Offenses Also Saw Fewer Police Shootings And crime in those cities wasn’t worse,” FiveThirtyEight, July 26, 2021. <https://fivethirtyeight.com/features/police-arresting-fewer-people-for-minor-offenses-can-help-reduce-police-shootings>; Sungwoo Cho, et al., “Do Police Make Too Many Arrests? The Effect of Enforcement Pullbacks on Crime,” IZA Institute of Labor Economics Paper No. 14907, December 2021. <https://docs.iza.org/dp14907.pdf>.

28. Ibid.; David S. Abrams, “Crime in the Time of COVID,” Econofact, March 30, 2021. <https://econofact.org/crime-in-the-time-of-covid>.

29. See, e.g., “July 2021 National Tracking Poll,” Politico, last accessed Jan. 29, 2022. https://assets.morningconsult.com/wp-uploads/2021/07/14051637/2107045_cross-tabs_POLITICO_RVs_v1_LM.pdf; “Americans Favor Expanded Pretrial Release, Limited Use of Jail. National Poll Finds Strong Support For Alternatives To Detention,” The Pew Trusts, Nov. 21, 2018. <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/11/americans-favor-expanded-pretrial-release-limited-use-of-jail>.

30. See, e.g., “Principles of Good Policing: Avoiding Violence Between Police and Citizens,” U.S. Department of Justice, September 2003. <https://www.hsdl.org/?abstract&did=455913>; Rachel A. Harmon, “Why Arrest?” *Michigan Law Review* 115:3 (2016). <https://repository.law.umich.edu/mlr/vol115/iss3/1>.

31. Geoffrey P. Alpert and Roger G. Dunham, “The Force Factor: Measuring and Assessing Police Use of Force and Suspect Resistance,” U.S. Department of Justice, 1997, p. 52. <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/176330-2.pdf>.

32. Harmon. <https://repository.law.umich.edu/mlr/vol115/iss3/1>.

33. Sinyangwe. <https://fivethirtyeight.com/features/police-arresting-fewer-people-for-minor-offenses-can-help-reduce-police-shootings>.

34. Ibid.

35. Ibid.

Community Cooperation

It is commonly understood that police cannot produce public safety results alone, but need the cooperation, participation and trust of communities to permanently reduce crime.³⁶ To be effective, police must rely on community members to provide vital information on crimes, offenders and ongoing criminal and social problems. Policy also need communities to work with law enforcement to devise solutions to crime and disorder.³⁷ Reducing low-level arrests is one of the elements that strengthens the relationship between law enforcement officers and the communities they serve.

The perception that police use unnecessary levels of force, or make unnecessary arrests, fuels community distrust.³⁸ Reducing arrests for low-level offenses through expanded use of citations has the potential to build community trust and improve community relations by minimizing the use of force in police encounters with the community that negatively impact both individual and community perceptions of police legitimacy.³⁹ This shift could be mutually beneficial in a time of rising homicide rates and shootings, as it fosters trust with high-risk communities and improves perceptions of police legitimacy, which in turn enables essential anti-violence initiatives. Lack of trust between the community and law enforcement makes it difficult—if not impossible—for officers to solve violent crimes because the investigative process relies heavily on community members' knowledge of events in their own neighborhoods and on their willingness to identify perpetrators.⁴⁰

Reducing low-level arrests can substantially improve anti-violence strategies by easing community-police tensions and facilitating police-community communications, providing police with access to the basic information they need to carry out tailored crime-prevention and problem-solving strategies to address violent crime.⁴¹ For these reasons, among others, the President's Task Force on 21st Century Policing expressly recommends that law enforcement give preference

to citations in lieu of arrest for low-level offenses as an effective “least harm” resolution that promotes crime reduction while increasing public trust.⁴²

Recidivism Rates

Finally, as part of an overall crime reduction strategy, use of citations for low-level offenses shows promise in preserving and promoting pro-social behaviors. Encouraging positive community relationships among low-level offenders actively reduces the likelihood of re-arrest and recidivism. Citations allow low-level offenders, who do not pose a flight or public safety risk, to maintain stable housing, continue working, attend school, and care for their families and other obligations without disruption. These are all pro-social behaviors, which are protective factors known to encourage desistance from crime and lessen rates of recidivism.⁴³

Research indicates that unnecessary arrests and removal of people from communities contributes to crime and social disorder by disrupting the familial ties and social stability that act as deterrents to crime.⁴⁴ For low-level, low-risk offenders in particular, pre-trial detention of only two days is associated with an increased likelihood of re-arrest; the longer the period of detention, the greater the likelihood of re-arrest upon release.⁴⁵ In effect, while arrest and detention of low-level offenders may reduce re-offending in the short-term through physical incapacitation, this may come at a steep cost of driving up levels of re-arrest and re-offending over the long term.

As evidenced by the above, expanding the use of citations in lieu of arrest for low-level offenses has proven highly successful in reducing viral spread without driving up homicide rates or overall crime, while at the same time cutting costs, improving correctional and police officer safety and enhancing law enforcement capacity to address violent crime. Consistent with the recommendation of the President's Task Force on 21st Century Policing (as well as the recommendations of International Association of Chiefs

36. See, e.g., Community Oriented Policing Services, “Law Enforcement Best Practices: Lessons Learned from the Field,” U.S. Department of Justice, (2019), p. 6. <https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf>; Community Relations Services Toolkit for Policing, “Importance of Police-Community Relationships and Resources for Further Reading,” U.S. Department of Justice, last accessed Jan. 30, 2022, p. 1. <https://www.justice.gov/file/1437336/download>.

37. *Ibid.*, p.6.

38. Community Relations Services Toolkit for Policing, p. 1-2. <https://www.justice.gov/file/1437336/download>.

39. “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” p. 18. <https://www.theiacp.org/sites/default/files/all/i-i/IACP%20Citation%20Final%20Report%202016.pdf>; “Better Policing Toolkit: Legitimacy Policing in Depth,” Rand Corporation, last accessed Jan. 30, 2022. <https://www.rand.org/pubs/tools/TL261/better-policing-toolkit/all-strategies/legitimacy-policing/in-depth.html>.

40. “50 State Report on Public Safety, Part 1, Strategy 4, Action Item 2: Advance violent crime reduction efforts by improving trust and cooperation between communities and police,” Justice Center: Council for State Governments, July 31, 2018. <https://csjusticecenter.org/publications/50-state-report-on-public-safety>.

41. *Ibid.*

42. “Final Report of the President’s Task Force on 21st Century Policing,” U.S. Department of Justice, May 2015, p. 92. <https://cops.usdoj.gov/ric/Publications/cops-p311-pub.pdf>.

43. See, e.g., Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” p. 19. <https://www.theiacp.org/sites/default/files/all/i-i/IACP%20Citation%20Final%20Report%202016.pdf>; “Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders,” United Nations Office on Drugs and Crime, December 2018. https://www.unodc.org/documents/justice-and-prison-reform/18-02303_ebook.pdf; “Policy Reforms Can Strengthen Community Supervision,” Pew Charitable Trusts, April 23, 2020. <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision>.

44. Cecelia Klingele et al., “Reimagining Criminal Justice,” *Wisconsin Law Review* 953:973 (2010), pp. 101-46. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1689607.

45. Leon Digard and Elizabeth Swavola, “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention,” Vera Institute of Justice, April 2019, p. 6. <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>.

of Police, the Association of Prosecuting Attorneys, the National Association of Pretrial Services Agencies and the American Bar Association), policy makers and law enforcement should work together to expand the use of citations for low-level offenses as a cost-effective means to address the twin crises of the pandemic and rising homicide.⁴⁶ Yet, law enforcement agencies and criminal justice stakeholders must be aware of challenges and potential pitfalls that can accompany expanded use of citations in lieu of arrest, and take steps to address these proactively to maximize the benefits of citation.

CHALLENGES FOR LAW ENFORCEMENT IN EXPANDING THE USE OF CITATIONS IN LIEU OF ARREST

Although citations in lieu of arrest exist in some form in every state, data collection and analyses regarding their impact and the specifics of their use among the nation's 18,000 law enforcement agencies is extremely limited.⁴⁷ The report and literature review published by the International Association of Chiefs of Police (IACP) in 2016 on citations in lieu of arrest remains the most comprehensive analyses conducted on the subject to date.⁴⁸

While the IACP generally endorses the benefits of using citations more expansively to reduce low-level arrests, it also identifies potential problems in expanding the use of citations. The most concerning potential issue for law enforcement officers is the risk of increased rates of failure to appear in court with offenders who are cited and released.⁴⁹

Failure to Appear

Empirical documentation on failure to appear rates for persons cited and released is relatively scarce, and offers widely varying findings, which span all categories including no increase in failure to appear, some increase in failure to appear and substantial increase in failure to appear compared to offenders who are arrested.⁵⁰ Based on this, even assuming that citation and release consistently produce higher rates of failure to appear than arrest, evidence nevertheless indicates that simple, cost-effective measures can greatly reduce rates of failure to appear.

Research shows that the primary reasons low-level offenders fail to appear include forgetfulness, employment obligations, childcare or similar logistical issues.⁵¹ In addition, low-level offenders cited for petty offenses are often unaware of the consequences of not appearing in court and do not realize that failure to appear will result in an arrest warrant.⁵² To counteract the problem of human error, an automated notification systems that reminds offenders by text, phone call or in writing of their upcoming court dates and of the penalty for failure to appear prove highly effective at increasing appearance rates.⁵³ Likewise, redesigning citations and summonses so that they clearly prioritize and set forth the date, time and location for the court and the penalty for failure to appear can dramatically reduce failures to appear.⁵⁴ A study in 2016 demonstrated that New York City improved rates of court appearance by 21 percent with text message reminders and by 13 percent by redesigning and clarifying citation forms, leading to 30,000 fewer arrest warrants over the course of three years.⁵⁵

Presumably, an increase in rates of failure to appear attributed to expanding the use of citations in lieu of arrest could be mitigated by implementing a system to remind offenders

46. See, e.g., "Final Report of the President's Task Force on 21st Century Policing," p. 92. <https://cops.usdoj.gov/ric/Publications/cops-p311-pub.pdf>; "Partnerships in Pretrial Justice: A Law Enforcement Leader's Guide to Understanding and Engaging in Meaningful Front-End Justice System Change," International Association of Chiefs of Police, August 2018. https://www.theiacp.org/sites/default/files/2018-08/IACP_ParnerinPretrialJustice_Final.pdf; "Proposed Public Health And Public Safety Pathways for Criminal Justice System Response to Covid-19," Association of Prosecuting Attorneys et al., May 2020. https://www.hivlawandpolicy.org/sites/default/files/CJS%20Pub%20Health%20Pathways%20May%202020_0.pdf; "Standards of Pretrial Release Revised 2020," National Association of Pretrial Services Agencies, last accessed Jan. 30, 2022. https://cdpsdocs.state.co.us/ccij/committees/PRTF/Handout/2020_NAP-SA_StandardsOnPretrialRelease.pdf; "Standards On Pretrial Release, Standard 10-1.3, Use of Citations and Summonses," American Bar Association, last accessed Jan. 30, 2022. https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/#10-1.3; "Expanded Pretrial Release," American Bar Association, Feb. 22, 2021. https://www.americanbar.org/groups/legal_aid_indigent_defense/resources/covid-19-resources/expanded-pretrial-release.

47. "Citation in Lieu of Arrest: Examining Law Enforcement's Use of Citation Across the United States: Literature Review," p. 4. <https://www.theiacp.org/sites/default/files/all/c/Citation%20in%20Lieu%20of%20Arrest%20Literature%20Review.pdf>.

48. "Citation in Lieu of Arrest: Examining Law Enforcement's Use of Citation Across the United States." <https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Citation%20Final%20Report%202016.pdf>.

49. "Citation in Lieu of Arrest: Examining Law Enforcement's Use of Citation Across the United States," pp. 20-2. <https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Citation%20Final%20Report%202016.pdf>.

50. *Ibid.*, pp. 20-21; Warren Davis, "Should Georgia Change Its Misdemeanor Arrest Laws To Authorize Issuing More Filed Citations? Can An Alternative to Arrest Process Help Alleviate Georgia's Jail Overcrowding and Reduce the Time Arresting Officers Expend on Processing Misdemeanor Nontraffic Offenses?" 22 Ga. St. U. L. Rev. 313 (Winter 2005). <https://readingroom.law.gsu.edu/gslur/vol22/iss2/6>.

51. Joanna Thomas, "Court Date Notifications," New York Criminal Justice Agency, March 7, 2021, p. 5. <https://www.nycja.org/publications/court-date-notifications-2>.

52. *Ibid.*, pp. 9-10.

53. See, e.g., Digard and Swavola, p. 8. <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>; Alissa Fishbane, et al., "Behavioral nudges reduce failure to appear for court," *Science* 10:1126 (Oct. 8, 2020), pp. 1-17 https://www.ideas42.org/wp-content/uploads/2020/10/Behavioral-nudges-reduce-failure-to-appear-for-court_Science_full_.pdf; Brian Bornstein, et al., "Reducing Courts' Failure-to-Appear Rate by Written Reminders" *Psychology, Public Policy, and Law* 19:1 (2013), pp. 70-80. <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1601&context=psychfacpub>; "Research on Court Date Reminder Phone Calls," New York City Criminal Justice Agency, Nov. 4, 2020. <https://www.nycja.org/justice-in-practice/research-on-court-date-reminder-phone-calls>.

54. Brice Cook, et al., "Using Behavioral Science to Improve Criminal Justice Outcomes: Preventing Failures to Appear in Court," University of Chicago Crime Lab, January 2018. <https://www.ideas42.org/wp-content/uploads/2018/03/Using-Behavioral-Science-to-Improve-Criminal-Justice-Outcomes.pdf>.

55. Fishbane, pp.1-2. https://www.ideas42.org/wp-content/uploads/2020/10/Behavioral-nudges-reduce-failure-to-appear-for-court_Science_full_.pdf.

of upcoming court dates and redesigning citation forms. However, this remedy presupposes that using citations in lieu of arrest consistently increases rates of failure to appear. Although there is data indicating that increasing the use of citation releases corresponds with increased rates of failure to appear, research examining the unintended, negative effects of using citations in lieu of arrest (including increased rates of failure to appear) remains sparse.⁵⁶ While the benefits of using citations are fairly well-documented in jurisdictions that expanded their citation programs, little data or research exists on potential unintended, negative consequences of broadening citation use.

Net Widening

Another potential issue is that of “net widening,” whereby offenders, who otherwise would have been let off with a warning for minor violations and diverted from further criminal justice involvement, are instead formally inducted into the criminal justice system via citation because of the convenience and expediency of this sanction.⁵⁷ Thus, citation in lieu arrest, a reform intended to reduce familial and social disruption and criminal justice involvement for petty offenders, and decrease overall criminal justice costs, could have the opposite effect by increasing the number of people against whom criminal justice proceedings are formally initiated.

In addition, use of citations in lieu of arrest raises issues with respect to uniformity and fairness in how officers exercise judgement and utilize discretion in determining whether to arrest, cite and release, or issue a warning for low-level offenses. Statutes and departmental rules provide varying degrees of guidance on when officers can or must, in the case of mandatory citation provisions, cite and release an offender in lieu of arrest for an offense.⁵⁸ However, despite the overall movement by law enforcement towards increased use of citations, there is currently no standardization among citation practices or agreement on what constitutes “best practices.”⁵⁹ As with arrests, this leaves open troubling opportunities for race and class to factor into decision making, and for citations to be used in discriminatory or arbitrary ways.⁶⁰ For instance, a recent report by the Lawyer’s Committee for Civil

Rights of the San Francisco Bay Area found poor people of color were disproportionately cited for minor, non-traffic offenses compared to white offenders.⁶¹

Data collection and analysis regarding when and how police issue citations to people of color and marginalized populations can help to guide police departments in refining their tactics to prevent discriminatory citation practices.⁶² To develop a national best practices model for citation policies, the IACP further recommends that research be conducted to determine: (1) if citations result in higher failure to appear rates; (2) how use of citations affects ultimate case outcomes, public safety, criminal justice system costs and jail populations; (3) what information officers need in the field in order to best make citation decisions; (4) how citations affect the collection of complete criminal histories; (5) the potential for officer bias in making citation decisions; (6) whether use of citations leads to net-widening; (7) challenges faced by agencies in developing and implementing citation policies and the impact of officer perceptions; (8) how victims and the public perceive citations; (9) whether agencies consider citation issuance as part of officer performance evaluations; and (10) how citation data collection can be improved and standardized to aid research and analysis.⁶³

One recent project directly attempts to address issues of net widening. In 2020, the collaborative “Citation Project” was launched in North Carolina.⁶⁴ The project seeks to improve policing practices through implementation and rigorous evaluation of citation in lieu of arrest programs across North Carolina, with the ultimate goal of developing a model citation in lieu of arrest policy. Researchers implemented the model policy in four police department pilot sites, conducting an empirical evaluation to assess the model policy’s impact on criminal justice metrics, including safety, equity and efficiency.⁶⁵ While research is still ongoing, preliminary results are promising with respect to police patrol hours saved using citation versus arrest. On average, officers were out of service and off patrol 171.32 minutes to conduct a war

56. Center for Police Research and Policy, “Deconstructing the Power to Arrest: Lessons Learned From Research,” International Chiefs of Police Association, March 15, 2018, pp.72, 92-93. https://www.theiacp.org/sites/default/files/2018-08/CPRP_Deconstructing%20the%20Power%20to%20Arrest_FINAL.PDF.

57. Ibid.

58. “Citation in Lieu of Arrest: State Laws,” National Conference of State Legislatures, last accessed Jan. 30, 2022. <https://www.ncsl.org/research/civil-and-criminal-justice/citation-in-lieu-of-arrest.aspx>.

59. “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” pp. 4-5. <https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Citation%20Final%20Report%202016.pdf>.

60. Ibid., p. 22.

61. “Cited for Being Cited for Being in Plain Sight in Plain Sight: How California Polices Being Black, Brown, and Unhoused in Public,” Lawyer’s Committee for Civil Rights of the San Francisco Bay Area, September 2020. https://lccrsf.org/wp-content/uploads/2020/09/LCCR_CA_Infracton_report_4WEB-1.pdf.

62. “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States,” p. 60. <https://www.theiacp.org/sites/default/files/all/i-j/IACP%20Citation%20Final%20Report%202016.pdf>.

63. Ibid., pp. 4-5.

64. “Cite or Arrest? The School’s New Innovation Lab Will Research the Options,” University of North Carolina School of Government, last accessed Jan. 30, 2022. <https://www.sog.unc.edu/about/news/cite-or-arrest-school%E2%80%99s-new-innovation-lab-will-research-options-1>.

65. “The Citation Project: First Report,” University of North Carolina School of Government, July 2021. <https://cijl.sog.unc.edu/wp-content/uploads/sites/19452/2021/07/Citation-Project-Report-1-Final.pdf>.

rantless arrest, versus 27.58 minutes to issue a citation—a difference of over two hours.⁶⁶

A final assessment of the relative costs and benefits of expanding the use of citations in lieu of arrest cannot be made based on existing data. However, these preliminary results lend additional credence to the understanding that expanding the use of citations in lieu of arrest for low-level offenses would enable officers to spend more time on patrol to focus on violent crime.

CONCLUSION

In an ideal world, law enforcement and policy makers would make decisions only upon complete information and data. However, even when the best data and information is available, the full impact of policy reforms are hard to predict. Faced with a crisis of rising homicides, coupled with the ongoing COVID-19 pandemic and shrinking state and local revenues, the best available evidence indicates that expanding the use of citations in lieu of arrest would minimize jail crowding; enhance health and institutional safety in detention facilities; improve relations and trust between police officers and high-risk communities; reduce risk of harm to officers and incidents of police-civilian shootings; and increase law enforcement capacity to focus on homicides and violent crime.

This is not mere conjecture. As previously set forth, law enforcement and correctional agencies in jurisdictions that increased citation releases in response to COVID-19 have benefitted, without appreciable negative impacts on public safety. To further augment these findings, agencies that expand the use of citations in lieu of arrest should rigorously collect and analyze data to identify trends and problems in implementation so that they can modify policies accordingly and develop best practice standards. Law enforcement agencies also would be well-served by making data on citation use available to the public and other law enforcement agencies to promote transparency and accountability and to enable comparative analyses that enlarge the field of knowledge.

Serious questions remain as to the relative costs, benefits and potential unintended negative consequences of expanding the use of citations in lieu of arrest. However, the first step in answering those questions requires a willingness among law enforcement to challenge implicit assumptions and to use citations more expansively. Doing so will help determine whether citations can effectively be deployed as an alternative to arrest that manages low-level offenses as part of an overall strategy to address the surge in violent crime.

ABOUT THE AUTHOR

Maya Szilak is a licensed attorney of 23 years and resident fellow on the Criminal Justice and Civil Liberties team. She researches and writes policy papers on criminal justice issues, including alternatives to arrest, diversion programs, bail reform and juvenile justice.

66. *Ibid.*, p. 28.