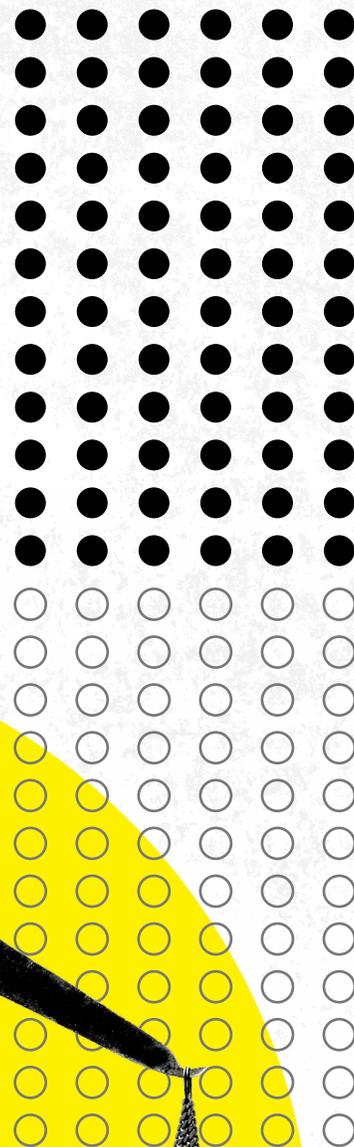


# POLICE REFORM ACTION BRIEF: RESTRUCTURING CIVILIAN PAYOUTS FOR POLICE MISCONDUCT



By Rashawn Ray, PhD

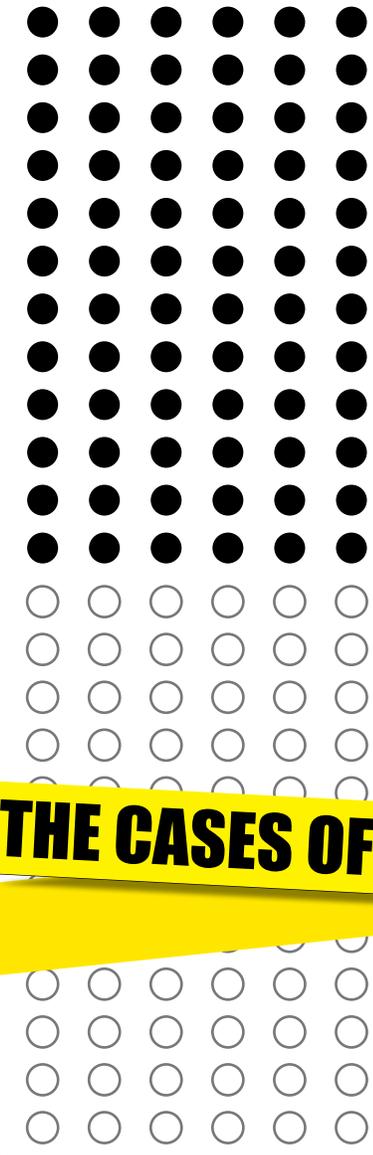


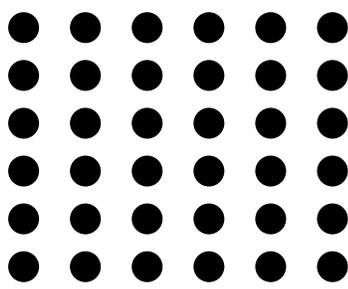
A person is killed by police about every eight hours in the United States. Despite violent crime decreasing over the past 20 years, police killings have increased about 25% during this same time period (Gilbert and Ray, 2016). Importantly, research documents that the police killing rate is not associated with the violent crime rate in cities (Mapping Police Violence, 2015). In 2014 and 2015, a series of high-profile fatal encounters occurred between police and civilians. The deaths of Michael Brown, Tamir Rice, Freddie Gray, Sandra Bland, and Walter Scott, among others, became associated with the Black Lives Matter Movement. Since these fatal encounters involved mostly White officers and Black civilians, some argue these incidents highlight racial bias and discrimination within policing (Ray, 2015). Though racism is part of the story, I argue these fatal encounters underline the extreme lack of accountability within law enforcement (Ray, 2020).

Policy solutions to close this racial gap in police killings and improve police-community relations have overwhelmingly centered on implementing body-worn cameras and participating in implicit bias training. Though beneficial, I argue these policy solutions fall short of their goals because they do not address the lack of accountability that police departments have to the communities they serve. In this article, I recommend restructuring civilian payouts for police misconduct from taxpayer money to police department insurances to ensure law enforcement is held fiscally responsible for their actions. Civilian payouts for police misconduct cost local jurisdictions millions of dollars when taxpayer money could be spent in ways that help close the achievement gap and create jobs (Ray, 2021). Restructuring civilian payouts for police misconduct will reduce police killings and police use of force by increasing the accountability that police departments have to the communities they serve.

I begin by providing two notable cases of fatal police encounters. Next, I give an overview of what we know about racial disparities in policing. Then, I discuss my proposal for restricting the civilian payout process. Finally, I conclude by discussing why existing policies focused on implicit bias training and body-worn cameras fall short of decreasing police killings and use of force without increasing the accountability that police officers have to the communities they serve.

**THE CASES OF MICHAEL BROWN AND TAMIR RICE**





**MICHAEL BROWN**



**DARREN WILSON**



On August 9, 2014, Michael Brown, an 18-year-old Black male, was shot and killed by Ferguson, Missouri police officer Darren Wilson, a 28-year-old White man. Within days of pictures showing Michael Brown's dead body lying on the street in cold blood, protests erupted in the St. Louis area spreading throughout the United States

and to all corners of the world. On November 24, 2014, a grand jury decided not to pursue charges against Darren Wilson for killing Michael Brown. That night until the following day resulted in the most concurrent protests in U.S. history and birthed what most people know as the Black Lives Matter Movement (Ray et al., 2017; Brown et al., 2017). Wilson resigned shortly after the grand jury decision and lived off the \$500,000 in donations he received. In June 2017, the insurance company for the city of Ferguson paid the Brown family \$1.5 million in a wrongful death settlement. It is important to note that taxpayer money pays the salaries of police officers, public officials, city insurances, and civilian payouts for police misconduct.

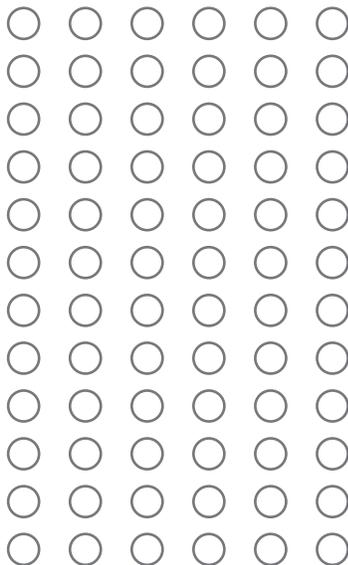
On November 22, 2014, two days before Wilson's non-indictment, 12-year-old Tamir Rice was shot and killed by police in Cleveland, Ohio. While playing with a toy gun in a park, 26-year old officer Timothy Loehmann shot Rice within seconds of arriving at the park. In 2016, the city of Cleveland settled with the Rice family for \$6 million. Loehmann was ultimately fired from the police department in 2017 for failing to conceal information from a previous job with Independence Police Department. Rather than be fired from Independence, Loehmann resigned after he was evaluated as not being able to follow basic commands, losing composure easily, and being easily distracted. In 2018, Loehmann was hired by Bellaire Police Department, but he decided to resign after petitions for his firing. Frank Garmback, the officer with Loehmann when he killed Rice, had a \$100,000 excessive force lawsuit settled in 2014. A woman who called police about a car blocking her driveway ended up being put in a chokehold and beaten by Garmback. This incident does not appear in his personnel file. Loehmann and Garmback are both White men.



**TAMIR RICE**

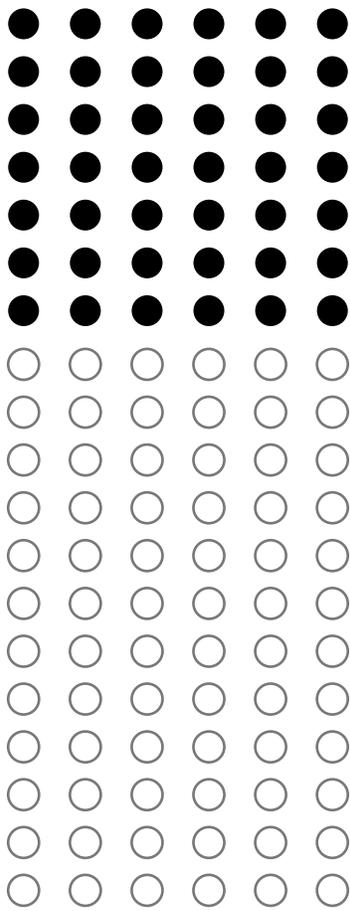


**TIMOTHY LOEHMANN**



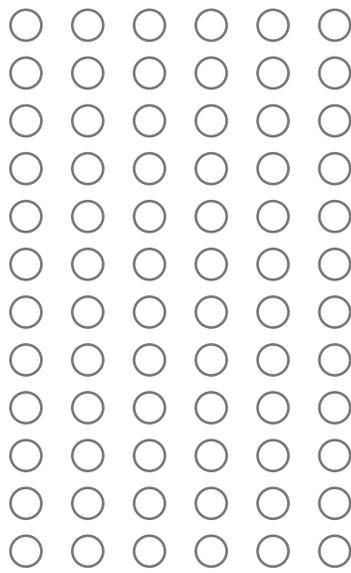
How is a killing justified in criminal court and ruled as a wrongful death in civil court? How does an incident ruled as excessive force not appear in a police officer's file? How is an officer involved in a wrongful death incident able to obtain another job in law enforcement? Loopholes in the criminal justice system overwhelmingly exonerate police officers, permit them to often get away with murder, absolve them of financial penalties, and often authorize their ability to resign, obtain their pension, and get a new job in law enforcement.

The U.S. Department of Justice issued consent decrees for the Cleveland Police Department in 2015 and the Ferguson Police Department in 2016. Both consent decrees found links with the criminal justice system that erodes public trust and limit police accountability. Broader structural outcomes related to racial disparities in policing also undergird this process.



**RACIAL DISPARITIES IN POLICING**

**02**



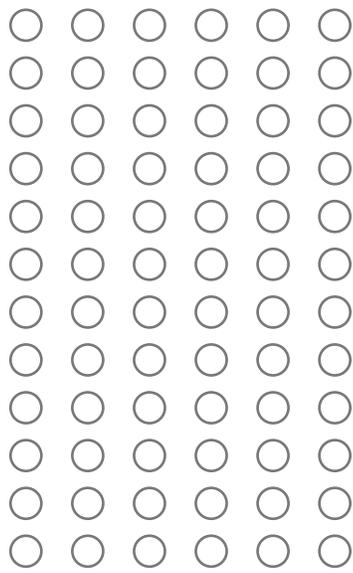
**B**lack Americans are 3.5 times more likely to be killed by the police when they are not attacking nor when they have a weapon (Gilbert and Ray, 2016; Gilbert et al., 2016; Krieger, 2015). Despite this gap, the only data is at the federal level from approximately 16 states (Parks et al., 2014). Puzzlingly, the federal government collects data on how many people die from the flu and how many people die from jellyfish. However, the federal government does not collect comprehensive data on fatal police encounters. Americans are starting to recognize these racial disparities within our governmental and policing systems. While 80% of Blacks view fatal encounters with the police as signs of broader problems, over 50% of Whites do, too (Pew, 2016).

Some people argue that police killings impact a small number of people. This is only true if police killings are viewed in isolation from other aspects of the criminalization pipeline. I argue that police killings are the tip of the iceberg on a continuum of over-policing that starts from pullovers and traffic stops and highlights the consequences of trickledown policing. Research shows that Blacks are more likely than Whites to be stopped by the police. Some people say that racial disparities in traffic stops are justified because Blacks commit more crimes. Yet, the violent crime rate has substantially decreased since the early 1990s and stands at one of the lowest in American history (even with a slight uptick since 2014). Nonetheless, about three-fourths of Blacks who are incarcerated are in prison for non-violent crimes (Ray, 2015).

In addition to the racial disparities in stopping civilians, there is also a racial gap in who is frisked and searched by the police. A 2011 study of New York City found that Blacks were about six times as likely as Whites to be stopped by police while in public (Center for Constitutional Rights, 2011). Blacks, compared to Whites, were nearly eight times as likely to have force used on them. Interestingly, Whites were more likely to be found with contraband on them. Only 2% of the nearly 700,000 stops led to the discovery of contraband. This study highlights that police stops may not necessarily reduce crime as much as they are about aiming to control predominately Black communities.



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Research  
shows that  
Blacks are  
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than Whites to  
be stopped by  
the police.”**



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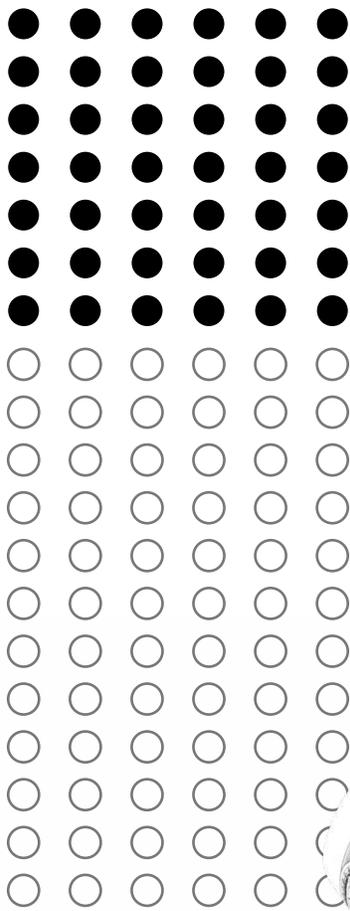
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The study above also draws attention to the operation of racial bias in policing. Whites being more likely to have contraband on them does not mean they are more likely to commit crime than other racial groups. Rather, it showcases that police officers use different social scripts for Whites versus Blacks. For Whites, police officers are more likely to focus on their behavior. Thus, they are more accurate at predicting who may be engaging in illegal activity. For Blacks, police officers are more likely to focus on their race. Thus, their blackness becomes criminalized and an ill-advised subsequent for criminal behavior (Ray, 2015).

Once arrested, there are racial disparities in who is offered a plea deal and sentencing length. For the same crimes, Whites are more likely to receive plea deals, while Blacks are more likely to receive more months and years in prison (Rehavi and Starr, 2014). Examining 700 felony convictions, Bayer and colleagues (2012) found that the racial composition of the jury matters when it comes to convictions. When there is at least one Black person in the jury pool, Blacks and Whites were convicted at similar rates. But, when the jury pool was all White, Whites were 20% less likely than Blacks to be convicted. Once released from prison, returning citizens face a difficult transition back into the labor market. Yet, race actually matters more than a criminal record. Pager's (2007) research showed that Whites with a criminal record were more likely to be called back for jobs than Blacks without a criminal record.

Throughout the criminal justice pipeline, racial disparities exist. A series of policy solutions have been touted as the "silver bullet" to close the racial gap in policing. However, I argue these policy solutions fall short because they do not address the root cause of racial disparities in policing—a lack of police accountability. Below, I provide insight into the police accountability process and why restructuring civilian payouts for police misconduct will improve police-community relations, reduce racial profiling, and reduce police killings.



# RESTRUCTURING CIVILIAN PAYOUTS

# 03





**ST. LOUIS PAID OVER  
\$33 million  
IN CIVIL PAYOUTS**



**BALTIMORE PAID OVER  
\$50 million  
IN CIVIL PAYOUTS**



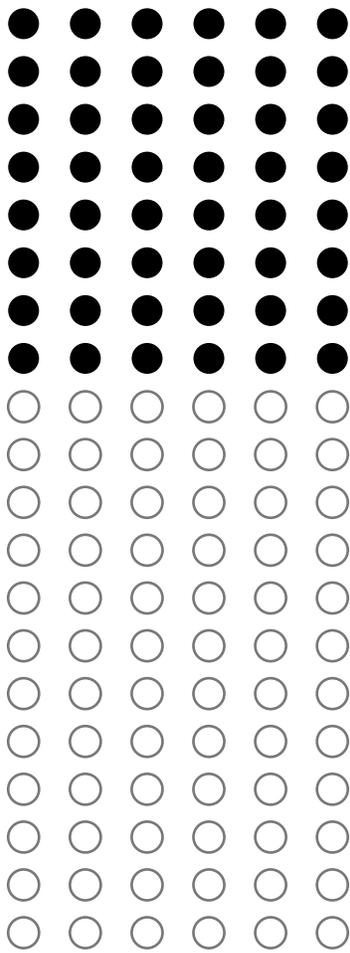
**CHICAGO PAID OVER  
\$650 million  
IN CIVIL PAYOUTS**

**T**ax money from local residents pays for civilian payouts for police misconduct. My policy recommendation is for police department insurances to replace taxpayer money concerning civilian payouts for police misconduct. While most officers have personal insurance and department insurance for injury, these plans mostly do not cover misconduct.

Pricing for the police insurance plans can be based on a score that includes misconduct. The model that I am proposing is not novel. In fact, we use it in healthcare on the patient and physician sides. Previously, if a patient had a pre-existing condition, their premium was higher than someone without pre-existing conditions. For physicians and hospitals, those who are more prone to malpractice lawsuits see increases in their insurance premiums. Police departments can operate similarly. This restructuring will take the burden off of taxpayers, particularly in struggling cities, and place accountability on police departments and police officers who commit the misconduct. Based on the number of misconduct settlements and cases, insurance companies can decide whether to retain the department, increase the rate, or decrease it. Then, cities can decide how to restrict funds to police departments based on these costs.

Since 2010, the city of St. Louis has paid over \$33 million in civil payouts for police misconduct. The city of Baltimore was found liable for about \$50 million during this time. These monies do not include lawyer fees to defend the officers involved, the police department, and the city in court. Over the past 20 years, Chicago spent over \$650 million on police misconduct cases. These monies have little impact on police department operations. Nothing changes with their normal budgetary operating procedures. It does not impact hiring and rarely affects firing. However, these monies do impact city budgets in other ways. St. Louis and Baltimore are predominately Black cities with struggling school systems and high job displacement. Imagine if these funds went to improving schools, creating jobs, and revitalizing infrastructure.

Now that I have established what restructuring of civil payouts would look like, it is important to detail the current process. Typically, when a person or family initiates a civil suit on behalf of a person who was killed or harmed by the police, the city or governing jurisdiction represents the police department. Often, the city, police department, police chief, and officers involved are formally named in the civil suit. The jurisdiction normally hires a law firm to represent the parties named in the civil suit. The law firm does a cost-benefit analysis to determine whether the case is worth going to trial



or worth settling. Most important to note is police officers are mostly absolved throughout this entire process. Civilian payouts have little bearing on their jobs.

Accordingly, it is important to discuss the process of how investigations of officers occur within police departments. For any use of force or officer-involved shooting, there is a formal, internal investigation. For large departments like St. Louis and Baltimore, Internal Affairs normally handles these investigations. Typically, an investigator is assigned the case and begins the examination process by interviewing witnesses and reviewing evidence, such as police reports and video or audio surveillance. The investigator makes a determination and then sends it up the chain of command to Lieutenants, Captains, and/or Majors who review the documents and also make a determination. Sometimes the case comes before a misconduct or trial board which rules on the matter. A trial board may be composed of three or more officers who make decisions like a team of judges.

The outcome of an investigation can be an officer being absolved of the complaint or being found liable at different levels with varying penalties. The penalties range from a note in the training and personnel file, administrative duty, fine, or demotion and loss of rank. Administrative duty, also known as desk duty, carries a stigma within police departments. Typically, officers are relieved of their service weapons and forced to work at a desk at the main administrative building in plain clothes. A fine may result in a prorated amount of money deducted from each paycheck until the fine is paid in full.

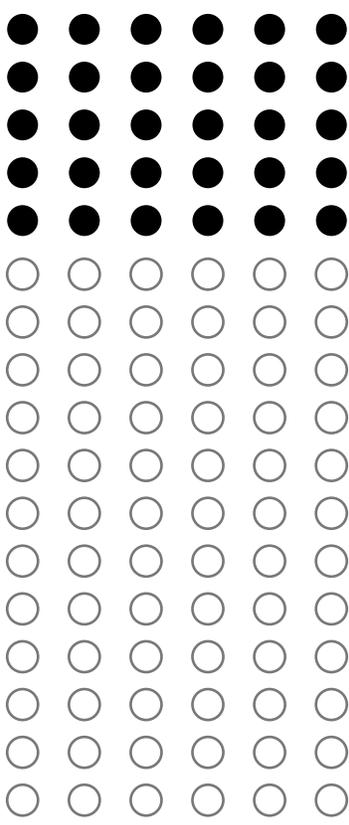
Similar to other jobs, rarely does the public know about these internal sanctions. But maybe it should.

Unlike other jobs, police officer salaries are paid from taxpayer money. It is the right of taxpayers to know what is happening within the police departments they fund.

Now, I am not necessarily keen on having the officers' names associated with these acts. But, a quarterly list of investigations and outcomes are in order. This occurs in some jurisdictions based on the guidelines of the civilian oversight committee. However, most police civilian oversight committees receive data from police departments about the departments' determinations.

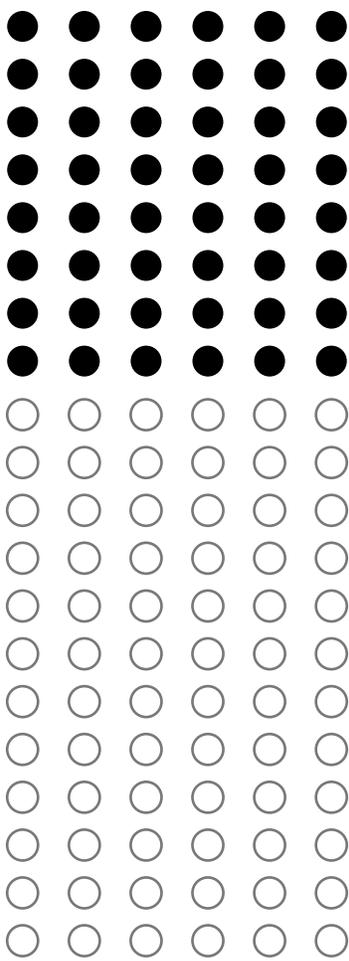
These determinations have little impact on the outcome of civilian complaints or payouts.





**LIMITS OF EXISTING POLICIES WITHOUT RESTRUCTURING CIVILIAN PAYOUTS**



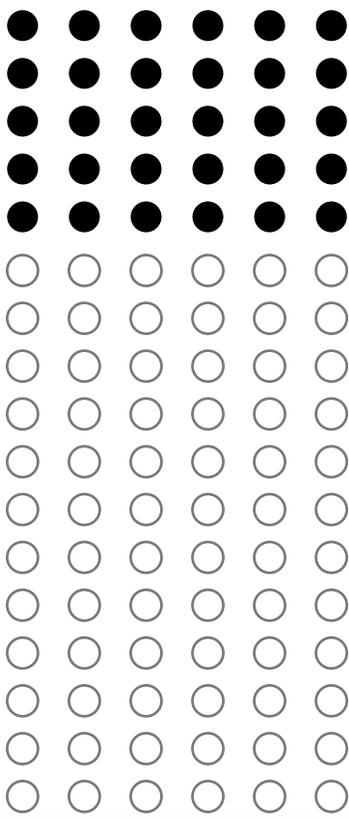


In 2015, I started leading implicit bias training with local police departments. Before this, I had conducted implicit training with corporations, community organizations, and universities. I continue to run these types of trainings to this day. LASSR has an extensive curriculum that it has conducted with police departments, the Department of Homeland Security, and the U.S. military. I believe implicit training is meaningful, but it is also limited. It aims to address a structural problem with a micro-level solution. Our virtual reality experiments show that officers hold pervasive implicit biases against Blacks. These patterns hold regardless of the race of the officer. Consequently, implicit bias training will only maximize effectiveness if accompanied by policies, like restructuring civilian payouts, that hold officers accountable for the implicit biases they display during social interactions. If not, implicit biases largely go unchecked.

In 2017, we published results from an extensive study on body-worn cameras (Ray et al., 2017). In the study, we conducted interviews with residents of Prince George’s County, Maryland and found that body-worn cameras are limited in their ability to make structural changes. Body-worn cameras were perceived as a panacea to provide transparency on policing. However, they do not have consistent regulation across jurisdictions. While some jurisdictions make footage publicly available, other jurisdictions do not. Those jurisdictions make researchers, journalists, and even family members wait until the courts mandate release. Additionally, cameras have different brands and have different functionalities. For example, some stay on continuously, while others are manually operated. These factors determine the effectiveness of body-worn cameras. Nonetheless, body-worn cameras are doing what they are designed to do—capture an interaction from an officer’s perspective. They are very beneficial, but they are limited if the public cannot access the recordings.



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In this article, I argued that in order to reduce police killings, there needs to be a restructuring of the civilian payout process for police misconduct. Civilian payouts for police misconduct put a strain on local governments and absolve police officers of culpability. Current law enforcement protocols hold officers internally accountable, but they are not externally held accountable to the communities they serve. By restructuring police-civilian payouts from taxpayer funding to police department insurances, monies typically spent on civilian payouts and lawyer fees can be used for education, jobs, and infrastructure. Improving education and creating jobs will indirectly reduce crime with local communities. Furthermore, this restructuring will ultimately reduce police killings and police use of force.

## CONCLUSION



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## About the Author

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## About the Center for Justice Research

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The Center for Justice Research (CJR), housed in Texas Southern University's Barbara Jordan - Mickey Leland School of Public Affairs, provides culturally-responsive solutions to mass incarceration. The Center's initiatives are situated on four pillars: Research and Data, Policy Advocacy, Researcher Development and Strategic Engagement. CJR's efforts move theory to practice, advise key stakeholders, and diversifies the justice-research space.

Founded in 2018, CJR was initially funded as a research initiative born out of a partnership between the Thurgood Marshall College Fund, Charles Koch Foundation, and Koch Industries to explore the removal of barriers to opportunities in historically under-resourced communities. From the beginning, CJR has worked on projects supported by the Department of Justice, National Science Foundation, National Hockey League, National Collaborative on Gun Violence Research, Chevron, and the Houston Endowment. The supporters of CJR all share a deeply rooted interest in dismantling mass incarceration, maintaining public safety and creating a procedurally just criminal justice system. Because of our partnerships, CJR has the unique opportunity to investigate problems and provide solutions for the complexities of the criminal justice system. Through these relationships, the Center's researchers turn data into solutions by prioritizing rapid dissemination of research to professionals, policymakers, and advocates. Sources of the Center's funding and our projects are outlined in greater detail on the website.

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**Research. Reform. Reposition**



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