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# Ideas for the New Administration: *Criminal Justice*

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With the sharp uptick in violent crime in and around many American cities, the new government should seek to better protect public safety while fostering a fairer legal system. Three areas, in particular, are ripe for bipartisan action:

- **Policing**
- **Civil asset forfeiture**
- **Criminal justice reform**

## 1. **Policing**

*Congress and the Biden administration should help fortify America's dwindling local police forces.*

Violent crime—homicides and shootings, in particular—was on the upswing in many American cities in 2020. In New York City, for example, murders were up 38.2% through November 29 and shootings were up almost 96%. In Chicago, murders and shootings were up 55% and 53% through November 29. In St. Louis, through the end of November, murders were up 39%, compared with the same time in 2019. In Los Angeles, year-to-date shootings and homicides were up 33% and 29%, respectively, as of November 28. Through November 29, homicides in San Francisco were up 43%. In Atlanta, murders were up 48% through November 28, while shootings jumped 39%.<sup>1</sup>

The rise in the number and intensity of antipolice protests may be playing a role not just in the crime uptick<sup>2</sup> but also in police officer attrition. New York, Chicago, Minneapolis, Milwaukee, and Atlanta are among the cities where officers have left their jobs in higher than usual numbers this year. The struggle of police

departments to retain and recruit officers predates 2020.<sup>3</sup> In 2019, the Police Executive Research Forum (PERF) released a report documenting what it called a “workforce crisis.”<sup>4</sup> That crisis, incidentally, came just as a “growing number of officers who entered policing during the federally funded hiring programs of the 1990s are now reaching retirement age.”<sup>5</sup> Meanwhile, 63% of respondents to a PERF survey of police departments stated that applications had decreased over the last five years—and 36% of them said that the decrease was “significant,” as opposed to “slight.”<sup>6</sup>

Police forces may be further squeezed as cities move to “defund” departments to varying degrees. NYPD cut its July 2020 academy class because of a \$1 billion budget cut passed earlier this year. LAPD could see its budget slashed by \$150 million next year, which, its police chief told reporters, would reduce its force by 350 officers. A \$14 million proposed cut to the Minneapolis police budget may also lead to a reduction in force size.<sup>7</sup>

A robust body of research suggests that replenishing departments can and will have significant crime-reduction effects. Economists Jonathan Klick and Alexander Tabarrok found a strong causal connection between police presence and crime, showing that the latter declined when the former was boosted.<sup>8</sup> In another study, Klick, along with criminologist John MacDonald and law professor Ben Grunwald, found that an increase in police patrols “decreased crime in adjacent city blocks by 43%–73%.”<sup>9</sup> Criminologist Aaron Chalfin, along with law professor Justin McCrary, found “reduced victim costs of \$1.63 for each additional dollar spent on police in 2010, implying that U.S. cities are under-policed.”<sup>10</sup>

In light of these facts, the Biden administration should work to secure federal funding for hiring more police officers at the local level. Some short-term aid can be reallocated from available federal discretionary funds; but ultimately, the administration will have to signal to congressional leaders that more funding is a legislative priority. To address public concerns about controversial police uses of force, the new administration could consider conditioning funds on departments reserving, say, 25% of new positions for college-educated officers—who, at least some research suggests, are less likely to use force.<sup>11</sup>

### [Read more](#)

Charles Fain Lehman, “Police Departments on the Brink,” *Eye on the News*, City Journal, Nov. 11, 2020

Lehman, “Beat Cops Cut Crime,” *Eye on the News*, City Journal, Nov. 30, 2020

## 2. *Civil asset forfeiture*

*The Biden administration and Congress should work to limit federal civil asset forfeitures, and eventually make them conditional on a criminal conviction.*

While policing has, by and large, been the target of a false and toxic narrative,<sup>12</sup> it is by no means an institution without flaws. One of these flaws is the practice of seizing and “forfeiting” money or property without having to prove beyond a reasonable doubt that it was used to facilitate—or that it reflects the proceeds of—a crime. Individuals and groups across the political spectrum have opposed this abuse—and one driver of this broad opposition is growing evidence that civil asset forfeiture is *not* used primarily to fight crime but to pad the budgets of law-enforcement agencies.<sup>13</sup> Supreme Court Justice Clarence Thomas recently questioned the constitutionality of the practice.<sup>14</sup>

Federal law-enforcement agencies such as FBI, DEA, and ATF engage in civil asset forfeiture. The Department of Justice encourages states and localities to do so, as well, through its Equitable Sharing Program (ESP). State and local law-enforcement agencies can seize property that is turned over to and “adopted” by the federal government, which initiates forfeiture proceedings. Up to 80% of the proceeds can then be kicked back to the agencies that seized the property.<sup>15</sup>

In 2014, the Department of Justice Assets Forfeiture Fund showed more than \$4.4 billion in state deposits.<sup>16</sup> Obama’s attorney general, Eric Holder, effectively halted ESP in 2015, limiting federal adoptions of state/local agency forfeitures to “property that directly relates to public safety concerns, including firearms,

ammunition, explosives, and property associated with child pornography,” as well as to seizures made by authorities working on a joint task force.<sup>17</sup> The following year, deposits by states fell to \$1.9 billion.<sup>18</sup>

In 2017, however, Trump’s first attorney general, Jeff Sessions, reinstated ESP, overriding Holder’s 2015 order.<sup>19</sup> Yet a report that year by the Office of the Inspector General (OIG) found that more than 75% of the cash seized by federal agencies was forfeited in administrative—as opposed to criminal—proceedings, in which the government’s burden of proof is significantly lower.<sup>20</sup> The OIG report sampled 100 forfeitures and characterized only 44 as having “advanced or having been related to criminal investigations.”<sup>21</sup>

Biden should direct his new attorney general to cancel ESP on the first day in office. In addition to providing incentives to engage in a constitutionally suspect practice that is anything but equitable, ESP undermines states’ efforts to curtail civil asset forfeiture within their borders.<sup>22</sup> The day after that, the president should call on Congress to pass legislation that would condition federal-level asset forfeiture on a criminal conviction.

[Read more](#)

Rafael A. Mangual, “(No) Crime and Punishment: Attorney General Sessions Is Wrong on Civil-Asset Forfeiture,” *Eye on the News, City Journal*, Aug. 2, 2017

James R. Copland, “It’s Time to Rethink How Our Federal Agencies Seize Cash and Property,” *Fox News*, Apr. 11, 2017

**3. Criminal justice reform**

*Congress and the president should tie the perpetuation of some of the First Step Act’s key provisions to concrete measures of success.*

The 2018 First Step Act (FSA) was a signature legislative achievement of the Trump administration, which consistently supported this popular, bipartisan criminal justice reform. The FSA is meant to, among other things, address perceived inequities in federal sentencing, cut the federal prison population, and reduce recidivism. It was a compromise measure: some lawmakers, such as Senator Cory Booker (D., NJ),<sup>23</sup> argued that the law did not go far enough. Critics including Senator Tom Cotton (R., AR)<sup>24</sup> argued that it went too far.

Senator Cotton worried about the risk to public safety posed by violent felons who were allowed to cut their prison stays by cashing in “good time” credits acquired by participating in programs thought to reduce recidivism, or who were released earlier than they might otherwise have been—for example, via retroactive applications of changes made to cocaine sentencing laws. Those concerns resurfaced when Joel Francisco—a former federal inmate released pursuant to one of FSA’s provisions—was charged with the murder of a Rhode Island man shortly after his release under the act.<sup>25</sup>

The Department of Justice did establish an independent review committee<sup>26</sup> to track offenders released under FSA. But so far, little is known about whether the beneficiaries of this law have reoffended.

The Biden administration should direct an effort to assess the success of some of FSA’s key provisions. In particular, the administration should push for an amendment to the law that would require the timely publication of data that would allow the public to assess:

- The actual predictiveness of the act’s Risk and Needs Assessment System to determine the risk level of prisoners with respect to recidivism, as well as serious or violent misconduct while incarcerated; and
- The effectiveness of prison anti-recidivism programming.

Another amendment to consider would be a provision that would set baseline measures of success—as measured by actual offender behavior during and after their terms of incarceration—as to both risk assessments and anti-recidivism programs, which, if not met, would prohibit the continued use of such assessments and programs.

## [Read more](#)

**Tom Cotton, “Fix the First Step Act and Keep Violent Criminals Behind Bars,” *National Review*, Dec. 17, 2018**  
**“Convicted Felon Released Early Under First Step Act Arrested for Second Time on Drug Charges,”**  
**wsoctv.com (Charlotte, NC), Mar. 6, 2020**

## Endnotes

- <sup>1</sup> Police Department, City of New York, CompStat Citywide, “Report Covering the Week 11/23/20 through 11/29/2020”; Chicago Police Department, CompStat Citywide, “Report Covering the Week of 23-Nov-20 Through 29-Nov-20”; St. Louis Metropolitan Police Department, Report: CRM0013-BY, “Part 1, Crime Comparison Based on UCR Reporting Neighborhood Report,” Years Compared: 2019–2020, Months Included: January–October, Nov. 4, 2020; Los Angeles Police Department, CompStat Citywide Profile,” Nov. 1, 2020–Nov. 28, 2020; San Francisco Police Department, Crime Dashboard, Crime Data, Comparing a Date Range Within One Year to Its Prior Year, Jan. 1, 2020–Nov. 29, 2020; Atlanta Police Department, 2020 Week 48 Crime Report.
- <sup>2</sup> See Tom Jackson, “Homicides Skyrocket Across U.S. During Pandemic, While Robberies and Rapes Plummet,” *Washington Post*, Nov. 21, 2020: “Cities that experienced tumultuous protests in the wake of police killings saw some of the highest homicide spikes: Minneapolis’s total went from 33 in the first nine months of last year, to 61 this year, an 85 percent increase. Louisville has seen a 79 percent increase, Portland a 68 percent increase, and Milwaukee’s homicides have more than doubled, from 67 to 141, a 110 percent increase.”
- <sup>3</sup> Rocco Parascandola, “‘Blue Flight’ Retirements Thinning NYPD Ranks to Levels Not Seen in Nearly a Decade,” *New York Daily News*, Oct. 8, 2020; Frank Main and Fran Spielman, “Chicago Cops Are Retiring at ‘Unheard Of’ Twice the Usual Rate,” *Chicago Sun-Times*, Aug. 17, 2020; Amy Forliti, “Over 150 Minneapolis Police Officers Seeking Disability Claims After Death of George Floyd,” *Denver Post*, July 10, 2020; Shaun Gallagher, “MPD: Spike in Officers Leaving the Job Due to Unrest,” WTMJ-TV Milwaukee, June 25, 2020; Nyamekye Daniel, “Atlanta Police Department Sees Significant Increase in Resignations After Protests,” *The Center Square*, Sept. 6, 2020.
- <sup>4</sup> “The Workforce Crisis, and What Police Agencies Are Doing About It,” Police Executive Research Forum, September 2019.
- <sup>5</sup> *Ibid.*
- <sup>6</sup> *Ibid.*
- <sup>7</sup> Scott A. Davis, “As Crime Explodes in Defunded NYC, Cancelled NYPD Academy Class Back On—900 New Cops Expected,” *Law Enforcement Today*, Oct. 30, 2020; LAPD Budget to Be Cut by \$150 Million: Decision Triggered by Widespread Protests,” *nbclosangeles.com*, Nov. 7, 2020; Audrey Conklin, “Minneapolis Police Chief Warns of Changes if Mayor Frey’s \$14M Budget Cut Goes Through,” *foxnews.com*, Oct. 9, 2020.
- <sup>8</sup> Jonathan Klick and Alexander Tabarrok, “Using Terror Alert Levels to Estimate the Effect of Police on Crime,” *Journal of Law and Economics* 48, no. 1 (April 2005): 267–79.
- <sup>9</sup> John M. MacDonald, Jonathan Klick, and Ben Grunwald, “The Effect of Private Police on Crime: Evidence from a Geographic Regression Discontinuity Design,” *Journal of the Royal Statistical Society* 179, no. 3 (June 2016): 831–46.
- <sup>10</sup> Aaron Chalfin and Justin McCrary, “Are U.S. Cities Underpoliced? Theory and Evidence,” *Review of Economics and Statistics* 100, no. 1 (March 2018): 167–86.
- <sup>11</sup> See, e.g., Eugene A. Paoline, William Terrill, and Michael T. Rossler, “Higher Education, College Degree Major, and Police Occupational Attitudes,” *Journal of Criminal Justice Education* 26, no. 1 (2015): 49–73; Jason Rydberg and William Terrill, “The Effect of Higher Education on Police Behavior,” *Police Quarterly* 13, no. 1 (March 2010): 91–120; Christopher Chapman, “Use of Force in Minority Communities Is Related to Police Education, Age, Experience, and Ethnicity,” *Police Practice and Research* 13, no. 5 (2012): 421–36.
- <sup>12</sup> Rafael A. Mangual, “The Toxic Narrative About Police Is Wrong,” *Eye on the News, City Journal*, June 2, 2020.
- <sup>13</sup> See, e.g., Dick M. Carpenter II et al., “Policing for Profit: The Abuse of Civil Asset Forfeiture,” Institute for Justice, November 2015.
- <sup>14</sup> *Lisa Olivia Leonard v. Texas*, Petition for Writ of Certiorari, Statement of Justice Thomas Respecting the Denial of Certiorari.
- <sup>15</sup> Rafael A. Mangual, “(No) Crime and Punishment: Attorney General Sessions Is Wrong on Civil-Asset Forfeiture,” *Eye on the News, City Journal*, Aug. 2, 2017.
- <sup>16</sup> U.S. Dept. of Justice (DOJ), “Total Net Deposits to the Fund by State of Deposit, Fiscal Year 2014.”
- <sup>17</sup> DOJ, Office of the Attorney General, “Prohibition on Certain Federal Adoptions of Seizures by State and Local Law Enforcement Agencies,” January 2016.
- <sup>18</sup> DOJ, “Total Net Deposits to the Fund by State of Deposit,” Fiscal Year 2016.
- <sup>19</sup> DOJ, Criminal Division, Policy Directive 17-1, “Policy Guidance on the Attorney General’s Order on Federal Adoption and Forfeiture of Property Seized by State and Local Law Enforcement Agencies,” undated.
- <sup>20</sup> DOJ, Office of the Inspector General, “Review of the Department’s Oversight of Cash Seizure and Forfeiture Activities,” March 2017.
- <sup>21</sup> *Ibid.*
- <sup>22</sup> Ilya Somin, “Jeff Sessions’ Attack on Federalism and Property Rights,” *Washington Post*, July 20, 2017.
- <sup>23</sup> “Booker, Watson Coleman Introduce Far-Reaching Criminal Justice Legislation: The Next Step Act,” *booker.senate.gov*, Mar. 8, 2019.
- <sup>24</sup> Tom Cotton, “How the Senate First Step Act Is Flawed,” *Washington Times*, Nov. 29, 2018.
- <sup>25</sup> Brian Amaral and Katie Mulvaney, “He Was Released Early from Prison in February. Now He’s Wanted for a Murder on Federal Hill,” *Providence Journal*, Oct. 5, 2019.
- <sup>26</sup> First Step Act Independent Review Committee.

## ***About Transition 2021***

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As President Biden assumes office, his administration and the 117<sup>th</sup> Congress face several pressing tasks. Among them: accelerating the pace of recovery from the pandemic, helping to get schools reopened and students back on track, and restoring safety to the many American cities afflicted by unrest and rising violence. In these briefs, Manhattan Institute fellows offer actionable ideas for the new government— proposals for educational pluralism, executive branch prudence, economic revitalization, evidence-based criminal justice reform, fair and efficient health care, near-term fiscal relief, and long-term fiscal discipline. Each brief contains specific recommendations for Congress or the new administration, along with links to further reading. Taken together, these recommendations represent an agenda for fostering the growth and opportunity that America desperately needs in the wake of the pandemic.

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