

# Lessons Learned from Ferguson: Ending Abusive Collection of Criminal Justice Debt

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## Recommended Citation

Neil L. Sobol, *Lessons Learned from Ferguson: Ending Abusive Collection of Criminal Justice Debt*, 15 U. Md. L.J. Race Relig. Gender & Class 293 (2015).

Available at: <https://digitalcommons.law.umaryland.edu/rrgc/vol15/iss2/6>

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## LESSONS LEARNED FROM FERGUSON: ENDING ABUSIVE COLLECTION OF CRIMINAL JUSTICE DEBT

Neil L. Sobol\*

“Addressing the deeply embedded constitutional deficiencies we found demands an entire reorientation of law enforcement in Ferguson. The City must replace revenue-driven policing with a system grounded in the principles of community policing and police legitimacy, in which people are equally protected and treated with compassion, regardless of race.”<sup>1</sup>

On March 4, 2015, Attorney General Eric Holder announced the release of the Department of Justice’s “searing report” on the Ferguson Police Department.<sup>2</sup> The report was the product of one of two federal investigations that occurred in response to a police officer’s fatal shooting of Michael Brown, an unarmed black teenager, in August 2014.<sup>3</sup> While the investigation of the officer concludes that

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<sup>1</sup> U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 6 (2015), [http://www.justice.gov/crt/about/spl/documents/ferguson\\_findings\\_3-4-15.pdf](http://www.justice.gov/crt/about/spl/documents/ferguson_findings_3-4-15.pdf) [hereinafter FPD REP.].

<sup>2</sup> U.S. Dep’t of Justice, *Attorney General Holder Delivers Update on Investigation in Ferguson, Missouri*, JUSTICE.GOV (Mar. 4, 2015), <http://www.justice.gov/opa/speech/attorney-general-holder-delivers-update-investigations-ferguson-missouri> [hereinafter *Holder Press Release*].

<sup>3</sup> Matt Apuzzo & John Eligon, *Ferguson Police Tainted by Bias, Justice Department Says*, N.Y. TIMES (Mar. 4, 2015), <http://www.nytimes.com/2015/03/05/us/us-calls-on-ferguson-to-overhaul-criminal-justice-system.html>; U.S. DEP’T OF JUSTICE, DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON (2015), [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj\\_report\\_on\\_shooting\\_of\\_michael\\_brown\\_1.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf)

the “evidence does not support charging a violation of federal law,”<sup>4</sup> the review of the police department paints a disturbing picture of public officials more concerned with collecting revenue than protecting public safety.<sup>5</sup>

Unfortunately, these allegations are neither limited to Ferguson, a town of 21,000 people, nor are they recent developments in the United States.<sup>6</sup> As Eric Holder explained, “although the concerns we are focused on . . . may be particularly acute in Ferguson—they are not confined to any one city, state, or geographic region. They implicate questions about fairness and trust that are national in scope.”<sup>7</sup> Change is necessary in Ferguson and other cities to combat the abusive collection of the criminal justice debt.

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[hereinafter BROWN REP.]; FPD REP., *supra* note 1.

<sup>4</sup> BROWN REP., *supra* note 3, at 4.

<sup>5</sup> FPD REP., *supra* note 1, at 2 (alleging that “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs”). The Justice Department report is not the first criticism of Ferguson’s law enforcement system. *See, e.g.*, THOMAS HARVEY ET AL., ARCHCITY DEFENDERS: MUNICIPAL COURTS WHITE PAPER 2, 27, 31, 34 (2014), [https://archive.org/details/pdfy-iyuTY46j7R\\_fAvpK](https://archive.org/details/pdfy-iyuTY46j7R_fAvpK) [hereinafter ARCHCITY WHITE PAPER] (reviewing the municipal court practices in the Missouri cities of Bel-Ridge, Florissant, and Ferguson); Class Action Complaint, *Fant v. City of Ferguson*, No. 4:15-cv-00253 (E.D. Mo. Feb. 8, 2015), <http://equaljusticeunderlaw.org/wp-content/uploads/2015/02/Complaint-Ferguson-Debtors-Prison-FILE-STAMPED.pdf>.

<sup>6</sup> *See, e.g.*, Alex Bender et. al., *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*, LCCR.COM 6 (2015), <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf> [hereinafter CAL. REP.] (describing traffic fine abuses in California); Ruth Marcus, *Policing by Fleecing in Ferguson and Beyond*, WASH. POST (Mar. 6, 2015), [http://www.washingtonpost.com/opinions/in-ferguson-and-other-cities-jailed-for-being-poor/2015/03/06/e8cb5896-c42a-11e4-9271-610273846239\\_story.html](http://www.washingtonpost.com/opinions/in-ferguson-and-other-cities-jailed-for-being-poor/2015/03/06/e8cb5896-c42a-11e4-9271-610273846239_story.html) (asserting “[t]he most important thing to understand about the problems with the police force in Ferguson, Mo., is that they’re not unique to Ferguson”); Simon McCormack, *The Ferguson Report was Damning, But It’s Not Just a Ferguson Problem*, HUFFINGTON POST (Mar. 9, 2015, 4:19 PM), [http://www.huffingtonpost.com/2015/03/09/ferguson-report\\_n\\_6833272.html](http://www.huffingtonpost.com/2015/03/09/ferguson-report_n_6833272.html) (describing “glaring racial disparities in minor arrest statistics” in Boston, Detroit, Minneapolis, New York City, Newark, and Philadelphia); Editorial Board, *Policing for Profit Perverts Justice: Our View*, USA TODAY (Mar. 11, 2015, 7:01 PM), <http://www.usatoday.com/story/opinion/2015/03/11/ferguson-mo-police-traffic-tickets-justice-department-editorials-debates/70175690/> (describing allegations of policing for profit practices in Alabama, Mississippi, and Ohio).

<sup>7</sup> *Holder Press Release*, *supra* note 2.

This Article will address the collection issues by identifying the key findings in the Department of Justice's report and discussing the major points to be learned from the allegations in Ferguson. The lessons learned from Ferguson should be a guide to other municipalities that are or may be on the brink of developing similar abusive collection practices.<sup>8</sup>

## I. THE JUSTICE DEPARTMENT'S INVESTIGATION

The report on the Ferguson Police Department has been characterized as a "scathing" indictment of city officials, the court system, and the police in their relentless pursuit of revenue collection leading to violations of federal constitutional and statutory law.<sup>9</sup> This section of the Article will briefly describe the background and methodology of the report as well as its primary findings.

### A. Background & Methodology

The pattern-or-practice provisions of the Violent Crime

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<sup>8</sup> In an introduction to a paperback version of the report, Theodore Shaw, Director of the Center for Civil Rights at the University of North Carolina School of Law, urges all Americans to read the report as a starting point to "begin the process of turning the tragedy of Ferguson into a turning point for our country." THEODORE M. SHAW, U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INTRODUCTION TO THE FERGUSON REPORT xvi (2015). After months of negotiations, the Department of Justice and the City of Ferguson were unable to reach an agreement to resolve the concerns in the Ferguson report, and the Department filed a complaint against Ferguson. Matt Apuzzo, *Department of Justice Sues Ferguson, Which Reversed Course on Agreement*, N.Y. TIMES (Feb. 10, 2016), <http://www.nytimes.com/2016/02/11/us/politics/justice-department-sues-ferguson-over-police-deal.html>; Complaint, *United States v. City of Ferguson*, No. 4:16-cv-00180 (E.D. Mo. Feb. 10, 2016), <https://s3.amazonaws.com/pacer-documents/99/144595/10716541447.pdf>. This article was submitted prior to the lawsuit and does not specifically address the allegations in the complaint; however, the allegations are similar to the findings and conclusions made in the Ferguson report.

<sup>9</sup> Mark Berman & Wesley Lowrey, *The 12 Key Highlights From the DOJ's Scathing Ferguson Report*, WASH. POST (Mar. 4, 2015), <http://www.washingtonpost.com/news/post-nation/wp/2015/03/04/the-12-key-highlights-from-the-doj-s-scathing-ferguson-report/>; Trymaine Lee, *Justice Department Releases Scathing Ferguson Report*, MSNBC.COM (Mar. 3, 2015, 9:17 PM), <http://www.msnbc.com/msnbc/justice-department-releases-scathing-ferguson-report>; FPD REP., *supra* note 1, at 1.

Control and Law Enforcement Act,<sup>10</sup> the Omnibus Crime Control and Safe Streets Act,<sup>11</sup> and Title VI of the Civil Rights Act<sup>12</sup> authorized the report on the Ferguson Police Department.<sup>13</sup> The investigation was not limited in scope or review to the operations or personnel of the police department; it also examined the role of city and court officials.<sup>14</sup> A brief introduction to the city's demographics and its governance policies is important to understanding the report.

Ferguson is one of nearly ninety cities located within St. Louis County, Missouri.<sup>15</sup> The city consists of approximately 21,000 citizens, of whom sixty-seven percent are African American and twenty-nine percent are Caucasian.<sup>16</sup> One-quarter of Ferguson's residents have incomes below the federal poverty level.<sup>17</sup>

An elected mayor and a six-person council govern the city.<sup>18</sup> A city manager appointed by the council serves as the chief executive and administrative officer and supervises the city's departments, including the police department.<sup>19</sup> The city manager also appoints the police chief.<sup>20</sup>

The municipal court is physically and operationally under the supervision of the police chief.<sup>21</sup> The court is housed within the police department, and the court staff report to the police chief.<sup>22</sup> Unlike the court staff, the municipal judge is not subject to the police chief's supervision. The judge, nominated by the city manager and elected by the council, is under state court rules generally subject to oversight by the St. Louis County Circuit Court; however, the municipal code gives the judge broad powers and discretion to establish the court's practices

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<sup>10</sup> 42 U.S.C. § 14141 (2006).

<sup>11</sup> 42 U.S.C. § 3789d (2006).

<sup>12</sup> 42 U.S.C. § 2000d (2006).

<sup>13</sup> FPD REP., *supra* note 1, at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 6 (citing data from the U.S. Census Bureau).

<sup>16</sup> *Id.* (citing data from the U.S. Census Bureau).

<sup>17</sup> *Id.* (citing data from the U.S. Census Bureau).

<sup>18</sup> FPD REP., *supra* note 1, at 7.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.* at 8.

and procedures.<sup>23</sup>

The Department of Justice's report was based primarily on interviews, ride-alongs with officers, courtroom observations, reviews of third-party studies, police records, incident reports, emails, and information submitted by police and court officials.<sup>24</sup> The investigators interviewed the top city, court, and police officials, including the mayor, the city manager, the finance director, the judge, the court clerk, and the police chief. Additionally, they questioned half of the police officers as well as hundreds of city residents who had contact with the police. The investigators also spoke with community and advocacy groups.<sup>25</sup>

### *B. Findings & Conclusions*

The six-month Ferguson investigation found three major problems: a misplaced focus on collection, racial bias, and a community's distrust in the criminal justice system.<sup>26</sup>

#### 1. Revenue Maximization as the Primary Goal

The report concludes that Ferguson's focus on revenue collection adversely affected its law enforcement process to the detriment of its citizens.<sup>27</sup> The investigators found that the over-emphasis on revenue collection was a policy that pervaded governmental, judicial, and policing powers as "[c]ity, police, and court officials for years [had] worked in concert to maximize revenue at every stage of the enforcement process."<sup>28</sup>

City officials stressed the importance of revenue maximization in the municipality's monitoring of collections, as well as its communications with police and court officials. The city's estimated and actual revenues collected reflect a significant and increasing reliance on fines and fees from enforcement of municipal code

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<sup>23</sup> *Id.* (citing FERGUSON, MO., MUN. CODE § 13-29)

<sup>24</sup> FPD REP., *supra* note 1, at 1.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 10.

violations.<sup>29</sup> Actual fines and fees collected between the fiscal years 2010 and 2013 increased each year with \$1.38 million collected in 2010 and \$2.46 million collected in 2013. Budgeted amounts for fiscal years 2014 and 2015 were \$2.63 million and \$3.09 million, respectively. The \$1.38 million collected in 2010 represented about 12.5% of the general revenues for 2010, while the \$3.09 million budgeted in 2015 represents over 23% of the budgeted general revenues for 2015.<sup>30</sup>

To help reach the budgeted revenue increases, city officials regularly monitored revenue collection efforts by the courts and the police, approved high fines, and encouraged aggressive collection efforts.<sup>31</sup> Law enforcement reports provided to the city focused on revenue generation, such as tickets issued, rather than public safety concerns.<sup>32</sup> Moreover, the investigation found that city officials even directed enforcement plans to “fill the revenue pipeline,”<sup>33</sup> and tried to maximize revenue within the state-imposed limit on revenues from fines.<sup>34</sup> Communications to court and police officials praised efforts that continually increased collection amounts.<sup>35</sup>

The city’s focus on revenue collection, in turn, created pressure on officers to maximize revenue. Officer productivity, promotion, evaluation, and discipline were based on the number of arrests and citations.<sup>36</sup> Lists displayed in the police station reflected the monthly arrest statistics for each officer. Officers were encouraged to write multiple citations at every stop, with bragging rights going to those who had the most citations during a single stop.<sup>37</sup>

Similarly, the report found that the city’s revenue maximization goals “fundamentally compromise[d] the role of

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<sup>29</sup> *Id.* at 9.

<sup>30</sup> FPD REP., *supra* note 1, at 9–10.

<sup>31</sup> *Id.* at 12–13.

<sup>32</sup> *Id.* at 11.

<sup>33</sup> *Id.* at 13 (quoting Ferguson’s Financial Director).

<sup>34</sup> *Id.* at 14.

<sup>35</sup> *Id.* at 13.

<sup>36</sup> FPD REP., *supra* note 1, at 11–12.

<sup>37</sup> *Id.* at 11 (finding that “[i]ssuing three or four charges in one stop is not uncommon” and that “[o]fficers sometimes write six, eight, or in at least one instance, fourteen citations for a single encounter”).

Ferguson's municipal court."<sup>38</sup> The city's finance director, the police chief, and the court clerk had a role in setting the revenue goals for fines and fees. Court staff and the judge recognized the city's focus on obtaining these goals.<sup>39</sup> Preset fines in Ferguson were typically "at or near the top of the list' compared with other [Missouri] municipalities."<sup>40</sup> For non-preset fines, the report identified particular cases of high fines, including charges of over \$300 for a manner of walking violation and over \$500 for high grass and weeds.<sup>41</sup>

The finance director praised the judge for increasing court collections and creating additional fees.<sup>42</sup> When the city council was considering reappointment of the judge, and concerns were raised about whether he was handling cases "properly and fairly," the city manager, commented "[i]t goes without saying the [c]ity cannot afford to lose any efficiency in our [c]ourts, nor experience any decrease in our [f]ines and [f]orfeitures."<sup>43</sup>

As support for its claim that the court focused more on revenue production than public safety, the report highlighted the court's use of arrest warrants and additional fees for failure to appear or make payments.<sup>44</sup> This practice produced "overwhelming evidence of minor municipal code violations resulting in multiple arrests, jail time, and payments that exceed[ed] the cost of the original ticket many times over."<sup>45</sup> Accordingly, while penalties for underlying violations were typically limited to fines, defendants were often arrested and incarcerated based on failure to pay the fines.<sup>46</sup>

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<sup>38</sup> *Id.* at 3.

<sup>39</sup> *Id.* at 14.

<sup>40</sup> *Id.* at 52.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 14. Notably, the additional fees included "many of which are widely considered abusive and may be unlawful, including several that the City has repealed during the pendency of [the Department of Justice's] investigation." *Id.*

<sup>43</sup> FPD REP., *supra* note 1, at 15.

<sup>44</sup> *Id.* at 42. Notably, after the investigation started, Ferguson ended its practice of imposing Failure to Appear charges. *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 42. For a more detailed discussion of use of arrest and incarceration as a method of collecting criminal justice debt, see Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons*, 75 MD. L. REV. 486 (2016), <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3701&context=mlr>.

Overall, the report found that instead of “act[ing] as a neutral arbiter of the law . . . the court primarily use[d] its judicial authority as the means to compel the payment of fines and fees that advance[d] the [c]ity’s financial interests.”<sup>47</sup>

## 2. Racial Bias

Ferguson’s focus on the collection of revenue reportedly “reflects and exacerbates existing racial bias, including racial stereotypes.”<sup>48</sup> The investigation concluded that African Americans received disparate treatment at virtually every phase of the law enforcement process, and such treatment included intentional discrimination in violation of equal protection rights under the Constitution.<sup>49</sup> While approximately two-thirds of Ferguson’s residents are African American, the following statistics reflect the disparate treatment by the police and the court system and portray a “comprehensive municipal justice system that, at each juncture, enforces the law more harshly against black people than others.”<sup>50</sup>

- African Americans were subject to eighty-five percent of traffic stops, eighty-eight percent of the reported cases involving police use of force, ninety percent of citations, and ninety-three percent of arrests.<sup>51</sup>
- African Americans were twice as likely to be cited and more than twice as likely to be arrested and searched following a traffic stop, even though contraband was twenty-six percent less likely to be found with African Americans.<sup>52</sup>

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<sup>47</sup> FPD REP., *supra* note 1, at 3.

<sup>48</sup> *Id.* at 2. A detailed analysis of Ferguson’s racial bias and segregation issues is beyond the scope of this Article. For more information, see RICHARD ROTHSTEIN, ECONOMIC POLICY INSTITUTE, THE MAKING OF FERGUSON: PUBLIC POLICIES AT THE ROOT OF ITS TROUBLES (2014), <http://s3.epi.org/files/2014/making-of-ferguson-final.pdf>. Additionally, for a detailed discussion of the role that race plays in police stops, see CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP (2014).

<sup>49</sup> FPD REP., *supra* note 1, at 62.

<sup>50</sup> *Id.* at 63.

<sup>51</sup> *Id.* at 62.

<sup>52</sup> *Id.*

- African Americans were “more likely to receive multiple citations during a single incident.”<sup>53</sup>
- African Americans received a disproportionate amount of charges for petty offenses, including over ninety-percent of charges for manner of walking in a roadway, failure to comply, resisting arrest, and disturbing the peace.<sup>54</sup>
- African Americans were sixty-eight percent less likely to have their cases dismissed, received ninety-two percent of the arrest warrants issued, and represented ninety-six percent of those arrested solely because of an outstanding municipal warrant.<sup>55</sup>

The report determined that “this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law.”<sup>56</sup> Instead, the Department of Justice concluded that the disparate treatment was due in part to unlawful bias and racial stereotypes and found “substantial evidence of racial bias among police and court staff.”<sup>57</sup> The evidence included the racial disparities in police and court actions, the historical opposition to African Americans in Ferguson, and racial stereotypes reflected in communications by police and court personnel.<sup>58</sup>

Additionally, the composition of the police force and the court personnel do not reflect the diversity in Ferguson. The report found that only four of Ferguson’s fifty-four sworn police officers were African American.<sup>59</sup> Similarly, at the time of the report, the judge, the prosecuting attorney, and the clerks in the municipal court were

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 62. A manner of walking violation can occur if an individual “walk[s] along and upon an adjacent roadway” rather than the sidewalk. FERGUSON, MO., MUN. CODE § 44-344 (2015).

<sup>55</sup> FPD REP., *supra* note 1, at 62–63.

<sup>56</sup> *Id.* at 5.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 63. The report identified specific messages sent by court and police personnel, including supervisors, using their city email accounts that reflected racial bias. *Id.* at 72. Typically, the messages were forwarded and senders were not disciplined. *Id.*

<sup>59</sup> *Id.* at 7.

white.<sup>60</sup>

### 3. Distrust

Ferguson's persistent focus on revenue collection and the disparate treatment of African Americans created distrust in the police and judicial system, which existed "long before Michael Brown's shooting death in August 2014."<sup>61</sup> Instead, the report found that the distrust was primarily due to the "years of unlawful and unfair law enforcement practices by" the police and court system.<sup>62</sup> The report referred to research confirming the findings in Ferguson that "when police and courts treat people unfairly, unlawfully, or disrespectfully, law enforcement loses legitimacy in the eyes of those who have experienced, or even observed, the unjust conduct."<sup>63</sup> The lack of trust, in turn, makes it unlikely that citizens will "seek police assistance even when they are victims of crime, or that they will cooperate with the police to solve or prevent other crimes."<sup>64</sup>

Ferguson's failure to have a system for effectively reporting and dealing with citizens' complaints about the police contributed to the lack of trust issue.<sup>65</sup> The report found that the department's "tolerance for officer misconduct" when viewed in relation to the "aggressive enforcement of even minor municipal infractions" supported the statement "that a 'different set of rules' applies to Ferguson's police than to its African-American residents, and that making a complaint about officer misconduct is futile."<sup>66</sup>

Moreover, the failure to develop community policing or

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<sup>60</sup> *Id.* at 8. Additionally, at the time of the shooting of Michael Brown, only one of the six council members were African American, and the police chief and mayor were white. Matt Pearce, Maya Srikrishnan & David Zucchini, *Protesters and Police Face Off in St. Louis Suburb Over Shooting*, L.A. TIMES (Aug. 11, 2014, 10:19 PM), <http://www.latimes.com/nation/nationnow/la-na-missouri-st-louis-police-shooting-teen-20140811-story.html#page=1>.

<sup>61</sup> FPD REP., *supra* note 1, at 79.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 80 (citing TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS (2002)).

<sup>64</sup> *Id.* at 81.

<sup>65</sup> *Id.* at 82–86.

<sup>66</sup> FPD REP., *supra* note 1, at 82.

engagement strategies only exacerbated the preexisting trust issues.<sup>67</sup> As revenue-maximization practices increased, community-policing efforts decreased and “dwindled to almost nothing in recent years.”<sup>68</sup> Ferguson has only one officer assigned to community relations. Moreover, the department’s focus on the importance of ticket writing and use of twelve-hour shifts to generate increased revenue has reportedly adversely affected community relations.<sup>69</sup>

## II. MOVING FORWARD

Revenue maximization, racial bias, and community distrust have created a system in Ferguson that improperly disregards the rights of individuals. The Department of Justice’s report recognizing that resolving the issues in Ferguson will require “a fundamental redirection of Ferguson’s approach to law enforcement” suggests reforms in both the police department and the court system.<sup>70</sup> Change has begun, as following the release of the report, the mayor, city manager, police chief, municipal judge, court clerk, and other court personnel have either resigned or been dismissed.<sup>71</sup> This section will build on the broad recommendations in the report and evaluate some of the steps that have already been taken.

### A. *Focus on Protecting and Serving Rather than Collecting Revenue*

Instead of viewing the police and the court system as primarily a funding source, municipalities must recognize the importance of

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<sup>67</sup> *Id.* at 86–88.

<sup>68</sup> *Id.* at 87.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 90.

<sup>71</sup> Christine Byers & Stephen Deere, *A Look Into Ferguson's Pricey Pick To Negotiate DOJ Settlement*, ST. LOUIS POST-DISPATCH (May 3, 2015, 5:05 AM), [http://www.stltoday.com/news/local/crime-and-courts/a-look-into-ferguson-s-pricey-pick-to-negotiate-doj/article\\_05a6800b-e525-5392-94eb-cbf7b68a1830.html](http://www.stltoday.com/news/local/crime-and-courts/a-look-into-ferguson-s-pricey-pick-to-negotiate-doj/article_05a6800b-e525-5392-94eb-cbf7b68a1830.html) (describing the release of employees based on racist emails and the resignations of the city manager, police chief, and municipal judge); Wesley Lowery & Sari Horwitz, *Ferguson Police Chief Tom Jackson Resigns Following Scathing DOJ Report*, WASH. POST (Mar. 11, 2015), <http://www.washingtonpost.com/news/post-nation/wp/2015/03/11/ferguson-police-tom-jackson-resigns-following-scathing-doj-report/>.

providing justice and protection for its citizens. The system should re-examine the setting and assessment of fees and fines, remove revenue collection as the primary means for evaluating police officers and court personnel, take into account ability to pay criminal justice debt, and use payment alternatives when appropriate.<sup>72</sup>

Notably, on July 9, 2015, Missouri's Governor Jay Nixon signed a reform bill, aimed at ending many of the practices criticized in the report on Ferguson.<sup>73</sup> The bill, touted by Nixon as "the most sweeping' municipal court reform bill in state history," addresses uncontrolled revenue generation, excessive monetary charges, and the use of incarceration for minor traffic violations.<sup>74</sup>

Specifically, the legislation establishes caps for the percentage of a municipality's annual operating revenue attributed to fines and charges for minor traffic violations. In 2016, the cap will be 12.5% for municipalities in counties with more than 950,000 residents and 20% for municipalities in counties with populations less than 950,000.<sup>75</sup> Furthermore, fines and court costs for any minor traffic violation are limited to \$300, and costs shall not be assessed if a defendant is determined to be indigent.<sup>76</sup> The reform permits incarceration for minor traffic violations only if they involve "alcohol or controlled substances . . . endangering health or welfare of others, [or] eluding or giving false information to a law enforcement officer."<sup>77</sup> Additionally, municipalities must establish procedures for determining indigency of defendants and use the information in setting fines, costs, and payments options.<sup>78</sup> Cities must certify that they do not assess failure to appear charges for minor traffic violations, and that they use

<sup>72</sup> FPD REP., *supra* note 1, at 90–98.

<sup>73</sup> Robert Patrick & Stephen Deere, 'Sweeping' Court Reform Comes As Nixon Signs Bill To Cap Cities' Revenue, End Predatory Habits, ST. LOUIS POST-DISPATCH (July 10, 2015, 9:00 AM), [http://www.stltoday.com/news/local/crime-and-courts/sweeping-court-reform-comes-as-nixon-signs-bill-to-cap/article\\_cafffb7e-b24d-5292-b7bb-84ef81c6e81d.html](http://www.stltoday.com/news/local/crime-and-courts/sweeping-court-reform-comes-as-nixon-signs-bill-to-cap/article_cafffb7e-b24d-5292-b7bb-84ef81c6e81d.html).

<sup>74</sup> *Id.*

<sup>75</sup> MO. ANN. STAT. § 479.359.2 (West 2015).

<sup>76</sup> *Id.* §§ 479.353(1), (4). The Missouri Supreme Court is directed to create model rules to help courts establish standards for determining indigency. *Id.*

<sup>77</sup> *Id.* § 479.353(2).

<sup>78</sup> *Id.* § 479.360.1(4). A Missouri Supreme Court order effective July 1, 2015, requires courts to provide additional time or installment plans to defendants unable to pay fines. MO. R. ORD. & TRAF. VIOL. R. 37.65 (2014).

“alternative payment plans and community service alternatives.”<sup>79</sup>

For enforcement purposes, the statute establishes minimum standards that require annual audits, adequate insurance, publication of ordinances, certification or accreditation of police departments, and written policies regarding use of force and reporting of crime and police stop data.<sup>80</sup> Additionally, it sets up a procedure for residents to allege that municipalities have failed to meet the standards and establishes remedies for failure to meet the standards.<sup>81</sup> Municipalities that fail to comply with the requirements risk transfer of court cases, “loss of sales tax revenue[,] and disincorporation.”<sup>82</sup>

The reform is a good start; however, it is limited to cases involving minor traffic violations. Merely placing caps on minor traffic violations may not resolve the revenue maximization or racial bias issues as it leaves open the potential for cities to create revenue by increasing collection of fines for non-traffic violations.<sup>83</sup> Non-traffic citations, such as loitering, sagging pants, high grass, peeling paint, and jaywalking,<sup>84</sup> accounted for more than fifty-percent of the citations in Ferguson.<sup>85</sup> African Americans received ninety-five percent of the “manner of walking” in a roadway citations issued in Ferguson.<sup>86</sup> As one commentator calculated, African Americans were over nine times more likely to be cited for “manner of walking.”<sup>87</sup> A

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<sup>79</sup> MO. ANN. STAT. §§ 479.360.1(6), (8) (West 2015).

<sup>80</sup> *Id.* § 67.287.2(1)–(12).

<sup>81</sup> MO. ANN. STAT. § 67.287(3) (West 2015).

<sup>82</sup> Patrick & Deere, *supra* note 73; MO. ANN. STAT. § 67.287(3) (West 2015).

<sup>83</sup> Jennifer S. Mann, *Municipalities Ticket for Trees and Toys, As Traffic Revenue Declines*, ST. LOUIS POST-DISPATCH (May 24, 2015, 12:15 PM), [http://www.stltoday.com/news/local/crime-and-courts/municipalities-ticket-for-trees-and-toys-as-traffic-revenue-declines/article\\_42739be7-afd1-5f66-b325-e1f654ba9625.html](http://www.stltoday.com/news/local/crime-and-courts/municipalities-ticket-for-trees-and-toys-as-traffic-revenue-declines/article_42739be7-afd1-5f66-b325-e1f654ba9625.html).

<sup>84</sup> Mann, *supra* note 83 (describing potential violations in Pagedale, Missouri). In Ferguson, non-traffic violations include manner of walking, failure to comply, resisting arrest, disturbing the peace, barking dogs, high grass. FPD REP., *supra* note 1, at 7, 69 n.46.

<sup>85</sup> Mann, *supra* note 83.

<sup>86</sup> *Id.*; FPD REP., *supra* note 1, at 62.

<sup>87</sup> Pleuni S. Pennings, *The Math of Ferguson: Percentages Don't Show How Bad It Really Is*, BEING A BETTER SCIENTIST (Mar. 14, 2015), <https://abetterscientist.wordpress.com/2015/03/14/the-math-of-ferguson-percentages-dont-show-how-bad-it-really-is/>.

manner of walking charge was Officer Darren Wilson's initial allegation against Michael Brown and was the charge used against protesters following the fatal shooting of Brown.<sup>88</sup>

Fees and fines should be rationally related to the offense charged and should not be used merely to raise revenue.<sup>89</sup> To reduce conflict of interest concerns, Professors Wayne Logan and Ronald Wright suggest the adoption of independent commissions to examine the appropriateness of current and proposed monetary sanctions.<sup>90</sup> A recent draft of the Model Penal Code (Second) of Sentencing abolishes all costs and fees on the basis that their collection creates conflicts of interest and does not fulfill the goals of sentencing.<sup>91</sup> Moreover, the Model Penal Code draft broadens ability to pay determinations by precluding any monetary sanctions that would leave defendants without "sufficient means for reasonable living expenses and family

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<sup>88</sup> Molly Henessy-Fiske, *Walking in Ferguson: If You're Black, It's Often Against the Law*, L.A. TIMES (Mar. 5, 2015, 5:58 PM), <http://www.latimes.com/nation/la-na-walking-black-ferguson-police-justice-report-20150305-story.html#page=1>.

<sup>89</sup> Joel F. Shults, *The 5 Big Lessons from DOJ's Ferguson Report*, POLICEONE.COM (Mar. 5, 2015), <http://www.policeone.com/chiefs-sheriffs/articles/8396631-The-5-big-lessons-from-DOJs-Ferguson-report> (noting "[i]f enforcement of the law is designed around funds rather than as a means to create conformance with the law for the purpose of health and safety, the justification for policing become suspect").

<sup>90</sup> Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1215–17, <http://www.illinoislawreview.org/wp-content/ilr-content/articles/2014/4/Wright.pdf>.

<sup>91</sup> See Kevin R. Reitz, *The Economic Rehabilitation of Offenders: Recommendations of the Model Penal Code (Second)*, 99 MINN. L. REV. 1735, 1757–61 (2015) (citing MODEL PENAL CODE: SENTENCING § 6.04D(2), Alternative § 6.04D(1) (Tentative Draft No. 3, 2014), [http://www.minnesotalawreview.org/wp-content/uploads/2015/09/Reitz\\_5fmt\\_PDF1.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2015/09/Reitz_5fmt_PDF1.pdf)). Professor Reitz also discusses an alternative, although less "preferred" provision that instead of abolishing fees would condition their use on a "host of substantive and procedural limitations." *Id.* Professor R. Barry Ruback agrees with banning the assessment of fees (including costs). R. Barry Ruback, *The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society*, 99 MINN. L. REV. 1779, 1820 (2015), [http://www.minnesotalawreview.org/wp-content/uploads/2015/09/Ruback\\_5fmt\\_PDF1.pdf](http://www.minnesotalawreview.org/wp-content/uploads/2015/09/Ruback_5fmt_PDF1.pdf). Professors Katherine Beckett and Alexes Harris recommend that both fines as well as fees should be abolished. Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 CRIMINOLOGY & PUB. POL'Y 509, 519 (2011), <http://onlinelibrary.wiley.com.ezproxy.law.umaryland.edu/doi/10.1111/j.1745-9133.2011.00726.x/epdf>.

obligations.”<sup>92</sup>

### *B. Remove Racial Bias*

Hopefully, removing the focus on revenue-based policing will eliminate some of the racial bias complaints; however, as the report revealed, racial bias was due to other more insidious issues in the city, including intentional discrimination. Training, supervision, accountability, and diversity are essential to addressing racial biases. Training needs to reflect the racial concerns, conduct standards should be established, and police and court officials should be held accountable and subject to discipline for failure to meet the standards.<sup>93</sup> Data should be continually collected and evaluated to help track the efforts at reducing racial disparities.<sup>94</sup> Incentives should be created to encourage such reductions.<sup>95</sup> Additionally, diversity must be a focus in recruiting, hiring, and promotion to help establish a municipal system that is more reflective of the community.<sup>96</sup>

### *C. Restore Trust*

Resolving the problems of reliance on revenue generation and racial bias are important, but ultimately, the distrust created by the system must also be addressed. The Department of Justice has emphasized that “if the Ferguson Police Department truly commits to community policing, it can restore the trust that it has lost.”<sup>97</sup> Improved community engagement is necessary so that “law enforcement is seen as part of, rather than distant from, the

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<sup>92</sup> Reitz, *supra* note 91, at 1751.

<sup>93</sup> FPD REP., *supra* note 1, at 94–96.

<sup>94</sup> Jessica Eaglin & Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice*, BRENNAN CTR. FOR JUSTICE 32 (2013), <https://www.brennancenter.org/sites/default/files/publications/Racial%20Disparities%20Report%20062515.pdf>.

<sup>95</sup> *Id.* at 33.

<sup>96</sup> FPD REP., *supra* note 1, at 95. The report also found issues with gender diversity as only four of the fifty-four police officers in Ferguson were female. *Id.* at 89 n.60.

<sup>97</sup> *Justice Department Announces Findings of Two Civil Rights Investigations in Ferguson, Missouri*, THE U.S. DEPT. OF JUSTICE (Mar. 4, 2015), <http://www.justice.gov/opa/pr/justice-department-announces-findings-two-civil-rights-investigations-ferguson-missouri> (quoting Vanita Gupta, Acting Assistant Attorney General of the Civil Rights Division).

communities they serve.”<sup>98</sup>

Better community engagement requires not only that law enforcement is positively involved in the community but also that the community participates in the law enforcement process.<sup>99</sup> Instead of reducing community involvement and leaving only one officer engaged in community relations, positive community engagement should be a priority. Officers must take an active role in helping and participating in the community. Officers should be evaluated on positive community involvement, rather than on the number of tickets that they write.<sup>100</sup> Additionally, the community must have an opportunity to review the law enforcement process. Citizen oversight groups should be established. Procedures for dealing with complaints about law enforcement need to be set up, and transparency be afforded to the public.<sup>101</sup> The shooting of Michael Brown has prompted widespread calls for the use of body cameras by police, and Jim Bueermann, president of the Police Foundation in Washington, predicts that “[w]ithin the next five years or so, body-worn cameras will be as ubiquitous in the world of policing as handcuffs, the police radio, and gun.”<sup>102</sup> A more controversial remedy to help restore community relations is the use of police residency requirements.<sup>103</sup>

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<sup>98</sup> *Id.*

<sup>99</sup> FPD REP., *supra* note 1, at 86.

<sup>100</sup> *Id.* at 90.

<sup>101</sup> *Id.* at 95–97.

<sup>102</sup> Max Ehrenfreund, *Body Cameras for Cops Could Be the Biggest Change to Come Out of the Ferguson Protests*, WASH. POST (Dec. 2, 2014), <http://www.washingtonpost.com/news/wonkblog/wp/2014/12/02/body-cameras-for-cops-could-be-the-biggest-change-to-come-out-of-the-ferguson-protests/>. The discussion of body cameras is beyond the scope of this Article, for more detailed information see *Development in the Law Policing: Chapter Four Considering Police Body Cameras*, 128 HARV. L. REV. 1794 (2015), <http://cdn.harvardlawreview.org/wp-content/uploads/2015/04/Considering-Body-Cameras.pdf>.

<sup>103</sup> *See, e.g.*, Nate Silver, *Most Police Don't Live in the Cities They Serve*, FIVETHIRTYEIGHT (Aug. 20, 2014, 4:14 PM), <http://fivethirtyeight.com/datalab/most-police-dont-live-in-the-cities-they-serve/> (describing St. Louis's residency requirement for officers who have served the city for less than seven years). The discussion of residency requirement is beyond the scope of this Article, for more detailed information see Joel E. Smith, Annotation, *Validity, Construction, and Application of Enactments Relating to Requirement of Residency Within or Near Specified Governmental Unit as Condition of Continued Employment for Policemen or Firemen*, 4 A.L.R.4th 380 (1981).

Removing racial bias and changing the focus of law enforcement to protecting and serving rather than collecting revenue should help with the community's acceptance of law enforcement. As Professor Tom R. Tyler, who has written extensively on creating community trust in the legal system, has stated:

[S]tudies consistently show that the most important issue to public evaluations of the police is whether they believe that the police are exercising their authority fairly. This means that they are not making decisions about who to stop based upon race; that they are willing to listen to people when they stop them; apply the law consistently and without prejudice and take time to explain the reasons for their actions. Most importantly, the police need to treat people in the community respectfully and with courtesy. When the police do these things they build trust. In other words, we know how the police can build trust in communities, White or minority. If people see the police acting with justice, they respond with trust.<sup>104</sup>

#### CONCLUSION

The allegations in Ferguson are shocking and distressing, especially given the comments that they are not limited to this one city. Efforts must now focus on resolving the issues in Ferguson and elsewhere, rather than merely continued criticism. Municipalities owe an obligation to protect and serve their residents rather than treat them as sources of revenue.

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<sup>104</sup> Tom R. Tyler, *The Lessons of Ferguson, Missouri: Teachable Moments About Policing*, HUFFINGTON POST (Oct. 18, 2014, 5:59 AM), [http://www.huffingtonpost.com/tom-r-tyler/the-lessons-of-ferguson-m\\_b\\_5689080.html](http://www.huffingtonpost.com/tom-r-tyler/the-lessons-of-ferguson-m_b_5689080.html). For more information about the work of Professor Tyler, see Tyler & Huo, *supra* note 63; TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006).