Investigation of the Louisville Metro Police Department and Louisville Metro Government

United States Department of Justice
Civil Rights Division

and

United States Attorney's Office
Western District of Kentucky
Civil Division

March 8, 2023

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EXECUTIVE SUMMARY

The Department of Justice has reasonable cause to believe that the Louisville/Jefferson County Metro Government (Louisville Metro) and the Louisville Metro Police Department (LMPD) engage in a pattern or practice of conduct that deprives people of their rights under the Constitution and federal law:

- LMPD uses excessive force, including unjustified neck restraints and the unreasonable use of police dogs and tasers.
- LMPD conducts searches based on invalid warrants.
- LMPD unlawfully executes search warrants without knocking and announcing.
- LMPD unlawfully stops, searches, detains, and arrests people during street enforcement activities, including traffic and pedestrian stops.
- LMPD unlawfully discriminates against Black people in its enforcement activities.
- LMPD violates the rights of people engaged in protected speech critical of policing.
- Louisville Metro and LMPD discriminate against people with behavioral health disabilities when responding to them in crisis.

We also identified deficiencies in LMPD's response to and investigation of domestic violence and sexual assault, including its responses to allegations that LMPD officers engaged in sexual misconduct or domestic violence. These deficiencies raise serious concerns about whether LMPD engages in gender bias in providing policing services to women.

Louisville Metro and LMPD exist to serve the community and keep people safe. Most Metro employees and LMPD officers are dedicated public servants who work hard to promote public safety. But Louisville Metro and LMPD fail to ensure that all employees uphold the federal constitutional and statutory rights of people in Louisville.

For years, LMPD has practiced an aggressive style of policing that it deploys selectively, especially against Black people, but also against vulnerable people throughout the city. LMPD cites people for minor offenses, like wide turns and broken taillights, while serious crimes like sexual assault and homicide go unsolved. Some officers demonstrate disrespect for the people they are sworn to protect. Some officers have videotaped themselves throwing drinks at pedestrians from their cars; insulted people with disabilities; and called Black people "monkeys," "animal," and "boy." This conduct erodes community trust, and the unlawful practices of LMPD and Louisville Metro undermine public safety.

Failures of leadership and accountability have allowed unlawful conduct to continue unchecked. Even when city and police leaders announced solutions, they failed to follow through. In LMPD, officer misconduct too often goes unnoticed and unaddressed. At times, LMPD leaders have endorsed and defended unlawful conduct. A street enforcement unit that violated LMPD policy and federal law has been repeatedly rebranded, but never disbanded.

First-line supervisors regularly fail to monitor their officers and recognize misconduct when it occurs, and more senior leaders fail to demand better. Supervisors routinely overlook or even defend obviously excessive force, search warrants clearly lacking probable cause, unjustified no-knock entries, failures to document traffic stops in Black neighborhoods, and unnecessarily harsh treatment of people with disabilities.

In 2020, Louisville experienced widespread protests and civil unrest after LMPD officers shot and killed Breonna Taylor in her own home in the middle of the night. The officers were executing a search warrant, but they found no evidence of any crime.[1] Police officers' forcible and violent entry into a person's home strikes at the heart of the constitutional protection against unreasonable government intrusion. But Louisville Metro's and LMPD's unlawful conduct did not start in 2020. As an LMPD leader told us shortly after we opened this investigation, "Breonna Taylor was a symptom of problems that we have had for years."

This findings report is based on Louisville Metro's and LMPD's own data, many thousands of documents, and thousands of hours of body-worn camera footage. Importantly, our findings are also based on conversations with hundreds of LMPD officers, Louisville Metro employees, and community members.

Police officers have difficult jobs, as do others involved in public safety, like 911 dispatchers and call-takers. Officers and other Metro employees thoughtfully discussed the challenges they face and identified causes of the legal violations we found. Louisville Metro and LMPD have not given officers and other employees the support and resources they need to do their jobs effectively and lawfully. Officers and employees have deficient training, substandard facilities and equipment, and inadequate support for mental health and wellness.

The cumulative effect of Louisville Metro's and LMPD's violations takes a heavy toll. It takes a toll on community members who regularly experience these injustices. It takes a toll on those officers and civil servants who serve the community daily with care and impartiality. And it takes a financial toll: Over the past six years, Louisville Metro has paid more than $40 million to resolve claims of police misconduct.

To their credit, Louisville Metro and LMPD have not waited to make changes. Since 2020, they have banned no-knock search warrants, started a pilot program to send behavioral health professionals to some 911 calls, expanded community-based violence prevention services, and taken steps to support officers' health and wellness. Nevertheless, much work remains to ensure that the city and its police department comply with federal law.

This report provides a roadmap to address the unlawful conduct of Louisville Metro and LMPD. We expect to work collaboratively with Louisville Metro and LMPD, informed by the views of stakeholders in the community and in the government, to identify the reforms necessary

[1] In August 2022, the Department of Justice charged four LMPD officers with federal crimes related to Breonna Taylor's death. The investigation described in this report is civil, not criminal. This report does not examine the circumstances of Ms. Taylor's death.

to remedy the unlawful conduct, and require that the reforms be implemented fully and as quickly as possible.

BACKGROUND

Louisville is the largest city in Kentucky. The city merged with Jefferson County in 2003 to create a coextensive Louisville/Jefferson County Metro Government, or Louisville Metro for short. Jefferson County includes dozens of smaller municipalities, some of which have their own police departments. The Louisville Metro area has an estimated population of about 630,000, which is 68 percent white, 24 percent Black, 6 percent Hispanic or Latino of any race, 3 percent Asian, and 4 percent multiracial. The area is home to colleges and universities, major corporations, small businesses, and many community groups and nonprofit organizations.

1. Louisville Metro Government and LMPD

Louisville Metro is governed by an elected legislative council, called the Metro Council, and an elected mayor. The mayor of Louisville Metro is Craig Greenberg, who took office in January 2023. The previous mayor was Greg Fischer, who served in that position for 12 years. Metro Council approves the budget, submitted by the mayor, and determines the funding for city agencies, including LMPD and other Metro departments responsible for public safety. Responses to public safety emergencies in Louisville are provided by LMPD and Louisville Metro's Emergency Services, which houses Emergency Medical Services and MetroSafe, Louisville Metro's 911 communications center.

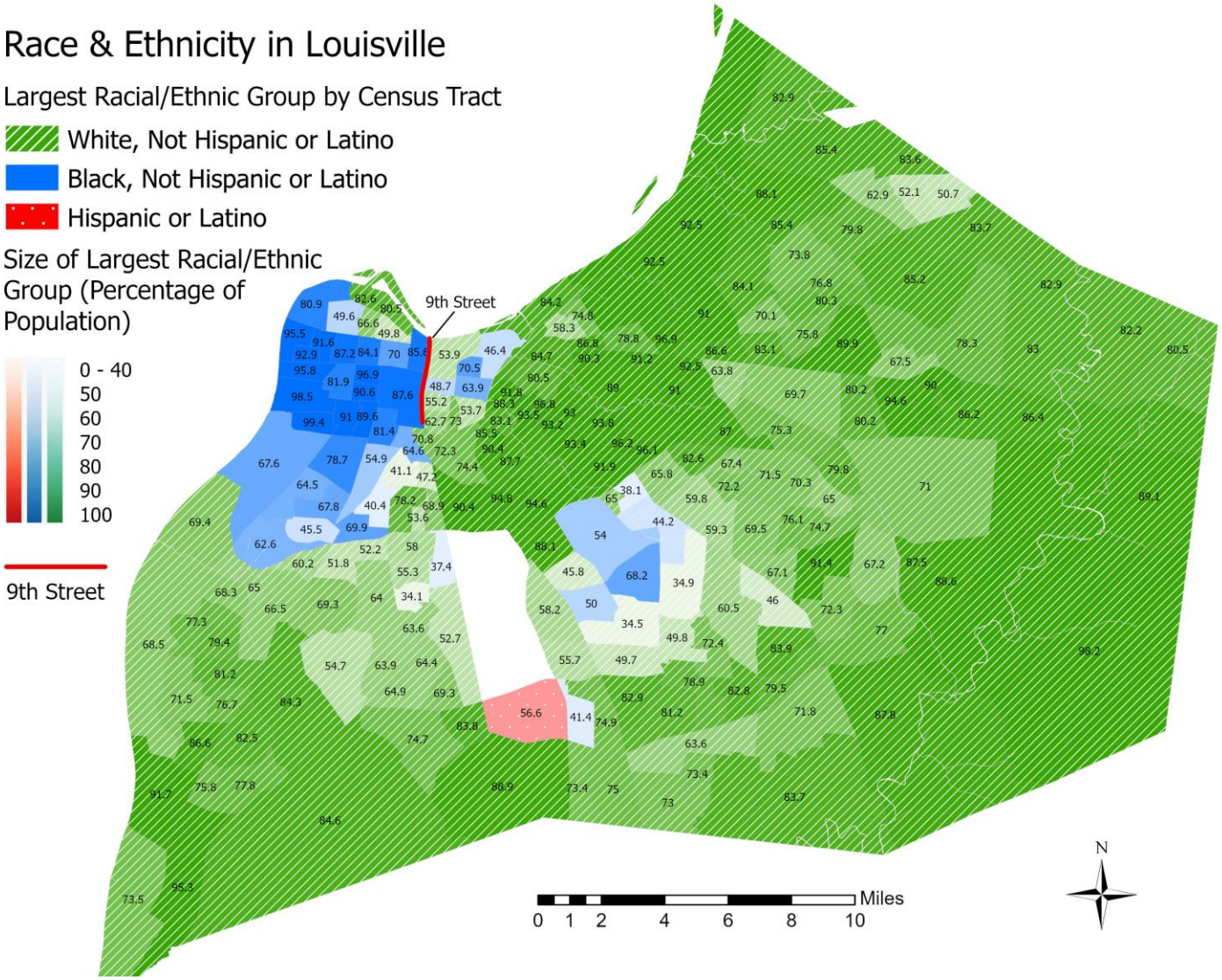
LMPD began operations in 2003 as part of the newly consolidated city-county government. As a result of the city-county merger, LMPD's jurisdiction covers both urban and suburban areas. LMPD currently employs approximately 1,000 sworn officers, of whom 81 percent are white and 14 percent are Black; 87 percent are men and 13 percent are women. LMPD also employs more than 300 civilians.

LMPD has eight patrol divisions, which cover different geographic areas of Louisville Metro. LMPD also has specialized units, including citywide units assigned to address drugs and violent crime; units focused on domestic violence and sexual assault; a unit that handles major events, including protests; a Special Weapons and Tactics (SWAT) team; and internal affairs units that investigate allegations of officer misconduct. LMPD's executive staff includes the chief of police, a deputy chief, three assistant chiefs, and a legal advisor.

The mayor appoints the LMPD chief. From 2012 to June 2020, the chief of LMPD was Steve Conrad. Interim chiefs Robert Schroeder and Yvette Gentry briefly led LMPD during 2020. Erika Shields served as chief from January 2021 until January 2023. LMPD is currently led by interim chief Jacquelyn Gwinn-Villaroel.

2. The Louisville Community

LMPD's interactions with Louisville residents do not happen in a vacuum—dynamics like segregation, poverty, and violence all affect how officers do their jobs. Like many cities in the United States, Louisville is racially segregated. As the map below shows, neighborhoods in Louisville's West End are predominantly Black, while neighborhoods east of Ninth Street, which runs through downtown Louisville, are mostly white. Some residents call this "the Ninth Street divide."



Louisville's segregation is the product of several historical forces, including racially exclusionary city ordinances, restrictive housing covenants, violence by white residents, and federal policies that discouraged lending in Black neighborhoods. In recent years, Louisville has become home to increasing numbers of immigrants, and parts of the city have grown more diverse, especially in South Louisville.

More than 15 percent of Louisville residents live below the federal poverty line. Black residents are three times as likely to live in poverty as white residents.[2] A report found that Louisville, when compared to other cities with large Black populations, had one of the highest

[2] *Poverty*, Greater Louisville Project, https://perma.cc/Z54F-FQRT.

rates of concentrated Black poverty.[3] More than one in ten Louisville residents ages 16 to 24 are neither attending school nor working—among the highest rates of large American cities.[4] More than a quarter of Black young adults are not in school or working. This gives Louisville the single largest gap between Black and white young adults in all of the country's most populous metropolitan areas.[5]

A lack of affordable housing contributes to homelessness: More than 10,000 people in Louisville experienced homelessness in 2021, a 41 percent increase since 2018.[6] A Metro government report found that, as a result of zoning laws that concentrated older rental units in west Louisville, children in the West End face a risk of lead poisoning that is nearly ten times higher than for children in other parts of the city. Even low levels of lead exposure can cause learning and behavioral problems.[7] Another recent city government report found that, on average, west Louisville residents lived 12 years fewer than east Louisville residents, and they were more likely to experience serious health conditions.[8] Scholars have attributed health disparities in part to west Louisville's proximity to factories and chemical plants.[9] West End neighborhoods also experience higher levels of gun violence than other parts of the city. Like many cities across the country, Louisville had increased numbers of homicides in 2020 and 2021, compared to prior years. In both 2020 and 2021, Louisville had more than 170 homicides. In 2022, Louisville had 160 homicides.

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[3] Paul A. Jargowski, *Concentration of Poverty in the New Millennium*, The Century Foundation (2015), at 14, https://perma.cc/WHH5-MAFL.

[4] Kristen Lewis, *Making the Connection: Transportation and Youth Disconnection*; Measure of America, Social Science Research Council (2019), at 16, 18, https://perma.cc/9K5M-YQE9.

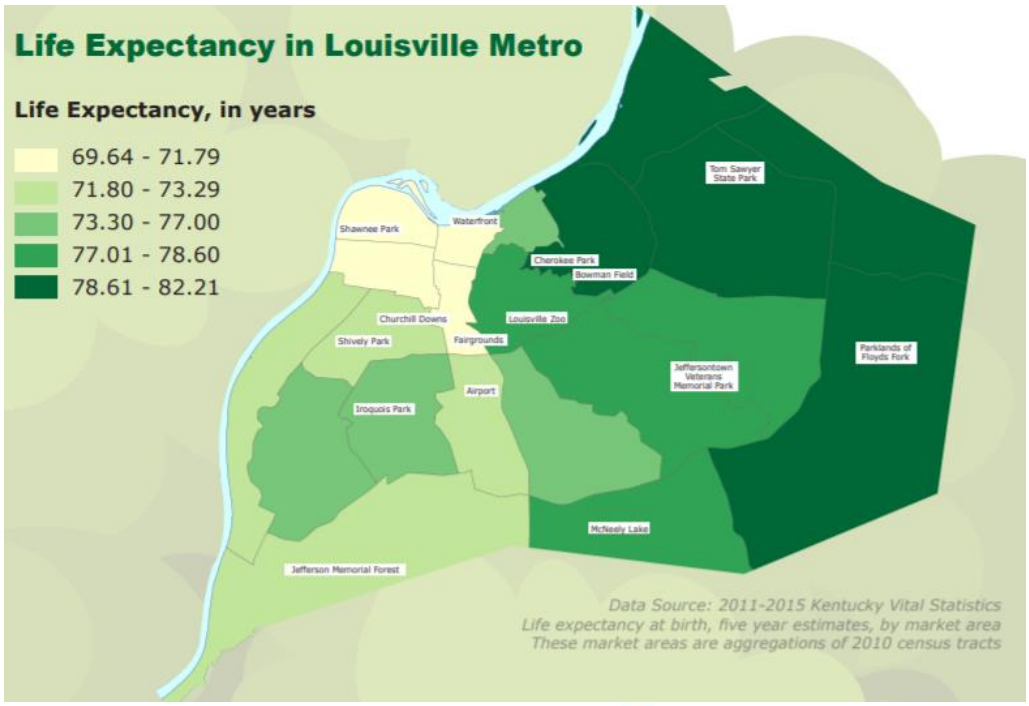
[5] *Id.*

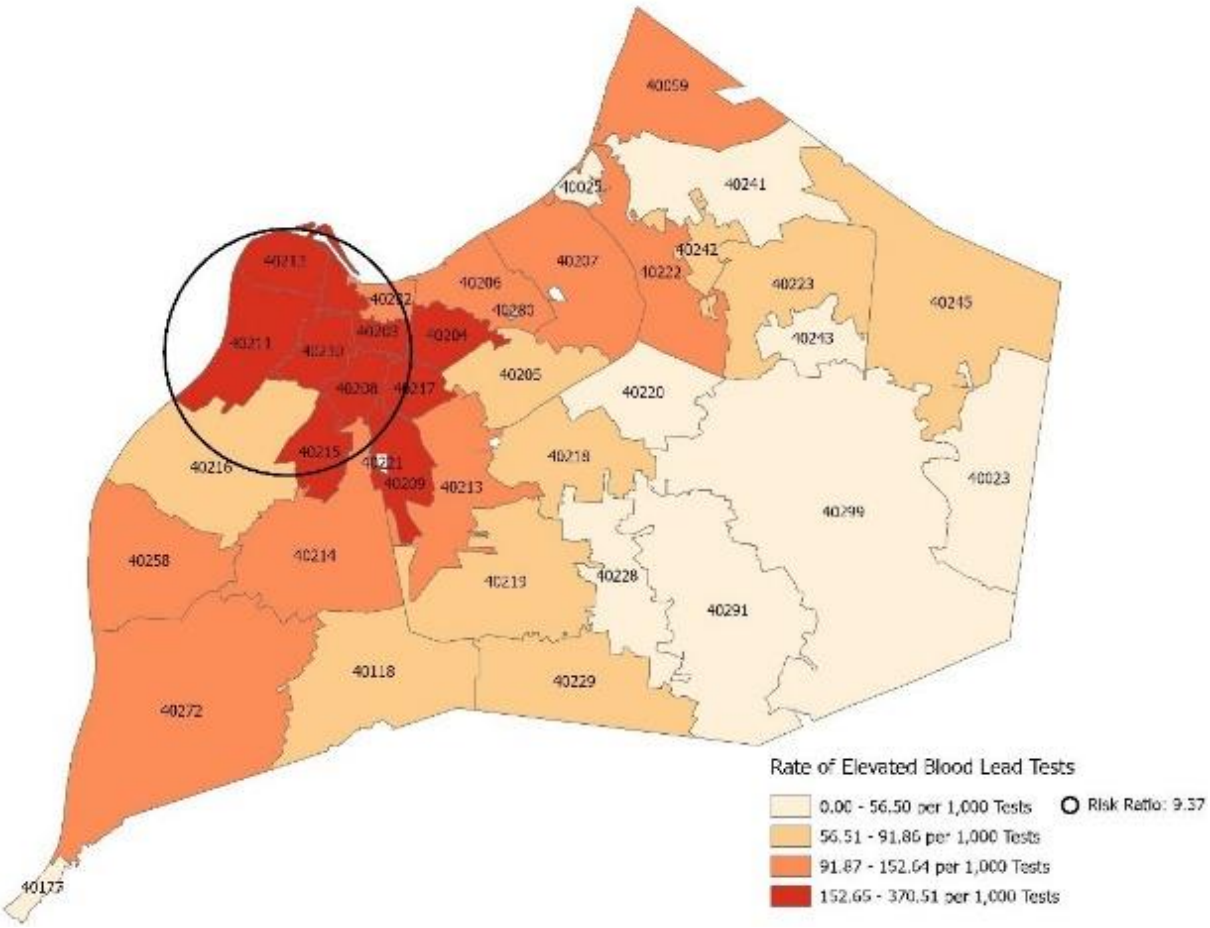
[6] *Addressing Urgent Needs: A 2022 Analysis of Homelessness in Louisville*, Coalition for the Homeless (2022), at 1, https://perma.cc/VV2G-FU3G.

[7] Nat'l Ctr. for Environmental Health, *Childhood Lead Exposure in the United States: CDC's Role in Prevention, Education, and Surveillance*, Centers for Disease Control (Aug. 4, 2021), https://perma.cc/HAN8-WN6B.

[8] Center for Health Equity, *Louisville Metro Health Equity Report* (2017), at 38, https://perma.cc/9CVE-D2AX.

[9] J.H. Gilderbloom et al., *Pollution, Place and Premature Death: Evidence from a Midsized City*, Local Environment: Int'l Journal of Sustainability & Justice (2020), https://perma.cc/T7YB-PMP5.


Life Expectancy in Louisville Metro
Life Expectancy, in years
69.64 - 71.79
71.80 - 73.29
73.30 - 77.00
77.01 - 78.60
78.61 - 82.21
Tom Sawyer State Park
Shawnee Park
Waterfront
Cherokee Park
Bowman Field
Churchill Downs
Louisville Zoo
Shively Park
Fairgrounds
Parklands of Floyds Fork
Jeffersontown Veterans Memorial Park
Airport
Iroquois Park
McNeely Lake
Jefferson Memorial Forest
Data Source: 2011-2015 Kentucky Vital Statistics
Life expectancy at birth, five year estimates, by market area
These market areas are aggregations of 2010 census tracts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40213
40023
40299
40258
40214
40228
40291
40118
40229
40272
40173
Rate of Elevated Blood Lead Tests
0.00 - 56.50 per 1,000 Tests
Risk Ratio: 9.37
56.51 - 91.86 per 1,000 Tests
91.87 - 152.64 per 1,000 Tests
152.65 - 370.51 per 1,000 Tests

In the face of segregation and inequality, Louisville residents have a rich history of community organizing: from education, to environmental justice, to public safety. Decades before our investigation and this report, community members challenged excessive force; racial discrimination; and unlawful stops, searches, and arrests by police. For years, residents have pushed for changes to policing in Louisville, including greater police accountability. Despite these efforts, problems have persisted.

> "We would speak up, but they wouldn't listen."
>
> *West Louisville Resident*

3. Recent Events

On March 13, 2020, LMPD officers shot and killed Breonna Taylor, a 26-year-old Black woman, while executing a search warrant. Thousands of people marched in protest and gathered in downtown Louisville for months, returning day after day to Jefferson Square Park, which they called Injustice Square or Breeway.

Since 2020, Louisville Metro and LMPD have made a number of changes. The city enacted Breonna's Law, which prohibits LMPD from seeking or executing judicially authorized no-knock search warrants. The city commissioned a review of LMPD by the consulting firm Hillard Heintze, which published a report in January 2021 identifying a range of recommendations that Louisville Metro and LMPD have started implementing. A limited pilot program has started sending behavioral health professionals to certain emergency calls. The city opened an outdoor area, operated by a local nonprofit, where people experiencing homelessness can receive mental health resources, job training, and other services. The city expanded community-based violence prevention services that were underfunded for years. LMPD announced plans to revamp its training, support officers' mental health and wellness, and establish internal auditing. A new inspector general and civilian review board are intended to provide external oversight. These efforts are commendable, and we credit Louisville Metro and LMPD for acknowledging that change is necessary.

INVESTIGATION

On April 26, 2021, the Department of Justice opened an investigation into Louisville Metro and LMPD pursuant to 34 U.S.C. § 12601 and 42 U.S.C. § 12101 *et seq*. Section 12601 prohibits law enforcement agencies from engaging in a pattern or practice of conduct that deprives people of rights protected by the Constitution or laws of the United States. If the Department of Justice has reasonable cause to believe that an agency has engaged in a prohibited pattern or practice, we may bring a lawsuit seeking court-ordered changes to eliminate the pattern or practice. Our investigation focused on the following issues: (1) whether LMPD officers use unreasonable force; (2) whether LMPD engages in unlawful search warrant practices; (3) whether LMPD engages in discriminatory policing on the basis of race; (4) whether LMPD conducts unreasonable stops, searches, seizures, and arrests in street enforcement activities; (5) whether LMPD violates the rights of people engaged in protected speech; (6) whether Louisville Metro and LMPD violate the Americans with Disabilities Act (ADA),[10] including by unnecessarily deploying police to behavioral health calls; and (7) whether LMPD engages in discriminatory policing on the basis of gender. We also sought to identify the root causes of any violations we found.

The team conducting the investigation includes career attorneys, investigators, and paralegals from the Special Litigation Section of the Civil Rights Division and the United States Attorney's Office for the Western District of Kentucky. The team also includes more than a dozen expert consultants, including several former police chiefs from throughout the nation, a retired federal judge, a retired FBI agent, statistical experts, an expert in 911 and dispatching systems, experts in behavioral health crisis services, and experts in investigating sex crimes and domestic violence. We conducted numerous onsite tours during our investigation where Department staff and expert consultants spoke to LMPD leadership and accompanied officers on ride-alongs. We visited every LMPD patrol division and interviewed members of specialized units, including SWAT, homicide, narcotics, sexual assault and domestic violence investigators, victim services, and internal affairs. We reviewed thousands of documents, including policies and training materials; internal affairs files; incident reports describing stops, searches, and arrests and uses of force; sexual assault and domestic violence case files; and databases containing information on thousands of traffic stops and other encounters. Our team reviewed thousands of hours of body-worn camera footage.

We interviewed LMPD officers individually and conducted focus groups with both officers and supervisors. We also interviewed Louisville Metro officials and MetroSafe call-takers, dispatchers, and supervisors. We thank LMPD officers and Louisville Metro employees for candidly discussing the challenges they face and identifying changes that are needed. We met with community members, advocates, criminal defense attorneys, prosecutors, judges, and service providers in the Louisville Metro area, both virtually and in person. We are grateful to members of the Louisville community for sharing their experiences with us.

[10] We received complaints that Louisville Metro and LMPD were discriminating against people with disabilities, and we accepted and investigated these complaints pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

We conclude that Louisville Metro and LMPD are engaged in a pattern or practice of conduct that deprives people of their rights under the Constitution and federal law. This findings report describes our conclusions and the reasonable cause we have found to reach those conclusions. At the end of this report, we describe the types of changes necessary to address the violations we found.

LOUISVILLE METRO GOVERNMENT AND THE LOUISVILLE METRO POLICE DEPARTMENT ENGAGE IN A PATTERN OR PRACTICE OF CONDUCT THAT VIOLATES THE CONSTITUTION AND LAWS OF THE UNITED STATES.

1. LMPD Uses Excessive Force in Violation of the Fourth Amendment.

We evaluated LMPD's force practices with the understanding that officers often encounter challenging circumstances that threaten their safety or the safety of others. These encounters may necessitate the use of force, including deadly force, to protect officers and others from the threat of harm. We conducted our review with this understanding, keeping in mind that our conclusions cannot be based on 20/20 hindsight, but rather should be guided by the perspective of a reasonable officer on scene. We also note that LMPD has already made some efforts to improve the way officers use force in the field. Nonetheless, we have reasonable cause to believe that LMPD engages in a pattern or practice of excessive force. LMPD's unreasonable force is widespread and extends to both lethal and less-lethal force.[11] It is not limited to any one weapon or tactic.

The Fourth Amendment protects people from the use of excessive force. An officer's use of force must be objectively reasonable in light of the "totality of the circumstances."[12] Courts typically consider three factors when deciding whether an officer's use of force was reasonable: (1) the severity of the crime; (2) whether the suspect poses an immediate threat; and (3) whether the suspect is actively resisting arrest or attempting to evade. Deadly force is permissible only when an officer has probable cause to believe that a suspect poses an immediate threat of serious physical harm to the officer or others.[13]

Under LMPD policy, when officers use less-lethal force during an encounter, supervisors are required to evaluate the force in a use-of-force report. Supervisors send those reports up their chain of command for further evaluation. Supervisory review of less-lethal uses of force can help ensure compliance with the Constitution and agency policy, if the review is timely, robust, and thorough. Between January 1, 2016 and October 9, 2021, LMPD supervisors across the police department submitted 2,217 use-of-force reports for less-lethal force. Each incident may have involved multiple uses of the same type of force as well as uses of different types of force. While we saw that LMPD underreported certain types of uses of force, the following breakdown of reported less-lethal force provides an overview of LMPD's uses of less-lethal force and how frequently they occurred:

[11] "Less-lethal" is a term of art that refers to weapons and tactics that are designed to temporarily disable or stop a suspect without killing them, thereby providing law enforcement with an alternative to lethal force.
[12] *Graham v. Connor*, 490 U.S. 386, 396 (1989) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).
[13] *Tennessee*, 471 U.S. at 11.

Type of Less-Lethal Force	Number of Reported Incidents
Taser	484
Canine Bite	71
Baton	42
OC Spray	101
Projectile Launcher	34
Takedowns/Strikes	1997

We reviewed a random sample of the 2,217 incidents for which a supervisor submitted a less-lethal use-of-force report, including footage of the incidents from body-worn cameras. We also reviewed all 38 closed internal investigations LMPD classified as "Officer Involved Shootings" from 2016 to 2021. In 28 of these incidents, officers discharged their firearms; the remaining ten involved civilians firing on officers, but where officers did not return fire. Additionally, we reviewed LMPD's policy and training materials related to use of force. We interviewed LMPD officers and supervisors, as well as members of the public who have experienced or witnessed encounters with officers. Throughout the investigation, we were assisted by our expert police consultants.

We found that officers routinely use force disproportionate to the threat or resistance posed. Officers use force simply because people do not immediately follow their orders, even when those people are not physically resisting officers or posing a threat to anyone. At times, officers use force to inflict punishment or to retaliate against those challenging their authority, in violation of both the First and Fourth Amendments (see Section 6, below). LMPD officers also have used unreasonable force against peaceful protesters, people with disabilities, and teenagers (see Sections 1.b, 1.d, 6, & 7).

As one example from the hundreds of incidents that we reviewed, an officer encountered an intoxicated white woman screaming and crying while sitting on her friend's lawn. After 90 seconds of standing back and doing nothing, the officer rushed up to the crying woman as she fought with her friends and used his boot to push her torso to the ground. The woman continued wailing as the officer stood over her and held her down with his foot while saying, "I've had enough of you, ok?" As the officer pressed his foot into her chest, the woman tried to bite the outside of his shoe. This threw the officer into a frenzy, and he struck the woman's face over and over again with his flashlight. He later called his supervisor to report the incident and explained what happened, admitting that he "beat the shit out of [the woman] . . . as soon as she put her mouth on me." He said that he did not even know how many times he hit her in the face. The officer could not have reasonably feared for his safety. He was a tall, heavier-set man standing over an unarmed, five-foot woman who weighed 110 pounds.

The officer continued to yell at the woman to "get up" after he handcuffed her. He held the woman's handcuffed arms behind her back and up above her head as she sat hunched over on the pavement. Then he yanked her up by her arms and dragged her into his patrol car. The officer positioned the woman laying on her stomach across the backseat with her arms handcuffed behind her for over three minutes. His actions created a serious risk that the woman would be unable to breathe—a condition called positional asphyxia, about which officers receive guidance and training because of the risk of death or serious injury. Despite using clearly excessive force, the officer faced no discipline.

In the majority of the problematic incidents we evaluated, supervisors reviewed the conduct at issue but failed to identify the misconduct. This failure is compounded by LMPD's lack of a clear policy on how and when it is appropriate to use force. LMPD also fails to properly train officers on how to follow the policies it does have. In some cases, LMPD issues policy changes without providing any training at all. Finally, LMPD fails to exercise proper oversight to address potentially unreasonable force and remedy bad tactics when they occur. LMPD's failure to provide officers with the necessary guidance, skills, and oversight contributes to the constitutional violations we observed.

a. LMPD Uses Dangerous Neck Restraints Against People Who Pose No Threat.

LMPD officers use neck restraints in circumstances where they are not justified. Neck restraints—applying pressure to the neck or throat in a way that inhibits air or blood flow—are "inherently dangerous" and have the potential to cause "serious bodily injury or death."[14] They are objectively unreasonable where a person is already restrained or poses no danger to others. Our review shows that LMPD officers resort to neck restraints even against people who are not resisting, or people who have already been handcuffed or otherwise subdued. LMPD policy prohibits using neck restraints except in situations where deadly force would be allowed. But officers have repeatedly violated this prohibition without being held accountable by supervisors. In fact, in the vast majority of neck restraints that we identified in our sample, the neck restraint was not even reported as a use of force nor analyzed by supervisors for its reasonableness.

For example, an officer pulled over a white man for speeding and driving under the influence.[15] The officer conducted sobriety tests with the man and ultimately asked him to take a breathalyzer. When the man did not immediately agree, the officer took hold of him and pushed him down onto the grass next to the highway. The man looked stunned as he laid on his back with the officer screaming, "Roll over!" Within seconds, the officer grabbed and squeezed the man's throat, releasing it after five seconds. After handcuffing the man, who was not resisting, the officer pushed him onto his stomach and pressed his forearm into his neck for nearly a

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[14] National Consensus Policy and Discussion Paper on Use of Force (July 2020) at 15, https://perma.cc/V7XE-BU56; *see also* American Academy of Neurology Position Statement On The Use Of Neck Restraints In Law Enforcement (June 9, 2021), https://perma.cc/7R48-3D7L ("Because of the inherently dangerous nature of these techniques, the AAN strongly encourages federal, state, and local law enforcement and policymakers in all jurisdictions to classify neck restraints, at a minimum, as a form of deadly force.").

[15] This man is currently suing LMPD over this incident. We focus on the neck restraints used against the man, but we note that officers used other types of force as well.

minute, despite the man's repeated complaints of pain. The officer removed his arm only after another officer rushed onto the scene and immediately dropped his knee onto the man's neck. The man continued to wail in pain, screaming, "You're killing me! I'm already cuffed!" Still, officers used their hands and knees to press the man's neck for another minute.

At no point were officers justified in using neck restraints. There were no threats or acts of violence, and the man was handcuffed for parts of the encounter. We had the opportunity to talk with this man during our investigation. He spoke of the deep and ongoing trauma he experienced as a result of what officers did, as well as the physical toll it has taken on his body.

In another incident, officers responded to a call about an elderly Black man "dancing in the street." Within seconds of arriving, they grabbed the man and pulled him to the ground by his neck. Again and again the man tried to understand what was going on, but officers ignored his questions. Instead, an officer sat on his head and neck while another officer struggled to handcuff him. After 30 seconds, the first officer got off, turned the man to the side, and pressed his knee against the man's head and neck for nearly two minutes. Witnesses implored the officer to get his "knee off that man's head, he's a human being!" The officer finally removed his knee after additional officers arrived, but went on to grab the back of the man's neck and push his head into the pavement.

The man presented no threat, and the multiple neck restraints that officers used here violated the man's constitutional rights. But the officers were not held accountable. In fact, the sergeant who later reviewed the incident noted that one of the officers "broke a fingernail," but said nothing about the many times officers violated LMPD's neck restraint policy.

b. LMPD Deploys Police Dogs Against People Who Pose No Threat and Allows Dogs to Continue Biting People After They Surrender.

LMPD's use of police dogs frequently leads to bites that are unnecessary, dangerously prolonged, and unlawful. In police departments across the country, officers legitimately use dogs to locate people suspected of crimes and bring them into custody. Police violate the Fourth Amendment when they order a dog to bite someone who poses no threat and is not resisting arrest or attempting to flee. When officers allow a dog to continue biting someone who no longer poses a threat, they violate the Constitution.

At times, LMPD sends dogs after people without giving them any warning, and sends dogs after people who are in confined spaces, even if there is no exigency. LMPD's dogs sometimes will not release a person even after their handler orders them to do so, requiring the handler to pull the dog off of the person being bitten. A dog's failure to release upon command calls its training into question. Using an improperly trained dog is reckless and will likely lead to excessive force. A member of LMPD's canine unit told us that, for several years, training was not a priority for the unit, and it eventually realized that "we're doing stuff but we aren't doing it right." The officer explained that, in the last couple years, the unit has started to take steps to address these deficiencies, such as requiring the documentation of weekly training and requiring external certification for canine teams. LMPD's canine teams were not certified by any nationally recognized canine organization until March 2021.

Two incidents encapsulate the problems we observed. In the first, an officer sent his dog into a basement to search for a white man who was hiding from officers trying to arrest him for a probation violation. The dog signaled to the officer the presence of the man near a couch. The officer flipped the sofa over as he ordered the dog to bite the man who was found lying face up, on his back, in his boxers, with his hands up. The man stayed on the ground, kept his hands where the officer could see them, and tried to comply with the officers' orders while the dog bit him. The officer allowed his dog to continue biting the man's foot for 20 seconds. The officer finally commanded the dog to release, but the dog continued to bite the man for 25 more seconds. The man suffered puncture wounds on his foot, which Emergency Medical Services thought was broken due to the bite.

In the second incident, an LMPD officer ordered his dog to bite a Black 14-year-old even though he was not resisting. The officer was leading his dog to search for a person suspected of a home invasion. After searching for several minutes, the officer saw the teenager lying on the ground, face down in the grass. Immediately after noticing the teen, the officer deployed his dog off-leash—without giving any warning—and ordered the dog to bite the teen at least seven times. Despite the teen staying prone and pleading, "Ok! Ok! Help! Get the dog please!", officers stood over him shouting orders for nearly 30 seconds while the dog gnawed on his arm. Officers failed to recognize that the teen could not comply with their commands given the dog's hold on his arm. At one point, an officer shouted, "Stop fighting my dog!" despite video showing the teen lying still with one arm behind his back and the other arm in the dog's mouth. The 14-year-old suffered serious injuries on his arm and back from the bites and had to go to a children's hospital for treatment.

In both incidents, officers should not have ordered their dogs to bite the people involved. Both were trying to comply with orders and were not resisting. Further, officers' delay in ordering the dogs to release—even after the individuals surrendered and no longer posed a threat—violated the Constitution. Because these bites went on for far longer than was necessary, and given the way that officers spoke to these individuals, we have serious concerns that these uses of force were punitive, reflecting a dangerous lack of self-control by the officers and subjecting these individuals to excruciating uses of force far beyond lawful limits.

Deficiencies in LMPD's canine policy likely contribute to officers' unconstitutional conduct and tactically unsound practices. LMPD policy does not refer to dogs as a force option and does not state that the use of a dog must be reasonable. The policy also does not dictate when an officer should command a dog to stop biting. Indeed, the word "bite" does not appear anywhere in the policy. As a result, officers lack critical guidance about the constitutional limits on deploying dogs, and supervisors regularly fail to identify unlawful dog bites when they occur.

c. LMPD's Use of Tasers is Unreasonable and Unsafe.

A taser, or "conducted electrical weapon," is a device with two modes. In dart mode, an officer fires a cartridge that sends two darts or prongs into a person's body, penetrating the skin and delivering a jolt of electricity for as long as the officer holds the trigger. In drive-stun mode, an officer presses the weapon directly against a person's body, pulling the trigger to activate the electricity. In either mode, tasers can cause severe pain. LMPD officers use tasers on people who do not comply with an officer's commands but are not a threat. Officers also use tasers even after

people have submitted to the officer or are already restrained. Officers also tase people multiple times without justification. These taser uses are painful and dangerous, and they violate the law.[16]

For example, officers repeatedly tased an intoxicated white man accused of "refusing to pay his bill" at a bar. Officers walked up to the man sitting at the bar and, within a minute of speaking with him, grabbed him to place him under arrest. The man pulled away, asking why officers were arresting him. Instead of explaining what was going on, officers threw the man off of a barstool and onto the ground. He screamed in agony as officers pushed him onto his stomach and restrained him using a chokehold. As the man laid on the ground, at times with two officers on top of him, a third officer tased him in the back three times—all without warning, and once when officers were holding his arms behind his back. The tasings and chokehold were excessive under the Fourth Amendment.

Officers tased people who were not even suspected of a crime. For example, officers tased a Black man who was "acting strange [and] dancing around the home." The man, who was clearly under the influence of some substance, largely ignored officers when they arrived at his home. At one point, he started playing with a statue that was sitting on his mantle. Officers responded as if this were a threat, even though the man never acted aggressively towards them. Officers inched closer to the man and shouted numerous commands, even though a behavioral health expert advised that a sound approach here would have been to de-escalate the situation, such as by keeping some distance from the man and speaking to him in a calm, normal voice. The man ignored the officers' aggression. After about 90 seconds, an officer shot the man with his taser in dart mode. The man fell hard on his back and head. Officers ordered him to roll over but the man appeared confused and writhed in pain. When he did not immediately comply, the officer tased him again. A supervisor who later reviewed video of the incident found the tasings appropriate, writing in a report that the man was "moving closer to the officers," and "actively resist[ing]." But that is not what the video shows.

LMPD officers also tase individuals without warning and, at times, intentionally target vulnerable parts of people's bodies. For example, an officer tased a white man suspected of "attempting to steal gas" without any warning and within seconds of arriving on scene. The taser caused the shirtless man, who was standing a few feet from an open gas tank, to fall face forward onto the brick pavement. In another incident, an officer drive-stunned the neck of a young Latino man three times without justification. An officer stopped the man—who was suspected of breaking and entering—as he rode his bike along the road. Though he did not appear to speak English, the man readily complied with the officers' commands to get off the bike. Within seconds of talking at the man, the officer grabbed him to place him in handcuffs. The man began slightly pulling away while speaking in Spanish. As the officer tried to get the man on the ground, another officer ran up and drive-stunned the man in the neck without warning. He tased

[16] *See Baker v. Union Twp.*, 587 F. App'x 229, 236 (6th Cir. 2014) ("[I]f a suspect is neither fleeing nor resisting arrest, case law holds that deployment of a taser violates the suspect's Fourth Amendment right to be free from excessive force.").

the man's neck three times for a total of 10 seconds, including when the man was prone and had another officer on top of him.

LMPD officers' swift deployment of tasers even against people who pose no threat violates the Fourth Amendment. It also ignores the reality that tasers "involve a significant degree of force" and can "render even the most pain tolerant individuals utterly limp."[17] Deficiencies in LMPD's force policies and training contribute to this unconstitutional behavior. One officer admitted that LMPD policies do not provide enough guidance about how to choose among different force options. He specifically noted his confusion about when to use a taser. A high-ranking LMPD official also told us that LMPD has changed the taser policy "a bunch of times but never trained on it." Officers also said they received insufficient taser training. In fact, in one of the body-worn camera videos we reviewed, an officer admitted to being afraid to use his newly issued taser because he had received barely any training on it and was worried that he might tase himself.

d. LMPD Uses Takedowns, Strikes, and Other Bodily Force Disproportionate to the Threat or Resistance.

In addition to the higher levels of force, we also found that LMPD officers use takedowns, strikes, and other bodily force in ways that are unnecessary and unlawful. For example, two officers saw a man walking along a road who matched the description of a "suspicious person" that someone had reported to the police. There was no indication that the man was armed or that he was otherwise a threat to officers. Nonetheless, one officer shouted, "Stop digging in your pockets!" as he ran up to the man and tackled him at full speed. The stunned man screamed that he did not do anything wrong as he laid in a pile of thorn bushes with two officers pushing down on his back. In another example, an officer punched a Black man twice in the stomach even though he was pinned to the ground and not resisting.

We also reviewed incidents where officers tackled individuals suspected of low-level crimes off of their bikes, throwing them onto the pavement with no apparent exigency. For example, officers were pursuing a Black 18-year-old in the middle of the night because he fled on his bike after reportedly picking up a backpack that officers believed contained marijuana. An officer found the teen and tackled him off of his bike without announcing himself or giving any commands to stop. Other officers descended on the teen after he was tackled and on the ground. At one point, four officers were on top of him, even though he was lying still on his stomach with his hands being held by officers. An officer then grabbed the teen's head and pushed it into the pavement for several seconds. When the teen exclaimed "My head bro, my head!" another officer replied, "You'll be alright." After handcuffing the teen, officers repeatedly taunted him, saying that he was going to "big boy jail." In all of these incidents, officers violated core constitutional principles but were not held accountable for their misconduct.[18]

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[17] *Cockrell v. City of Cincinnati*, 468 F. App'x 491, 497-98 (6th Cir. 2012).

[18] *Ortiz ex rel. Ortiz v. Kazimer*, 811 F.3d 848, 852 (6th Cir. 2016) ("[T]he gratuitous use of force against a suspect who has 'surrendered' is 'excessive as a matter of law.'").

e. LMPD Officers Unnecessarily Escalate Encounters, Leading to Excessive Force.

LMPD officers routinely rush into encounters without adequately weighing the threat or resistance presented by the individual involved. They not only fail to de-escalate the situations they face, but in fact engage in escalating behavior that startles, confuses, or angers the individuals they encounter. This often leads to the use of force—both lethal and less-lethal force—that is unwarranted or disproportionate under the circumstances.

For example, officers responded to a domestic violence call in which a Black man was in an apartment reportedly armed with a knife. Two of the three responding officers drove onto the scene as the man walked out with a saw in his hands. Instead of creating distance and taking cover, the officers rushed out of their cars and ran towards the man, ordering him to "Drop it!" Officers shot the man thirteen times within two seconds of giving the commands, killing him.

The man's estate sued LMPD for excessive force. A federal court concluded that the officers were not entitled to qualified immunity. The court described the incident in detail, noting that, when he was shot, the deceased man was slowly walking towards officers and had the saw pointed downward.[19] The court also noted that officers were more than 15 feet from the man when they shot him and that they gave him very little time to comply.[20] Officers on scene even acknowledged that the situation escalated quickly, admitting, "That went from zero to sixty fast." Louisville Metro ultimately settled the lawsuit for $1.25 million.

In another incident, officers were responding to a domestic violence call reporting a fight and that the suspect had a knife. When they arrived, no fight was occurring. Instead, they encountered a Black man and a white woman walking away from each other on the sidewalk in front of their home, where their five children were inside. Officers made no attempt to investigate what had happened, but rather walked up to the man and immediately told him, "Put your hands up here." The man, whose hands were visibly empty, calmly asked why. Officers did not answer him, even though our law enforcement expert noted that appropriate de-escalation would have involved approaching the man calmly and explaining why he was being stopped. Instead, officers grabbed the man and continued pulling at him.

Officers eventually took the man to the ground and tased him three times. They gave no warning before deploying the taser and gave the man no opportunity to comply in between the tasings. The second and third tasings occurred as the man laid on his stomach while screaming, "I'm done! I'm done! Please stop!" Officers handcuffed the man and left him lying on the ground while his kids cried out, "Is he dead? Is my daddy dead?" Officers not only failed to de-escalate, but in fact escalated the encounter by grabbing the man within seconds of arriving on scene. Indeed, the man told officers, "I would've complied if you said, hey, step on the steps and

[19] *See Cleveland v. Louisville Metro Gov't*, No. 3:16-CV-588-CRS, 2019 WL 1058154 (W.D. Ky. Mar. 6, 2019).
[20] *Id.* at *2-3.

let me talk to you." Their unsound tactics resulted in at least two unreasonable tasings and traumatized the five young children who witnessed the event.

LMPD officers' tendency to ratchet up tensions and escalate situations not only leads to constitutional violations, but it also threatens the safety of everyone involved and undermines community trust. While LMPD has provided department wide de-escalation training for officers since 2019, and studied the impact of that training on its uses of force,[21] our review shows that officers still fail to integrate de-escalation strategies into their encounters, leading to unreasonable uses of force.

f. LMPD's Weak Oversight Contributes to Its Use of Excessive Force.

LMPD's pattern or practice of unreasonable force is due, in part, to its system for investigating uses of force. LMPD tasks first-line supervisors with the responsibility to investigate uses of force, but the investigations are perfunctory. While first-line supervisors typically respond to the scene of a use of force, they do very little investigation and rarely make efforts to manage the officers on scene. They ask officers for a basic chronology of events and take pictures of the people involved. LMPD does not require officers to submit written statements regarding their use of force, and supervisors rarely ask officers probing questions about their decision to use force when gathering facts on scene. Supervisors also miss opportunities to interview civilian witnesses and fail to document interviews—if they conducted any—in their reports. These investigative gaps lead to force reports that are short on detail or analysis.

Supervisors' reports sometimes mischaracterize or omit facts that would undermine a conclusion that force was justified. Supervisors do not meaningfully review and assess each use of force involved in an incident, and at times do not report serious and potentially deadly uses of force. Their reports rarely include any analysis of the tactics involved in the incident or whether the officer could have avoided the need to use force through better tactics. Supervisors also rarely refer potential misconduct to internal affairs for an administrative investigation into whether officers violated LMPD policies.

In the incident described at the beginning of this Section, where an officer stepped on a woman's chest and beat her with his flashlight, the supervisor who responded to the scene began laughing as the officer told him what happened. The supervisor did not ask the officer why he used force—What was the threat? Did she resist?—but instead asked, as he chuckled, if the woman had "broken skin" when she tried to bite him. When the officer told the supervisor that he did not know how many times he hit the woman on the head, the supervisor just responded, "Okay." The supervisor did not refer the use of force to internal affairs.

LMPD's review of officers' deadly force—including neck restraints that amounted to deadly force and shootings—is notably deficient. Supervisors rarely identified and analyzed neck

[21] *See Examining the Impact of Integrating Communications, Assessment, and Tactics (ICAT) De-escalation Training for the Louisville Metro Police Department: Initial Findings*, IACP Center for Police Research and Policy, at i (Updated October 30, 2020), https://perma.cc/55G4-CJLZ.

restraints in the incidents we reviewed. In the few incidents in which supervisors did identify neck restraints, they minimized them.

For example, during an incident in which officers choked and dropped a knee on the neck of a non-resisting, handcuffed man (recounted above in Section 1.a), the reviewing supervisor not only mischaracterized the chokehold, but also failed to identify the knee to the man's neck. The supervisor concluded that the officers' actions complied with LMPD policy, but the chief initiated an administrative investigation of the incident. That investigation was also deficient. In evaluating the chokehold, the investigator reported that he performed a "quick online search of a one-handed choke hold" instead of applying the language regarding vascular restraints in LMPD's use-of-force policy. The investigator concluded that the officer's conduct did not constitute a chokehold because his "technique [did] not resemble either of those found when doing a search."

LMPD's investigations into shootings by officers are also flawed.[22] Until 2020, LMPD conducted both criminal and administrative investigations of all shootings by officers.[23] Both investigations are routinely deficient. Criminal investigators often asked leading questions of both officers and witnesses, at times suggesting possible justifications for the officer's use of force to interviewees. Investigators also failed to resolve discrepancies between officer or witness statements. We also found that administrative investigators conduct their investigations after the criminal investigations are completed. These subsequent administrative investigations almost always rely exclusively on the criminal investigation and adopt its factual record wholesale, even when that record is lacking. As a result, LMPD fails to identify critical policy violations and tactical failures that resulted in otherwise avoidable deaths.

In March 2022, LMPD announced that it would establish a Performance Review Board, an internal entity of high-ranking LMPD officials that will evaluate critical incidents involving the use of serious force. On December 19, 2022, LMPD enacted a policy governing the function and objectives of the Board, which is intended to comprehensively review force and other incidents to detect patterns and guide LMPD's management of officers. This type of trend analysis is a hallmark of a self-evaluating and self-correcting agency. LMPD must ensure that the Board has the knowledge and training to identify deficiencies and the authority to address problems.

LMPD's accountability deficiencies involving use of force have had grave consequences. Supervisors' failure to properly identify and address unreasonable force has allowed unlawful conduct to continue. When supervisors decided that excessive force was, in their view, appropriate, they endorsed and perpetuated unlawful conduct. This pattern of excessive force

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[22] *See* section on Supervision and Accountability below for a description of the structure of internal affairs at LMPD.
[23] In 2020, LMPD announced that the Kentucky State Police would handle criminal investigations of shootings by LMPD officers. LMPD and the Kentucky State Police have not formalized this arrangement through a memorandum of understanding or similar document, and we have seen instances since 2020 where LMPD conducted shooting investigations. *See, e.g.*, Thomas Birmingham, *Louisville police break recent precedent, investigate themselves in Shawnee Park shooting*, Louisville Courier-Journal (July 14, 2022 10:48 AM), https://perma.cc/3UYL-6ZMW.

ultimately jeopardizes officers' ability to do their jobs safely and effectively. Repeated violations of people's rights also erode public trust.

2. LMPD Violates the Fourth Amendment by Conducting Searches Based on Invalid Warrants.

We have reasonable cause to believe that LMPD engages in a pattern or practice of seeking search warrants in ways that deprive individuals of their rights under the Fourth Amendment. A significant number of LMPD's search warrant applications fail to satisfy the constitutional requirement of being supported by "probable cause." As explained more thoroughly below, the applications frequently lack the specificity and detail necessary to establish probable cause for the search, are typically overly broad in scope, and fail to establish probable cause for searching everything and everyone listed in the warrant. LMPD also improperly uses confidential informants in narcotics-related search warrants.

A search warrant is a court order, signed by a judge, that authorizes the police to search a person or place, like a home or a car. Under the Fourth Amendment, a judge can issue a warrant only if the police show that there is "probable cause." Officers have probable cause to search a person or a place when they have a reasonable belief, based on trustworthy information, that they will find evidence of a crime. Officers explain their probable cause for the search in a search warrant application and supporting affidavit filed with the judge. The officer swears, under oath, to facts that justify the search. The judge then reviews the application and decides whether probable cause exists to issue the warrant. If it later comes to light that officers acted in bad faith to persuade a judge to issue a search warrant—such as by including important facts in the affidavit that the officers knew to be untrue—the court may decide that evidence found during that search cannot be used at trial.

To examine LMPD's search warrant practices, we reviewed a sample of their warrant applications, from January 1, 2016 through October 31, 2021; examined information from more than 1,800 suppression hearings; reviewed LMPD's training, guidance, and procedures related to warrants; and interviewed officers, community members, and stakeholders. More than 40 percent of the applications relate to narcotics, more than 35 percent relate to LMPD's Major Crimes Units (Homicide, Robbery, Crimes Against Children, and Special Victims), and approximately 17 percent are from patrol divisions.

As the majority of applications are related to narcotics or major crimes, we pulled a random sample of these types of applications for review, including sealed applications. We were assisted in our review of the applications, and of LMPD's search warrant practices generally, by expert consultants, including a former police chief, a former FBI agent, and a former federal judge.

As a preliminary matter, Jefferson County has a rotating schedule for judges to review warrant applications, but LMPD does not follow the court's schedule. Of the warrants in our sample, officers rarely sought approval from 19 of the 30 judges who approved warrants in the sample. In fact, just six judges approved more than half of the warrants in our sample. LMPD also submits approximately 25 percent of search warrant applications under seal. This means the warrant applications are protected from disclosure to the target of the investigation, as well as from members of the public and media organizations. To be sure, sealing warrant applications and other court documents is often necessary to protect the integrity of criminal investigations, the identity of confidential sources, or other legitimate law enforcement interests. But LMPD officers seal search warrant applications—and keep them sealed—when these interests are not, or are no longer, at stake. The warrants are, therefore, not available to be scrutinized by interested parties, by members of the public, or through the adversarial process. Perhaps owing to this lack of outside scrutiny, we found that the rate of problematic probable cause justifications in sealed applications was 3 times the rate as in unsealed applications.

a. LMPD's Search Warrant Applications Frequently Lack the Specificity and Detail Necessary to Establish Probable Cause for the Search.

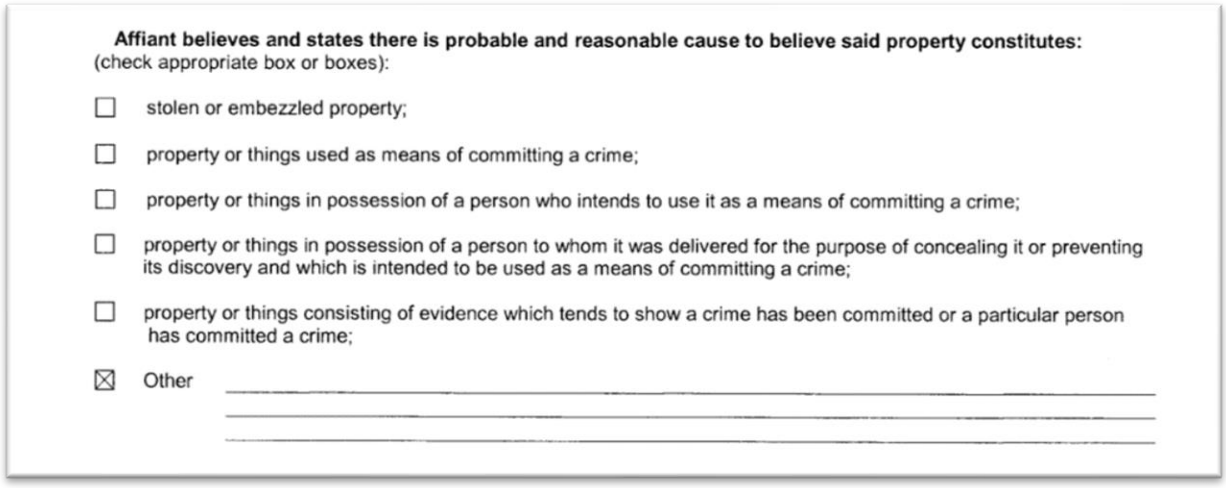
LMPD's search warrant applications routinely fail to demonstrate probable cause. Many affidavits accompanying warrant applications say that a person is suspected of a crime, such as drug trafficking, and then speak in broad generalities about the tendencies of people who traffic drugs. The applications include a laundry list of things that "individuals engaging in drug trafficking and/or money laundering" allegedly often do, like keeping drugs, guns, and money at a place other than their home, or moving drugs around by car. Based on the allegation that a person is suspected of drug trafficking and generalities about what drug traffickers do, LMPD requests search warrants for places where the person spends time and for cars the person uses. LMPD frequently broadens its requests to also encompass people who are not the target of the investigation—including untargeted people's cars and homes—based solely on their relationships with the target. This includes friends, family members, and romantic partners, none of whom LMPD alleges have done anything wrong. Standing alone, neither broad generalities nor a third party's relationship to an investigative target mean that executing a search warrant is likely to yield evidence of a crime.

For example, LMPD received a warrant to search a Black man, his mother, and their home based on an officer's "hunch" that the man was trafficking drugs. This hunch was based only on where the man parked his car; the officer saw the car parked next to a known drug dealer's car several times. LMPD used this hunch to search the homes of the man *and* the man's mother, even though the officer gave no reason to suspect that his mother was involved in anything illegal or that illegal activity occurred in their home. Not surprisingly, this search—based on generalities about how drug dealers behave—resulted in no arrests.

We also found several narcotics-related applications where officers based probable cause solely on their observation of so-called "short stays." Officers use the term "short stays" when they see individuals briefly drop by a home. While "short stays" may, in combination with other evidence, link a house to drug trafficking, "[h]aving frequent visitors, who stay a short time and then leave, is not necessarily indicative of criminal activity."[24] Rather, officers need additional evidence to show that the "short stays" were connected to a crime. LMPD officers know how to provide this information. Some affidavits in our review described how LMPD used confidential informants to buy drugs at a place where an officer saw "short stays," or stated that LMPD stopped someone making a "short stay," found drugs on the person, and learned the person purchased the drugs during the "short stay." But this is not always the case.

For example, LMPD obtained a warrant to search a Black man, his home, and his car based on the officer's observation of "heavy traffic" in and out of the home "staying for short periods of time, which is indicative of narcotics trafficking." LMPD had not seen the man buy or sell drugs. LMPD had not seen drugs in the man's home or car. Nor had LMPD stopped someone outside of his home after a "short stay" and found drugs on that person. But LMPD nevertheless searched his home and his car. They found nothing, made no arrests, and never filed any charges. LMPD subjected this man to a significant intrusion—officers scouring his home and car looking for drugs—based only on the fact that people stopped at the man's home for short visits.

Finally, some warrant applications contained glaring omissions. For example, LMPD obtained a search warrant for a white man and his home without identifying any probable cause for the search. The officer used a standard warrant application that includes checkboxes to identify the probable cause for conducting a search. One option is "Other," and provides blank lines for an officer to explain any probable cause reasoning that does not fit into a standard category (see below). This officer checked "Other" but left the lines next to it blank. He provided no other reason for probable cause. The court issued the search warrant anyway.



Affiant believes and states there is probable and reasonable cause to believe said property constitutes:
(check appropriate box or boxes):

☐ stolen or embezzled property;

☐ property or things used as means of committing a crime;

☐ property or things in possession of a person who intends to use it as a means of committing a crime;

☐ property or things in possession of a person to whom it was delivered for the purpose of concealing it or preventing its discovery and which is intended to be used as a means of committing a crime;

☐ property or things consisting of evidence which tends to show a crime has been committed or a particular person has committed a crime;

☒ Other _____

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_____

[24] *United States v. Buffer*, 529 F. App'x 482, 484-85 (6th Cir. 2013) (quoting *United States v. King*, 2000 WL 1359635, at *4 (6th Cir. Sept. 14, 2000) (unpublished table opinion)).

b. LMPD's Applications are Typically Overly Broad in Scope and Fail to Establish Probable Cause for Searching Everything and Everyone Listed in the Warrant.

Even in circumstances where the affidavit supporting the warrant can establish probable cause for one person or place, many of LMPD's warrants are overly broad in scope. In many circumstances, the underlying affidavit would present a strong basis for probable cause to search an individual or a particular location (either a house or a car). The warrant itself, however, would seek to search additional locations or people, and in the most egregious examples, extended the initial finding of probable cause to anything associated with the target of the investigation.

For example, LMPD obtained a warrant to search a car owned by a Black man, the target of a narcotics investigation, his girlfriend, who was also Black, as well as her home and her car. The only stated rationales for searching her home were that her boyfriend went to her home almost daily and that the boyfriend had a key to the house. LMPD gave no reason to search her car. Neither did they give a reason to believe that the girlfriend was involved in her boyfriend's suspected drug activity. When LMPD executed the search warrant, they found nothing, and they did not charge or arrest the girlfriend.

In another incident, LMPD obtained a warrant to search a Black man, his home, his car, two more cars recently seen parked in his driveway, and "any other individual present at the time of the execution of the search warrant who may attempt to conceal or destroy evidence." While the affidavit established probable cause for searching the man, his home, and his car, the affidavit did not contain any information connecting the other cars in the driveway or "any other individual present" to any criminal activity. This type of general warrant is prohibited by the Fourth Amendment. When officers executed the warrant, they found nothing in the additional cars or on any of the other people present. And no one was charged or arrested.

c. LMPD Improperly Uses Confidential Informants in Narcotics-Related Search Warrants.

Most of LMPD's narcotics-related warrants utilizing confidential informants are also constitutionally deficient due to LMPD's practices around those sources. When a search warrant application includes "an affidavit rel[ying] on information from a confidential source," courts review the application to determine whether a totality of the circumstances establishes probable cause for the search by "examining the veracity, reliability, and basis of knowledge of the source."[25] Without any indicia of the confidential informant's reliability, however, "courts insist that the affidavit contain substantial independent police corroboration."[26] Accordingly, law enforcement agencies can and do use confidential informants in compliance with legal standards. But they must exercise caution. As the Supreme Court has long recognized, informants "are

[25] *United States v. Helton*, 35 F.4th 511, 518 (6th Cir. 2022).
[26] *Id.*

'dirty business' [and] may raise serious questions [of] credibility."[27] The credibility of "narcotics informants" in particular "may often be suspect."[28]

At LMPD, officers used confidential informants in more than a third of LMPD's search warrant applications, and all were narcotics-related. Our investigation revealed an extremely high rate of those applications lacked probable cause. Often, the warrant applications include little to no information explaining why the confidential informant was reliable, what information the confidential informant provided, or how many informants LMPD used during the investigation. Instead, many of the applications rely on boilerplate language stating the informant is "familiar with the manner in which narcotics are packaged, sold, and consumed," "has provided information in the past that has been independently verified as accurate and true," and "has been established as a reliable confidential informant according to KRE [Kentucky Rule of Evidence] 508."

KRE 508, however, permits law enforcement to withhold an informant's identity in a court case. It does not set a standard for establishing the reliability of an informant. Thus, recitation of the rule alone is insufficient to meet the Fourth Amendment's requirement that officers provide a "factual showing sufficient to comprise probable cause. . . [that is] a *truthful* showing."[29] Although "[t]his does not mean 'truthful' in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants, . . . [instead] it is to be 'truthful' in the sense that the information put forth is believed or appropriately accepted by the affiant as true."[30] LMPD's use of this boilerplate language from application to application, however, suggests that officers make minimal effort to ensure that informants are telling the truth, or, by extension, that officers have enough evidence to justify a search warrant.

Officers may use a confidential informant to conduct a controlled buy of narcotics, which could establish the informant's reliability and provide specific information to support a search warrant. Many of LMPD's warrant applications, however, include little information about the number of controlled buys, the time frame and locations in which they were conducted, or the nature and quantities of drugs purchased. Without information about the confidential informant's credibility or an explanation of the measures taken by the officer to verify the informant's information, many narcotics-related warrants fail to establish probable cause for the search.

This is compounded by LMPD supervisors who fail to enforce a policy requiring officers to complete an "Informant Activity/Payment Form" every time an informant provides information that leads to the execution of a search warrant. They also fail to enforce LMPD's policy prohibiting the use of confidential informants who have stale criminal history reports.[31] In a particularly egregious example, LMPD used one informant more than 40 times after the

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[27] *On Lee v. United States*, 343 U.S. 747, 757 (1952).
[28] *Jaben v. United States*, 381 U.S. 214, 224 (1965).
[29] *Franks v. Delaware*, 438 U.S. 154, 164-65 (1978) (quotation omitted) (emphasis in original).
[30] *Id*.
[31] LMPD Standard Operating Procedure 3.23.2.

informant's authorization expired. Every warrant application associated with those 40 impermissible uses could have problems with probable cause.

For example, LMPD obtained a warrant to search a Black man, his home, and his car based on a confidential informant's statement that the individual was "selling quantities of cocaine" and "was in possession of a large quantity of cocaine within the last 48 hours." The affidavit used boilerplate language about the reliability of the confidential informant but did nothing to corroborate the person's information. Moreover, LMPD's internal tracking system shows that the confidential informant was not authorized to be used at the time. LMPD paid the confidential informant anyhow.

d. The Inadequacies of LMPD's Warrant Applications Are Caused by Poor Supervision and Oversight.

LMPD's routine failure to demonstrate probable cause in warrant applications is the result of poor supervision and oversight within the agency, which enable errors to go uncorrected. Deficiencies in how LMPD works with prosecutors, its internal legal advisor, and courts also contribute to the problem. Prosecutors, the legal advisor, and judges could help LMPD improve its search warrant practices, but LMPD avoids rather than welcomes their oversight.

Supervision of Warrant Applications. As a matter of best practices, LMPD supervisors should—but do not—ensure that probable cause exists before LMPD seeks a search warrant. When probable cause exists, supervisors should—but do not—ensure that the warrant applications that officers draft set out the facts supporting probable cause.

Review of Warrant Applications by Attorneys and Judges. LMPD does not submit warrant applications to prosecutors or their internal legal advisor for review before filing them in court, even though attorneys could identify deficiencies in search warrant applications and correct errors before the applications go to court. As Kentucky's search warrant task force found in its December 2021 non-binding recommendation, "[i]n the absence of an emergency, a prosecutor should review and approve a proposed search warrant before the investigating agency seeks judicial authorization for the warrant." A prosecutor or legal advisor can ensure that officers have developed and documented sufficient evidence to justify a search warrant. If there is not enough evidence, attorneys can advise officers on additional investigatory steps they can take. In addition, LMPD could ensure that officers seek judicial approval of search warrants without regard to the judge assigned to review the warrants.

3. LMPD Violates the Fourth Amendment by Executing Search Warrants Without Knocking and Announcing.

We have reasonable cause to believe that LMPD engages in a pattern or practice of executing warrants in violation of the Fourth Amendment. Specifically, in executing search warrants on private homes, LMPD officers regularly fail to knock and announce their presence. These unlawful practices endanger both officers and members of the public.

These problems are not new, and LMPD has known about them for some time. In 2015, with the cooperation of LMPD, a researcher at the University of Louisville conducted a study of LMPD's warrant practices. The researcher personally observed detectives execute 73 search warrants. The study found that detectives relied heavily on boilerplate language to obtain warrants and did not adhere to constitutional safeguards in executing warrants.[32] We found no evidence that LMPD's practices changed in response to the findings of this study. Rather, as described below, LMPD detectives continue to follow many of the same unlawful practices.

Like search warrant applications, search warrant executions are governed by the Fourth Amendment. Officers executing a warrant generally may not force themselves into a home without first knocking, announcing their identity and purpose, and waiting a reasonable amount of time for the people inside to let the officers into the home. This rule: "1) reduces the potential for violence to both the police officers and the occupants of the house into which entry is sought; 2) curbs the needless destruction of private property; and 3) protects the individual's right to privacy in his or her house."[33]

Officers may execute a search warrant without knocking and announcing if they obtain a "no-knock" warrant from a judge. This requires officers to establish "reasonable grounds" that knocking and announcing would be futile or that an "exigency already exists or will arise instantly upon knocking."[34] Louisville Metro banned officers from requesting a judge to provide advance authorization for executing a no-knock warrant in June 2020.[35] But even if a judge does not authorize no-knock entry in advance, officers may execute a warrant without knocking and announcing if, upon arriving at the door, they determine that doing so would be dangerous or futile, or that people inside may destroy evidence. Under these circumstances, LMPD is required to report the search to their supervisors.[36]

For our investigation, we reviewed LMPD's documentation assessing the risks involved in executing a warrant, LMPD's records describing warrant executions and identifying exigent needs to avoid knocking and announcing, supervisory reports related to warrant executions, and videos of LMPD officers executing warrants. Importantly, only 10 percent of the residential search warrants in our sample were captured on body-worn cameras, despite the cameras' wide availability at LMPD. We therefore combed through LMPD's internal records and audited

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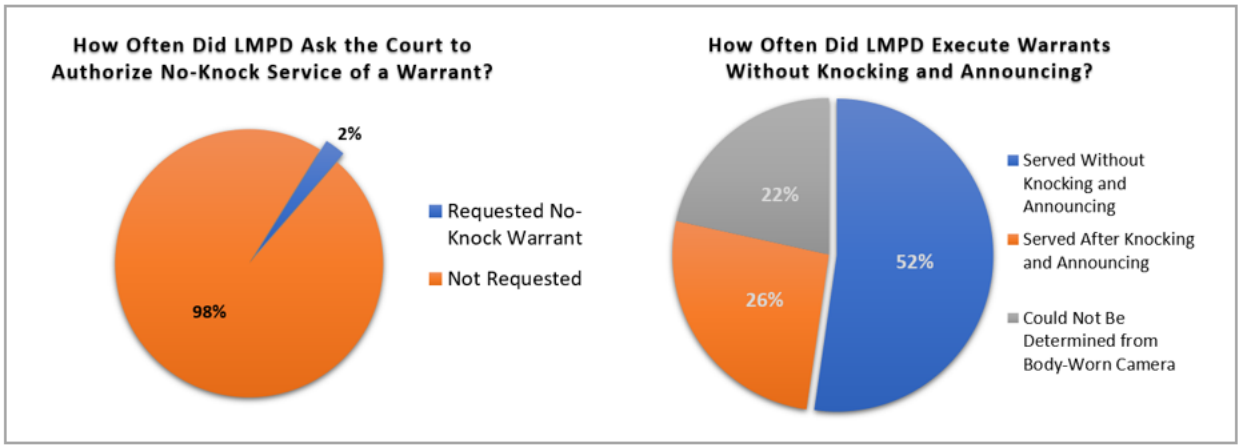
[32] Brian Patrick Schaefer, *Knocking on the door: police decision points in executing search warrants*, 94-100, 124-31, 165-66 (2015), https://perma.cc/DU3Z-4F2L.
[33] *United States v. Smith*, 386 F.3d 753, 758 (6th Cir. 2004).
[34] *United States v. Banks*, 540 U.S. 31, 36 (2003).
[35] *Breonna's Law*, Ordinance No. 069, Series 2020.
[36] LMPD Standard Operating Procedure 3.1.1.

LMPD's video database to identify videos of warrants executed on residences, from January 2016 through October 2021.

From this review, we determined that LMPD rarely—just 2.5 percent of the time—requested judicial authorization to execute a warrant without knocking and announcing (during the time period when it was lawful to do so). Nevertheless, LMPD officers still entered homes without knocking and announcing in more than half of the warrant executions we reviewed. Importantly, officers knew this was not allowed as it is contrary to LMPD's procedures requiring officers to knock "in a manner and duration that can be heard by the occupants;" "clearly and verbally announce themselves as law enforcement with the intent to execute a search warrant;" and "absent exigent circumstances, wait a minimum of 15 seconds or for a reasonable amount of time for occupants to respond, whichever is greater, before entering the premises."[37]

> LMPD officers regularly fail to knock and announce their presence before executing search warrants on private homes. These unlawful practices endanger both officers and members of the public.



LMPD also has a pattern of executing warrants at unnecessarily late times without taking appropriate measures to ensure public safety. In the federal system, there needs to be "reasonable cause" in the affidavit to execute a warrant at night, and a court must approve it.[38] More generally, criminal justice system leaders have noted that nighttime warrant service "should be restricted to emergency exigent circumstances associated with the immediate threat to the well-being of innocent parties."[39] And officers "should avoid entry into homes or businesses while they are occupied, instead employing covert surveillance to discern safe times to enter."[40]

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[37] LMPD Standard Operating Procedure 8.1.19.
[38] Federal Rule of Criminal Procedure 41(e)(2)(A)(ii) (requiring that a warrant specify that it will be executed "during the daytime, unless the judge for good cause expressly authorizes execution at another time.").
[39] Council on Criminal Justice, Task Force on Policing, *No-Knock Warrants and Police Raids, Policy Assessment* (2021), at 3, https://perma.cc/UMJ5-8L4A.
[40] *Id.*

Still, in more than a third of our sample, LMPD served warrants surreptitiously, late at night, or by officers appearing to be concerned with maintaining the element of surprise, by not using any light or making any sound. Several of these approaches were prefaced with officers peering into windows at length, which was tactically unsound and put the officers and occupants of the search location at unnecessary risk. These attempts at covert warrant service come with risks. Officers may be misidentified as intruders and may misinterpret surprise at their entry as a threat.[41] Executing warrants late at night may also undermine the knock-and-announce rule, as residents are less likely to hear the officers if they are asleep.

As an example, narcotics officers executed a warrant at 10:30 p.m. at a home near Churchill Downs, in the South End of Louisville. Officers ran up to the house in the darkness and peered through the windows. They then loudly announced their presence at the same time they pushed open the door and walked inside. They found an elderly Black woman asleep on the living room couch, and an elderly Black man asleep in bed. The woman said, "Man! What time is it?! Why couldn't you all just knock? I could have let you in. No problem! I thought someone was about to beat somebody!" Officers later learned that the man had a revolver in his bed. They joked about it "being good he didn't shoot," and how it could have been a very different night if he had.

In another incident that took place two hours after the sun had set, narcotics officers approached the front door of a home in the Parkland neighborhood of the West End of Louisville and nearly whispered, "Police officer with a search warrant." It is apparent from video of the incident that no one inside the home could have heard the officers. Then the officers shouted, "Police!" as they rushed through the front door. The first officer to come through the door ran into a Black man and a dog, which bit the officer. Other officers handcuffed the man and took him down to the ground. The man asked the officers why they did not knock, because he was near the door and could have answered it.

LMPD's failure to knock and announce before executing search warrants is not limited to nighttime warrant service. For example, we reviewed an incident in which narcotics officers executed a search warrant at 4:11 p.m., in the Taylor Berry neighborhood in the South End of Louisville. As officers were walking towards the front door, they quietly said, "Police, search warrant," in a manner that did not, from the video, appear audible from inside the home. Then they shouted, "Police! Search Warrant!" just one second before breaking into the home with a battering ram. Officers rushed in with no apparent strategy for making the scene safe. A Black man, his children, and his grandchildren—a baby, a toddler, and several teenage boys and girls—were in the home. Officers handcuffed the man and his teenage sons, and detained his teenage daughters, the toddler, and the baby in another room. All were distraught. An officer told the man that they were searching his home because officers believed that his children were dealing a small amount of marijuana. Officers had no lawful basis for conducting this no-knock entry, particularly given the presence of children and the personal-use amounts of marijuana involved.

[41] National Tactical Officers Association, *Position Statement on No-Knock Warrant Service* (2022), at 2-3, https://perma.cc/WNU8-8JWP.

LMPD's unlawful warrant executions are the result of poor planning, supervision, and oversight. Their routine failure to hold officers accountable for failing to complete risk matrices puts officers and the public in needlessly dangerous situations. As officers fail to record the warrant execution on body-worn camera and fail to record the details of the warrant execution through internal reporting, the extent of these dangerous executions is unknown.

Failure to Complete Risk Matrix. When it comes to executing search warrants, supervision is lacking. LMPD policy requires officers who propose executing a search warrant to evaluate the risks of doing so according to a risk assessment matrix.[42] The matrix identifies factors that can make a warrant execution more or less dangerous, and it boils down those factors into a numerical score. LMPD can use that numerical score to determine whether the circumstances are safe enough for detectives to handle the execution themselves; whether specially trained officers should instead handle the execution; or whether the proposed execution is so dangerous, and the underlying crime so minor, that the risks of executing the warrant outweigh the benefits to public safety. But LMPD officers routinely fail to even conduct risk assessments, and their supervisors fail to intervene. This puts officers and the public at risk.

Failure to Record Warrant Executions. Similarly, officers rarely record warrant executions on body-worn cameras, despite LMPD's uniform adoption of body-worn cameras by March 2016 and a policy requiring officers to record encounters with the public. Moreover, videos are not easy to find, because LMPD's record-keeping system relies on officers to categorize their videos themselves. LMPD has no quality assurance system in place to assess whether officers are doing so accurately or, in fact, at all. Without consistent practices for using cameras and categorizing videos related to search warrant executions, LMPD cannot ensure that officers are executing warrants lawfully.

Internal Review of Warrant Executions. LMPD policy requires supervisors to review and write reports about certain warrant executions, but their reports are rarely meaningful. Rather than individually assessing officers' actions, supervisors write the same sentence over and over, which is sometimes misleading: "After knocking, announcing, and waiting a reasonable amount of time, forced entry was made causing damage." Moreover, supervisors do not complete their reviews in a timely manner; do not say whether they watched body-worn camera videos or whether officers failed to record the execution; and do not identify every officer who was present, much less describe their roles. Supervisors also fail to assess or even require operation plans and after-action reports for warrant executions and fail to provide meaningful direction or critique to improve future executions.

[42] LMPD Standard Operating Procedure 8.1.13.

4. LMPD's Street Enforcement Activities Violate the Fourth Amendment.

We have reasonable cause to believe that LMPD engages in a pattern or practice of street enforcement that violates the Fourth Amendment. LMPD officers unlawfully stop, frisk, detain, search, and arrest people during street enforcement activities, such as traffic and pedestrian stops. These intrusive encounters violate the rights of people throughout the city, across race and socioeconomic class.

The Fourth Amendment prohibits "unreasonable searches and seizures." This constitutional provision limits police officers' authority to stop, search, and arrest people. To stop someone, officers must have reasonable articulable suspicion of criminal activity connected to the person. To frisk or pat down someone's outer clothing for weapons, officers must have reasonable articulable suspicion that the person is armed and dangerous. To search a person, car, or home, officers must have probable cause to believe they will find evidence of a crime in the location searched, and, with a few exceptions, they must first obtain a warrant from a court authorizing the search. Although officers may ask a person to waive these requirements and consent to a search, the consent must be voluntary and not the product of police coercion. Officers may not detain someone longer than necessary to complete the purpose of a stop. And to arrest someone, officers must have probable cause to believe the person committed a crime.

LMPD officers routinely violate these constitutional limits. Many of these violations involve pretextual traffic stops, which LMPD relies on heavily in its street enforcement activities. In a pretextual stop, an officer uses a minor violation, like a broken headlight, as grounds to stop someone in order to investigate unrelated suspected criminal activity. According to LMPD reports, officers use traffic stops to "target[] offenders in high crime neighborhoods" and "address crime in neighborhoods affected by violent crime." Officers told us that when they are not responding to calls for service, they engage in what they call "proactive policing," where they look for equipment or registration violations that might generate pretext for a stop. Although the Fourth Amendment permits pretextual traffic stops, it requires officers to have legitimate grounds for each search, frisk, or other investigative action that prolongs the encounter.

Our findings are based on a variety of evidence. We interviewed LMPD officers and supervisors and observed their activities during ride-alongs. We reviewed LMPD training materials concerning stops, searches, and arrests. From January 2016 through August 2021, LMPD conducted nearly 190,000 traffic stops that resulted in a citation or arrest. We selected a random sample of these traffic stops. For each stop in our sample, we reviewed officers' body-worn camera footage and documentation for evidence of constitutional violations. We also reviewed dozens of internal affairs investigations and court cases involving stops, searches, and arrests by LMPD officers. And we interviewed a range of stakeholders in the criminal legal system, including judges, prosecutors, criminal defense attorneys, and community members.

LMPD officers frequently stop and frisk people without reasonable articulable suspicion. For example, officers stop and frisk pedestrians if they happen to be in the area of an alert from the city's sound-based gunshot detection system, even though merely being in the general vicinity of suspected gunshots is not by itself grounds for a stop and frisk. In other incidents,

officers drove up to people, including youth, jumped out of their cars, and stopped and frisked them without any apparent reason for suspicion at all.

Some LMPD officers incorrectly believe that the Fourth Amendment does not apply to stops and frisks. In one incident, two officers frisked a Black man who was sitting on a bench in a public park next to his bicycle. When the man objected, one officer replied, "We're perfectly within our legal limits to give you a pat-down. A search and a pat-down are two very different things. A search is a violation of your Fourth Amendment rights; a pat-down is not." That is wrong. A pat-down violates the Fourth Amendment where, as in this incident, officers lack reasonable articulable suspicion that the person is armed and dangerous.[43] After frisking the man, the officers found nothing and walked away.

When LMPD officers document stops and frisks, they do not consistently cite specific and articulable facts that support their actions. Instead, they use vague indicia of suspicion, like "nervousness" or neighborhood, even though courts have warned that these factors are unreliable indicators of illegal activity.[44] Occasionally, officers document pedestrian stops using "Field Contact Reports," which LMPD uses to record information learned from community members. Although LMPD policy requires officers to use these reports to record the justification for all pedestrian stops and frisks they conduct, officers and commanders alike told us that they do not regularly do so. Even when they do, many reports describe officers stopping people engaged in lawful activity that cannot justify a stop without some other reason for suspicion. Examples include: "walking in rear apt parking lot," "two teenagers walking in the rain, at approximately midnight, not wearing rain gear, and carrying backpacks," "walking at [2am] in an area where we have had numerous car break-ins," and "subject in alley in high burglary area." Merely walking in a public place—whether at night, through a parking lot, in the rain, or where cars have been burglarized—is not suspicious. Officers also try to explain the reasons for initiating stops by using information they learned only after stopping a person. Information learned *after a stop is made* cannot possibly inform an officer's reason for *making the stop* in the first place.

> Some LMPD officers take an approach of "stop first, figure out the justification later."
>
> *Jefferson County Judge*

LMPD subjects people to unnecessarily intrusive traffic stops. Officers often reflexively frisk drivers and passengers, even when there is no reason to believe they are armed and dangerous. As the Sixth Circuit Court of Appeals has explained, however, a traffic stop "does not necessarily carry with it the authority to conduct a pat-down."[45] Moreover, a frisk is limited to patting down a person's outer clothing for concealed weapons, and unless the officer feels an object that may be a dangerous weapon or is immediately incriminating, reaching into a person's pockets violates the Fourth Amendment. But LMPD officers turn frisks into unlawful searches by reaching inside pockets to remove items that could not be mistaken for a weapon and are not immediately incriminating.

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[43] *United States v. Noble*, 762 F.3d 509, 521-22 (6th Cir. 2014).
[44] *Id.* at 522-23.
[45] *United States v. Campbell*, 549 F.3d 364, 372 (6th Cir. 2008).

In one case, an officer stopped a Black man for a broken headlight. The officer told his partner that he smelled alcohol and wanted to run field sobriety tests for impaired driving and "make sure there's nothing else going on." He told the driver to get out of the car. Instead of checking for impaired driving, the officer carefully searched the driver and then each of the two passengers, methodically checking through their pants pockets and examining each object he encountered—a pack of gum, receipts, cash, lip balm, and Neosporin. As he searched one passenger, he said, "I know it's invasive man, but you never know, you know?" As the driver and passengers sat on the rear bumper, the officer told them to take off their shoes and inspected them. Since none of the men were under arrest, the officer had no legal justification under the Fourth Amendment for these searches.

LMPD coerces people into acquiescing to searches instead of obtaining voluntary consent. If a police officer asks for consent to search, a person has the right to say "no." LMPD officers openly threaten people who exercise this right with the use of drug-sniffing dogs. LMPD training makes this tactic explicit: "During an investigation of a traffic stop," one training states, "the driver of the vehicle can refuse to let the officer search his/her vehicle. This is an important time to know how the K9 Unit can be used." Although using a drug-sniffing dog in this situation is not necessarily unlawful, LMPD officers make this threat in a manner that suggests refusal to consent is futile, even though officers' use of the dog would only justify a lawful vehicle search if the dog identifies evidence of drugs or other contraband from outside the vehicle. Further, the presence of a police dog can itself be threatening. In one incident we reviewed, officers told a driver whose young children were in the car that they would call in a police dog if he did not consent to a search. These factors may affect whether consent is voluntary or the product of police coercion. As one resident told us, an officer's request to search a car is "a double-edged sword"—"If you don't comply," the officers will call in a drug-sniffing dog, "but if you say yes, you surrender your rights."

During stops, officers repeatedly ask for consent and pressure people into agreeing to searches. One resident told us that officers asked to search his car so often, "I started thinking the searches were part of being pulled over." In addition, officers ask for consent for a frisk or search immediately before or even during a frisk. If an officer "requests" consent to search while patting someone down, the person's consent is not voluntary. Other tactics, while not unlawful on their own, make traffic stops more coercive and undermine the voluntariness of any consent. For example, LMPD deploys multiple cars and officers to routine traffic stops for minor violations, which can be intimidating. LMPD acknowledged in 2019 that "too many officers on-scene can cause undue public concern," but its policy maintains discretion for more than two officers to be present at a traffic stop. Sending four or five officers to traffic stops also means those officers are not performing other patrol duties. LMPD's tactics cause community members to believe that refusing to consent is futile: "you learn to help speed the process along" by acquiescing to searches, one resident said.

LMPD officers search cars without probable cause and unreasonably detain people for longer than necessary. Officers have searched cars based solely on where drivers departed from, on claims of smelling marijuana that a court later found were "not credible,"[46] and on other

[46] *United States v. Thomas*, 434 F. Supp. 3d 576, 585-87 (W.D. Ky. 2020).

grounds that do not rise to probable cause. Moreover, the Supreme Court has explained that a traffic stop is typically a "relatively brief encounter" that "may last no longer than is necessary" to complete the purpose of the stop, and a stop must end "when tasks tied to the traffic infraction are—or reasonably should have been—completed."[47] The Court held that prolonging a stop by seven or eight minutes for a dog sniff required reasonable suspicion to justify the extended detention.

LMPD officers often complete traffic stops quickly. Many last 10 minutes or less. But in some cases, officers turn stops for minor traffic violations into 30-, 40-, or 50-minute ordeals that are rarely necessary to accomplish the tasks tied to a traffic infraction. In 2022, a federal court found that an LMPD officer violated a Black teenager's Fourth Amendment rights during a traffic stop by removing the teenager from the car, frisking him, and unlawfully extending the stop to use a drug-sniffing dog. In this stop and others, LMPD officers have compounded the intrusion by unnecessarily handcuffing people who are not arrested and pose no evident threat.

Unreasonably prolonged police encounters frustrate and harm people, and they undermine public trust. One resident was on his way to pick up his son from school when officers pulled him over for failing to come to a complete stop at a stop sign. Officers detained him for more than an hour, including at least 40 minutes after they finished searching his car. He said that officers laughed and joked about his son waiting to be picked up from school. The officers did not give him a ticket for the alleged traffic violation, but they seized cash they found in his car. The man sued Louisville Metro and recovered the cash two years later in a settlement. The arbitrariness of this experience colored his view of the police. He said, "I walk around feeling like at any moment, LMPD could put me back in custody for the rest of my life, just if they feel like it or not."

Officers unlawfully search and seize the belongings of people experiencing homelessness. The Fourth Amendment prohibits officers from unreasonably seizing and destroying unabandoned personal property on public sidewalks. But in Louisville, officers have searched people experiencing homelessness and seized their belongings without probable cause. In 2021, LMPD publicly apologized for removing belongings from a homeless encampment.

We also found incidents in which LMPD officers unlawfully searched homes without warrants. The Supreme Court has explained that freedom from "unreasonable governmental intrusion" in one's own home stands at the "very core" of the Fourth Amendment.[48]

In one incident, officers from multiple divisions converged on a house after a vehicle pursuit ended nearby at around midnight. Some officers did not know whether they had a legal basis to search the house, and no one took charge of the scene. No officer had seen the fleeing driver enter the house, and there was no evidence of danger or exigency justifying a warrantless search of the house. Nevertheless, officers surrounded the house with their guns drawn and a police dog, and an officer yelled, "Come out now or my dog will bite you." A Black woman and her son were inside the house; the suspect was not. When the woman answered the door, the officers ordered her to "come out now" as the dog barked at her. They grabbed her arm and

[47] *Rodriguez v. United States*, 575 U.S. 348, 354 (2015).
[48] *Florida v. Jardines*, 569 U.S. 1, 6 (2013).

pulled her onto the porch. Officers handcuffed her son and detained him outside. At least nine officers walked throughout the house, first with guns drawn and then with flashlights, wandering in and out of rooms. An internal affairs investigator later concluded that the search was unlawful because officers did not ask for consent before entering the home and were not in "fresh pursuit" of a suspect. In a "fluid situation," the investigator concluded, the officers "were simply [] not on the same page."

In another incident, officers were investigating a stabbing. After obtaining a physical description of the perpetrator from a witness, and apparently without consulting a supervisor, the officers entered an apartment without consent, arrested a woman sleeping on a sofa, and detained her in handcuffs outside for two hours. The woman was not involved in the stabbing. A detective released her shortly after arriving, and an internal affairs investigator concluded that the officers lacked probable cause or exigent circumstances for their warrantless entry.

LMPD officers also unlawfully arrest and detain people. For example, officers arrest people for engaging in activity protected by the First Amendment. (See Section 6, below.)

Officers also arrest people who have not committed any crimes, citing them for offenses—such as disorderly conduct or menacing—without evidence establishing the elements of the offense. In one case, officers charged a Black woman with "obstructing governmental operations" and "obstructing a highway" for changing her baby's diaper in a car parked in an alley behind her family's house. The officers pulled her out of her car, threw her on the ground, and one officer placed his knee on her neck for 30 seconds. She appeared to lose consciousness. Her baby began crying, unattended in the front seat. The officers also frisked the woman's brother, removed his shoes, and detained him in a police car for more than half an hour, handcuffed and shoeless, even though he had not committed any crime. In the arrest report, the officers did not mention the knee on the woman's neck. Instead, they wrote that they "escorted [her] to the ground," and she "began acting as if she couldn't move." A prosecutor later dismissed the case against her.

We also identified numerous incidents during which LMPD officers questioned people in custody without providing timely *Miranda* warnings. These incidents raise a concern that LMPD disregards individuals' Fifth Amendment right against self-incrimination.

LMPD's systemic Fourth Amendment violations, which often violate LMPD's own policies as well as constitutional limits, reflect an overly aggressive approach to street encounters that harms people. LMPD's training materials encourage this aggressive approach to stops. One training, involving a hypothetical traffic stop, instructs recruits to remove an "argumentative" passenger and a "completely compliant" driver from the car and pat them down. Another training instructs officers that they "should not trust that a suspect is not a threat just because he/she is following your commands," and "the goal is control, and many times control means physically controlling a person." A high-level supervisor told us that officers need to understand that "not everyone wants to kill you."

During one traffic stop, involving a white woman with two one-year-old children in the car, an officer tried to open the door so forcefully that he broke the door handle. Although the woman's only infraction was speeding, the officer removed her from the car, handcuffed her,

searched the pockets of a sweater wrapped around her waist, and detained her in the back of his police car for nearly 15 minutes—all while her children were in her car unattended. The officer later told internal affairs investigators that he believed the woman was armed and dangerous because of her "furtive movements."

LMPD's unlawful street encounters are more than mere inconveniences—they can be invasive and humiliating. One resident told us that being stopped by the police was a "daily" occurrence in his neighborhood. He described these encounters as "just something we have to accept and go through" and said that residents "don't believe we have a recourse." Not only do LMPD's street enforcement practices violate the Fourth Amendment, but they also undermine public safety by poisoning the relationship between the police and community members.

5. LMPD Unlawfully Discriminates Against Black People in its Enforcement Activities.

We have reasonable cause to believe that LMPD engages in racial discrimination in violation of Title VI of the Civil Rights Act of 1964 and the Safe Streets Act. Black people in Louisville disproportionately experience the conduct described in the previous sections of this report. Nearly half of LMPD's reported uses of less-lethal force from 2016 to 2021 were against Black people—twice the overall percentage of Black residents in Louisville Metro. In nearly half of the incidents we reviewed that involved an unreasonable use of force, officers used unreasonable force against a Black person. LMPD's search warrant practices disproportionately affect Black people: LMPD's internal reporting indicates that from 2016 to 2021, more than 60 percent of no-knock search warrants and forced entries into buildings involved Black people. LMPD concentrates its pretextual street enforcement in Black neighborhoods, and we reviewed numerous traffic and pedestrian stops in which officers violated Black residents' Fourth Amendment rights.

Title VI and the Safe Streets Act prohibit police practices that have an unjustified disparate impact on the grounds of race.[49] These statutes prohibit police practices that disproportionately affect Black people unless there is a substantial, legitimate, non-discriminatory justification for those practices.[50]

Our conclusion that LMPD engages in unlawful discriminatory policing against Black people is based on the following:

- *First*, we identified significant racial disparities across a range of LMPD's documented enforcement activities, including stops, searches, and arrests. The actual racial disparities are probably even larger than LMPD's data and our analysis shows, because LMPD has failed to properly document tens of thousands of police encounters in Black neighborhoods. LMPD's disparate enforcement results in part from unlawful discrimination against Black people. The large racial disparities we found are unlikely to result from race-neutral factors. In multiple areas, LMPD treats Black people differently from white people who engage in similar behavior.

- *Second*, LMPD adopted and maintained practices that its own analyses showed would result in discriminatory policing, all while publicly presenting itself as an agency committed to fairness and building community trust. Year after year, LMPD's reports showed racial disparities in traffic enforcement. For example, annual reports from 2013 through 2019 showed that LMPD was between 54 percent and 95 percent more likely to search Black drivers than white drivers during traffic stops. As the warning signs mounted, LMPD maintained its discriminatory practices and declined to release reports showing continuing disparities.

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[49] 42 U.S.C. § 2000d (Title VI); 28 C.F.R. § 42.104(b)(2) (Title VI); 28 C.F.R. § 42.203 (Safe Streets Act).
[50] *See N.Y. Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995); *Georgia State Conf. of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985); *see also Texas Dep't of Housing & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 524 (2015).

- *Third*, LMPD fails to respond appropriately to officers who express explicit racial bias and animus towards Black people.

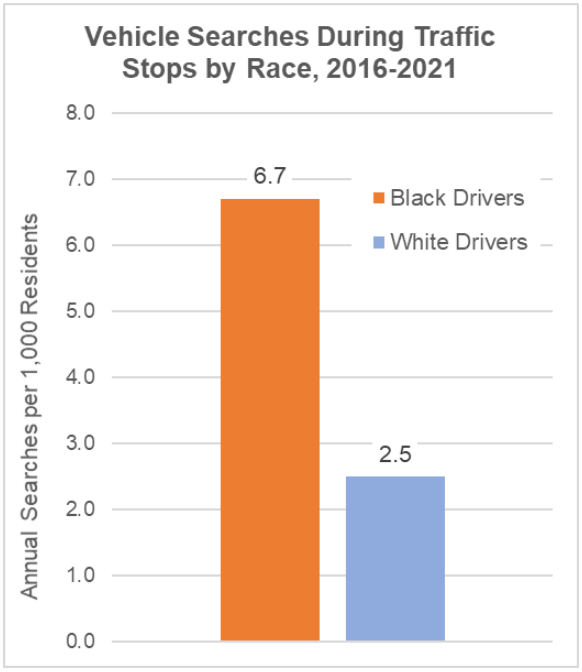
LMPD's practices violate federal law and undermine public safety.

a. LMPD Engages in Racially Disparate Enforcement that Harms Black People.

LMPD treats Black people differently than white people even when they engage in the same conduct. These racial disparities result from LMPD's decision to concentrate low-level enforcement in predominantly Black neighborhoods, as well as LMPD's selective enforcement against Black people throughout Louisville. LMPD's discriminatory enforcement harms Black people.

1. LMPD Unlawfully Uses Race in Its Enforcement Activities.

LMPD's own data show racial disparities in its enforcement activities, and those data likely understate the actual disparities because LMPD has failed to document thousands of police encounters in Black neighborhoods. As we explain later, LMPD received reports consistently showing that officers disproportionately stopped and searched Black drivers—including an unreleased 2019 report warning that "extralegal factors such as race of the driver" may affect stop outcomes. LMPD's overall traffic citation data, excluding stops on interstate highways, show statistically significant racial disparities in citations and searches of drivers when compared to the residential population in a given area. The data show that from 2016 to 2021, LMPD stopped and cited Black drivers at 1.5 times the rate of white drivers. As shown in the chart below, LMPD searched Black drivers during traffic stops at 2.6 times the rate of white drivers. These disparities persisted across nearly all of LMPD's eight divisions.

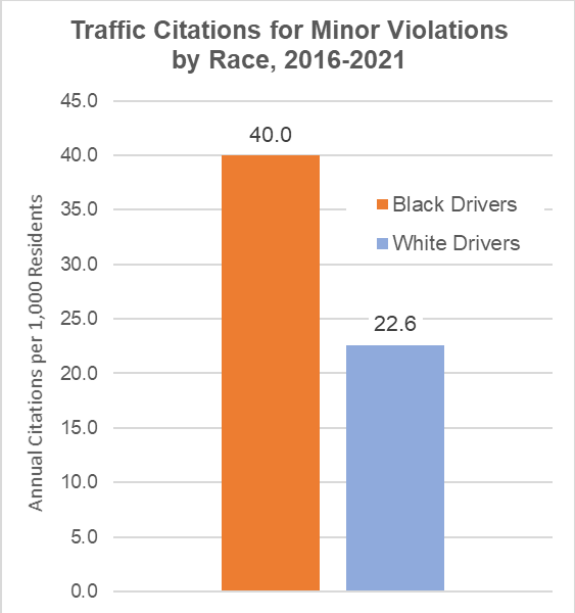


Because overall disparities may result from factors other than discriminatory policing, we conducted more refined analyses to account for race-neutral factors. Our statistical experts analyzed databases containing all of LMPD's reported traffic stops from 2016 to 2021, as well as dispatch data from MetroSafe. We conducted rigorous statistical analyses of LMPD's traffic enforcement. To account for potential race-neutral explanations of disparities, our experts analyzed LMPD's treatment of Black and white drivers observed engaging in comparable driving behavior, including the same types of traffic violations and whether officers described cars as suspicious. Our statistical analysis excluded all stops made on interstate highways, because commuters and drivers from other areas may give the interstate driving population a different racial composition than the local residential population. In addition to LMPD's overall traffic enforcement, we examined highly discretionary

actions and low-level offenses. Large racial disparities in these areas are additional evidence of discriminatory policing.

Based on these analyses, we find that LMPD disproportionately searches, detains, cites, and arrests Black residents, and that these disparities are not adequately explained by non-discriminatory factors. Even when comparing traffic stops for identical types of violations, LMPD officers search Black drivers more often and detain them for longer periods of time than white drivers. We also found large disparities in LMPD's enforcement of low-level offenses, like marijuana possession. Racial disparities in law enforcement activity are not necessarily the result of discriminatory policing. But in Louisville, we found that LMPD treats Black drivers differently from white drivers even when they engage in the same kinds of behavior. And the significant disparities we found in LMPD's low-level enforcement are unlikely to result from race-neutral reasons. The persistence of large racial disparities across a range of different law enforcement actions, and across the whole time period we studied, is evidence that these disparities result in part from unlawful discrimination.

Minor Traffic Offenses. LMPD disproportionately stops and cites Black drivers for minor traffic offenses such as equipment violations, improper tags, wide turns, and failure to signal. Overall, from 2016 to 2021, Black drivers were 1.8 times as likely to be cited for an equipment violation than white drivers. Black drivers were nearly twice as likely as white drivers to be cited for having one headlight out, 3.6 times as likely to be cited for improperly tinted windows, and 4.7 times as likely to be cited for improper tags. If these offenses are considered along with several other less serious offenses, Black drivers were 1.8 times as likely to be cited for minor violations, as shown in the chart. LMPD's data do not include encounters where officers stopped drivers for minor violations but did not issue citations, so the actual disparities for total minor violation stops may be even larger.



Moreover, LMPD enforces traffic laws differently in Black neighborhoods. LMPD cites drivers for minor violations throughout Louisville. In areas with a very low Black population, for example, about 45 percent of LMPD's traffic citations involve minor violations. But in areas with a majority-Black population, LMPD's proportion of minor violation citations jumps to more than 70 percent. We evaluated whether LMPD's disparate enforcement could be explained by differences in traffic accident rates in different parts of the city. For example, a high number of traffic accidents in one part of the city could be a race-neutral reason for conducting traffic stops in that area focused on broken headlights. But we found that LMPD makes a much larger percentage of stops for minor violations in Black neighborhoods as compared to white neighborhoods with similar levels of traffic accidents. In Black neighborhoods with low rates of traffic accidents, for example, 69 percent of LMPD's stops are for minor violations—more than twice the proportion of LMPD's minor violation stops in low-accident white neighborhoods.

Searches. LMPD disproportionately searches Black drivers who are stopped and cited. Even when comparing traffic stops that involve similar types of pre-stop behavior, Black drivers are 49 percent more likely to be searched than white drivers. Of the nearly 6,000 documented searches of Black drivers between 2016 and 2021, our statistical experts estimate that nearly 2,000 searches (32.8 percent) would not have occurred if LMPD had searched Black drivers at the same rates as white drivers who had engaged in identical types of pre-stop behavior. For example, among drivers who were stopped for running a stop sign, Black drivers were 3.5 times as likely to be searched as white drivers.

Prolonged Detentions. LMPD detains Black drivers significantly longer than white drivers during traffic stops. On average, LMPD's data shows that officers detain Black drivers for 15 percent longer than white drivers who were charged with the same types of violations. Black drivers are 26 percent more likely to be detained for longer than 20 minutes during a traffic stop, as compared to similarly situated white drivers.

Unreported Encounters. The data above show statistically significant racial disparities in stops that result in citations or arrests. But in Black neighborhoods, LMPD fails to document thousands of other traffic stops that do *not* result in citations or arrests. Those stops may also include prolonged detentions and searches.

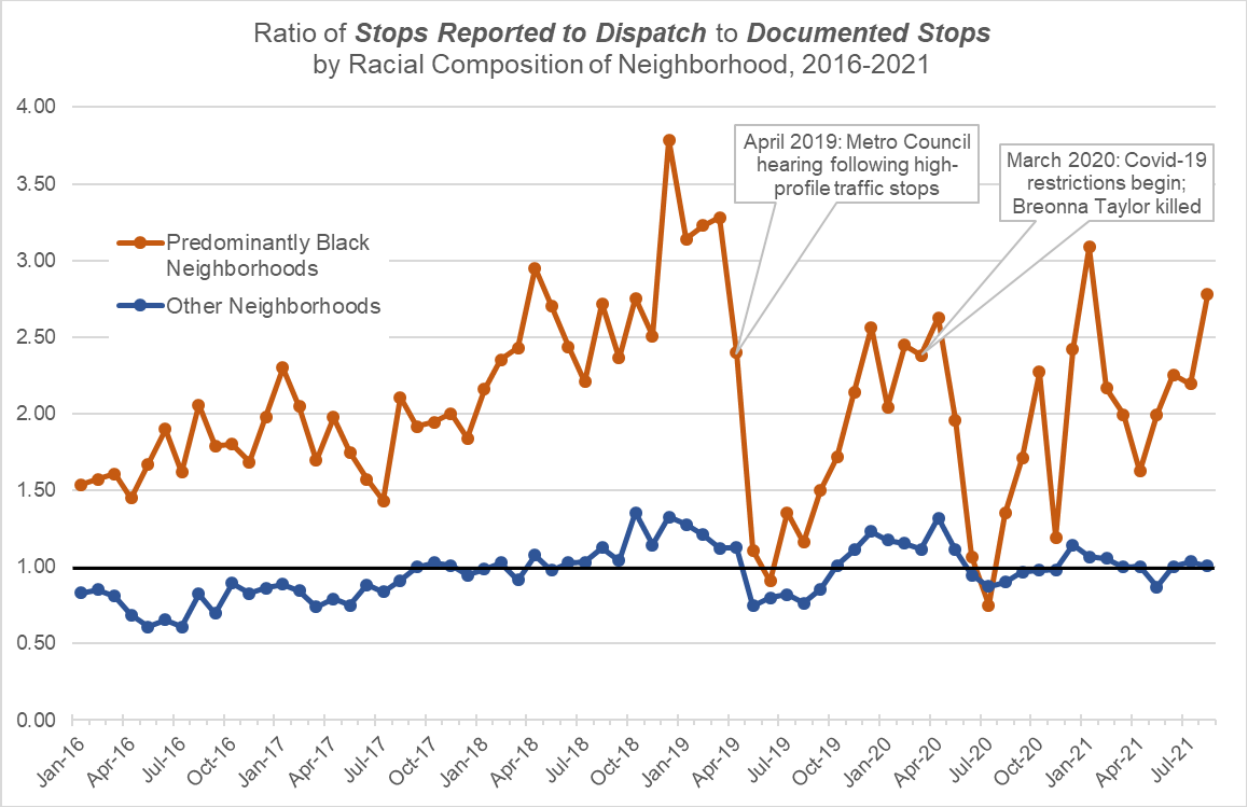
Comparing data from Metro's dispatch system with data from LMPD's official traffic stop databases, we found that LMPD regularly fails to document traffic stops in majority-Black neighborhoods. In these neighborhoods, officers reported to dispatchers at least 5,516 more traffic stops per year than they documented in LMPD's traffic stop databases. We did not find a similar inconsistency in neighborhoods with a lower Black population: for example, in neighborhoods with a Black population of 5 percent or less, officers did not report more stops to dispatchers than they documented in LMPD's traffic stop databases. The LMPD patrol divisions covering majority-Black neighborhoods were the only divisions that consistently engaged in more unreported encounters than documented stops.

By failing to document these encounters in LMPD's traffic stop databases, officers avoid providing information about the reason for a stop, its duration, the driver's race, and any searches of drivers, passengers, or cars. Accordingly, LMPD does not have reliable data about every traffic stop where an officer stops a driver, searches the car, finds no contraband, and issues no citation.

The chart below shows the monthly ratio of traffic stops in Metro's dispatch system to traffic stops in LMPD's traffic stop databases. A ratio higher than 1.00 means that officers failed to document at least some of their traffic stops. Higher ratios mean more unreported encounters. The graph presents these ratios for predominantly Black neighborhoods and for the rest of Louisville. As shown below, officers consistently fail to report encounters in predominantly Black neighborhoods. And although officers engaged in fewer unreported encounters after certain high-profile events, those events did not lead to a lasting change in LMPD's practice of failing to document enforcement activity in Black neighborhoods.

At certain places and times, documenting a stop has been the exception, rather than the rule. For example, in December 2018, officers reported about 1,600 traffic stops to dispatch in

majority-Black neighborhoods, but they documented only about 400 stops in LMPD's stop databases. That LMPD's *unreported* encounters are concentrated in Black neighborhoods is concerning, especially when LMPD's *reported* traffic enforcement results in disparate treatment of Black drivers. Although an area's residential population demographics may not match the area's driving population, LMPD's practice of failing to report encounters in Black neighborhoods suggests that the data understate the actual disparities in stops, prolonged detentions, and searches.

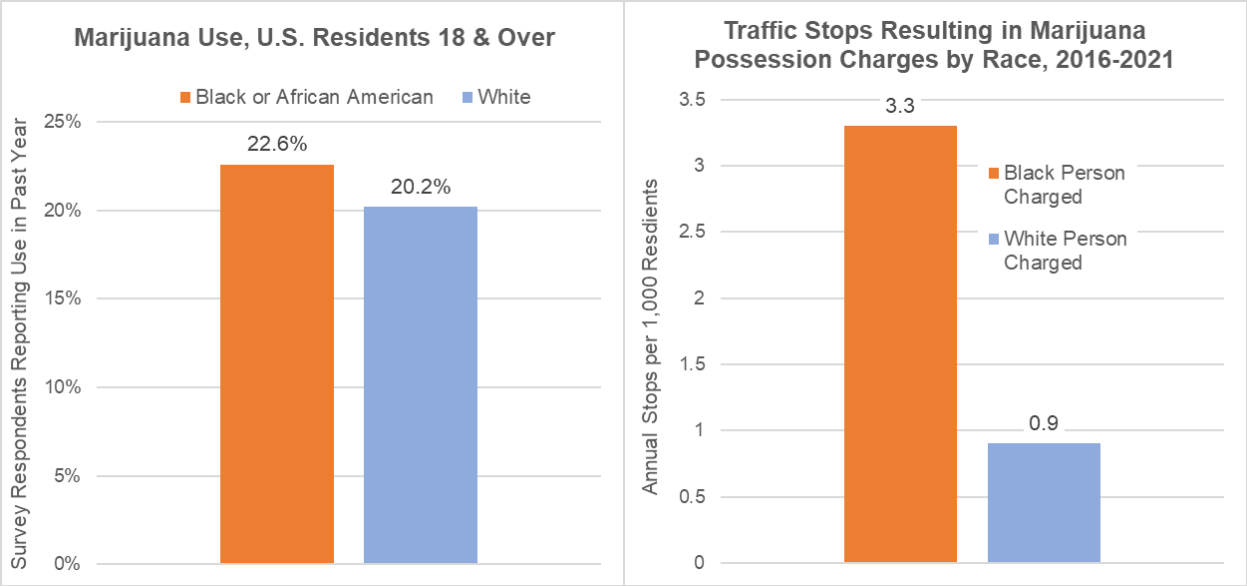


Marijuana Possession. We found striking disparities in LMPD's marijuana enforcement. Years of public health data show that Black people and white people use marijuana at similar rates. For example, a recent report by the U.S. Department of Health and Human Services showed that 22.6 percent of Black adults used marijuana, as compared with 20.2 percent of white adults.[51] We would therefore expect that if LMPD enforced marijuana possession laws without regard to race, Black and white people in Louisville would be charged with marijuana violations at roughly equal rates. But when we looked at citations and arrests for marijuana possession arising from traffic stops, we found that LMPD cites or arrests Black people for marijuana possession at nearly 4 times the rate of white people.[52] The chart below shows LMPD's racially

[51] U.S. Dept. of Health & Hum. Servs., Substance Abuse and & Mental Health Servs. Admin., *2021 Nat' Survey on Drug Use & Health (NSDUH)*, at tbl. 1.27B, https://perma.cc/CE2E-2X4G; *see also 2021 NSDUH Annual Report* (Dec. 2022), at 17, https://perma.cc/73WD-VZRV.

[52] LMPD cites or arrests Black residents for marijuana possession in traffic stops at a rate of 3.3 per 1,000 Black residents, as compared to 0.9 stops resulting in marijuana possession against white people per 1,000 white residents.

disparate marijuana enforcement. For this analysis, we considered only marijuana possession charges and excluded more serious charges involving drug trafficking.



When we limited the analysis to stops involving only minor traffic offenses, the disparity grew even wider: Black people were charged for marijuana possession at more than 5 times the rate of white people in these circumstances. These disparities extend across nearly all areas of Louisville, and they have grown in recent years. In 2021, LMPD charged Black people for marijuana possession at more than 6 times the rate of white people, and in stops that involved only minor traffic offenses, LMPD charged Black people for marijuana possession at nearly 10 times the rate of white people.

Other Misdemeanor Offenses. LMPD charges Black people at higher rates than white people for misdemeanor offenses for which officers typically have wide discretion over whether to charge someone. For example, LMPD charges Black people for loitering at more than 4 times the rate of white people, for disorderly conduct at 2.5 times the rate of white people, and for littering at 3 times the rate of white people. These disparities are so large that they are unlikely to result from race-neutral enforcement. LMPD's disparate enforcement of these misdemeanor offenses is additional evidence that LMPD unlawfully discriminates against Black people.

2. LMPD's Discriminatory Pretextual Enforcement Harms Black People.

LMPD's decision to rely on low-level, pretextual enforcement, especially in Black neighborhoods, provides important context for these racial disparities. At times, LMPD has defended its reliance on pretextual enforcement by citing violent crime rates in predominantly Black neighborhoods. But the racial disparities we identified are not limited to certain neighborhoods: LMPD engages in racially disparate enforcement throughout Louisville, including in areas with a low Black population. Nor does the goal of violent crime reduction justify LMPD's racially disparate policing. As a predictable result of its enforcement strategy, LMPD treats Black people differently from white people who engage in similar conduct. That is

unlawful.[53] As Chief Shields explained in 2021, "If you're going to police fairly and ethically, practices have to be consistent. And your standards have to be consistent, regardless of the neighborhood."

LMPD's pretextual stops differ from routine traffic stops that many people may have experienced. The officer's stated reason for the stop is usually a minor violation: expired tags, a faulty taillight, a wide turn. But officers' conduct makes clear that they are really looking for something else. Multiple officers walk up to the car. If the stop happens at night, one officer may approach from the passenger side, shining a flashlight into the window. After asking for drivers' licenses and checking for outstanding warrants, officers also examine drivers' and passengers' prior criminal history. During the stop, as many as four or five officers may show up. Officers ask if there are guns or drugs in the car. Officers may ask for consent to search the car. They may call in drug-sniffing dogs to walk around the car. And officers often order drivers and passengers out of cars to frisk them for concealed weapons, without reason to believe they are armed and dangerous, which is required for a frisk.[54] We reviewed pretextual traffic stops of Black teenagers, people leaving work or picking up their children, and families coming from church.

The Supreme Court has described traffic stops as "relatively brief" encounters.[55] But LMPD's pretextual stops can be prolonged, intrusive, and humiliating. These encounters can have a lasting impact, particularly for people who experience them again and again. Citations can lead to fines, court fees, and arrests for unpaid tickets. And when drivers sense that their race may have played a role in the stop—a concern supported by the statistical analysis above—the impact on residents and the community can be even greater.

Black residents told us that officers stop them repeatedly and treat them unfairly. One man told us that being stopped made him feel less than human—like he was locked in a room and someone outside was telling him, "I will let you out if you do [what] I tell you to do." A Black minister told us that officers display a "lack of respect for the humanity of the Black community." A Black woman said that a traffic stop made her feel "violated," "harassed," "disrespected," and "automatically guilty before we had a[n] opportunity to even say hello or anything." Another woman who was patted down by a male officer during a traffic stop said "it really felt wrong to me," and that she felt "humiliated" and "embarrassed." In June 2020, a veteran Black officer resigned from LMPD and wrote on social media about seeing unfair treatment of Black drivers: "So if you're going to give a white citizen a courtesy notice and not going to pull them out of the car and ask to search, then be fair across the board. If he's Black . . . and the only thing he's done is a minor traffic infraction, then why are you pulling him out of the car? Why are you running a dog around his car, why are you searching his car?"

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[53] *See Farm Labor Org. Comm. v. Ohio State Hwy. Patrol*, 308 F.3d 523, 534 (6th Cir. 2002) (a plaintiff can show unlawful discrimination through "statistical or other evidence" that shows "whether one class is being treated differently from another class that is otherwise similarly situated").

[54] See discussion of frisks in Section 4, above.

[55] *Rodriguez v. United States*, 575 U.S. 348, 354 (2015).

Black youth in Louisville told us how they experience interactions with officers. They feel "intimidated," "mad," "scared," "panic," and "paranoia." They described LMPD as a "gang." A 21-year-old estimated that officers had stopped him on the street more than 50 times. Researchers have linked frequent and invasive stops to adverse health effects among young people, including trauma, anxiety, psychological distress, and substance abuse. Research also finds that, due in part to the psychological distress they may cause, police stops are linked to an increased likelihood that a child will disengage from school and engage in delinquent behavior.[56] Some Black people in Louisville perceive that officers are afraid of them. When we asked a group of young people what they wished LMPD officers knew about them, one young man responded, "We aren't trying to hurt them."

b. Louisville Metro and LMPD Knew About Discriminatory Policing and Adopted Practices that Increased the Risk of Discrimination.

Our statistical analysis and residents' accounts are only the latest evidence of discriminatory policing in Louisville. More than twenty years of reports alerted city leaders to troubling racial disparities. Louisville Metro and LMPD knew of racial disparities from their own data, publicly available analyses, and complaints from community members. Between 2000 and 2008, at least five separate reports—including three commissioned by LMPD itself—showed racial disparities in enforcement. In 2000, the Louisville Courier Journal found that Black drivers were twice as likely as white drivers to be pulled over and checked for arrest warrants.[57] The police chief challenged the study's "validity," asserting that "we have a history of working crime problems." But LMPD's own reports also showed disparities. LMPD retained a University of Louisville professor to complete annual reports analyzing vehicle stops in 2004, 2005, and 2006. Each report showed that Black drivers were two to three times more likely to be searched during a traffic stop than white drivers. After 2006, LMPD stopped publishing vehicle stop reports until 2013.

In 2012, despite knowing of these racial disparities, LMPD created a unit that engaged in aggressive pretextual enforcement. The Violent Incident Prevention, Enforcement and Response (VIPER) Unit focused its enforcement on "hot spots" of violent crime, including by stopping people in certain neighborhoods for minor traffic infractions and other low-level offenses.

To lead the VIPER Unit, LMPD selected a lieutenant who had previously been disciplined for racist comments. Officers told investigators that the lieutenant asked a Latino officer "why he was Mexican and could not speak Spanish," said "all Asians can do are play in Godzilla movies," and called an officer a "chink" and told him "that's why we killed all your people with the bomb back in Japan." In 2014, the lieutenant resigned during an internal

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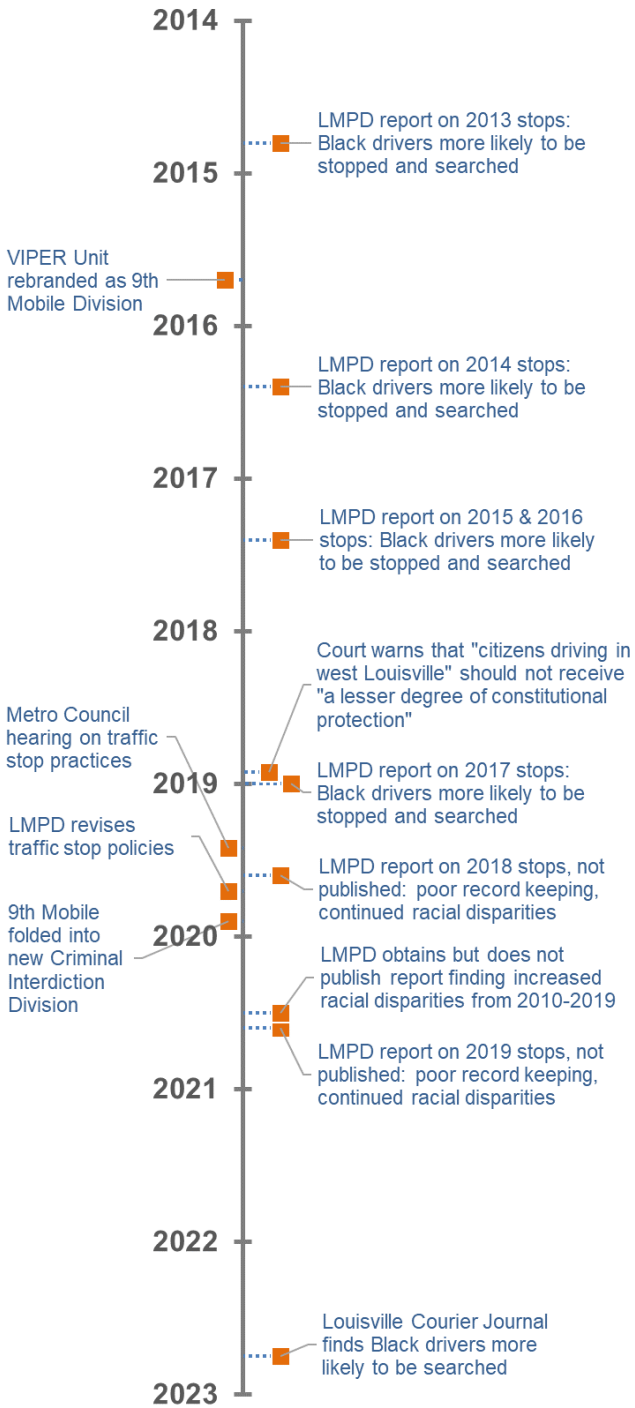
[56] Juan Del Toro et al., *The criminogenic and psychological effects of police stops on adolescent black and Latino boys*, Proceedings of the National Academy of Sciences, Vol. 116, No. 17 (Apr. 23, 2019); Juan Del Toro et al., *The Policing Paradox: Police Stops Predict Youth's School Disengagement Via Elevated Psychological Distress*, Developmental Psychology (2022).

[57] Jim Adams, *Study: Police stopped blacks twice as often as whites; Louisville chief says traffic survey is flawed*, Louisville Courier Journal (Oct. 29, 2000).

investigation, which found that VIPER officers displayed pornographic material throughout the office and that the lieutenant regularly exposed himself to other officers "as a joke."

Residents called VIPER officers "jump out boys" for their aggressive tactics, and protesters demonstrated in front of police headquarters to demand an end to the unit. In 2015, LMPD "rebranded" the VIPER Unit as the Ninth Mobile Division. Most of the officers in this new unit had been in VIPER. Chief Conrad described Ninth Mobile as merely "the next iteration" of VIPER, with a similar mission: to "focus in on the small number of people that are committing the most violent crimes," "the worst of the worst." LMPD pressured officers and supervisors in Ninth Mobile and patrol divisions to generate "stats" like stops and arrests, especially in predominantly Black neighborhoods. Despite VIPER's failures, LMPD leaders again failed to monitor Ninth Mobile. Neither Chief Conrad nor Ninth Mobile's leader analyzed enforcement activities for signs of discrimination. Federal and state courts found that Ninth Mobile officers violated residents' Fourth Amendment rights, and we reviewed incidents in which Ninth Mobile and other patrol officers engaged in unlawful street enforcement activities, as described in Section 4 above.

LMPD Fails to Act in Response to Repeated Warnings of Discriminatory Policing



During this same time period, LMPD resumed its annual reports analyzing vehicle stops. The 2013, 2014, 2015, 2016, and 2017 vehicle stop reports all found that LMPD disproportionately stopped and searched Black drivers. In response to these reports, LMPD rationalized the disparities and failed to collect other important data about officers' activities.

In 2016, for example, while providing an internal evaluation of a report on racial disparities in traffic stops, an LMPD major attributed disparities in searches to "the marijuana factor that you commonly see in the 1st, 2nd, and 4th divisions," which cover predominantly Black

neighborhoods. As noted above, however, Black people and white people do not use marijuana at significantly different rates. In response to a sentence in the report raising "concern" that officers may search people based on "extra-legal factors such as . . . race," the major suggested deleting the sentence as "unnecessary" and "implying there is a problem." As LMPD continued reporting disparities in traffic stops, it failed to collect data about pedestrian stops that could reveal additional disparities. LMPD has admitted its failure to collect pedestrian stop data since 2016, yet it still does not collect that data today.

In 2018 and 2019, LMPD's pretextual traffic stops led to complaints from Black residents, widespread media coverage, Metro Council hearings, and court cases. During an August 2018 traffic stop of a Black teenager, which involved at least five officers and a drug-sniffing dog, a detective told the teenager's mother that "we are told by our commanders, by the chief's office" to patrol the "18th Street Corridor, California Park, Victory Park, [and] Park Hill," and "we focus on traffic stops." These neighborhoods are 90 percent Black. That widely publicized encounter and others led to a Metro Council hearing in April 2019, where Chief Conrad defended LMPD's practices.

Shortly after testifying, Chief Conrad opened an internal investigation into Ninth Mobile officers for failing to document traffic stops. The next day, an LMPD official wrote in an email, "we do not have data on how many stops were made [by Ninth Mobile] that did not result in any arrest or citation." In other words, when LMPD leaders tried to figure out what one of their most active units was doing, they realized officers were not documenting their activities—even though LMPD policy required officers to document "every traffic stop, regardless of whether a citation is written or an arrest is made." LMPD learned that some Ninth Mobile officers had not completed any vehicle stop forms for 2018, which contradicted those officers' statements to investigators that their normal practice was to record stops. In February 2020, LMPD issued written reprimands to 23 Ninth Mobile officers for failure to document traffic stops.

LMPD downplayed other signs of racial discrimination. When a Black couple stopped after church alleged that officers targeted them based on their race, LMPD investigators exonerated the officers, in part because one officer had "a close, personal relationship with one of our minority officers." In late 2018, a state court held that LMPD unlawfully detained a Black man during a traffic stop. The court stated that "citizens driving in west Louisville" should not receive "a lesser degree of constitutional protection," and "protected activity on one side of town must be deemed protected activity on all sides of town." After the Courier Journal published an article about the case, LMPD opened an investigation. An LMPD investigator criticized the court as "uninformed" and described the court's statement about west Louisville drivers' constitutional rights as "a gratuitous editorial." Nearly two years after the court's decision, LMPD found no policy violations. LMPD's traffic stops of Black drivers were also the subject of several federal civil rights lawsuits, including some that Louisville Metro later settled.

The actions LMPD did take were superficial. In August 2019, LMPD revised certain policies related to traffic stops. The revised policies do not set clear rules for officers or change enforcement priorities, and LMPD failed to supervise officers and hold them accountable for violating the policies. LMPD's data show that the revised policies did not reduce racial disparities: After these policies went into effect, officers continued citing Black drivers for minor traffic violations at higher rates than white drivers, and detaining Black drivers longer than white

drivers for the same conduct. And overall, LMPD's traffic enforcement still focuses not on serious offenses like driving under the influence but instead on minor violations like broken headlights and expired tags, especially in Black neighborhoods.

The drumbeat of troubling statistical analyses continued. LMPD received draft vehicle stop reports covering 2018 and 2019. The 2019 draft report stated that "LMPD is potentially missing thousands of stops" because officers do not record stops resulting in warnings. LMPD thus departs from its own policy stating that the annual reports will cover "*all* stops by officers." The 2018 report found that officers disproportionately stopped Black drivers in seven of the eight LMPD divisions, and that the relationship between traffic stops and violent crime rates was "not strong." The 2019 report warned of "trends" that "should be further reviewed and addressed," and that "the data may suggest trend[s] that extralegal factors such as race of the driver contribute in some way to the nature and outcome of a stop." LMPD did not release either report to the public.

Other reports showed similarly concerning results. In 2019, for example, the Courier Journal found that officers cited Black drivers for marijuana possession at six times the rate of white drivers. Our statistical analysis found that LMPD's marijuana disparities grew even larger after this report. City officials also learned of stark disparities in enforcement against Black youth: Between 2016 and 2021, over 70 percent of youth arrested and brought to the juvenile detention center were Black, even though Black youth make up less than one-third of the youth population. LMPD makes the vast majority of youth arrests in Louisville.

In 2020, LMPD received a draft report from the Center for Policing Equity, which found that officers disproportionately stopped, searched, and used force against Black people, and that disparities increased from 2010 to 2019. The researchers recommended that LMPD "implement systems to collect data on all stops, including pedestrian stops," and require supervisors to review officers' stops. LMPD did not implement such systems. The researchers encouraged LMPD to "share these results with the people of Louisville" to promote "transparency," "accountability," and "community partnership in producing equity and public safety." LMPD did not release the report.

In September 2022, the Courier Journal published yet another report about LMPD's disparate traffic enforcement, finding that Black people were disproportionately likely to be searched. LMPD responded in a written statement. LMPD attributed "[m]any of law enforcement's failures" to a "historical emphasis" on "high arrest numbers," which has "created irreparable damage" in communities affected by violence. Nonetheless, LMPD defended its practice of sending "violent crime reduction details" to engage in traffic enforcement "primarily in the 2nd and 4th Divisions," which cover predominantly Black neighborhoods. And, as the police chief did more than 20 years ago, LMPD criticized the Courier Journal's analysis. In LMPD's view, the analysis was "inaccurate" and "highly inflammatory" because it included stops on interstate highways. LMPD's statement did not mention that the Courier Journal's findings were consistent with LMPD's own recent analyses, including reports that LMPD has declined to release to the public. In any event, as we explained above, LMPD's racially disparate enforcement persists even after excluding interstate stops.

After more than two decades of data, LMPD maintains practices that result in disparate treatment of Black residents. LMPD does not collect data on all traffic and pedestrian stops. Supervisors do not review officers' stops, searches, or arrests for constitutionality. Street enforcement units operate without proper oversight: the latest version, the Criminal Interdiction Division, started in 2019 with more than 20 former Ninth Mobile officers. And LMPD allows and encourages officers to act on vague indicia of suspicion when conducting pretextual stops, which increases the risk that officers will engage in discriminatory enforcement.

After more than two decades of data and reports finding racial disparities, LMPD maintains practices that result in disparate treatment of Black residents.

c. LMPD Fails to Respond Appropriately to Officers Who Express Explicit Racial Bias and Animus.

Our finding of unlawful discrimination is further supported by explicit racial bias within LMPD and LMPD's inadequate response to bias allegations. Although we met many LMPD officers who work hard to protect and build trust with Louisville's Black community, we found numerous occasions over the last decade when officers have expressed racial bias and animus in their interactions with each other and with community members. These incidents reflected some officers adopting racial stereotypes, including the view that Black people do not care about violence in their communities.

On paper, LMPD policies prohibit prejudice and "biased law enforcement practices." But in practice, LMPD has failed to respond appropriately to allegations of racial bias, including some made by its own officers. From 2016 through 2022, LMPD did not discipline a single officer for biased law enforcement practices or racial prejudice. Weak accountability for discriminatory conduct allows racial prejudice to fester in LMPD, deepens community distrust, and undermines officers who strive to do their jobs fairly and impartially.

For example, in 2015, a white sergeant berated three Black men in a car and called them "fucking monkeys." One of the men later told a reporter that the sergeant "said 'monkey' like that meant something to him, like old times back in the 40s and 50s." LMPD investigated the sergeant for discourtesy and conduct unbecoming, but not bias or prejudice. LMPD sustained the misconduct allegations, but the sergeant retired before he could be disciplined.

In 2017, two white officers saw a Black man standing in the street. When the officers got out of their car and approached the man, the man fled and allegedly discarded a handgun. The officers chased him, tackled him, and struck him with their knees and elbows. One officer yelled, "Gimme your arm, boy!" The officers continued striking and cursing at the man after he yelled, "I'm down!" and "I can't breathe!" The man's face was bleeding in multiple places. After the officers handcuffed the man, and while he was lying on the ground, an officer said, "This is what happens when you act like a fucking thug." When the man denied having a gun and asked why the officers chased him, the officer said, "That's the problem with this community, nobody wants to take a stand for what they did." Supervisors found the officers' force justified and

recommended "no further action," stating that the officers were "verbally counseled for vulgar language in the heat of the moment."

At a September 2019 in-service training, officers alleged that a white officer said, "We have a black and white issue in this city," "the minorities are the majority and they're the ones that's committing the . . . violent crime," and "until we quit catering to them people, we're never going to solve anything." Black officers told investigators that the officer's comments "stuck a stake in me," "I had to leave the room," and "finding out that she worked in the West End" was "shocking." Those accounts were corroborated by a supervisor, who described the comments as "downright offensive" and noted that the officer, when given an opportunity to explain herself, denied saying anything inappropriate and said she had "some black friends." Despite considerable evidence of racial bias, LMPD investigators only examined the incident as alleged conduct unbecoming, not potential bias or prejudice. They recommended finding no violation. The investigators did not find the comments "unequivocally racially insensitive or offensive," relying on the officer's "passionate declaration" that she was not racist. And although more than ten different people in the room—including multiple supervisors—recounted the officer's comments in similar terms and described reactions of shock and anger, investigators concluded that "[n]o single person in the classroom is perfectly clear" on what occurred and "[r]emarkably few members were angry or upset with the officer." LMPD closed the investigation more than one year after the incident, found no violation, and imposed no discipline.

In June 2020, officers pursued a car that another officer reported had been stolen at gunpoint. Two Black teenagers and a 20-year-old were in the car. The pursuit ended when they got into an accident and got out of the car. A white officer ran towards the 20-year-old driver with his gun drawn, screaming, "Get on the fucking ground! I will fucking kill you!" The young man laid down flat on his stomach by the side of the road, motionless. Although he was unarmed and posed no threat to the officer, the officer grabbed him by his dreadlocks, yelled, "What the fuck!" and shoved the youth's head back to the ground. The officer then handcuffed him while he was on the ground. The young man did not immediately stand up when the officer tried to lift him off the ground. The officer then dragged him, handcuffed, along the side of the road, telling him, "I'll drag you through the fucking dirt like an animal if you don't want to move." After pausing for a moment to speak with other officers, the officer turned back to the young man and again threatened to treat him "like a fucking animal." A sergeant reviewed the incident and "verbally counseled" the officer about "courtesy," "tactics," and "conduct unbecoming," and a lieutenant recommended "[n]o further action," before a major recommended an internal investigation. In October 2020, the chief initiated an investigation into the officer's conduct. More than two years later, in November 2022, LMPD suspended the officer for 10 days based on excessive force and courtesy violations, but LMPD exonerated the officer of a prejudice violation. LMPD investigators did not examine whether the officer's threat to treat a young Black man "like a fucking animal" reflected racial prejudice.

In addition to explicit racial bias, we identified instances of officers expressing disrespect, hostility, and contempt toward Louisville residents. These incidents, when considered alongside some officers' expressions of racial bias, are part of an overall pattern of discriminatory treatment. In 2018 and 2019, Ninth Mobile detectives threw large drinks at residents while on duty in west Louisville. Detectives drove slowly near pedestrians, announced "someone was thirsty" on the police radio, threw drinks at the pedestrians, and fled. Detectives

recorded videos of these attacks on their cell phones and shared the videos with other Ninth Mobile members during roll call. In June 2022, two detectives pleaded guilty to federal civil rights violations for this conduct. Some LMPD officers routinely threw garbage out of their cars while on duty. One officer said this practice was common "in the West End" because officers thought, "Ah, if they're going to treat their part of town like trash, then we'll treat it like trash, too."

In sum, LMPD's inadequate and dismissive response to racial bias signals that discrimination is tolerated. In one case, involving an officer who described a Black teenager as a "wild animal that needs to be put down," LMPD investigators asked the officer leading questions like "when you used the word animal, are you describing the person or the behavior?" and "So, you're not racist by any means?" LMPD's tolerance of explicit racial bias within its ranks is further evidence of unlawful discrimination.

d. LMPD's Discriminatory Policing Undermines Public Safety.

LMPD's discriminatory policing practices have been counterproductive.

Pretextual Traffic Stops. City officials have recognized the flaws of relying on traffic stops to address violent crime. In 2019, Chief Conrad admitted that more than 90 percent of stops recovered no contraband, and that "statistically," traffic stops are not "a particularly effective tool for addressing violent crime." Metro Council members said that LMPD's enforcement imposes a "disparate impact" on Black residents. In 2021, Chief Shields said the Hillard Heintze report showed that "there is racial profiling," citing the "disproportionate number of Black motorists being stopped" in predominantly white neighborhoods. In 2022, Chief Shields said LMPD "got itself in trouble" by engaging in "targeted enforcement," and "the data shows that all day long." Instead of such targeted enforcement, she said traffic enforcement should prioritize reducing traffic fatalities.

At times, LMPD leaders have recognized the flaws of relying on traffic stops to address violent crime.

Studies from across the country have found that overreliance on pretextual stops leads to racial disparities without meaningfully improving public safety. Large-scale analyses of traffic stops in the states of Washington and Vermont found that pretextual enforcement may contribute to racial disparities.[58] In Nashville, Tennessee, a study found that the "practice of making large numbers of stops in high crime neighborhoods does not appear to have any effect on crime."[59] And in Fayetteville, North Carolina, the police prioritized serious traffic offenses over minor

[58] Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 Stanford L. Rev. 637, 644 (2021); Stephanie Seguino, *Trends in Racial Disparities in Vermont Traffic Stops, 2014-2019* (2021).

[59] The Policing Project, *An Assessment of Traffic Stops and Policing Strategies in Nashville*, at 3, https://perma.cc/S3YV-TEV7.

violations, and a study found that racial disparities decreased, traffic safety improved, and "[n]on-traffic crime outcomes showed little change."[60]

Solving Violent Crime. LMPD's discriminatory policing may undermine efforts to solve serious violent crime. Law enforcement experts have linked the ability to solve crimes to community members' willingness to share information, and community members are more likely to cooperate when they trust the police.[61] From 2016 to 2021, LMPD reported arresting a suspect in 30 to 35 percent of homicides. In other words, LMPD only arrested a suspect in one out of every three homicides in Louisville. That is far below the national average "clearance rate" of 50 to 60 percent, and several other large police departments have clearance rates more than double LMPD's.[62] When a homicide victim was Black, LMPD was 33 percent less likely to arrest a suspect than if the victim was white. LMPD's clearance rate for non-fatal shootings is even lower than its homicide clearance rate. Community members, homicide detectives, and LMPD leaders attribute LMPD's low clearance rates to a lack of trust in the police. LMPD's pretextual traffic stops and other unnecessarily intrusive interactions erode trust in the police and may hamper LMPD's ability to investigate and solve crimes. As one LMPD leader told us, emphasizing pretextual enforcement in certain "hot spot" neighborhoods means that residents are "targeted twice": first by violent crime, and then by the police.

Lawful Approaches to Public Safety. City leaders, officers, and community members have long called for an end to discriminatory practices in favor of lawful approaches to public safety that are also more effective at reducing violent crime. LMPD has discussed community policing, or partnering with residents to address public safety challenges. Officers told us they are asked to be social workers or mental health professionals, and they need more support from the rest of city government. The police union president called for action to "identify the root causes" of violence, which would allow "early intervention," as well as "sufficient programs that focus on juvenile victims" and discourage "retaliation."

In addition to LMPD, other city agencies play an important role in public safety, including agencies that work with community members to prevent violence, provide behavioral health services, and offer programs for youth. But Louisville Metro and LMPD have not implemented and sustained these important public safety initiatives. In 2019, for example, Louisville Metro cut violence prevention services by $1 million, which led to the closure of a site in west Louisville, and made cuts to a youth jobs program that were projected to reduce participation by 17 percent. Metro agencies warned that the cuts "would reduce the ability to interrupt shootings and homicides" and "likely lead to a higher crime rate." Since 2020, Louisville Metro has increased funding for violence prevention services and restated a commitment to community policing, but it does not ensure effective coordination between LMPD and other city agencies. In late 2021, for example, officials wrote to the mayor's office that Louisville's Group Violence Intervention program has "no clear identifiable plan or

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[60] Mike Dolan Fliss et al, *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities*, Injury Epidemiology (2020) 7:3, at 6-7, https://perma.cc/AKM2-5CZJ.
[61] *See, e.g.*, David L. Carter, *Homicide Process Mapping: Best Practices for Increasing Homicide Clearances*, Bureau of Justice Assistance (2013), at ii, 11-12, 25, https://perma.cc/9RTU-NEZA.
[62] *See, e.g.*, Alex Giles, *Crime Stoppers: CMPD homicide clearance rate higher than national and state clearance rates, some families still await justice*, WBTV (Jun. 29, 2022), https://perma.cc/C5VT-DG2T.

timeline" to engage those involved in violence. They wrote that LMPD's Victim Services Unit "does not have the capacity to provide such services," and "we should not make promises for assistance when we do not have a system in place to provide it."

* * *

LMPD engages in unlawful racial discrimination. Despite vocal community opposition to discriminatory practices and years of reports showing troubling racial disparities, LMPD and Louisville Metro maintain practices that foreseeably lead to discriminatory policing. These practices include extensive pretextual enforcement in Black neighborhoods, poor data collection, and weak supervision and accountability. Addressing discriminatory policing will require significant changes in LMPD, continued engagement from community members, and support from other parts of Metro government. Louisville Metro and LMPD must implement and sustain practices that reduce discrimination and keep residents safe.

6. LMPD Violates the First Amendment When Responding to Protected Speech Against Police Action.

The First Amendment protects free speech, free press, and the right to gather in public to talk about political issues. Protests in public places like streets, sidewalks, and parks are due extra protection. So, too, is speech about policing—which falls under the Supreme Court's definition of "core political speech" deemed integral to our constitutional form of government. As the Court has explained, "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."[63]

The First Amendment allows police to address unlawful conduct that threatens public safety. Indeed, good policing ensures the right to public protest by guarding everyone from harm. But LMPD often responds aggressively to police-related speech, including by taking actions that could deter a person from criticizing police or assembling in a group to do so.

Our First Amendment findings are narrow, tied to protected speech about policing. Protests about policing pose unique challenges for law enforcement. In these events, responding officers will likely hear intense criticism of themselves, colleagues, their profession, and the actions they take in the moment. Likewise, protesters may find police presence provocative. Inappropriate actions by individuals in either group can quickly escalate to the detriment of both public safety and free speech. Challenges multiply if a few violent people hide among many peaceful protesters, or if individual police officers use excessive force. But these factors do not make police protests so inherently violent, lawless, or dangerous as to be entitled less First Amendment protection.

a. LMPD Abridged the First Amendment Right to Challenge Police Verbally During the 2020 Protests.

Beginning in May 2020, as news about Breonna Taylor's killing became public and George Floyd's murder was caught on video, Louisville Metro, like many other places, saw extensive police protests. Despite being aware of the risk of massive protests, LMPD was unprepared. Louisville Metro officials and LMPD lacked a consistent, coordinated response to the many discrete events and did not always communicate effectively with public safety personnel or the community, creating the appearance of disjointed and untimely decision-making. LMPD acknowledges it can improve, but did not conduct a comprehensive review of its 2020 protest response.

For nearly five months, LMPD responded to near daily protests for racial justice and police accountability. These events often involved both a large group of many peaceful people who lawfully denounced police brutality and a much smaller number of violent criminals who used firearms, incendiary devices, and projectiles to injure first responders and civilians and damage public and private property. Events were especially chaotic and dangerous at times.[64]

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[63] *City of Houston, Tex. v. Hill*, 482 U.S. 451, 461–63 (1987).

[64] During the 2020 protests, multiple officers and civilians were injured, including by gunfire. Two civilians died: David McAtee on June 1, 2020, and Tyler Gerth on June 27, 2020.

But not always. Many events and a vast majority of protesters were peaceful when subject to dispersal orders, force, or arrest. The scene was often stable when LMPD used force or arrested a person who verbally challenged police action. LMPD did not always fairly distinguish these cases, but sometimes conflated the protest message with disorder and danger, indiscriminately used force, or improperly arrested peaceful and law-abiding protesters.[65]

LMPD officers sometimes used riot sticks, less-lethal munitions, or chemical agents against protesters who did no more than passively resist or disperse more slowly than officers desired. By using force against peaceful protesters without individualized and adequate justifications, LMPD repeatedly retaliated against speech, in violation of the First Amendment. Officers fired thousands of less-lethal rounds, including at peaceful protesters from a rooftop, and at moving vehicles that posed no threat, sometimes shattering windows and risking serious injury to drivers, passengers, and bystanders. In one tragic case, an officer pled guilty to a federal crime after firing less-lethal rounds—without warning—first at a peaceful crowd assembled on private property, then directly at a young Black woman as she ran for cover in her uncle's business. In response to the unprovoked attack, her uncle, David McAtee, fired twice in the air from the business doorway, triggering at least 19 return shots from two LMPD officers and two National Guard members, with a Guard member firing the round that killed Mr. McAtee.

LMPD officers unlawfully used force against protesters who had surrendered. In one case, an officer pled guilty to federal crimes for striking a person in the back of the head with a riot stick after the person dropped to their knees and raised their hands. In another case, a young Black woman stood calmly in Jefferson Square Park surrounded by officers, one hand raised with the other clutching a plastic cup. The scene was stable until an officer who stood several yards away inserted himself into the event. Immediately upon reaching the woman—and without warning—he hit her twice in the chest with his riot stick, then grabbed her by the throat, choking the air out of her as he slammed her up against a squad car then down to the concrete path. He released the chokehold only after another officer physically intervened to pull his hand off the woman's neck while other officers, to their credit, shouted at him to stop. Force is not constitutionally justified against nonviolent people, like this young woman, who do not flee or actively resist arrest and who pose little or no threat.

LMPD also made improper, warrantless arrests during police protests. LMPD arrested some protesters based on the actions of others or for vague subjective reasons, like causing "annoyance," "alarm," or "inconvenience." When arresting police protesters, LMPD often issued multiple charges, like disorderly conduct, failure to disperse, and unlawful assembly, instead of issuing a single charge as LMPD did when arresting other kinds of protesters. Several times, LMPD made mass arrests without probable cause to show that each arrestee did what was charged. For example, on July 24, 2020, officers mass-produced boilerplate citations with three common charges and generic narratives that other officers used to arrest more than 70 people. The citations and body-worn camera recordings reveal a plan, endorsed by supervisors, in which

[65] *Cf. Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 252–53 (6th Cir. 2015) (en banc) ("When a peaceful speaker, whose message is constitutionally protected, is confronted by a hostile crowd, the state may not silence the speaker as an expedient alternative to containing or snuffing out the lawless behavior of the rioting individuals.").

LMPD used a guilt-by-association rationale to unlawfully deprive people of liberty. Such arrests are unnecessary and unjustified, in violation of LMPD policy and the Constitution.

Law-abiding journalists naturally got caught up in LMPD's indiscriminate responses to the 2020 protests. LMPD subjected both credentialed press and livestreamers to mass arrests and retaliatory force. Some officers used force against journalists who were committing no crimes, posing no safety risk, and not resisting or evading arrest. LMPD thus violated the firmly established qualified right of access for the press to observe government activities.

b. LMPD Abridged the First Amendment Right to Challenge Police Verbally Outside the 2020 Protests.

Our findings are not limited to the 2020 protests or large demonstrations, but are supported by evidence from other contexts. Throughout the period of our investigation, we saw LMPD officers engage in similar retaliatory practices against lawful, verbal challenges to police action in different settings against different kinds of people. These diverse cases share two things in common: protected speech that questions police conduct, and the lack of consistent accountability or discipline.

For example, in July 2020, LMPD detained a 21-year-old Black man and his friend, a 17-year-old white man, while investigating an armed robbery reported six hours earlier involving two Black men driving a similar, but different colored, truck. The 21-year-old was verbally uncooperative and used profane language to challenge what he saw as racial profiling. But he voluntarily submitted to being detained by the officers, was not physically violent, posed no reasonable risk of flight, and committed no crime. In response to the verbal aggression, officers handcuffed the man and later—without warning—applied OC spray to his face, took a forearm to his neck, and shoved him into the backseat of an unventilated patrol car. Despite lacking justifications to stop, arrest, or use force, the officers were not disciplined. LMPD did not even investigate them.

In January 2019, an LMPD officer instantly and without warning slammed a Black man's head into the ground, causing profuse bleeding after the man called the officer "too little." As the officer pressed the man's head to the floor, he said, "Nobody's too little bro, this is what happens right here . . . . Who's too little, huh?" During the ensuing 30 minutes, the man and officers kept berating each other. Officers used more bodily force against the man even though he was handcuffed and lying prone, posing no risk of harm or flight. Finally, after placing the man in the back of a patrol car, officers twice used OC spray on him, then slammed the door shut on his head, creating a dangerous situation in the unventilated car with air saturated by OC spray.

We also saw LMPD retaliate against speech critical of police long after the most chaotic days of the 2020 protests. For example, in December 2020, a small group gathered outside a news station to protest a story about homelessness. When about a dozen officers and squad cars responded by occupying the intersection, LMPD became the subject of protest. Protesters jeered at a sergeant who ordered people out of the street, but protesters eventually complied. Minutes later the sergeant called for reinforcements to conduct a mass arrest because she felt "surrounded" by the protesters on the sidewalks. The sergeant singled out for the first arrest a Black man who was especially vocal in criticizing police. As the man stood on the sidewalk, the

sergeant waved him to come to her. The man complied, and as he stepped into the crosswalk, the sergeant and another officer began to arrest him. Each officer grabbed an arm, and the officers inexplicably pushed and pulled the man rather than simply handcuffing him. The sergeant appeared to pinch the man's inner upper arm, which made him squirm and appear to resist. Two other officers then intervened, tackled the man, and pressed his face into the pavement as they handcuffed him.

A 14-year-old white girl filmed the arrest from the sidewalk when a male officer arrived on scene and—without warning—forcibly seized her from behind. The teen was startled and tried to break free when another female intervened, creating a tug-of-war with the officer. The officer forcefully took the teen to the ground, where she hit her head on the concrete. Officers cited the teen for disorderly conduct and the woman for obstructing government operations. Both charges were dropped. The teen's father, a local lawyer and frequent protester, filmed the encounter from the other side of the intersection, about one foot inside the crosswalk. The sergeant noticed and—without warning—shoved him onto the sidewalk. The father did not pose a threat to the officer or others, and this force was not justified. Furthermore, the First Amendment protects the right to video record the police.

In April 2021, a Black man stood on a Jefferson Square Park sidewalk after earlier standing in a crosswalk holding a large cross protesting police violence. The scene was calm when nine LMPD officers arrived to arrest him for obstructing a roadway. The man posed no reasonable safety threat or flight risk. There was little traffic on that Sunday, and the man was standing on the sidewalk with hands behind his back. In executing the arrest, one officer pulled the man by one arm while the other pushed the other arm, with both officers appearing to attribute the movements to the man rather than each other. Four officers then forcefully took the man to the ground, with one pulling the man by his hair and another putting his arm on the man's neck. One officer pressed the right side of the man's head into the sidewalk while another threw four punches to the left side of the man's head, breaking his glasses and causing a serious eye injury. Chief Shields initially condemned the force, but LMPD ultimately deemed the punches justified and did not evaluate the other applications of force.

c. LMPD's Pattern or Practice of First Amendment Violations Are the Product of Deficient Policy, Training, Planning, and Management.

LMPD's pattern or practice of retaliating against protected speech about police is traceable to various deficiencies. *First,* LMPD has no policy on managing lawful demonstrations. Instead, one LMPD policy sets guidelines for "civil disturbances" and "disorderly crowds," defined broadly as large groups "exhibiting unruly, violent, intimidating, or uncooperative behavior." That vague definition gives officers vast discretion to deem some protesters intimidating or uncooperative, and hence disorderly. The consequences can be harsh. When LMPD identifies a disorderly crowd, its mission is "to restore order as rapidly and efficiently as possible," whether by dispersal orders, force, or arrest. Louisville Metro's permit rules for public assemblies raise similar concerns by giving LMPD unbridled discretion to impose security costs and deny permits to protesters.[66] The rules even require those seeking

[66] Louisville Metro Code of Ordinances, ch. 100; Louisville Metro Office of Special Events.

permits to hire off-duty LMPD officers to provide event security, a policy that disincentivizes those who cannot afford to pay for security.

Second, LMPD's training exacerbated policy deficiencies during police protests. LMPD's one-day training on civil disturbances contains inappropriate content, poor guidance, and improper imagery, which primed officers to escalate police protests and predictably led to officers using aggressive tactics and excessive force. For example, LMPD trained officers to march at protesters with their name tags covered. That slide concludes with a picture and the words, "I am Darren Wilson."[67] LMPD taught officers to "keep pushing the disorderly crowd and making them uncomfortable," wrongly counseling against de-escalation.

Third, LMPD uses incident action plans to guide, assess, and improve its response to protests. But in practice LMPD's police-related protest plans were mostly boilerplate, and they contributed to problems by encouraging a more aggressive response to police protesters. Planning documents show that LMPD plans more aggressive responses to police protests than it does to other protests by encouraging officers to enforce traffic violations, deploying the SWAT team regardless of an explicitly identified threat, and preparing officers to charge more offenses more often.

They also reveal content-based discrimination. For example, in July 2018, Louisville saw extended protests by BLM, Occupy ICE, and other groups, which were counter-protested by the Three Percenters, an anti-government militia group. LMPD's planning document warned of "the potential for violence" and described the protesters as "generally uncooperative" and "leaderless." By contrast, the document described the counter-protesters—designated a terrorist entity by Canada, the Anti-Defamation League, and the Southern Poverty Law Center—by quoting the Three Percenters' self-image as a "national organization made up of patriotic citizens who love their country, their freedoms, and their liberty." LMPD added that the Three Percenters "believe law enforcement has been handcuffed by politics and want to help us do what they think is right," and advised officers that they "will be armed—long guns—ask to sling them on their back."

Fourth, LMPD has not conducted meaningful reviews of its own actions during protests. LMPD policy requires commanders to prepare after-action reports to track, evaluate, and improve performance. But during the 2020 protests, after-action reports lumped disparate events over a week into a single one- or two-page document completed weeks or months after the fact. Despite the significance of the 2020 protests, LMPD did not prepare a formal review of its overall response. Likewise, supervisors failed to review nearly all of the force events occurring during the 2020 protests because officers routinely did not report their uses of force.

[67] Darren Wilson is the Ferguson police officer who shot and killed Michael Brown in 2014.

7. Louisville Metro and LMPD Violate the Americans with Disabilities Act in their Response to People with Behavioral Health Disabilities.

a. Louisville Metro and LMPD Discriminate Against People with Behavioral Health Disabilities.

The ADA prohibits Louisville Metro and LMPD from discriminating against people with disabilities and excluding their participation in or denying them the benefits of their services, programs, and activities. They must afford people with disabilities, including people with behavioral health disabilities,[68] "an opportunity to participate in or benefit from" their services that is "equal to that afforded others" and is "as effective in affording equal opportunity to obtain the same result."[69] That includes the city's systems for responding to 911 calls and LMPD's response to those calls. If necessary to avoid discrimination against people with disabilities in these systems, Louisville Metro and LMPD are required to make "reasonable modifications" to policies, practices, or procedures.[70]

LMPD officers are the primary and generally the sole responders to situations involving behavioral health issues in Louisville, even in instances where safety does not require a law enforcement presence. These situations can involve a range of circumstances, many of which do not involve violence or threatening behavior. According to a study commissioned by Louisville Metro, LMPD officers were dispatched to 40,470 incidents involving behavioral health, out of 933,460 total LMPD-dispatched calls, over the course of nearly two years.[71] This amounts to over 55 behavioral health-related dispatches per day. That study relied on incidents that MetroSafe, Louisville Metro's 911 communications center, recorded as behavioral health related. Consistent with national research and our review of dispatch records and police encounters, we believe the number of behavioral health-related dispatches to be higher than the study suggests. Many of these calls involve no violence, weapon, or threat of harm that would warrant a police response. Rather, they often involve calls about a person with suicidal thoughts but no immediate plan; a person experiencing delusional thinking or responding to hallucinations; or someone who is loitering. While some calls necessitate a primary law enforcement response because of violence or threats of violence, thousands of calls per year could be safely and more effectively resolved through a response by behavioral health

LMPD officers are the primary responders to behavioral health issues in Louisville, even when safety does not require a law enforcement presence.

[68] People with behavioral health disabilities are individuals who have a diagnosable mental illness and/or substance use disorder. This population includes individuals with co-occurring intellectual or developmental disabilities.
[69] 28 C.F.R. § 35.130(b)(1)(ii), (iii).
[70] 28 C.F.R. § 35.130(b)(7).
[71] *Louisville Metro Alternative Responder Model Research and Planning Final Report* (September 2021), at 20-21, https://perma.cc/MTA2-4XPB.

professionals, such as a mobile crisis team,[72] or with co-responding behavioral health professionals paired with appropriately selected and trained officers.

Unnecessary LMPD response to people with behavioral health disabilities is often ineffective and harmful. LMPD officers frequently fail to engage in well-known tactics to successfully de-escalate people in crisis, such as giving a person in crisis extra space and time, speaking slowly and calmly, and utilizing active listening.[73] In many incidents that we reviewed, LMPD actions led to uses of force and arrests that were avoidable. Indeed, nearly one-quarter of the uses of force we reviewed involved individuals who appeared to be experiencing behavioral health crisis, or other signs of serious mental illness, and a large share of those incidents involved at least one unreasonable use of force. Louisville Metro's often harmful emergency response to behavioral health crises stands in stark contrast to its response to people who are experiencing physical health crises. Those individuals receive a prompt and often life-saving medical response by appropriately trained EMT professionals.

Louisville Metro's practices of responding to behavioral health issues are exemplified by the experiences of one individual, a Black man with an apparent behavioral health disability, who experienced more than 25 LMPD encounters in under two years. In some of these interactions, LMPD officers escalated the situation, at times mocking and cursing at him. Multiple times, officers used unreasonable force. In one October 2021 incident, MetroSafe dispatched LMPD officers to a report of a disorderly person panhandling, and they found this man walking in the street with his shirt off. The man spoke to the officer in a way that was difficult to understand, and the officer told him that he was "not making any sense." The responding officers were familiar with the man, noting that he "always" behaves in that manner. Nevertheless, the officers discussed arresting him for public intoxication or drug paraphernalia, or involuntarily hospitalizing him, reasoning that the hospitalization was essentially an arrest but easier to substantiate. The officers took him to the hospital and charged him with possessing drug paraphernalia. Ultimately, this man died on January 9, 2022, after being found unresponsive on the medical floor of Louisville Metro Detention Center.[74] He had been arrested by LMPD on January 5, 2022, and charged with criminal trespassing and failure to appear on previous charges. These encounters—including the October 2021 and January 2022 incidents—could have been handled by a behavioral health-focused response concurrently with law enforcement, and some did not need police involvement at all.

Louisville Metro and LMPD have subjected many individuals to an unnecessary or overly aggressive LMPD response during a behavioral health episode, violating the ADA. And as a result these individuals have faced, among other consequences, unreasonable uses of force and avoidable arrests. In determining Louisville Metro's and LMPD's compliance with the ADA, we worked with experts in the areas of behavioral health services, crisis response, and

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[72] A mobile crisis team includes trained behavioral health staff who respond to individuals in need of urgent behavioral health assistance wherever the person is located. The team can resolve the immediate need and connect the person with ongoing behavioral health services as appropriate.

[73] *See* Bureau of Justice Assistance, Office of Justice Programs, *Effective Community-Based Responses to Mental Health Crises: A National Curriculum for Law Enforcement*, at 298, https://perma.cc/WXN4-DMM7.

[74] Thirteen deaths occurred at Louisville Metro Detention Center between November 2021 and January 2023, raising community concerns. Many of the deaths were by suicide or suspected overdose.

dispatching. We analyzed documentation from a random sample of 911 calls. We also reviewed audio recordings of 911 calls, camera footage of police encounters with people with behavioral health disabilities, and LMPD's policies and training practices related to responding to people with behavioral health disabilities. We interviewed Metro officials, LMPD officers and supervisors, behavioral health providers, people with behavioral health disabilities and their families, and other community members. Stakeholders in a variety of roles widely agree that a behavioral health-focused response should be available to people experiencing behavioral health issues instead of a traditional law enforcement response, when appropriate.

1. As a Matter of Course, Louisville Metro Sends LMPD Officers to Respond to Urgent Behavioral Health Calls, Resulting in Unnecessary Law Enforcement Responses.

LMPD officers are the default responders to calls involving behavioral health issues, even in situations where there is no violence, no weapon, and the person is not posing a threat. LMPD is typically *solely* responsible for behavioral health response, while EMS and the Fire Department typically respond to other health emergencies. EMS and the Fire Department respond along with LMPD to behavioral health calls in certain situations, like when someone has both behavioral and medical health crises. When EMS or the Fire Department respond to behavioral health crises, they are not prepared. EMS staff reported that they do not have protocols or training for behavioral health crisis because those crises are within the purview of the police. Firefighters also said that they lack training on behavioral health crisis, stating that "we're not trained to talk people down."

"Officers shared that they frequently respond to calls for which they do not have the tools to resolve, and that do not require an arrest or transportation. They noted that they often respond to multiple non-emergency calls from a single person who is in need of behavioral health or social service support rather than uniformed officer attention."

Louisville Metro Alternative Responder Model Research and Planning Final Report (September 2021)

For many of the behavioral health crises that LMPD officers respond to, a behavioral health response—such as a mobile crisis team—could have responded and resolved the crisis, either in conjunction with officers or, in some instances, without any involvement from LMPD. As a report commissioned by Louisville Metro summarized: "Officers shared that they frequently respond to calls for which they do not have the tools to resolve, and that do not require an arrest or transportation. They noted that they often respond to multiple non-emergency calls from a single person who needs behavioral health or social service support rather than uniformed officer attention."[75] An example of a person who has experienced repeated law enforcement contact that could have been handled through an alternative response is a white man who had at least eight encounters with LMPD officers during 2020 for behavioral health reasons. During one of those encounters, LMPD came upon this man after being

[75] *Louisville Metro Alternative Responder Model Research and Planning Final Report* (September 2021), at 19, https://perma.cc/MTA2-4XPB.

dispatched to respond to an intoxicated person. After he drank alcohol in front of the officer, the officer arrested him, sprayed him multiple times with OC spray in a police vehicle, rolled the window up while the man screamed in pain, and dragged the man out of the car and restrained him. The man then asked to go to the hospital because he was suicidal. An officer told him to "stop crying, you are a grown damn man," and referred to him as "batshit crazy."

Louisville Metro staff recognize the appropriateness of sending a medical response to health crises that do not involve behavioral health issues. One officer, after describing LMPD's role as the primary responder to behavioral health crisis, stated that "if it's [a] physical [health crisis] it's going to be an EMS run. I'm not trusting [myself] to be able to do CPR, I would want those professionals" responding. A dispatcher we spoke to stated, "I know my officers can't treat a heart attack, so I want an ambulance to go with them," yet MetroSafe, Louisville Metro's 911 communications center, regularly dispatches only police to calls involving behavioral health issues. A hospital administrator noted the unequal and punitive nature of having police respond to an emergency regarding behavioral health issues, stating, "If it was a diabetic person we certainly wouldn't be putting them in the back of police cars." Yet, as a high-level Metro official acknowledged, "Two armed officers showing up for someone in a behavioral health crisis does not always make it better. It's scary and imposes trauma rather than reduces it." Even when individuals seeking a behavioral health response call the crisis hotline available in Louisville, the absence of an alternative behavioral health focused response can lead the hotline to connect people to MetroSafe, which in turn dispatches LMPD.

Many of the calls that we analyzed—both those categorized by MetroSafe as behavioral health related and those with other indicators of behavioral health needs (such as incidents classified as a suspicious or intoxicated person or disorderly behavior)—would be appropriate for response by behavioral health professionals instead of or in addition to LMPD. For example, over several years, in response to similar calls to 911 reporting a man walking on the road, officers repeatedly encountered one Black man with apparent symptoms of serious mental illness and cognitive disabilities. Once when officers encountered him in 2017, they surrounded him as he walked down a pathway, grabbed him, and brought him to the hospital involuntarily. Two years later, this person was walking on the side of the road when multiple officers approached and took him to the ground within a minute, causing a bloody nose and leading to another involuntary hospital drop-off. Later in 2019, he was walking on a bridge, and when officers approached, he immediately tried to walk away, but they cornered him near the bridge railing. After this incident, he was involuntarily hospitalized yet again. Then, in February 2020, he was sleeping under an umbrella on a sidewalk when an officer approached and was hostile to him before giving him a citation for criminal littering and disorderly conduct. LMPD officers unnecessarily escalated these situations when a behavioral health response—sometimes without law enforcement presence at all—could have prevented the use of force and resolved the issue without criminal citations.

We identified numerous instances of LMPD officers treating people with disabilities with contempt and callous disregard, underscoring the ineffective, harmful, and unequal response to situations involving behavioral health issues.

- LMPD was dispatched to an intoxicated person with a likely behavioral health disability sleeping outside of a building, and at least seven officers responded.

This person, a white man, was by himself when officers arrived and woke him up. When he told the officers that he did not want to go to the hospital, officers laughed at him, and he got increasingly agitated. After he cursed at officers, one officer told him, "Fuck you, too," and, "I'll beat your ass right here in front of everybody." Officers eventually took the man to the ground, and afterward an officer told him, "You start acting like you're going to fight me, you're getting fuckin' dropped. Fuck you." The officers charged him with criminal trespass, public intoxication, disorderly conduct, menacing, and terroristic threatening. Instead of this escalation by LMPD, a behavioral health-led response could have assessed the situation and may have prevented the use of force and arrest.

- One white man with a likely behavioral health disability frequently called 911 for help in behavioral health crisis. MetroSafe dispatched LMPD, though most of the calls that we reviewed likely could have been handled exclusively by behavioral health professionals. In one encounter, responding officers mocked his delusions, called the situation "fucking ridiculous," and told him they could not solve crimes because "we have to keep coming to see you for stupid shit." As the officers took him to a psychiatric hospital, the officers taunted him for going to the hospital and called him a "real fucking winner." The officers made sexually inappropriate comments, including one officer telling another, "Put your finger in his butt." The officers' behavior escalated the situation, and when the man attempted to enter the hospital before it was time to do so, officers took him down and restrained him, leading to an injury.

- Officers called an unhoused white woman who had just injured herself in the midst of crisis "an idiot," "dumbass," and a "fucking retard."

In some cases, officers' animosity toward people with behavioral health disabilities may have led to a worsening of their mental health symptoms. According to stakeholders, the treatment faced by these individuals is not uncommon. Stakeholders told us about officers making jokes about mental illness, taunting individuals in crisis, and treating unhoused individuals with "disdain."

Unnecessary and inappropriate LMPD involvement also can also lead to avoidable arrests and incarceration, which carries unique risks for people with behavioral health disabilities.[76] LMPD officers sometimes arrest people on multiple, redundant criminal charges, even when it is

[76] In the absence of behavioral health crisis services, law enforcement response to people experiencing behavioral health crises in Louisville Metro also led to unnecessary hospitalization. Some of these hospitalizations may have been avoided with a behavioral health-focused response and the accompanying clinical assessment at the scene. Title II of the ADA defines unnecessary institutionalization and segregation as discrimination. 42 U.S.C. § 12101, et seq.; *Olmstead v. L.C.*, 527 U.S. 581 (1999). On May 24, 2022, the Department of Justice opened a separate investigation into the Commonwealth of Kentucky's mental health service system. The investigation is examining whether the Commonwealth subjects adults with serious mental illness who reside in the Louisville/Jefferson County Metro area to unnecessary institutionalization, and serious risk of institutionalization, in psychiatric hospitals by failing to provide community-based mental health services. That investigation is ongoing, and the Department has not reached any conclusions. Notwithstanding the outcome of that investigation, Louisville Metro's obligations under Title II of the ADA are clear. The law prohibits public entities such as Louisville Metro from delivering services, programs, and benefits in a way that discriminates against people with disabilities.

clear that the person is experiencing behavioral health problems. In one incident, officers were dispatched to a white woman who was having thoughts of self-harm, a typical scenario that can often be handled by a behavioral health response such as a mobile crisis team. Upon officers' arrival, she was clearly experiencing illogical, disorganized thinking and delusions. The officer approached her quickly, closely, and confrontationally. She stated that she wanted to go to prison, spit in the direction of the officer, and, several minutes later, gave the officer a very light push. The officer aggressively handcuffed her and told her that she was "acting like a child" and that "quite a bit is wrong with" her. The officer arrested her and charged her with menacing, giving false identifying information, and disorderly conduct. Officers once again encountered this woman in April 2022 while she was experiencing a crisis and took her to the hospital. During this interaction, one officer stated: "They could have handled that with a social worker, right?"

Similarly, our review of body-worn camera footage revealed that LMPD officers frequently escalate situations rather than de-escalate them. Officers frequently fail to give people experiencing crisis time or space, do not engage in verbal de-escalation for enough time to be successful, and shout orders rather than speaking calmly.[77] Additionally, in some videos we witnessed LMPD officers rapidly surrounding individuals experiencing a behavioral health crisis with weapons drawn and failing to designate an officer to be the primary communicator. Both tactics tend to escalate rather than de-escalate the situation. In some cases, officers' escalation of the behavioral health crisis led to increased safety risks to themselves and the person in crisis and increased the likelihood of the use of force. At other times, officers' behavior toward people may have created the entire crisis. What we saw was confirmed more broadly by community stakeholders. For example, one service provider stated, "Things don't end well when LMPD gets involved."

- After a 17-year-old white girl cut herself with a piece of glass at a residential treatment facility, officers verbally engaged with her only briefly by ordering her to put the glass down; within a minute on the scene, officers had grabbed her. Shortly thereafter, officers tased her multiple times, continuing after she fell face down on the floor. Officers kept her face down for several minutes, despite her telling them she could not breathe. The officers' actions led to a possible medical seizure, and an officer continued to yell "Stop" at her while she was in clear physical distress. LMPD officers escalated the situation by rushing in and shouting commands, and when she did not immediately comply, they resorted to force.

- When officers were called to respond to reports of individuals using drugs in an abandoned house, camera footage reveals that officers encountered a white man who was likely experiencing a behavioral health crisis. The man was clutching a

[77] The ADA requires that a public entity must "take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others." 28 C.F.R. § 35.160(a)(1). When an individual is experiencing a behavioral health crisis and officers do not utilize those well-known tactics for communicating with that individual, the law enforcement agency may not have taken appropriate steps to ensure that communications with individuals with disabilities "are as effective as communications with others."

> screwdriver, with no visible bystanders nearby. Officers got out of their vehicles yelling commands and raised their weapons almost immediately. At least five officers quickly advanced and surrounded him, shouting commands. Within three minutes of LMPD officers arriving on scene, and with minimal if any de-escalation attempted, officers fatally shot him.

These are not isolated incidents: As noted above, nearly one-quarter of the uses of force we reviewed involved individuals who appeared to be experiencing a behavioral health crisis. For some of those incidents, law enforcement did not need to be deployed at all.

LMPD contends that it has adopted a Crisis Intervention Team (CIT) model to respond to behavioral health crises. Crisis intervention teams can provide a specialized police response to individuals experiencing a behavioral health crisis in situations where police presence is needed. If designed and implemented appropriately, officers assigned to crisis intervention teams receive training on how to recognize a crisis, how to communicate effectively with someone experiencing a crisis, and how to help someone in crisis get the services they need. Crisis intervention teams should generally be staffed by officers who volunteer and who are given the responsibility only after demonstrating competence and receiving specialized training.

But this is not how LMPD's CIT program works. At LMPD, all officers receive a one-time, 40-hour CIT training, and all officers are considered to be part of the crisis intervention team. LMPD makes no effort to evaluate whether some officers are better suited to this role than others, and it does not evaluate the effectiveness of its CIT program, its training, or officers' responses to behavioral health crises.[78] Given the conduct of officers, described above, who received this training and participate in LMPD's CIT program, LMPD's approach to CIT has been ineffective in preventing discrimination against people with behavioral health disabilities. Indeed, as a high-ranking Louisville Metro official told us: "They think [the officers] are all okay in [crisis intervention], and they are not."

2. MetroSafe's Policies and Practices Result in Needless Police Responses to Behavioral Health Calls While Providing an Effective Medical Response to Others.

MetroSafe's training and procedures direct employees to deploy police to calls involving behavioral health issues and trained medical personnel to calls involving medical issues. Call-takers and dispatchers undergo a lengthy training process. But despite estimates that MetroSafe staff spend more than a quarter of their time on behavioral health calls, call-takers do not receive any specific training for handling behavioral health crisis calls. MetroSafe staff believe such

[78] Additionally, Louisville Metro's investment in CIT as its primary response to behavioral health crisis is contrary to the model. As noted by CIT International, "training-only approaches do not improve safety and reflect a misunderstanding of the CIT model. The CIT model is not just about policing; it is about community responses to mental health crises." CIT International, *Crisis Intervention Team (CIT) Programs: A Best Practice Guide for Transforming Community Responses to Mental Health Crises*, https://perma.cc/RU6D-E69W. And as one officer told us, when the broader service system is not addressing the underlying causes regarding behavioral health crisis, CIT is not a solution at all.

training is needed. For example, they worried that when a person tells them they want to die by suicide, they do not know what to say in response.

MetroSafe's operations do not ensure that call-takers obtain adequate information from callers regarding behavioral health crisis or sufficiently memorialize the information for the dispatchers and responding LMPD officers. Call-takers are not required to ask about mental health, and our review revealed that they rarely did. In contrast, other health-related calls involve a much more detailed script followed by call-takers.

The failure to obtain information related to behavioral health affects first responders at the scene. Stakeholders and officers have reported that call-taking and dispatching at MetroSafe is like a game of telephone. One officer noted that "[t]he run they send you on and the run you arrive at are two different runs." Even when mental health is identified as a factor in the call, call-takers still have discretion to classify calls in other ways, such as intoxication or disorderly conduct. This is troubling because how calls are classified affects not only what type of response to deploy, but also officers' behavior upon arrival. Our investigation revealed that the wide discretion led to inconsistent classification. Multiple officials at MetroSafe acknowledged classification discrepancies, with one saying that because differing calls get the same level of officer response, "why not just pick one of them?"

MetroSafe does not conduct quality assurance on the calls when police respond to behavioral health-related issues. In contrast, a sample of other health-related calls is reviewed according to a rubric every day. And no quality assurance or performance feedback is done for dispatchers. Similarly, MetroSafe staff told us that an employee learns they are doing something incorrectly only if there is a complaint about a particular call or if it is discovered by accident. Any information learned is not utilized to examine the operations more widely.

These practices at MetroSafe contribute to a situation where people with behavioral health disabilities receive police responses that are often ineffective, unnecessary, and harmful. This constitutes discrimination under the ADA.[79]

b. Louisville Metro and LMPD Can Make Reasonable Modifications to Avoid Discrimination Against People with Behavioral Health Disabilities.

The ADA requires public entities to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."[80] Whether a particular modification is reasonable and not a fundamental alteration for any particular state or local government includes a fact-based assessment of that particular jurisdiction. Here, our

[79] We also heard significant concerns regarding short staffing at MetroSafe leading to lengthy shifts, overworked and tired staff, and longer 911 response time.

[80] 28 C.F.R. § 35.130(b)(7). Louisville Metro would not have to make the requested modifications if the person requiring the modification poses a direct threat to the safety of an officer or others. *See* 28 C.F.R. § 35.139. A direct threat is "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services." 28 C.F.R. § 35.104.

investigation revealed that Louisville Metro can make the following reasonable modifications to avoid unequal treatment of people with behavioral health disabilities.

Deploy Alternative Responses. First, Louisville Metro could modify MetroSafe's policies, procedures, and training program and deploy community-based, provider-operated mobile crisis teams to behavioral health calls—both initial calls for service and encounters when an officer determines that a police response is not necessary. Louisville Metro has recently embarked on limited behavioral health mobile response to people with behavioral health needs, through its Crisis Call Diversion Program, which is a pilot that began in March 2022. Under the pilot program, behavioral health professionals are embedded in MetroSafe to speak to individuals experiencing a behavioral health issue, a mobile response team responds to some calls for service, and a small respite center is available for stabilization services.

As of January 2023, the pilot program operates in only part of Louisville for eight hours per day, with limitations on the calls that are eligible for the program. For example, when the caller is unfamiliar with a person experiencing behavioral health-related issues, the call is not initially deflected to the pilot program. Even calls eligible under the limited criteria have "slip[ped] through the cracks," according to program evaluators. Better training and support for call-takers, along with improvements to the criteria used to assess the eligibility of calls, would likely address these shortcomings. In addition, Louisville Metro has in the past funded pilot programs for only a short period of time and then discontinued them, even when they showed promise. For example, stakeholders, including two former LMPD chiefs, current LMPD officers, and a Metro official, were nearly uniformly positive about Louisville Metro's former Living Room program, where police could drop off people experiencing behavioral health crisis. Louisville Metro cut the funding for the Living Room after a short time, forcing it to close. We have heard concerns that the pilot program would suffer a similar fate. The pilot program is a significant start and Louisville Metro could expand its reach and capacity for a behavioral health-led response to further prevent discrimination against people with behavioral health disabilities.[81] Additionally, when an officer response is deemed necessary but a situation could benefit from behavioral health professionals, Louisville Metro could modify its policies to deploy a co-response of LMPD officers and behavioral health professionals. A report commissioned by Louisville Metro recommended that Louisville begin co-response in situations that present a higher risk.[82]

Enhance coordination with the crisis hotline and other services. Second, Louisville Metro could enhance coordination with the crisis hotline operated by a community mental health

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[81] The development of the crisis respite component of the pilot program, currently being operated with limited capacity, could be an important alternative to more restrictive settings. Crisis respite programs provide police officers and behavioral health responders a place to drop off people experiencing behavioral health crisis. They can prevent unnecessary arrests and hospitalizations and connect people with ongoing behavioral health services. Louisville Metro's evaluation of the pilot program has highlighted ways in which Metro could improve and expand the crisis respite aspect of the pilot program.

[82] *Louisville Metro Alternative Responder Model Research and Planning Final Report* (September 2021), at 37, https://perma.cc/MTA2-4XPB.

center and work with the hotline to deploy a behavioral health response.[83] The crisis call center is open 24/7,[84] but no mobile behavioral health response is associated with the hotline. While hotline staff do not deploy the current limited mobile response services, they sometimes initiate an LMPD response to callers. Louisville Metro could improve coordination between MetroSafe and hotline staff to facilitate mobile crisis response connection when needed and prevent unnecessary law enforcement responses. Louisville Metro could also bolster coordination between MetroSafe, LMPD, and other community-based behavioral health services.

Modify CIT program. Third, LMPD can make changes to its CIT Program to ensure that when calls related to behavioral health do need a police response, the CIT Program deploys officers who are equipped to respond to those calls by using appropriate de-escalation techniques and coordinating with community-based crisis response where appropriate. LMPD and Louisville Metro can monitor the CIT Program for effectiveness and adherence to the CIT model and work with partners in the behavioral health community to identify and implement needed changes within the behavioral health system. Relieving some of the pressure on the current CIT Program as the primary response to behavioral health issues throughout the Louisville Metro area will enable LMPD to adhere to the CIT model.

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Louisville Metro makes the police its primary response system for situations involving behavioral health issues. And LMPD fails to reasonably accommodate individuals with behavioral health disabilities during encounters, leading to needless escalation, use of force, avoidable arrest, and serious injury. This discrimination can be avoided through expansion of current Louisville Metro programs, and reasonable modifications of LMPD's and MetroSafe's policies and practices.

[83] The crisis hotline in Louisville includes the National Suicide Prevention Hotline, which is now known as the Suicide and Crisis Lifeline. In July 2022, 988 became the new dialing code for that hotline nationwide.
[84] However, crisis hotline staff members noted that the crisis line was insufficiently funded and staffed, leading to delays that potentially translate to deaths or unnecessary admissions to emergency rooms or jails.

8. We Have Serious Concerns About LMPD's Response to Sexual Assault and Domestic Violence.

Our investigation also raised serious concerns about how LMPD responds to and investigates reports of sexual assault and domestic violence, including reports of sexual misconduct[85] and domestic violence by LMPD officers. Because these crimes and forms of misconduct overwhelmingly impact women, LMPD's inadequate response to and resourcing of the units responsible for investigating these crimes raises concerns about gender bias. Although we do not find reasonable cause, at this time, to believe that LMPD's practices result in gender bias in violation of federal law, we do believe that gender bias may be interfering with LMPD's handling of sexual assault, domestic violence, and officer sexual misconduct.

We acknowledge that not every victim[86] of sexual misconduct or domestic violence wants to engage with law enforcement agencies or the criminal justice system. But for those who do, law enforcement must provide victim-supported responses and thorough investigations.

a. LMPD Does Not Adequately Investigate Officers Accused of Sexual Misconduct and Domestic Violence.

LMPD's criminal and administrative investigations into reports of sexual misconduct and domestic violence by officers frequently deviate from Departmental policies and generally accepted investigative practices. We found numerous instances where LMPD did not open administrative investigations to correspond to criminal investigations into reports of sexual misconduct and domestic violence by officers. We also reviewed cases where administrative investigations occurred but did not address important allegations, such as reports that officers had tried to intimidate or retaliate against women for reporting sexual harassment or domestic violence.

For example, in one case, an LMPD officer's former girlfriend obtained an emergency protection order against him. In her affidavit for the order, she reported that the officer had threatened her with violence during their relationship and had tracked her activity, possibly with law enforcement technology. She also reported that the officer had engaged in some of this behavior after investigators and his supervisor had told him to stop contacting her. LMPD's criminal investigators closed the case after the protection order was dismissed 12 days later. LMPD conducted no administrative investigation into the officer's conduct at all.

The units that conduct criminal and administrative investigations into LMPD officer misconduct promise "thorough" investigations, including interviewing victims, witnesses, and anyone else with relevant information. But we reviewed numerous cases where investigators

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[85] When describing our review of officer-involved conduct, we use the term "sexual misconduct" because we reviewed investigations into reported sex crimes, sexual harassment, and unwanted and inappropriate contact and communications by officers.

[86] We use the term "victim" to refer to people who have experienced sexual assault or domestic violence because it is the term generally used in criminal legal definitions of sexual assault and domestic violence and in the criminal justice system. We appreciate, however, that many prefer the terms "survivor" or "victim/survivor," and encourage respect for those preferences.

failed to gather or seemed to disregard evidence such as testimony from outcry witnesses (the people who first heard about the sexual misconduct and domestic violence), other potential victims or witnesses, other related misconduct, or text or phone messages that may be stored on officers' and victims' phones, all of which could corroborate women's accounts.

For example, in one investigation, a woman reported that a narcotics detective was having sex with her daughter, whom he had charged with drug possession. The woman also provided investigators with the names of two other women the detective was similarly exploiting. When the woman's daughter told the investigator that the detective had texted her photos of his genitalia and leveraged the charges over her to coerce her into sending him photos of herself, she said: "if he's doing it to me, he's doing it to somebody else." The investigator lost track of the victim and closed the investigation as "appears unfounded" without then undertaking any additional investigation such as trying to locate the detectives' other victims. Five years later, three more women came forward with similar accusations against the detective. This time, an administrative investigator reached the same conclusion as the detective's first known victim: that he had "target[ed] drug addicts" and "low income individuals, mostly living in the Portland neighborhood" for sexual coercion. The detective resigned before the completion of the administrative investigation into the reports by the four women. The Commonwealth Attorney later declined to prosecute the detective, stating that the statute of limitations had run on most potential charges, and that the grand jury did not indict the detective on another charge.

b. LMPD Does Not Adequately Respond to or Investigate Sexual Assault or Domestic Violence in the Community.

When responding to sexual assault and domestic violence calls, LMPD patrol officers often engage in gender stereotyping. And both officers and detectives engage in practices that discourage reporting and prevent women from obtaining advocacy services. Finally, even though LMPD policy requires "thorough" investigation of all sexual assaults, LMPD detectives routinely fail to sufficiently investigate sexual assault and domestic violence, most often by failing to follow up on evidence that could corroborate women's accounts, conducting limited victim outreach, and prematurely screening cases with prosecutors for possible prosecution.

LMPD patrol officers are the first to respond to domestic violence calls for service and most reports of sexual assault.[87] Our review of body-camera footage revealed incidents where LMPD patrol officers appeared to rely on sex-based assumptions about women who report domestic violence and sexual assault, including skepticism of victims of sexual assault. This sex stereotyping was particularly evident where officers knew victims were intoxicated, assumed they engaged in sex work, or thought they were in a behavioral health crisis.

LMPD policy correctly recognizes: "[i]n the aftermath of a sexual assault, a victim may not have the emotional or physical capacity to commit to a full investigation and a court trial." Yet we reviewed numerous incidents where LMPD officers and detectives asked victims whether they wanted to report their sexual assaults, at times referencing prosecution at the initial

[87] Our investigation was limited to LMPD's response to adult rape and sodomy.

reporting stage, instead of—as LMPD policy requires—"allow[ing] victims to take the investigative process one step at a time."

LMPD officers responding to an incident of domestic violence must complete a lethality screening wherever there is evidence of physical injury. To complete the screening, officers ask the victim a series of listed questions to assess the danger their intimate partner poses. If a victim meets the criteria for an advocacy referral, the officer must call the Center for Women and Families Crisis Hotline and relay the situation to a crisis counselor to assist the victim in immediate safety planning. The victim can choose whether to speak to the counselor herself; but the officer is required to call. Despite LMPD policy, we found numerous domestic violence incidents where officers did not complete lethality screens when required. This concern was echoed by victim advocates and prosecutors.

We identified other problems with LMPD's investigations in sexual assault and domestic violence cases. Sex crimes detectives focus overwhelmingly on formal victim interviews and DNA evidence, often to the exclusion of other evidence such as statements from outcry witnesses (the people who first heard about the sexual assault and domestic violence), toxicology results, and physical evidence, all of which can help corroborate a report of sexual assault. In domestic violence cases, LMPD does not always document victim injuries or interview outcry witnesses and eyewitnesses. We also saw lapses in detectives' use of LMPD's Victim Services Unit, even though LMPD has invested heavily in the unit.

We also reviewed numerous investigations in which detectives did not make sufficient (or any) efforts to locate or interview suspects, even though victims had identified them. In some sexual assault investigations, detectives even sent victims who had identified suspects by name form letters telling them that LMPD was "unable to develop a suspect or any significant leads that would direct us toward a suspect."

We also saw instances where LMPD detectives presented potential sexual assault and domestic violence cases to prosecutors even though little to no investigation had been done, resulting in prosecutions being declined on scant investigative records. Even when prosecutors wrote to detectives indicating that more investigation was needed, detectives either closed these cases as "prosecution declined" or let them sit open without any further investigation.

Finally, we found cases that LMPD had closed on the grounds that victims did not return calls from LMPD. For example, we reviewed a case that a detective closed as "leads exhausted" because the victim did not attend two scheduled interviews, despite having provided a 30-minute recorded statement at the hospital following the assault. In his closure, the detective wrote "[s]hould additional leads be developed . . . the case will be reopened." Seven months later, Kentucky State Police (KSP) returned results of the rape kit confirming the presence of DNA matching the suspect and alerting LMPD that the suspect's profile was in state offender indexes. KSP requested a buccal swab sample but there is no indication in the case file that LMPD tried to obtain such a sample or even notify the victim.

To be clear, we encountered many within LMPD who are dedicated to providing high-quality responses to women who experience sexual assault and domestic violence. This was particularly true of the Domestic Violence Squad (DVS) and Office of Sexual and Physical

Abuse Investigations (OSPI) detectives and supervisors who spoke to us. All of them conveyed a genuine desire to conduct thorough, victim-centered investigations.

But LMPD has hampered the ability of sex crimes and domestic violence detectives to work their cases properly. Agency leaders face difficult choices about resource allocations, to be sure. Yet, in 2021, due in part to staffing shortages, LMPD consolidated its Sex Crimes and Crimes Against Children squads into OSPI. This did not ameliorate caseloads and instead meant that detectives were now tasked with investigating crimes for which they had no training. At the same time, LMPD data shows the number of adult rapes alone has risen 43 percent from 2021 to 2022. LMPD also cut the number of DVS detective positions from 15 to 8 over the past two years. One DVS member admitted that "our services to victims have drastically decreased" as a result of the staffing cuts. According to DVS personnel, since the cuts, detectives no longer have time to contact all victims, and the squad instead sends many victims form letters telling them to call LMPD if there is any new evidence in their case. Indeed, LMPD data shows that the percentage of victims that received these letters jumped from 5.6 percent in 2019 to 48 percent in 2022. Many of these cases involve serious risks to women, such as harassment, death threats, assault, and protection order violations. According to one DVS member, the squad has seen more repeat victims since increasing its use of these letters because "you need to catch DV early." In 2022, domestic violence homicides in Louisville reached their highest point in four years.

DEFICIENT SUPERVISION AND ACCOUNTABILITY CONTRIBUTE TO LMPD'S LEGAL VIOLATIONS.

The systemic legal violations we found result in part from Louisville Metro's and LMPD's deficient supervision and accountability systems. *First,* LMPD fails to adequately support and supervise officers. *Second,* LMPD fails to investigate and discipline officers for misconduct. *Third,* Louisville Metro has failed to provide sufficient external oversight to compensate for these deficiencies. This lack of accountability allows legal violations to go unchecked, undermines the community's trust in LMPD, and costs Louisville Metro millions of dollars.

1. LMPD Fails to Adequately Support and Supervise Officers.

Lawful and effective policing requires support for officers and strong supervision. Officers need adequate resources to do their jobs well. They need clear policies enforcing constitutional limits on police practices, meaningful training to ensure they understand these policies and to prepare them for real-world encounters, proper facilities and equipment, and support for their health and well-being. Supervisors should promote best practices, recognize good work, and correct problems early on. They should establish expectations for each shift and set the tone for community interactions. Supervisors have important administrative duties, including writing and reviewing reports and handling certain disciplinary matters. And supervisors play an essential role in directing activities at the scene of a critical incident. Officers who are not well trained, well supported, and well supervised are more likely to violate the law, harm community members, and endanger themselves and their colleagues.

In some sections of this report, we identify policy shortcomings that have contributed to legal violations by LMPD officers, while in other sections, we describe failures to follow policy that have resulted in violations. More broadly, LMPD does not adequately train, support, or supervise officers, and these failures are a contributing cause of all of the problems we describe.

LMPD's training academy has not systematically assessed officers' training needs, overseen training for specialized units, or developed a high-quality curriculum that consistently incorporates adult learning principles and scenario-based lessons. The academy has failed to ensure training for officers across LMPD that is consistent with law and policy. In some instances, LMPD expects officers to understand new or updated policies by simply reading them or watching a video, rather than through meaningful and interactive training.

Officers told us that poorly maintained facilities and equipment hurt morale. For example, in one division, officers must sign a waiver because of black mold at the division's headquarters. These environments send a signal to officers that their work is not valued, and it undermines efforts to set high expectations for conduct. Other support systems are also lacking. Before 2022, LMPD lacked a functioning early warning system to flag officers who may need additional support. It remains to be seen if recent efforts to implement such a system will be successful. LMPD only recently recognized an unmet need to focus on officers' health and wellness, developing plans to create a Wellness Unit with counselors and a full-time psychologist.

LMPD supervisors regularly fail to identify, document, and address problematic conduct by officers under their command. A high-ranking LMPD official told us bluntly, "There is a lack of supervision here." That view is widely shared within LMPD. One officer attributed "the bulk of our problems in this department" to "front line supervision." The problems are not limited to sergeants. Deficient supervision extends throughout the ranks, including commanders who are disconnected from day-to-day activities, and mid-level supervisors who operate independently and provide little direction to their subordinates. Inadequate supervision contributes to LMPD's systemic legal violations. For example, LMPD supervisors regularly fail to investigate and assess uses of force, which contributes to officers using excessive force. LMPD fails to adequately supervise search warrant applications and executions, which leads to deficient warrant applications and unlawful warrant executions. And LMPD fails to adequately supervise officers' stops, searches, and arrests, which contributes to Fourth Amendment violations and discriminatory policing.

LMPD supervisors regularly fail to identify, document, and address problematic conduct by officers under their command.

Ineffective supervision results from inadequate training and from supervisors' reluctance or refusal to confront officers about violations. LMPD offers supervisor training, but some supervisors only attend the training months or years after being promoted. Several supervisors told us that LMPD did not provide adequate training on key aspects of supervision, such as reporting uses of force and reviewing body-worn camera footage. A top LMPD official told us that some supervisors "are just winging it." Officers report that some supervisors take the path of least resistance and avoid writing up their subordinates, while others protect officers instead of holding them accountable. One supervisor who has served in an internal affairs unit told us that investigators look at misconduct cases and wonder why a sergeant did not intervene with officers earlier in their careers.

2. LMPD's Internal Accountability Systems Are Flawed.

Internal police accountability requires timely, objective investigations into alleged misconduct and consistent discipline. Strong internal investigations are important for civilians harmed by misconduct, accused officers, and a police department's standing in the community. We found flaws at each stage of LMPD's internal investigations into possible misconduct. LMPD sets arbitrarily high thresholds for investigating allegations of misconduct. Even when LMPD investigates, its internal affairs units fail to conduct thorough, impartial, and timely investigations. And disciplinary decisions depart from investigative findings without adequate documentation. Officers do not face meaningful consequences and engage in repeated violations.

a. Structure of Internal Affairs at LMPD

LMPD has two internal affairs units. One unit investigates alleged crimes by LMPD officers. The other unit conducts administrative investigations of alleged policy violations by LMPD officers. The possible punishment for officers' criminal violations is the same as it would be for anyone else; officers who commit crimes may pay fines or go to prison. If an officer violates policy, LMPD might discipline the officer through a reprimand, a suspension without pay, or by firing them.

LMPD presents evidence of criminal misconduct to the Commonwealth's Attorney, who determines whether to bring criminal charges against the officer. The standard of proof to convict an officer of criminal wrongdoing is "beyond a reasonable doubt." Many allegations of criminal conduct are also investigated administratively for potential policy violations. An officer who commits a crime may therefore go to prison and be fired.

For administrative investigations, a detective prepares a report summarizing what they learned and recommending conclusions. The commander who oversees the internal affairs units reviews that report, as does the commander who oversees the accused officer's unit and LMPD's legal department. The legal department then forwards its recommendation to the chief, who determines whether the officer committed misconduct, and if so, what discipline to impose. The standard of proof applied by the chief to determine whether administrative misconduct occurred is whether the officer more likely than not violated policy.

b. LMPD Fails to Consistently Initiate Investigations of Possible Misconduct.

LMPD does not consistently investigate potential misconduct. One reason for this failure is structural: In the absence of a sworn civilian complaint, only the police chief may initiate an administrative investigation. LMPD does not authorize any other official to open investigations, and LMPD policy does not specify when the chief should or must open an investigation. In multiple cases, Chief Conrad initiated investigations only after incidents received media attention, long after the civilians involved had objected to their treatment.

Supervisors also fail to detect and address misconduct. We found examples of clear officer misconduct, including unreasonable force, that supervisors failed to identify, concluding instead that officers acted appropriately. In addition, supervisors fail to address repeated violations with progressively more serious consequences. For example, when officers curse at civilians or fail to activate their body-worn cameras, supervisors "verbally counsel" them instead of recommending formal discipline—even when officers belittle civilians with abusive or demeaning language. And when officers violate policy even after counseling, supervisors continue to counsel them instead of recommending discipline. The collective bargaining agreement between Louisville Metro and the union that represents LMPD officers further constrains supervisors by requiring destruction of supervisory notes and performance reviews after one year. Even supervisors who wish to keep track of minor violations addressed with counseling cannot do so for more than a year.

As a result of the inadequate documentation and unclear standards that govern decisions whether to initiate investigations, LMPD fails to consistently initiate investigations on its own. These practices reflect a lack of internal accountability.

c. LMPD Imposes Unnecessary Burdens on Civilian Complainants.

LMPD discourages residents from filing misconduct complaints by imposing unnecessary burdens. In Kentucky, complaints that do not allege criminal misconduct must include a sworn affidavit.[88] But even without such an affidavit, LMPD may still investigate

[88] KRS § 67C.326(1)(a).

allegations on its own and discipline officers if investigators independently substantiate the allegations. Rather than freely accepting complaints of officer misconduct, however, LMPD imposes numerous barriers not required by state law:

LMPD's complaint intake process discourages reports of misconduct and departs from best practices.

- If a civilian wants to file a complaint against an officer, LMPD policy "encourage[s]" commanding officers to resolve "minor concerns" informally, without disciplinary action. LMPD does not document informal complaints in officers' personnel files.

- If a complainant declines an informal resolution and wants to file a sworn complaint, the commanding officer cannot accept it. Under LMPD policy, only the internal affairs units may take affidavits.

- Officers exercise discretion over whether to send unsworn complaints to the internal affairs units. Until 2021, LMPD destroyed documentation of unsworn complaints 90 days after receipt.

- Patrol divisions do not follow a standard practice for receiving complaints of officer misconduct from civilians. Some supervisors screen out complaints from ever being submitted, including by persuading civilians not to file complaints.

- LMPD's website provides confusing instructions for how to file a complaint. For example, the website describes one method as "By form -- Pick up a form at any of the eight (8) divisions." But as noted above, LMPD policy does not permit staff at its eight divisions to accept sworn complaints: the completed form must be submitted directly to the internal affairs unit. The website labels another method "electronically." But at the end of lengthy instructions about how to "file electronically," LMPD explains that civilians actually cannot file complaints electronically—they must print the form and return it in person or by mail.

- LMPD's complaint form requires the complainant to initial two statements: that anyone who "makes a false statement under oath" about any "material" issue "shall be guilty of Perjury in the Second Degree," and that an officer can sue any person who makes "a false statement under oath" against the officer. As a federal court found after examining similar language in another law enforcement agency's complaint form, this type of warning can intimidate complainants and "undermines the integrity of any internal investigation process because it may prevent a complaint from ever being made."[89]

- LMPD has threatened and retaliated against civilian complainants. In one incident, a woman was shot during an argument and believed LMPD's investigation, which did not result in charges against anyone, was deficient. When she tried to file a complaint, she was told she could not do so over the phone, and she did not feel comfortable going to

[89] *Ortega Melendres v. Penzone*, 2021 WL 4458241, at *1 (D. Ariz. Sept. 29, 2021).

LMPD in person. Shortly thereafter, she received a voicemail from a detective, who said he would "drop the case" about the shooting "since you're trying to file a formal complaint on me." The woman felt "exhausted" and "traumatized" by the experience.

Police departments that value accountability encourage community members to share concerns about officer misconduct. LMPD's complaint intake process discourages reports of misconduct and departs from best practices. Unlike LMPD, several other law enforcement agencies in Kentucky—all subject to similar state law requirements—allow officers outside of internal affairs to accept complaints, permit civilians to submit complaints by phone or email, and accept anonymous complaints. As a result of its practices, LMPD receives few civilian complaints. In 2020, for example, LMPD reported investigating just 43 civilian complaints of officer misconduct—an extremely low number for a department with about 1,000 officers, compared to departments of similar size around the country. Since 2016, LMPD has never reported investigating more than 51 civilian complaints in a year.

d. Internal Affairs Units Fail to Objectively Investigate Alleged Misconduct.

If the chief opens an investigation or a civilian succeeds in filing a formal complaint, LMPD's internal affairs units investigate the allegations. Those units routinely fail to conduct thorough and impartial investigations.

We reviewed dozens of internal affairs investigations into a variety of misconduct allegations, including excessive force, sexual misconduct, racial bias, and unlawful stops or searches. We consistently found the LMPD internal investigations we reviewed to be flawed. *First*, investigators wait weeks or even months before interviewing involved officers. These delays permit memories to fade, and they provide time for officers to develop justifications for their actions and coordinate their testimony. Indeed, a training document used by internal affairs detectives acknowledges the "Traditional Approach" of interviewing officers "ASAP" so they "don't 'cook up' a story."

Second, investigators often ask leading questions, priming officers to give certain answers. Investigators frequently suggest to officers that they may have feared for their safety and ask questions like, "You had the law on your side to arrest him if you chose to?" During one interview, when an officer struggled to justify a pat-down, the investigator asked the officer to "put it in a package and sell it." Responding to this prompt, the officer cited the man's "hoodie" and the "high crime rate area."

Third, investigators fail to run down leads, including neglecting to interview potential witnesses.

Fourth, when administrative investigations uncover evidence of other policy violations beyond those alleged in the initial complaint, investigators fail to look into those additional violations.

Fifth, investigators draw inferences in favor of officers or against civilians that are not supported by the evidence, seeking to justify officers' actions.

LMPD's practices reflect a system that is biased in favor of officers at the expense of individuals' constitutional rights. We identified multiple cases in which investigators cleared officers of misconduct even after a court found that they broke the law. In 2020, a federal court held that an officer violated the Fourth Amendment during a traffic stop by searching a car without probable cause. The chief opened an investigation into whether the officer violated LMPD policy for stops and searches. An investigator deemed the alleged policy violation "unfounded," describing the federal court's analysis as "presumptuous and not a defined conclusion." LMPD closed the case 21 months after the court's decision and imposed no discipline. If LMPD finds no policy violations and imposes no discipline even when courts rule that officers obtained evidence unconstitutionally, officers will assume that their actions have been approved by their superiors.

LMPD's internal investigations reflect a system that is biased in favor of officers at the expense of individuals' constitutional rights.

In addition to these flaws, LMPD's administrative investigations are untimely and can take years to complete. When Chief Shields arrived in 2021, there were open misconduct cases from 2017. LMPD officials have since said that they have cleared this backlog, which is commendable. But for years, these delays imposed unfair burdens on officers, undermined accountability, and damaged public confidence that misconduct will be addressed. Indeed, we heard about them over and over, from officers at all levels of LMPD.

e. LMPD Fails to Impose Appropriate Discipline for Officer Misconduct.

Even when investigators conclude that officers violated LMPD policy, LMPD routinely fails to impose meaningful consequences. *First*, even when an internal affairs investigator documents strong evidence of misconduct, LMPD leadership does not always adopt the investigator's recommended findings and usually does not explain any departures from them. *Second*, even when the chief determines that an officer committed misconduct, the chief has regularly imposed minimal discipline. *Third*, even when the chief initially decides to terminate or suspend an officer, the chief frequently reduces the penalty after meeting with the officer, the officer's attorney, and a union representative. This meeting gives officers a second chance to explain their conduct, after they have already explained their conduct to investigators, and the investigators have reached their conclusion. LMPD does not keep any official record of these meetings, and if the chief reconsiders a disciplinary decision, LMPD does not document the reasons for the change. *Fourth*, if an officer resigns during an administrative investigation, LMPD permits the officer to resign with the case "closed by exception," instead of terminating the officer and issuing findings that could adversely affect future employment. LMPD has allowed officers to resign rather than terminating them even when officers had pleaded guilty to crimes, expressed explicit racial bias, or faced multiple civil rights lawsuits at the time of their resignation. LMPD's failure to terminate officers in these cases signals to both officers and the

community that officers can escape disciplinary consequences for even the most serious violations.[90]

f. LMPD's Deficient Accountability Systems Result in Repeated Misconduct.

Some LMPD officers have violated the law and LMPD policy again and again over the course of years. In some cases, officers escaped meaningful consequences and remain on the force. In other cases, misconduct escalated until officers were criminally charged. In the past five years, LMPD officers have pleaded guilty to a range of crimes, including sexual abuse or misconduct, federal civil rights violations, assault, excessive force, theft, falsely inflating overtime, and working private security jobs while clocked in for patrol duty.

In 2021, an LMPD officer pleaded guilty to using excessive force and was later sentenced to two years in federal prison for beating a kneeling protester in the back of the head with a baton in May 2020. From 2016 up to the date of this incident, the same officer had dozens of documented uses of force and faced 9 different misconduct investigations. Four of those investigations found misconduct, and another was pending when the officer resigned. But LMPD failed to discipline the officer for punching a handcuffed man in the face after the man spit at him or unreasonably tasing and striking people experiencing behavioral health crises. LMPD also failed to take action against the officer for a January 2020 incident in which he punched a 19-year-old in the face and threw him to the concrete after handcuffing him. That incident was still under investigation at the time of the officer's resignation in June 2021. This officer was not alone in committing repeated violations. Repeated misconduct is further evidence that internal accountability systems are deficient, contributing to LMPD's systemic legal violations and harming community members.

3. Louisville Metro's External Accountability Systems Have Failed to Compensate for LMPD's Deficient Internal Systems.

Louisville residents have long demanded police accountability, including external civilian oversight. Community groups have tracked police complaints and submitted findings to elected officials, arguing that "the police can't police themselves." Twenty years ago, local organizers called for "true community oversight of the police" and an end to "the secrecy surrounding investigations of police misconduct." Residents secured an ordinance establishing a civilian review board, the Citizens Commission on Police Accountability. But the ordinance limited the Commission's authority to reviewing closed investigations and recommending changes to policy or training. These restrictions prevented the Commission from weighing in on pending investigations or discipline. Between 2018 and 2020, the Commission held its meetings in an LMPD's internal affairs office, found that each investigation it reviewed was "adequate and complete," and issued just two recommendations.

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[90] State law authorizes the Kentucky Law Enforcement Council to revoke an individual's peace officer certification for a range of misconduct, including excessive force, action that "interferes with or alters the fair administration of justice," and failure to intervene to stop excessive force by another officer. KRS § 15.391. Police departments must report misconduct to the Council. *Id.* But that requirement is evaded when LMPD allows an officer to resign without making a formal finding of misconduct.

In November 2020, Louisville Metro replaced the Commission with a new Civilian Review & Accountability Board and Office of Inspector General. These entities can investigate complaints against LMPD and examine LMPD's practices and policies. The Board began meeting in April 2021. An Inspector General was appointed in December 2021, and his office began investigating cases in the summer of 2022. The ordinance creating the Board does not expressly require LMPD to participate in Board proceedings or provide regular updates about recent data or practices. If the Board and the Inspector General find problematic practices or misconduct by officers, they can only "share investigative findings" and "make recommendations." The new Board's additional investigative authority is a positive step, but a limited ability to ensure action in response to its findings raises concerns about whether the Board will be able to achieve its objectives.

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Strong supervision and accountability systems enhance the professionalism of a police force, help officers succeed, and root out officers who undermine not only their own credibility but that of the whole police department. In Louisville, these systems would help protect both LMPD and the communities it serves from future violations of the type described throughout this report. These violations have taken a heavy toll—on community members who regularly experience injustices, on those officers and civil servants who serve the community with care and impartiality, and on the public fisc, from which Louisville Metro has paid more than $40 million over the past six years to resolve claims of police misconduct.

RECOMMENDED REMEDIAL MEASURES

We commend Louisville Metro Government and LMPD for not waiting for the outcome of this investigation to make improvements. But they must do more to address the legal violations—and the root causes of those violations—identified in this report. The recommended remedial measures below provide a starting framework for changes that Louisville Metro and LMPD must make to improve public safety, build the trust of Louisville's many communities, and comply with the Constitution and federal law.

1. **Enhance Use-of-Force Policies, Reporting, and Review Procedures**. LMPD should revise its use of force policy to place more emphasis on de-escalation techniques and require officers to consider less-intrusive alternatives before employing force. LMPD should implement use-of-force reporting and review systems to ensure that officers report all uses of force, and that LMPD conducts timely, thorough reviews of force incidents.

2. **Create and Deliver New Use-of-Force Training**. New use-of-force training should provide clear guidance to officers about when to use the different force options and explicitly address the dangers of neck restraints, canines, and tasers.

3. **Enhance Force-Related Accountability Mechanisms**. LMPD should ensure that uses of force are promptly referred to the appropriate investigative unit or agency whenever a supervisor or reviewing officer finds evidence indicating apparent misconduct or criminal conduct by an officer. LMPD should promptly take appropriate corrective or disciplinary action when officers use force that violates the agency's policies.

4. **Improve Policies Related to Confidential Informants.** LMPD should develop and implement clear policies on how officers can use confidential informants, regularly evaluate and document their credibility and reliability, and track confidential informants' work over time.

5. **Improve Policies and Training Related to Search Warrant Requests.** LMPD should develop and implement clear policies to guide all aspects of search warrant requests, including: the use of confidential informants to establish probable cause for a search; the preparation of warrant applications to demonstrate probable cause; internal review of applications; the presentation of applications to prosecutors prior to seeking authorization; and a system for seeking judicial approval of a search without forum shopping.

6. **Improve Policies and Training Regarding Knocking and Announcing During Search Warrant Executions**. LMPD should adopt policies that require officers to knock and announce their presence during search warrant executions at homes, and establish strict criteria for supervisory approval of executing a search warrant on a home without first knocking and announcing. LMPD should generally require officers to execute search warrants during the daytime and establish strict criteria for supervisory approval of night-time search warrant executions. LMPD should develop training on these new policies and require all officers who prepare, review, or execute search warrants to receive this training.

7. **Improve Policies and Training Related to Confidential Informants.** LMPD should develop and implement clear policies on how officers can use confidential informants, regularly evaluate and document their credibility and reliability, and track confidential informants' work over time.

8. **Improve Policies and Training Related to Residential Search Warrant Executions.** LMPD should adopt policies that identify techniques to accomplish a thorough and lawful search, minimize intrusion experienced by individuals having their premises searched, and provide for the safety of all persons involved in the search.

9. **Implement Planning and After-Action Review Processes for Residential Search Warrant Executions.** LMPD should require officers to plan for search warrant executions by evaluating the risks of executing a warrant, developing operation plans for search warrant executions, and ensuring that appropriately trained officers participate in executing the warrants. LMPD should require supervisory approval of search warrant execution plans. After search warrants are executed on a residence, LMPD should require officers to promptly conduct thorough after-action reviews to evaluate the effectiveness of the search warrant execution and any lessons learned and to establish a record of the warrant execution process

10. **Require Consistent Activation and Review of Body-Worn Cameras.** LMPD should require officers to consistently wear and activate their body-worn cameras to document enforcement and investigative activities and other contacts with the public. LMPD should take steps to ensure compliance with its new policy requiring supervisors to review body-worn camera footage of their subordinates on a monthly basis in order to monitor officer performance and to ensure compliance with all LMPD policies.

11. **Street Enforcement Policies and Training.** LMPD should adopt, implement, and train officers on policies relating to street enforcement that clearly set forth the constitutional limits on stops, searches, frisks, and arrests, and ensure that officers comply with those limits. LMPD should require close and effective supervision of all street enforcement activities, including traffic and pedestrian stops. LMPD should reconsider the role of any specialized street enforcement units that conduct targeted or pretextual traffic and pedestrian stops.

12. **Require Documentation of All Stops.** LMPD should collect data on all traffic and pedestrian stops, including stops that do not lead to citations or arrests. Officers should document the reasonable articulable suspicion for any stops and frisks, the probable cause for any searches, and the basis for any consent searches. Supervisors should review officers' stops, frisks, searches, and arrests to ensure compliance with law and policy.

13. **Analyze Data from Enforcement Activity.** LMPD should regularly analyze data about its enforcement activities, such as stops, searches, citations, and arrests. If the data shows evidence of racial disparities by officers, units, divisions, or across LMPD, then Louisville Metro and LMPD should take steps to reduce or eliminate unjustified racial disparities, including by modifying deployment and enforcement priorities.

14. **Improve Community Engagement in Violent Crime Reduction Efforts.** Louisville Metro and LMPD should implement measures to support victims' families and strengthen community engagement to address and prevent violent crime.

15. **Deliver Public Safety Services in Ways that Are Consistent with Community Values.** Louisville Metro and LMPD should open new channels of communication with residents and hear from those impacted by the unlawful practices described in this report. Louisville Metro and LMPD should partner with residents to address public safety challenges by incorporating the views of residents and community stakeholders into LMPD's policies, training, and enforcement priorities.

16. **Improve Policies Related to Protests and Demonstrations.** LMPD should revise its policy on responding to civil disturbances and disorderly conduct to improve planning for protests demonstrations; emphasize First Amendment freedoms; including the rights of journalists; define rules of engagement; ensure compliance with force and reporting policies; and provide daily after-action reports about use of force, officer wellness, and overall effectiveness.

17. **Improve Ordinance Regarding Permits for Protests and Demonstrations.** Louisville Metro should revise its ordinance on issuing permits for assemblies. It should create new procedures to cabin LMPD discretion to define security needs, pass costs of security onto applicants, and deny permits for First Amendment-protected activity.

18. **Improve Training on Protests and Demonstrations.** LMPD should develop and provide new training on responding to protests and demonstrations that emphasizes policy, includes de-escalation and avoidance strategies, addresses how to protect the rights of journalists, and incorporates community voices. The training should address the particular challenges of protecting public safety and First Amendment rights during demonstrations and protests critical of law enforcement.

19. **Expand the Mobile Crisis Team Pilot.** Louisville Metro should expand the reach and capacity of its Mobile Crisis Team pilot program and transition to a behavioral health-led response to people experiencing a behavioral health crisis. In particular, Louisville Metro should deploy mobile crisis teams to behavioral health-related calls where police response is not necessary.

20. **Ensure that MetroSafe Deploys Mobile Crisis and Co-Responder Teams.** Louisville Metro Government should modify MetroSafe's policies, procedures, and training program and monitor MetroSafe to ensure that MetroSafe staff deploy mobile crisis and co-responder teams when appropriate.

21. **Improve Coordination Between MetroSafe and the Crisis Hotline.** Louisville Metro should improve coordination between MetroSafe and Louisville Metro's crisis hotline to facilitate mobile crisis response when people call the hotline. Louisville Metro should also improve coordination between MetroSafe, LMPD, and other community-based behavioral health services in Louisville.

22. **Create a True Crisis Intervention Team at LMPD.** LMPD should ensure that its CIT program deploys officers who are equipped to respond to behavioral health-related issues that need a police response. LMPD and Louisville Metro should monitor its CIT program for effectiveness and adherence to the CIT model and should conduct quality assurance on LMPD's response to incidents related to behavioral health.

23. **Improve Training Across the Department.** LMPD should ensure trainings are delivered by qualified instructors, use best practices in adult learning, and incorporate outside experts and community-based instructors.

24. **Improve Training for Supervisors.** LMPD should provide training to all supervisors on promoting effective and constitutional police practices by leading and coaching subordinates, monitoring and assessing their performance, evaluating written reports, investigating officer uses of force, building community partnerships, and de-escalating conflicts.

25. **Accept All Civilian Complaints.** LMPD should take steps, consistent with state law, to ensure that anyone who wishes to submit a complaint about an officer's conduct is able to do so.

26. **Facilitate Civilians' Access to the Complaint Process.** LMPD should ensure that whenever any officer encounters a person who wants to make a complaint, the officer helps the person do so by putting them in contact with a supervisor, internal affairs, or other appropriate means. LMPD should provide training to all officers on the appropriate procedures to follow and on reasons for facilitating civilian complaints, including the importance of learning about any misconduct that may have taken place.

27. **Improve Civilian Complaint Investigations.** LMPD should ensure that whenever any person makes any allegation of misconduct to any member of LMPD, the allegation is documented and reviewed, the allegation is fully investigated by internal affairs when appropriate under state law, and that the person making the allegation is kept up to date on the status of their complaint.

28. **Improve Training for Internal Affairs Investigators.** LMPD should require all internal affairs investigators to undergo training on basic investigative practices and the particular challenges of internal law enforcement investigations.

29. **Fully Staff Internal Affairs Units.** LMPD should ensure that internal affairs units are fully staffed with enough qualified, well-trained investigators to complete all investigations in a timely manner. Internal affairs leadership should ensure that investigations are thorough, interviews of officers and civilians are conducted appropriately, all evidence is appropriately weighed, and sound credibility determinations of all witnesses are made where there is conflicting evidence.

30. **Improve the Review Process for Internal Affairs Investigations.** LMPD should streamline the review process for administrative investigations to facilitate the timely resolution of all misconduct allegations. The chief should set time limits for each stage of

review, and should oversee and delegate tasks as necessary to ensure the process moves forward expeditiously. LMPD should document all decisions in the review process.

31. **Improve Civilian Oversight.** To help build trust with the community, LMPD should cooperate with the Inspector General and Civilian Review and Accountability Board to promote robust and even-handed civilian oversight. It should also prioritize transparency in its internal affairs practices, including reporting to the public about the nature of complaints received, misconduct findings made, and discipline imposed.

32. **Develop and Implement a Strategic Plan for Improving Facilities.** Louisville Metro and LMPD should develop a long-term plan for improving police facilities to ensure that officers have a safe, professional environment to work in.

33. **Improve Officer Health and Wellness Programs.** LMPD should continue to ensure that officers have access to confidential counseling services and continue developing its early warning system to enhance support for officers.

34. **Improve Policies, Training, and Internal Investigations Related to Officer Sexual Misconduct and Domestic Violence.** We recommend that LMPD develop, implement, and train on policies prohibiting officers from engaging in domestic violence and all forms of sexual misconduct. We also recommend that LMPD train internal affairs investigators on sexual assault and domestic violence investigations.

35. **Improve Policies and Training on Responding to Allegations of Sexual Assault and Domestic Violence.** We recommend that LMPD develop, implement, and train on revised policies and manuals governing the response to sexual assaults and domestic violence. We recommend that the policies clearly delineate the roles and responsibilities of patrol officers, detectives, and supervisors, including specific instructions for the identification, preservation, and analysis of all evidence. We also recommend that the policies require LMPD to securely maintain and preserve all investigative case files for sexual assaults and domestic violence. Further, we recommend that the policies specify what information must be included in case files and require that all materials related to a case must be contained in the case file.

36. **Establish an External Review Panel.** We recommend that LMPD and Louisville Metro establish a group of qualified representatives, including experienced sexual assault investigators, advocates, and medical practitioners to serve as an external review group for sexual assault investigations.

CONCLUSION

The Department of Justice has reasonable cause to believe that Louisville Metro and LMPD engage in a pattern or practice of conduct that deprives people of their rights under the Constitution and federal law. Louisville Metro's and LMPD's unlawful practices harm community members and undermine public safety. The remedies described in this report provide a starting point for ending Louisville Metro's and LMPD's pattern or practice of unlawful conduct. We look forward to working with city and police leaders, officers, and the broader Louisville community to stop the unlawful practices, build trust, and ensure that Louisville Metro and LMPD serve and protect the people of Louisville.