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CIVIL ASSET FORFEITURES: HOW PROSECUTORS CAN FACILITATE COMMUNITY-BASED CRIMINAL JUSTICE REFORM

*Lane Waples**

“Incarceration is a unique state function. The forcible deprivation of liberty and detention in a facility designed for the purpose is a restriction on the individual freedom to which liberal societies aspire. Incarceration represents a collective decision that some among us are too dangerous, or their crimes too serious, to circulate freely in the community. To preserve order and safety, to affirm norms of lawful conduct, and to help remedy criminal behavior, we built lockups, detention centers, asylums, jails, and prisons.”¹

Criminal justice reform is elusive in the United States. Despite evidence that the system is broken, change remains ephemeral at best. This is partially attributable to the fact that most attempts to reform the criminal legal system have occurred through the political process. However, another method of criminal justice reform is to assist communities as they address the root causes of crime. Undergirding this approach is the belief that building stronger communities contributes to less crime and reduces recidivism. After seizing \$250 million via prosecutions of financial crimes in 2016, the New York County District Attorney’s Office created a “first-of-its-kind” initiative to reinvest those seized funds into the

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¹ NAT’L RSCH. COUNCIL OF THE NAT’L ACAD.’S, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 14 (Jeremy Travis et al., eds. 2014).

communities of Manhattan in New York City. This “Criminal Justice Investment Initiative” (CJII) seeks to empower said communities through a variety of programs to prevent crime from happening in the first place. This Note argues that prosecutorial offices across the United States should create similar initiatives that derive funding solely from seizures related to financial crimes. In doing so, it highlights why the political process is unequipped to enable criminal justice reform, explains the notion of community-based criminal justice reform, explores the CJII, and finally demonstrates the pitfalls of constructing such initiatives around traditional civil asset forfeitures.

INTRODUCTION

Over the last several decades, the United States’ rate of incarceration has grown at an unprecedented pace.² While it peaked in 2009, the rate still remains “5 to 10 times higher” than that of comparable democracies in the modern world.³ Today, nearly one out of every one hundred adults in the U.S. resides in a prison or jail.⁴ One out of every three adults—around seventy-seven million Americans—has a criminal record.⁵ Overall, the number of incarcerated people has increased seven hundred percent since 1970.⁶ While the incarcerated population has marginally decreased over the last five years, the U.S. still has the highest rate of incarceration in the world.⁷ These figures are, in a word, staggering.

² *Id.* at 355.

³ *Id.* at 13.

⁴ *Id.*

⁵ Chidi Umez & Rebecca Pirius, *Barriers to Work: People with Criminal Records*, NAT’L CONF. OF STATE LEGISLATORS (July 17, 2018), <https://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx>.

⁶ *Criminal Justice Fact Sheet*, NAACP, <https://www.naacp.org/criminal-justice-fact-sheet/> (last visited Oct. 1, 2021).

⁷ *Trends in U.S. Corrections*, SENTENCING PROJECT 1–2, available at <https://www.sentencingproject.org/publications/trends-in-u-s-corrections/> (last updated May 2021).

Tracing the expansion of the carceral population requires examining a confluence of factors beginning in the 1960s.⁸ During the decade, the rate of overall violent crime doubled.⁹ Intense political activism stemming from the Civil Rights Movement—and the conservative reaction to it—also accompanied these soaring crime numbers.¹⁰ The disruption of America’s racial order created a tumultuous political climate, one that “blurred the line between protest and disorder.”¹¹ Additionally, cities across the U.S. underwent significant restructuring.¹² They became more segregated as wealthier, predominately white people left for the suburbs.¹³ This exodus left a void in many inner cities, which were ultimately repopulated by historically marginalized communities, particularly racial and ethnic minorities and the poor.¹⁴ Those communities were soon blamed for the high rates of urban crime and were moreover plagued by unemployment.¹⁵ It was the amalgamation of these circumstances that spurred a shift in criminal justice towards a more “punitive direction.”¹⁶ At both the local and federal levels, incarceration became more common, especially for minor offenses.¹⁷ Mandatory sentencing laws for violent and repeat offenders, along with a tougher approach to drug-related offenses, further contributed to the growing rate of incarceration.¹⁸ These policies are largely responsible for America’s modern incarcerated population, which numbers 2.2 million people.¹⁹ It is impossible to

⁸ See NAT’L RSCH. COUNCIL, *supra* note 1, at 335–36.

⁹ *Id.* at 335.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See id.*

¹³ *See id.*

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ *Id.* at 336.

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ RACHEL BARKOW, PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION 2 (2019).

ignore that the U.S.'s prison and jail population is unparalleled in the modern world.²⁰

Further, mass incarceration in the U.S. disproportionately impacts some communities more than others.²¹ While people of color make up only thirty-seven percent of the overall U.S. population, they represent sixty-seven percent of its prison population.²² African Americans are five times more likely than white people to be imprisoned.²³ Additionally, African American women are twice as likely as white women to be incarcerated.²⁴

Logic would seem to dictate that harsher crime policies would lead to lower rates of crime and an overall increase in public safety. But, whether mass incarceration has reduced crime is seriously disputed.²⁵ The same is true of whether longer sentences effectively deter crime.²⁶ In fact, some commentators and scholars argue that mass incarceration has had virtually no positive effect on overall crime rates or has even worsened them.²⁷

What is undisputed, however, is that mass incarceration incurs immense financial costs. Statistics show that state and federal governments spend \$81 billion annually.²⁸ However, that number balloons to over \$181 billion when “policing and court costs, and costs paid by families to support incarcerated loved ones” are taken

²⁰ See *id.* Despite accounting for only 5% of the global population, the U.S. possesses 25% of the globe's prison population.

²¹ See *Criminal Justice Facts*, SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> (last visited Oct. 17, 2020).

²² *Who's in Prison in America?*, OPENINVEST (Feb. 21, 2018), <https://www.openinvest.com/articles-insights/statistics-prison-america>.

²³ NAACP, *supra* note 6.

²⁴ *Id.*

²⁵ See NAT'L RSCH. COUNCIL, *supra* note 1, at 337.

²⁶ See *id.*

²⁷ See BARKOW, *supra* note 19, at 2; *Study Finds Increased Incarceration Has Marginal-to-Zero Impact on Crime*, EQUAL JUST. INITIATIVE (Aug. 7, 2017), <https://eji.org/news/study-finds-increased-incarceration-does-not-reduce-crime/>.

²⁸ *Mass Incarceration Costs \$182 Billion Every Year, Without Adding Much to Public Safety*, EQUAL JUST. INITIATIVE (Feb. 2, 2017), <https://eji.org/news/mass-incarceration-costs-182-billion-annually/>. This figure only accounts for “the cost of operating prisons, jails, paroles, and probation.” *Id.* It does not include policing and courts costs.

into consideration.²⁹ This figure dwarfs government expenditures on welfare and social programs.³⁰ For example, during the 2016-2017 fiscal year, Los Angeles delegated 16.9% of its budget, almost \$1.5 billion, to its police department.³¹ On the other hand, the Los Angeles “economic and workforce development department” received just 0.2% of the city’s budget.³² In New York City, only the Department of Education’s budget exceeded the city’s crime related expenditures that year.³³ These are not isolated examples; many U.S. city budgets evince similar decision-making.³⁴

The collateral consequences of mass incarceration also exact a heavy social toll. Higher rates of incarceration inevitably mean that more mothers and fathers are locked up.³⁵ While estimates vary, a report by the National Institute of Justice, a “research development and evaluation agency of the U.S. Department of Justice,”³⁶ determined that somewhere between 1.7 million and 2.7 million children will have at least one parent incarcerated during their lifetime.³⁷ That equates to eleven percent of children in the U.S.³⁸ While the actual consequences vary case-to-case, there is ample data suggesting that children with an incarcerated parent are more likely to become incarcerated themselves and/or develop mental health

²⁹ *Id.*

³⁰ See Kate Hamaji et al., *Freedom to Thrive: Reimagining Safety & Security in Our Communities*, THE CTR. FOR POPULAR DEMOCRACY, 44, 57–58, <https://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf> (last visited Oct. 11, 2021).

³¹ *Id.* at 44.

³² *Id.* This department’s objective is to “steer economic development” so that Los Angeles has a “strong and committed workforce, sustainable neighborhoods and profitable communities.” *About the EWDD*, ECON. & WORKFORCE DEV. DEP’T, <https://ewddlacity.com/index.php/about-ewdd> (last visited Sept. 17, 2019).

³³ See Hamaji et al., *supra* note 30.

³⁴ See *id.*

³⁵ Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NAT’L INST. OF JUST. J. (Mar. 1, 2017), <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>.

³⁶ *About the National Institute of Justice*, NAT’L INST. OF JUST., <https://nij.ojp.gov/about-nij> (last visited Oct. 30, 2021).

³⁷ *Id.*

³⁸ *Id.*

problems.³⁹ Additionally, criminal conviction may also result in the revocation of some civil rights.⁴⁰ For example, a felony conviction can inhibit one's ability to vote or serve on a jury.⁴¹ A conviction can also prevent one from participating in public programs, such as the Supplemental Nutrition Assistance Program.⁴² Also, because of the stigma associated with a criminal conviction, it is nearly impossible for a convicted person to find gainful employment, regardless of their offense.⁴³ This is just the tip of the iceberg; a more thorough survey of the collateral consequences of mass incarceration is beyond the scope of this Note. However, these consequences—which rarely relate to the underlying crime in question—share in exacerbating criminal punishment beyond a court-imposed sentence,⁴⁴ which consequently “negatively affect public safety and the public good.”⁴⁵ Specifically, collateral consequences may increase recidivism by barring individuals from using many social programs to help support themselves.⁴⁶

In 2016, The New York County District Attorney's Office (“DANY”) created a “first-of-its-kind” initiative to spur criminal justice reform.⁴⁷ After seizing \$250 million through prosecuting international financial crimes, DANY created the Criminal Justice Investment Initiative (“CJII”).⁴⁸ Using a data-driven approach and

³⁹ *See id.*

⁴⁰ *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, U.S. COMM'N ON CIV. RTS., 89 (June 2019), <https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf>.

⁴¹ *Id.*

⁴² *See id.* at 77. The Supplemental Nutrition Assistance Program is a federal program that helps low-income families purchase healthy and nutritious food. *See Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC., FOOD AND NUTRITION SERV., <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program> (last visited Sept. 15, 2021).

⁴³ *See* U.S. COMM'N ON CIV. RTS., *supra* note 40, at 134.

⁴⁴ *See id.* at 133–34.

⁴⁵ *Id.* at 133.

⁴⁶ *See id.*

⁴⁷ *Safer Neighborhoods and a Fairer, More Efficient Justice System*, CRIM. JUST. INVEST. INITIATIVE, 2, <https://cjii.org/wp-content/uploads/2016/06/CJII-plan-6-23-2016.pdf> (last visited Oct. 11, 2021) [hereinafter *Safer Neighborhoods*].

⁴⁸ *See id.* at 2.

capital derived from these seizures, the CJII funds local community groups in New York City.⁴⁹ The initiative hopes to strengthen and empower local communities by providing resources to prevent crime in the first place.⁵⁰

Clearly, the U.S.'s criminal justice system, or as some call it, the "criminal punishment system,"⁵¹ needs fixing. In the wake of George Floyd's murder, groups ranging from evangelical faith leaders⁵² to the Retail Industry Leaders Association⁵³ have demanded different iterations of reform. Politicians have responded,⁵⁴ yet substantive change remains elusive. As the CJII demonstrates, prosecutors are uniquely positioned to spearhead community-based criminal justice reform. Therefore, more prosecutorial offices should set up CJII-like programs that derive their funding from white-collar crime prosecutions.

Part I of this Note illustrates why criminal justice reform is hard to achieve through conventional political processes. Part II discusses one view of criminal justice reform, particularly advanced by abolitionists, that takes a community-focused approach to criminal justice. Part III provides a more thorough introduction to DANY's CJII. Part IV briefly explains asset forfeitures in criminal cases. Finally, Part V argues for more prosecutorial offices to create CJII-like initiatives, funded by revenue from litigation or civil asset

⁴⁹ See *id.* at 3.

⁵⁰ See *id.* at 2.

⁵¹ Sharon Beckman, *The Criminal 'Punishment' System*, BOS. COLL. L. SCH. MAG., <http://lawmagazine.bc.edu/2020/07/the-criminal-punishment-system/> (last visited Oct. 16, 2020).

⁵² See Elana Schor, *Evangelicals Call for Police and Criminal Justice Reform*, CHRISTIANITY TODAY (Aug. 19, 2020, 9:39 AM), <https://www.christianitytoday.com/news/2020/august/christian-criminal-justice-police-reform-and-campaign-race.html>.

⁵³ Brian Dodge, *Leading Retailers Call for Criminal Justice Reforms*, RETAIL INDUS. LEADERS ASS'N (June 24, 2020), <https://www.rila.org/focus-areas/public-policy/leading-retailers-call-for-criminal-justice-reform>.

⁵⁴ During the 2020 Presidential Election, progressive and moderate democratic candidates included in their platforms various plans and proposals for criminal justice reform to address the United States' mass incarceration. See Timothy Williams & Thomas Kaplan, *The Criminal Justice Debate Has Changed Drastically. Here's Why*, N.Y. TIMES (Aug. 21, 2019), <https://www.nytimes.com/2019/08/20/us/politics/criminal-justice-reform-sanders-warren.html>.

forfeitures from white-collar crime, as a means to promote criminal justice reform.

I. WHY THE POLITICAL PROCESS IS UNSUITED FOR CRIMINAL JUSTICE REFORM

Rachel Barkow, a professor at New York University Law School and the faculty director of its Center for Administration of Criminal Law,⁵⁵ argues that the policies underlying crime control and public safety hinge primarily on “emotions and the gut reactions of laypeople.”⁵⁶ This stems from the combination of emotional responses and penal populism.⁵⁷ The average person will almost always have a “visceral” and emotional reaction to crime, particularly high-profile cases, prompting many to favor “more-punitive” policies.⁵⁸ Furthermore, politicians are keen on this, and many will “consistently seek to gain electoral advantage by catering to these instincts and pandering to public anxiety,”⁵⁹ rather than analyzing which policies actually increase public safety—a more challenging policy question.⁶⁰ Criminologists call this phenomenon “penal populism,” and it is “embedded” in the modern U.S. political system.⁶¹ The result is a policy-making process predicated on gut reactions rather than data and analysis.⁶²

Additionally, the U.S. political system makes reasoned criminal justice reform incredibly difficult.⁶³ A single anecdote carries the potential to derail any attempt to enact meaningful criminal justice reform.⁶⁴ To do so, officials simply point to someone convicted of a

⁵⁵ Rachel E. Barkow, NYU LAW, <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.overview&personid=20660> (last visited Sept. 15, 2021).

⁵⁶ BARKOW, *supra* note 19, at 1.

⁵⁷ *See id.* at 4–5.

⁵⁸ *Id.*

⁵⁹ *Id.* at 4–5.

⁶⁰ *See id.* at 4–5.

⁶¹ *Id.* at 5.

⁶² *See id.*

⁶³ *See id.* at 6.

⁶⁴ *See id.*

violent felony who would benefit from the proposed changes.⁶⁵ For example, President George H.W. Bush effectively used these tactics during his 1988 campaign against Michael Dukakis, the then Governor of Massachusetts.⁶⁶ Bush unveiled a campaign advertisement focused on Willie Horton, a prisoner in Massachusetts.⁶⁷ While released through the state's furlough program, Horton brutally raped a woman and stabbed her boyfriend.⁶⁸ Bush seized upon this and used it to paint Dukakis as insufficiently tough on crime.⁶⁹ Even though the program had a success rate above ninety-nine percent, the public became enraptured with this one, isolated incident.⁷⁰ This episode would help propel Bush to the presidency, providing a framework for how future campaigns could weaponize such stories.⁷¹ A similar phenomenon occurred in Arkansas, where a single crime became an indictment on the state's parole system.⁷² There, a murder perpetrated by a man with a history of parole violations drove this decision.⁷³ No consideration was paid to the parole program's overall costs and benefits.⁷⁴

In 2019, the New York state legislature passed what, at the time, was touted as one of the country's "most progressive bail reform packages."⁷⁵ In January 2020, the new law took effect.⁷⁶ However, in a March press release announcing the preceding month's crime statistics, the New York City Police Department ("NYPD") claimed

⁶⁵ *See id.*

⁶⁶ *See* Peter Baker, *Bush Made Willie Horton an Issue in 1988, and the Racial Scars Are Still Fresh*, N. Y. TIMES (Dec. 3, 2018), <https://www.nytimes.com/2018/12/03/us/politics/bush-willie-horton.html>.

⁶⁷ *See id.*

⁶⁸ *See id.*

⁶⁹ *Id.*

⁷⁰ *See* BARKOW, *supra* note 19, at 6.

⁷¹ *See id.*

⁷² *See id.*

⁷³ *See id.*

⁷⁴ *See id.*

⁷⁵ Jamiles Lartey, *New York Rolled Back Bail Reform. What Will the Rest of the Country Do?*, MARSHALL PROJECT (Apr. 23, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/04/23/in-new-york-s-bail-reform-backlash-a-cautionary-tale-for-other-states>.

⁷⁶ *Id.*

the city saw a 22.5% increase in crime when compared to the same period the previous year.⁷⁷ Significantly, the NYPD attributed this uptick to criminal justice reform, labelling it a “significant reason” behind the increase.⁷⁸ A coalition of New York City public defenders disputed the data, noting that there are actually twenty percent less complaints on court docket calendars.⁷⁹ Nevertheless, as tabloids and reform opponents amplified the NYPD’s report, the new bail law’s popularity dwindled.⁸⁰ In 2019, fifty-five percent of New Yorkers surveyed favored the reforms.⁸¹ After the press release, that number cratered to just thirty-seven percent.⁸² In April, just a few months after the bail reforms became law, former New York Governor Andrew Cuomo and former New York City Mayor Bill de Blasio supported legislation that would retract many of the changes.⁸³ Those alterations expanded the roster of criteria eligible for bail, notably including grand larceny and some types of persistent felony offenders.⁸⁴ This political trend has continued into 2021 as evidenced by Eric Adams winning the democratic nomination for New York City’s mayoral race on a pro-police platform.⁸⁵

These examples illustrate how woefully unequipped the U.S.’s political system is to tackle meaningful criminal justice reform. So long as penal populism remains embedded in this country’s political discourse—and it seems unlikely that it will disappear anytime soon—attempts to enact substantive change will face a

⁷⁷ *NYPD Announces Citywide Crime Statistics for February 2020*, N.Y.C. POLICE DEP’T (Mar. 5, 2020), <https://www1.nyc.gov/site/nypd/news/pr0305/nypd-citywide-crime-statistics-february-2020>.

⁷⁸ *Id.*

⁷⁹ Tina Moore & Craig McCarthy, *NYC’s Public Defenders Claim NYPD May be Faking Spike in Crime*, N.Y. POST, <https://nypost.com/2020/03/03/nycs-public-defenders-claim-nypd-may-be-faking-spike-in-crime/> (last updated Mar. 3, 2021, 3:51 PM).

⁸⁰ *See* Lartey, *supra* note 75.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *See id.*

⁸⁴ *See id.*

⁸⁵ *See Eric Adams Wins Democratic Primary in New York Mayoral Race*, CNBC (July 6, 2021, 7:41 PM), <https://www.cnn.com/2021/07/06/eric-adams-wins-democratic-primary-in-new-york-city-mayoral-race.html>.

bombardment of opposition. This is not to say that criminal justice reformers should shun the political process completely, but they clearly cannot rely upon it to be the sole vehicle of change. Fortunately, there are those who advocate for criminal justice reform in a way that largely avoids these entanglements, choosing instead to focus on the role that local communities can play.

II. COMMUNITY-BASED CRIMINAL JUSTICE REFORM

Community-based criminal justice reform, which focuses on community accountability rather than a punishment system, may seem radical at face value.⁸⁶ After all, the world needs police and prisons, right? Mariame Kaba, an activist and criminal justice reformer, explains how this conceptualization of criminal justice might not be as far-fetched as it seems.⁸⁷ Her vision, which she describes as “transformative justice,” entails a system closely akin to restorative justice.⁸⁸ Rather than focusing on punitive ends, transformative justice aims to create accountability within individual communities.⁸⁹ Kaba concedes materializing such a vision would require a massive shift in prison philosophy and recognizes that such a change could take a lifetime.⁹⁰ However, this process does not need to be abrupt; it can be gradual. Kaba explains that anytime someone works to “shorten the reach” of the present systems—such as using programs that provide an alternative to incarceration—that person is working towards an “abolitionist horizon.”⁹¹ The ultimate goal is to emphasize accountability.⁹² Based on her own experiences as an activists and as a survivor of sexual assault, Kaba believes that criminal offenders “want a chance to talk to the families of the people they harmed because they want

⁸⁶ See *Thinking About How to Abolish Prisons with Mariame Kaba*, NBC (Apr. 10, 2019, 12:58 PM), <https://www.nbcnews.com/think/opinion/thinking-about-how-abolish-prisons-mariame-kaba-podcast-transcript-ncna992721>.

⁸⁷ *See id.*

⁸⁸ *Id.*

⁸⁹ *See id.*

⁹⁰ *See id.*

⁹¹ *Id.*

⁹² *See id.*

to talk to those people, because accountability is a form of healing.”⁹³

Such an approach to criminal justice, however, begs the question: what about supposed the “monsters, sociopaths [and] immoral remorseless killers?”⁹⁴ Proponents of criminal justice like Kaba have a couple responses. First, perpetrators of the most egregious crimes, such as rape and murder, represent a meager percentage of the overall U.S. prison and jail population.⁹⁵ While conceding that there certainly are “people who cannot in good conscience be within our regular society,” Kaba asserts there is no reason to assume prison is the only option for such people.⁹⁶ Secondly, and more persuasively, community-based criminal justice reform seeks to remove the root causes on criminality.⁹⁷ It is a front-end approach.⁹⁸ Five Mualimm-ak, another reform activist who spent twelve years in prison for a crime he did not commit,⁹⁹ posits that this form of criminal justice necessitates a two-step approach: “you cannot abolish prisons, which tear apart communities, without repairing and building communities.”¹⁰⁰

This view of criminal justice is not just theoretical; there are already numerous individuals and organizations making it a reality. Mualimm-ak, for example, serves on several community boards and organizations,¹⁰¹ which gives him ample opportunity to explore alternatives to incarceration, particularly for youths. Through this leadership, he creates programming for at-risk youth, which he then

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL’Y INITIATIVE (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

⁹⁶ NBC, *supra* note 86.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See *Beyond Prisons—Episode 4: Abolition by Any Means Necessary Feat. Five Mualimm-AK*, SHADOW PROOF (May 5, 2017), <https://shadowproof.com/2017/05/05/beyond-prisons-episode-4-abolition-means-necessary-feat-five-mualimm-ak/>.

¹⁰⁰ *Id.*

¹⁰¹ *See id.*

can present to judges as alternatives to incarceration.¹⁰² Not only does this allow young offenders to stay in school, but it also makes them accountable to the community they harmed.¹⁰³ Despite the historical dearth of scholarly research about the efficacy of community-based criminal justice,¹⁰⁴ some individuals are attempting to quantify it.¹⁰⁵ One study on the “casual effect of community organizations on violent crime” concluded that community non-profits “had a substantively meaningful negative effect on murder, violent crime, and property crime.”¹⁰⁶ Specifically, it found that “in a city of 100,000, each new nonprofit community organization [led] to a 1.2% drop in homicide rate, a 1% reduction in violent crime,” and a 0.7% reduction in property crime.¹⁰⁷

Perhaps the most poignant example of this approach is Common Justice, an alternative program to incarceration that operates in Brooklyn and the Bronx.¹⁰⁸ Common Justice is the only program in the country that caters exclusively to adults who committed violent felonies.¹⁰⁹ If the victim consents, Common Justice “diverts the cases into a process designed to recognize the harm done . . . and develop[s] appropriate responses to hold the responsible party accountable.”¹¹⁰ Through this unique program, a trained facilitator, the parties involved in the crime, and those who support them meet in a “restorative justice ‘circle.’”¹¹¹ They engage in a dialogue and come to an agreement as to what the responsible party can do to

¹⁰² *See id.*

¹⁰³ *See id.*

¹⁰⁴ *See* Patrick Sharkey, et al., *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime*, 82 AM. SOC. REV. 1214, 1234–35 (2017).

¹⁰⁵ *See id.*

¹⁰⁶ *Id.* at 1234.

¹⁰⁷ Noah Atchison, *Community Organizations Have Important Role in Lowering Crime Rates*, BRENNAN CTR. FOR JUST. (Apr. 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/community-organizations-have-important-role-lowering-crime-rates>.

¹⁰⁸ *Common Justice Model*, COMMON JUST. (Feb. 2021), https://www.commonjustice.org/common_justice_model.

¹⁰⁹ *See id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

make amends.¹¹² Afterwards, the responsible party must adhere to the agreement, which typically involves “restitution, extensive community service, and commitments to attend school and work.”¹¹³ That person must also complete a twelve to fifteen month “intensive violence intervention program.”¹¹⁴ Completion means avoiding any potential jail or prison sentences.¹¹⁵ In short, Common Justice seeks to make people accountable for their harm through a community-oriented approach, simultaneously breaking cycles of violence and bringing justice for survivors.¹¹⁶

These kinds of initiatives belie the presumption that community-oriented criminal justice is an unrealistic alternative to incarceration. While achieving a world without prisons would require a massive shift in both philosophy and values,¹¹⁷ that should not preclude attempts to move towards that objective. However, are there ways to accomplish this type of criminal justice reform while working through or alongside the present system? Or are outside forces, like the activists and programs mentioned above, the only option? Paul Butler, a professor at Georgetown Law and one of the country’s preeminent scholars on criminal justice,¹¹⁸ argues activists should be cognizant of what the law can and cannot do to induce criminal justice reform.¹¹⁹ The Manhattan District Attorney’s Office provides one example of how the law can be used to effectuate change.

¹¹² *See id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *See id.*

¹¹⁶ *See id.*

¹¹⁷ *See* NBC, *supra* note 86.

¹¹⁸ *The Albert Brick Professor in Law: Paul Butler*, GEO. L., <https://www.law.georgetown.edu/faculty/paul-butler/> (last visited Oct. 18, 2020).

¹¹⁹ Paul Butler, *The System is Working the Way it is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1471 (2016). Professor Butler notes how some Black Lives Matter activists champion “liberal reforms” like federal investigations and prosecutions of police departments. *Id.* at 1470. However, he believes those measures do not address the fundamental causes of police brutality, those rooted in racial discrimination. *Id.* at 1471. However, legal strategies can help by enrolling activists and inspiring “community mobilization.” *Id.*

III. PROSECUTORIAL INITIATIVES THAT FOCUS ON COMMUNITY INVESTMENT

A. *The Manhattan District Attorney's Office's Criminal Justice Investment Initiative*

The DANY CJII provides an excellent example of how the law can be used as a tool to achieve criminal justice reform. Cyrus Vance Jr., the Manhattan District Attorney, created the initiative in 2016 to invest \$250 million seized through international financial crime prosecutions.¹²⁰ The goal is to use this money to fund community projects and organizations to “improve public safety, prevent crime, and promote a fair and efficient justice system.”¹²¹ Much like the front-end approach of community-focused criminal justice, the CJII attempts to address the causes of criminality.¹²² Through analyzing “dozens of systemic factors” that contribute to crime, DANY identified four Manhattan neighborhoods to focus on: East Harlem, Central and West Harlem, Washington Heights, and the Lower East Side.¹²³ The CJII especially looks to provide funding for programs that provide services for youth.¹²⁴ “By intervening early and supporting targeted, holistic development, youth become less likely to interact with the justice system and more likely to engage in pro-social activities.”¹²⁵ The CJII also seeks to expand diversion opportunities and assist those leaving prison with reintegration.¹²⁶ In sum, the CJII attempts to change the criminal justice system with the same goal as abolitionists, that is, safer and stronger communities to prevent crime in the first place.¹²⁷

Data shaped the CJII's development process.¹²⁸ For example, it cited a 2013 study that revealed and analyzed many of the barriers

¹²⁰ See *Safer Neighborhoods*, *supra* note 47, at 1.

¹²¹ *Id.*

¹²² See *id.* at 4

¹²³ *Id.* at 5.

¹²⁴ See *id.* at 8.

¹²⁵ *Id.*

¹²⁶ *Id.* at 11.

¹²⁷ See *id.* at 13.

¹²⁸ See *id.* at 5.

stymying employment opportunities for youth in New York City.¹²⁹ That study focused on the approximately 172,000 New York City residents between the ages of eighteen and twenty-four who neither work nor attend school.¹³⁰ While the number of young adults attending school in New York City is trending upwards, fewer are working.¹³¹ The study also showed how those unemployed individuals are disproportionately “less educated, of color, and geographically concentrated in poorer neighborhoods.”¹³² For example, for every six young adults that are neither working nor pursuing education beyond a high school diploma, five were either black or Latino.¹³³ This reality makes clear there are two diverging paths policy-makers can consider in regards to such individuals: either invest in their communities to allow society to “reap the benefits of their contributions,” or continue to neglect them and risk paying the exorbitant social and financial costs associated with the criminal justice system.¹³⁴ These are the kinds of systemic inequalities that the CJII seeks to address.¹³⁵ The initiative acknowledges how one’s circumstances can impact the likelihood that he or she will end up in the criminal justice system. The CJII seeks to address this through its youth hubs, a community-based approach to support underserved youths that directly provides funding to organizations and groups that work with them.¹³⁶

The CJII funds a myriad of programing.¹³⁷ From “family and youth development programs,” to “diversion and reentry support,”

¹²⁹ See *id.* at 7, 14 n.7; see James Parrott & Lazar Treschan, *Barriers to Entry, JOBS FIRST N.Y.C.* (May 2, 2013), http://jobsfirstnyc.org/wp-content/uploads/2019/06/JobsFirstNYCBarriers_to_EntryExec_EVersion.pdf.

¹³⁰ Parrot & Treschan, *supra* note 129, at 5.

¹³¹ See *id.*

¹³² *Id.* at 4.

¹³³ See *id.* at 7.

¹³⁴ See *id.* at 4.

¹³⁵ See generally *Safer Neighborhoods*, *supra* note 47.

¹³⁶ See *Opportunity Knocks: Community Investment Provides Launching Pad for Our City’s Youth*, CRIM. JUST. INV. INITIATIVE, 2–3 (Oct. 19, 2020), <http://cjii.org/wp-content/uploads/2020/10/CJII-Policy-Progress-Update-10.15.20.pdf> [hereinafter *Opportunity Knocks*].

¹³⁷ See *Funded Programs*, CRIM. JUST. INV. INITIATIVE, <https://cjii.org/funding/funded-programs/> (last visited Nov. 6, 2020) [hereinafter *Funded Programs*].

it furnishes millions of dollars to various organizations in New York City.¹³⁸ The aforementioned “youth opportunity hubs” are integral to this objective.¹³⁹ In total, there are five hubs operating in various areas of New York City.¹⁴⁰ Recognizing the importance of community space, the CJII delegated \$45.9 million to create hubs in underserved areas.¹⁴¹ These spaces serve more than 2,800 young New Yorkers every year.¹⁴² To prevent youths from becoming involved with the criminal justice system, the hubs are equipped with resources like substance abuse services, housing and educational assistance, and mentorship and employment training opportunities.¹⁴³

The hubs have seen remarkable results since they launched in June 2017.¹⁴⁴ According to the CJII’s October 2020 progress report, the five hubs have served over 11,000 youths, ages ranging from ten to twenty-four years old.¹⁴⁵ Of those, 364 obtained a “high school equivalency” within one year of participating.¹⁴⁶ Additionally, over 1,200 participants found employment within that same timeframe.¹⁴⁷ While education in particular has been linked to crime prevention,¹⁴⁸ the same applies to employment opportunities at both the “community and individual-level.”¹⁴⁹ “Individuals who are

¹³⁸ *Id.*

¹³⁹ *Youth Opportunity Hubs*, CRIM. JUST. INV. INITIATIVE (Feb. 28, 2017), <https://cjii.org/youth-opportunity-hubs/> [hereinafter *Youth Opportunity Hubs*].

¹⁴⁰ *See Opportunity Knocks*, *supra* note 136.

¹⁴¹ *Funded Programs*, *supra* note 137.

¹⁴² *Id.*

¹⁴³ *See id.*

¹⁴⁴ *See Youth Opportunity Hubs*, *supra* note 139, at 9–11.

¹⁴⁵ *Id.* at 6.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *See* Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 155, 183 (Mar. 2004); *see also* Stephen Machin, et al., *The Crime Reducing Effect of Education*, ECON. J. 479 (May 2011).

¹⁴⁹ Thomas P. Wadsworth, *Employment, Crime and Context: A Multi-Level Analysis of the Relationship Between Work and Crime*, 200 (Dec. 7, 2002) (unpublished PhD dissertation, University of Washington) (on file with author); *see also* Sarah Lageson & Christopher Uggen, *How Work Affects Crime—And Crime Affects Work—Over the Life Course*, in HANDBOOK OF LIFE-COURSE

employed, those working in higher quality jobs,¹⁵⁰ and those in school commit fewer crimes than individuals who are unemployed, not in school, and working in lower quality jobs.”¹⁵¹

To facilitate the work of these youth hubs, the CJII created a network of “navigators”¹⁵² to connect underserved individuals with resources and coordinate with the service providers running those resources.¹⁵³ The navigators are specially trained to help individuals through the quagmire of social programs and are required to complete a “rigorous social work-based training” developed at Hunter College.¹⁵⁴ This training enables navigators to serve as guides for youth hub participants, helping them “access the various resources they need to cope with crisis or unaddressed trauma, or take the next step towards an education or job goal.”¹⁵⁵ Navigators represent a mobile network of individuals, “cutting across organizations, city agencies, and systems.”¹⁵⁶ One way the CJII augments the effectiveness of navigators is by recruiting some from the neighborhoods they ultimately serve.¹⁵⁷ “[L]ived experience” has been crucial to the success of navigators.¹⁵⁸ Their experiences often mirror those of the individuals who participate in a CJII program, which allows them to serve as role models.¹⁵⁹ To date, twelve different navigators have individually served 1,500 CJII programming participants.¹⁶⁰ On average, each navigator handles

CRIMINOLOGY: EMERGING TRENDS AND DIRECTIONS FOR FUTURE RESEARCH 202 (Chris L. Gibson & Marvin Krohn eds., 2012).

¹⁵⁰ See Wadsworth, *supra* note 149, at 200. This particular analysis defined such jobs as those that require “more skill and offer better compensation.” *Id.* at 14.

¹⁵¹ *Id.* at 200.

¹⁵² *Safer Neighborhoods*, *supra* note 47, at 7.

¹⁵³ *Id.*

¹⁵⁴ *Opportunity Knocks*, *supra* note 136, at 9–10.

¹⁵⁵ *Id.* at 10.

¹⁵⁶ *Safer Neighborhoods*, *supra* note 47, at 7.

¹⁵⁷ *See id.*

¹⁵⁸ *Opportunity Knocks*, *supra* note 136, at 8–9.

¹⁵⁹ *See id.* at 8.

¹⁶⁰ *See id.* at 10.

twenty cases at once.¹⁶¹ Each case typically requires four months of engagement.¹⁶²

The combination of youth hubs and navigator support helps the CJII address the root causes of crime.¹⁶³ However, both wings of the program focus on building safer and stronger communities.¹⁶⁴ The CJII's evaluation process is a multi-year effort, and preliminary results are expected sometime in 2021.¹⁶⁵ However, through the CJII, DANY has invested millions of dollars into programs ranging from its youth hubs, reentry programs, and counseling.¹⁶⁶ Despite originating from a state actor, this community-focused approach to criminal justice reflects many of the same values and rationales that abolitionists espouse.¹⁶⁷ The endgame is also the same: reducing mass incarceration.¹⁶⁸

B. Other Initiatives Similar to the CJII

Despite the immense potential the CJII possesses for being a state-anchored tool for criminal justice reform, there appear to be few imitators across the country. The Bradenton Police Department in Florida has a similar initiative called the Florida Contraband Forfeiture Fund Award Program ("FCFF").¹⁶⁹ This initiative allows

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Funded Programs*, *supra* note 137.

¹⁶⁴ *See Id.* (Youth Opportunity Hubs); *see also Silberman School of Social Work: Community Navigator Program*, CRIM. JUST. INV. INITIATIVE, <https://cjii.org/focus-areas/enhancing-effectiveness-across-systems/silberman-school-social-work-community-navigator-program/> (last visited Oct. 13, 2021) (Community Navigator Program).

¹⁶⁵ *2020 Annual Report, Innovations and Innovations and Lessons Learned from the Manhattan District Attorney's Criminal Justice Investment Initiative*, CRIM. JUST. INVEST. INITIATIVE at 50, <http://cjii.org/wp-content/uploads/2021/01/CJII-Annual-Report-2020-Final.pdf> (last visited Oct. 13, 2021).

¹⁶⁶ *Id.* at 53–55.

¹⁶⁷ *See supra* Part II.

¹⁶⁸ *See supra* Part II; *see also Opportunity Knocks*, *supra* note 136 at 2.

¹⁶⁹ *Contraband Forfeiture Grant Program*, BRADENTON POLICE DEP'T, <https://www.bradentonpd.com/forfeituregrantprogram> (last visited Nov. 6, 2020) [hereinafter *Contraband Forfeiture Program*].

non-profit community groups and organizations to apply for access to asset forfeiture funds for projects that attempt to improve “neighborhood safety, [promote] crime prevention, drug education, drug treatment services, or school resource officer programs.”¹⁷⁰ Between 2017 and 2019, the Bradenton Police Department has given “forfeiture grant[s]” to the Boys and Girls Club, a substance abuse prevention coalition called Drug Free Manatee, and a handful of similar community groups.¹⁷¹

There are several noteworthy ways in which the two programs differ. First, the FCFF does not explicitly disclose what type of forfeitures make up “contraband forfeiture,”¹⁷² whereas the CJII discloses that it derives its funding from the Manhattan DA’s settlements with international banks for violating U.S. sanctions.¹⁷³ Second, the FCFF gives the Bradenton Chief of Police almost complete discretion when granting funds.¹⁷⁴ In New York, the DANY has limited discretion in distributing CJII funds, instead they must rely on substantial research and advice from the CUNY Institute of State and Local Governance, which identifies at-risk neighborhoods in New York City where the funds should be dedicated.¹⁷⁵ This includes input from the actual communities that the CJII would ultimately work with.¹⁷⁶ This enables DANY to enact a “data-driven” initiative that impactfully and sustainably invests in communities to improve both the criminal justice system and public safety.¹⁷⁷ If a community group or an organization believes their work falls within a “focus area,” they can then apply

¹⁷⁰ *Contraband Forfeiture Grant Program Information Sheet Fiscal Year 2019-2020*, BRADENTON POLICE DEP’T, <https://static1.squarespace.com/static/5fe0e251db7005a219bdd4f/t/6035539a4ae7a02a824ee013/1614107547044/Forfeiture+Grant+Information+Sheet-Website.pdf> (last visited Nov. 10, 2020) [hereinafter *Program Information Sheet*].

¹⁷¹ *Contraband Forfeiture Program*, *supra* note 169.

¹⁷² *See Program Information Sheet*, *supra* note 170.

¹⁷³ *See Safer Neighborhoods*, *supra* note 47, at 3.

¹⁷⁴ *Program Information Sheet*, *supra* note 170.

¹⁷⁵ *See Safer Neighborhoods*, *supra* note 47 at 3, 5.

¹⁷⁶ *Id.* at 5.

¹⁷⁷ *See id.* at 4.

for funding.¹⁷⁸ This removes personal preference—organizations that the district attorney himself favors—from the equation. It appears at least one other police department in the country has a similar program to Bradenton.¹⁷⁹

Few other prosecutorial offices in the United States have programs as comprehensive and thoughtfully funded as the CJII. Recently, in response to an ongoing gang war in Houston,¹⁸⁰ Kim Ogg, the Harris County District Attorney in Texas,¹⁸¹ said she plans to create a similar initiative.¹⁸² However, she did not provide any details, nor a timeline for the project.¹⁸³ While her office already uses forfeited assets to fund a diversion program, Ogg hopes an expansion will include “intervention and prevention programs.”¹⁸⁴

The Nassau County District Attorney (“NCDA”) in Long Island, New York does have a program that resembles the CJII.¹⁸⁵ However, while DANY relies on third-party consultation and research when determining where to allocate funds,¹⁸⁶ the NCDA Community Partnership and Crime Prevention Fund (“CPCPF”) does not engage in such a process.¹⁸⁷ Rather, it puts the onus on a group applying for

¹⁷⁸ See *Frequently Asked Questions*, CRIM. JUST. INV. INITIATIVE, <https://cjii.org/about/faqs/> (last visited Nov. 6, 2020).

¹⁷⁹ See *Asset Forfeiture Community Reinvestment Grant Program*, PASADENA POLICE DEP’T, <https://www.cityofpasadena.net/police/wp-content/uploads/sites/28/PPD-Asset-Forfeiture-Community-Reinvestment-Grant-Solicitation-Informational-Packet.pdf?v=1602979200030> (last visited Nov. 7, 2020).

¹⁸⁰ See St. John Barned-Smith, *Kim Ogg Says She Will Use Asset Forfeiture Funds for Crime Prevention Programs*, HOUSTON CHRON. (June 8, 2019), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Kim-Ogg-says-she-will-use-asset-forfeiture-funds-13962559.php>.

¹⁸¹ *Leadership Bios*, OFF. OF THE DIST. ATT’Y HARRIS CNTY., TEX., <https://app.dao.hctx.net/bios> (last visited Nov. 6, 2020).

¹⁸² See Barned-Smith, *supra* note 180.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See *NCDA Community Partnership & Crime Prevention Fund*, NASSAU CNTY. DIST. ATT’Y, <https://www.nassauda.org/168/NCDA-Community-Partnership-Crime-Prevent> (last visited Nov. 7, 2020).

¹⁸⁶ See *Safer Neighborhoods*, *supra* note 47, at 2.

¹⁸⁷ See NASSAU CNTY. DIST. ATT’Y, *supra* note 185.

funds to provide an in-depth description of its proposal.¹⁸⁸ The NCDA CPCPF Advisory Committee then reviews the proposal and decides if it wants to give the applying group or organization funds.¹⁸⁹ While it shares a common goal with DANY, the Nassau County crime prevention fund resembles those employed by Pasadena¹⁹⁰ and Bradenton.¹⁹¹ That is, the three programs allocate basically total discretion as to which programs receive funding to a handful of individuals.¹⁹² While it is not possible to survey every police department and state prosecutorial office in the country to ascertain whether there are other analogous programs to the CJII for the purposes of this Note, it seems likely CJII is one of a kind.

IV. FORFEITURE PRACTICES ACROSS THE UNITED STATES

Prosecutorial offices across the country—particularly those in major metropolitan areas—should consider devising and implementing their own versions of the CJII. Prosecutorial offices should follow DANY’s lead and use an analytical approach when developing their version of the Proposal and identifying where to allocate funding.¹⁹³ This should be done by consulting with local community groups as well as research and policy organizations. Data, not the personal preferences of prosecutors, should be the primary driver behind the flow of funds. Furthermore, prosecutors should only derive funding from prosecuting white-collar crime or from civil asset forfeiture stemming from those crimes. Limiting funding in this way avoids the risk of incentivizing over-policing because it limits funding to a very narrow category of crimes that are not categorized as street crimes.

Comparing the CJII’s source of investment to that of a “contraband fund,” as found in Bradenton,¹⁹⁴ demonstrates this risk. Forfeitures first evolved as a method to “cripple large-scale criminal

¹⁸⁸ *See id.*

¹⁸⁹ *See id.*

¹⁹⁰ *See PASADENA POLICE DEP’T, supra note 179.*

¹⁹¹ *See Contraband Forfeiture Program, supra note 169.*

¹⁹² *See PASADENA POLICE DEP’T, supra note 179; see also NASSAU CNTY. DIST. ATT’Y, supra note 185; Contraband Forfeiture Program, supra note 169.*

¹⁹³ *See Safer Neighborhoods, supra note 47, at 4.*

¹⁹⁴ *See Contraband Forfeiture Program, supra note 169.*

enterprises by diverting their resources.”¹⁹⁵ There are two types of forfeitures: criminal asset forfeitures and civil asset forfeitures.¹⁹⁶ The former is employed as additional punishment once a prosecutor secures a conviction against a defendant.¹⁹⁷ Because furthering criminal punishment is the antithesis of CJII-like programs, criminal forfeitures should be excluded. Civil forfeitures, on the other hand, are more common¹⁹⁸ and do have a role. To collect a civil forfeiture in a criminal proceeding, a law enforcement agency must show, by a preponderance of evidence, that those assets stem from the criminal conduct in question.¹⁹⁹ Upon this showing, those assets may “be seized and subsequently forfeited by a court in a civil proceeding.”²⁰⁰

Federal and state laws impact asset forfeiture practices.²⁰¹ They outline where forfeited money can go and how it can be used.²⁰² These laws should not be an obstacle. As explained in Part III, some law enforcement agencies already use forfeitures as community investment funds.²⁰³ In general, these laws provide immense leeway as to how proceeds from forfeitures may be used.²⁰⁴ Accordingly, there are likely no legislative barriers inhibiting prosecutors from implementing CJII-like initiatives. However, it is difficult to ascertain exactly how much money states seize through civil forfeitures because there are no uniform reporting requirements.²⁰⁵ This lack of transparency and uniformity makes it almost impossible

¹⁹⁵ *Asset Forfeiture Abuse*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/issues/criminal-law-reform/reforming-police/asset-forfeiture-abuse> (last visited Nov. 25, 2020).

¹⁹⁶ Marian R. Williams, *Civil Asset Forfeiture: Where Does the Money Go*, 27 CRIM. JUST. REV. 321, 321 (2002).

¹⁹⁷ *See id.*

¹⁹⁸ *See id.*

¹⁹⁹ *See id.* at 322; *see also Civil Asset Forfeiture: Unfair, Undemocratic, Un-American*, S. POVERTY L. CTR. (Oct. 2017), https://www.splcenter.org/sites/default/files/com_policybrief_civil_asset_forfeiture_web.pdf.

²⁰⁰ Williams, *supra* note 196, at 322.

²⁰¹ *See id.* at 323.

²⁰² *See id.*

²⁰³ *See discussion supra* Part III.

²⁰⁴ *See* Williams, *supra* note 196, at 327.

²⁰⁵ *See* S. POVERTY L. CTR., *supra* note 199.

to decipher a holistic picture of forfeiture activity.²⁰⁶ Seventeen states do not even require forfeiture record keeping.²⁰⁷ And, according to the Institute for Justice's most recent data, twenty-six states do not require reporting on how agencies spend forfeiture money.²⁰⁸ Unfortunately, where statutory requirements do exist, they often fail to accurately capture forfeiture activity.²⁰⁹ For example, some states do not require law enforcement to distinguish between criminal and civil forfeitures.²¹⁰ Many reports also fail to delineate between the type of property seized or whether the seizure accompanied an actual criminal charge or conviction.²¹¹ Additionally, forfeiture reports are often missing data.²¹² What is known, however, is that state forfeitures amount to millions, if not billions, of dollars a year.²¹³

Civil forfeitures, and their immense potential for abuse, present the largest challenge to implementing programs like the CJII. No jurisdictions, not even those that report civil forfeitures, require law enforcement agencies to provide itemized lists showing how they use forfeiture funds.²¹⁴ In 2015, the Institute for Justice conducted a survey in an attempt to understand where law enforcement funnels this money.²¹⁵ It discovered that equitable sharing funds—property seized locally that is then forfeited to the federal government²¹⁶—in eight states primarily went towards “equipment” or “other”

²⁰⁶ See *Civil Forfeiture & Transparency*, INST. FOR JUST., <https://ij.org/report/policing-for-profit-2/civil-forfeiture-transparency/> (last visited Nov. 29, 2020).

²⁰⁷ DICK M. CARPENTER, ET AL., *POLICING FOR PROFIT* (2015) at 33, available at <http://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf>.

²⁰⁸ Angela C. Erickson et al., *Forfeiture Transparency & Accountability: State-by-State and Federal Report Cards*, INST. FOR JUST., <https://ij.org/report/forfeiture-transparency-accountability/?state=US-NY> (last updated Nov. 3, 2020).

²⁰⁹ See CARPENTER, ET AL., *supra* note 207, at 36.

²¹⁰ See *id.*

²¹¹ See *id.*

²¹² See *id.*

²¹³ See S. POVERTY L. CTR., *supra* note 199 at 323.

²¹⁴ See CARPENTER ET AL., *supra* note 207, at 39.

²¹⁵ See *id.* at 39, 41.

²¹⁶ See *id.* at 25.

expenses.²¹⁷ This “other” category exemplifies the potential for abuse.²¹⁸ In 2012, just four states spent nearly \$13.7 million of forfeiture money under this category.²¹⁹ As the title insidiously suggests, and as anecdotes convey, this designation essentially amounts to a “slush fund.”²²⁰ The Institute for Justice’s report unveiled that local law enforcement officials have used forfeitures to pay for “luxurious travel, high-end dining, fancy equipment, [and] salaries.”²²¹ The former Brooklyn District Attorney, Charles Hynes, was implicated in a scheme where he improperly used seized money to pay a political consultant \$200,000 to work on his unsuccessful re-election campaign.²²² Similarly, a Texas district attorney used such funds to purchase a margarita machine.²²³ These are but a few of the absurd purchases law enforcement has been caught making with forfeitures funds.²²⁴

In order for CJII-like initiatives to be successful, they cannot incentivize this type of conduct. While a broader discussion on state and federal asset forfeiture reform—a topic that uniquely unifies both liberals and conservatives²²⁵—goes beyond the scope of this Note, it is clear there are enough funds for prosecutorial offices across the country to create versions of the Proposal. Inevitably,

²¹⁷ *Id.* at 39.

²¹⁸ *See id.* at 41.

²¹⁹ *Id.*

²²⁰ *See id.*

²²¹ *Id.*

²²² *See* Stephanie Clifford & William K. Rashbaum, *Ex-Brooklyn Prosecutor Charles J. Hynes Accused of Misuse of Funds*, N.Y. TIMES (June 2, 2014), <https://www.nytimes.com/2014/06/03/nyregion/charles-hynes-brooklyn-district-attorney-inquiry.html>.

²²³ *See* Nick Sibilla, *Cops In Texas Seize Millions By ‘Policing for Profit,’* FORBES (June 5, 2014, 4:51 PM), <https://www.forbes.com/sites/instituteforjustice/2014/06/05/cops-in-texas-seize-millions-by-policing-for-profit/?sh=24e8bf541a81>.

²²⁴ *See* Institute for Justice, *The Top 6 Craziest Things Cops Spent Forfeiture Money On*, YOUTUBE (Jan. 31, 2014), https://www.youtube.com/watch?v=n2iJ7UBODw8&feature=emb_title.

²²⁵ Elaine S. Povich, *U.S. Supreme Court Limits States’ Civil Asset Forfeiture Practices*, PEW RSCH. CTR. (Feb. 20, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/02/20/us-supreme-court-limits-states-civil-asset-forfeiture-practices>.

some offices will have more funds than others; some may have none at all.²²⁶ However, as discussed further in Part V, this is ultimately inconsequential to the Proposal's success. Despite the increased calls for civil asset forfeiture reform, this is not an area of the law in flux.²²⁷ In 2019, the United States Supreme Court held, in *Timbs v. Indiana*,²²⁸ that the Excessive Fines Clause of the Eighth Amendment applies to the states.²²⁹ The case epitomizes the reasons why such devout critics of civil asset forfeiture exist.²³⁰ However, the *Timbs* holding will likely have a minimal impact on actual asset forfeitures practices, at least for the immediate future.²³¹ Even if the law in this area were to change, the Proposal possesses the requisite limitations to comport with whatever the future holds. The next section furnishes a complete overview of the Proposal and addresses potential concerns.

²²⁶ See *Total Net Deposits to the Fund by State of Deposit*, U.S. DEP'T OF JUST. (2019), <https://www.justice.gov/afp/page/file/1240516/download> (illustrating the variance in total net deposits to the federal forfeiture fund by state).

²²⁷ See *Sen. Lee Backs Bipartisan Bill to Reform Civil Asset Forfeiture Laws*, MIKE LEE U.S. SENATOR FOR UTAH (June 26, 2020), <https://www.lee.senate.gov/2020/6/sen-lee-backs-bipartisan-bill-to-reform-civil-asset-forfeiture-laws>; see also Anne Teigen & Lucia Bradd, *Evolving Civil Asset Forfeiture Laws*, NAT'L CONF. OF STATE LEGISLATORS (Feb. 2018), <https://www.ncsl.org/research/civil-and-criminal-justice/evolving-civil-asset-forfeiture-laws.aspx>.

²²⁸ See *Timbs v. Indiana*, 139 S. Ct. 682 (2019).

²²⁹ *Id.* at 690–91.

²³⁰ See Radley Balko, *Study: Civil Asset Forfeiture Doesn't Discourage Drug Use or Help Police Solve Crimes*, WASH. POST (June 11, 2019, 9:00 AM), <https://www.washingtonpost.com/opinions/2019/06/11/study-civil-asset-forfeiture-doesnt-discourage-drug-use-or-help-police-solve-crimes/>.

²³¹ See Emma Andersson, *The Supreme Court Didn't Put the Nail in the Civil Asset Forfeiture's Coffin*, AM. CIV. LIBERTIES UNION (Mar. 15, 2019, 4:45 PM), <https://www.aclu.org/blog/criminal-law-reform/reforming-police/supreme-court-didnt-put-nail-civil-asset-forfeitures>.

V. HOW OTHER PROSECUTORS SHOULD STRUCTURE INITIATIVES LIKE THE CJII

The Proposal is modeled off of two components of the CJII: a data-driven formulation and a limited source of funding.²³² DANY's close work with the City University of New York demonstrates the former.²³³ This data driven approach helped DANY recognize the communities most in need of support and identify certain factors that disproportionately contribute to crime.²³⁴ DANY's CJII methodology must be followed by other offices, but prosecutors do not necessarily need to hire outside consultants to replicate this approach. DANY primarily used the City University of New York as a middleman to conduct research through public surveys and interview experts in the field of criminal justice.²³⁵ While incorporating both would be ideal, it is also unrealistic. Many offices likely lack the funds to embark on an endeavor of a similar scale. However, consulting and collaborating with the community through individual organizers or organizations during the Proposal's creation must be emulated.

The CJII strategy provides several benefits. First, it maximizes funding. Unlike the reactive policy of the Nassau County District Attorney, where groups apply for funding,²³⁶ the CJII approach is proactive. Rather than making a subjective evaluation of a proposal, prosecutors instead make an objective and targeted decision to invest funds with a specific group. It ensures that funding goes towards the portions of the community that need it most. Secondly, this requirement sequesters the calculus and decision-making of where funds will go from becoming distorted by what prosecutors perceive to be a community's needs. Despite purporting to represent

²³² See discussion *supra* Part III

²³³ See *Opportunity Knocks*, *supra* note 136, at 5.

²³⁴ See *id.* at 3.

²³⁵ See *id.*

²³⁶ See NASSAU CNTY. DIST. ATT'Y, *supra* note 185.

the people,²³⁷ one cannot ignore the fact that, as of 2014,²³⁸ ninety-five percent of the 2,437 elected prosecutors in this country were white.²³⁹ Moreover, a staggering seventy-nine percent were white men.²⁴⁰ How then, can such a high concentration of one demographic in an elected position realistically comprehend and represent the complex and varied needs of a community? Some argue they simply cannot.²⁴¹ White individuals often do not “have the kinds of life experiences that most of the population [have].”²⁴² Even from a gender perspective, there are notable differences between how men and women handle cases related to pregnancies, sexual harassment, and domestic violence.²⁴³ Furthermore, these figures cannot be attributed to a successful election campaign, perhaps indicating a broader coalition of support,²⁴⁴ because eighty-five percent of incumbent prosecutors run unopposed.²⁴⁵ This evidence renders the claim that prosecutors represent their communities, despite even genuine attempts to do so, dubious at best. At worst, it makes it impossible. In total, a community-focused analysis of where to provide funding forms the necessary foundation for a successful Proposal. Prosecutor offices lack the necessary knowledge and perspective to unilaterally decide where funding should go to be effective.

²³⁷ See Alan Vinegrad, *The Role of Prosecutors*, 28 HOFSTRA L. REV. 895, 897 (2000); see also *Fourth Edition (2017) of the Criminal Justice Standards for The Prosecution Function*, AM. BAR ASS'N, https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/ (last visited, Oct. 14, 2021).

²³⁸ Amita Kelly, *Does it Matter that 95 Percent of Elected Prosecutors Are White?*, NPR (July 8, 2015, 4:59 PM), <https://www.npr.org/sections/itsallpolitics/2015/07/08/420913118/does-it-matter-that-95-of-elected-prosecutors-are-white>.

²³⁹ Joe Watson, *Study: 95 Percent of Elected Prosecutor are White*, PRISON LEGAL NEWS (Feb. 8, 2017), <https://www.prisonlegalnews.org/news/2017/feb/8/study-95-percent-elected-prosecutors-are-white/>.

²⁴⁰ *Id.*

²⁴¹ See Kelly, *supra* note 238, at 3.

²⁴² *Id.*

²⁴³ See *id.*

²⁴⁴ See *id.*

²⁴⁵ *Id.*

Next, it is necessary to define the very narrow realm from which funding for the Proposal may be drawn. Again, the CJII provides guidance. Funding must be limited to two sources: settlements or civil asset forfeitures from white-collar crime. The former category is relatively straightforward, however, the same cannot be said of the latter. At first, this may seem overly constraining. After all, the CJII had \$250 million worth of funding to invest.²⁴⁶ Without access to the entire spectrum of civil asset forfeitures, how can other prosecutorial offices amass similar funding? The answer is that most other offices probably cannot, but access to millions of dollars is not a predicate for an effective Proposal. New York City, arguably the financial capital of the world,²⁴⁷ creates an inimitable environment for white-collar crime; DANY is uniquely equipped to combat this.²⁴⁸

Because there is poor reporting on what percent of state civil asset forfeitures stem from just white-collar crime,²⁴⁹ it is impossible to provide a workable estimate as to potential funding nationwide. Federal reports may provide a reference point, albeit a poor one: “half of all federal asset forfeiture cases involved white-collar crime.”²⁵⁰ While this is imperfect, it ultimately does not matter because the amount of money that a prosecutor’s office can funnel into a community is not the barometer for this Proposal’s success. Rather, the bolstering of communities and the consequential reduction in crime is the objective. The Proposal does not mandate that imitators set up youth hubs.²⁵¹ The CJII should serve as one

²⁴⁶ *Safer Neighborhoods*, *supra* note 47, at 2.

²⁴⁷ See Arjun Reddy, *New York Reclaims the Crown as the World’s Financial Center, Survey Says*, BUS. INSIDER (Mar. 29, 2019; 4:00 PM), <https://markets.businessinsider.com/news/stocks/survey-new-york-reclaims-crown-as-top-financial-center-2019-5-1028240244>.

²⁴⁸ *Financial Crimes*, N.Y. CNTY. DIST. ATT’Y’S OFF., <https://www.manhattanda.org/victim-resources/financial-crimes/#:~:text=Because%20Manhattan%20is%20a%20global,to%20fight%20white%2Dcollar%20crime.&text=If%20you%20are%20a%20victim,at%20212%2D335%2D8900> (last visited Dec. 1, 2020).

²⁴⁹ See sources cited *supra* notes 202–09 and accompanying text.

²⁵⁰ Alice W. Dery, *Overview of Asset Forfeiture*, AM. BAR ASS’N (June 30, 2012), https://www.americanbar.org/groups/business_law/publications/blt/2012/06/02_dery/.

²⁵¹ See *Funded Programs*, *supra* note 137.

example of community investment programs, not the standard that all communities must replicate exactly. Aligning with the agenda of community-based criminal justice advocates,²⁵² any successful Proposal is one that empowers local groups and organizers to realize safer and stronger communities and address the root causes of criminality. This Proposal merely provides some amount of financial support to help communities pursue this objective. Consequently, there is no threshold dollar amount. While some jurisdictions will inevitably have more funding than others, it is important to remember that criminal justice reform demands a multi-faceted approach.²⁵³ This Proposal is not meant to replace existing efforts, particularly those by community-based justice organizers.²⁵⁴ It is meant to be a vehicle for state actors to facilitate reform that is not subject to many of the pitfalls present via traditional political routes.²⁵⁵

Finally, because of the inherent dangers of asset forfeiture,²⁵⁶ it is imperative the Proposal does not furnish any excuses to expand those practices. That threat is another reason why funding should be limited to civil asset forfeitures from white-collar crime. The practices of the NYPD supply an apt example of this danger.²⁵⁷ A 2018 settlement revealed that in 2016 alone, the NYPD kept \$7.1 million in revenue from seizures attributable to crime in New York City.²⁵⁸ Consequently, the NYPD will have to turn over the nearly “160,000 records on vehicles, phones, and seized cash” that comprise this revenue.²⁵⁹ These seizures “routinely affect[]” low-income individuals and communities of color.²⁶⁰ If this depicts the practices of a relatively liberal jurisdiction like New York—one that

²⁵² See NBC, *supra* note 86.

²⁵³ See discussion *supra* Parts I–II.

²⁵⁴ See discussion *supra* Part II.

²⁵⁵ See discussion *supra* Part I.

²⁵⁶ See discussion *supra* Part IV.

²⁵⁷ See Adam Klasfeld, *Settlement Shines Sunlight on Millions Seized by NYPD*, COURTHOUSE NEWS SERV. (May 14, 2018), <https://www.courthousenews.com/settlement-shines-sunlight-on-millions-seized-by-nypd/>.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

purports to have several self-proclaimed progressive District Attorneys²⁶¹—then measures must be taken to prevent such abuse nationwide. No initiative that claims to further community-based criminal justice can actually do so if it invites behavior by law enforcement that has the potential to harm those very same communities. Additionally, this limited pool of funds avoids incentivizing over-policing of low-income neighborhoods and communities of color because, for the most part, the “majority of white-collar offenders are white males.”²⁶² This is not an attempt to enact a form of reparations. This is just another way that limiting funding to white-collar crime shields the Proposal from being a source of abuse. This construction avoids the tendency of local governments to ratchet up low-level ticketing in poor communities to secure revenue, for example.²⁶³ Under the Proposal, the communities that will benefit the most will be a wholly different population than that from which the funding derives.

In short, the combination of a data-driven formulation and a limited source of funding enables the Proposal to effectuate community-based criminal justice reform while avoiding many of the issues that have historically accompanied relying upon asset forfeiture funds.

CONCLUSION

For a multitude of reasons, criminal justice reform remains elusive in the United States.²⁶⁴ However, the public discourse

²⁶¹ See Dave Colon, *Why Anyone Who Cares About Criminal Justice Reform Should Keep an Eye on Brooklyn*, SPLINTER (Apr. 19, 2019, 11:36 AM), <https://splinternews.com/why-anyone-who-cares-about-criminal-justice-reform-shou-1833980988>.

²⁶² Cynthia Barnett, *The Measurement of White-Collar Crime Using Uniform Code Reporting (UCR) Data*, U.S. DEP'T OF JUST. at 5, https://ucr.fbi.gov/nibrs/nibrs_wcc.pdf.

²⁶³ See Brentin Mock, *Municipal Courts' War on Poor People, Explained*, BLOOMBERG CITYLAB (Sept. 29, 2017, 4:10 PM), <https://www.bloomberg.com/news/articles/2017-09-29/the-municipal-courts-war-on-the-poor-explained>.

²⁶⁴ See Carissa B. Hessick, *DNA Exonerations and the Elusive Promise of Criminal Justice Reform*, 15 OHIO ST. J. OF CRIM. L. 271, 282 (2017); see generally NBC, *supra* note 86.

regarding it, despite “sporadic and incomplete” media coverage, appears to be moving in a “positive direction.”²⁶⁵ Research indicates that Americans are now less ideological and more pragmatic when it comes to discussing criminal justice reform.²⁶⁶ With that in mind, and as calls for prison and police abolition mount,²⁶⁷ the time is right for the U.S. to take a critical look at its criminal justice system. Despite the radical nomenclature, abolitionists are mainly arguing for criminal justice reform through community-based accountability.²⁶⁸ One way to achieve this is to empower community organizations and individuals through funding so they can build the infrastructure necessary to prevent crime in the first place.²⁶⁹

Prosecutor offices can contribute to this effort—not replace it or commandeer it—by creating initiatives like the one proposed here. To avoid incentivizing over-policing and the immense potential for abuse innate to asset forfeiture practices, this Proposal hinges on funding derived from a very limited category: white-collar crime. Through a data-driven approach that requires collaboration with the actual community groups and individuals that make up a prosecutor’s constituents, these funds can be effectively invested to yield the greatest boon possible. Community-based criminal justice reform will likely take years, if not generations, to realize.²⁷⁰ But, if prosecutors truly want to embrace and champion the progressive mantle, this Proposal provides them an opportunity to literally put their money where their mouth is.

²⁶⁵ *An Overview of Public Opinion and Discourse on Criminal Justice Issues*, OPPORTUNITY AGENDA 3, https://www.prisonpolicy.org/scans/2014.08.23-CriminalJusticeReport-FINAL_0.pdf (last visited Dec. 1, 2020).

²⁶⁶ *Id.*

²⁶⁷ See Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

²⁶⁸ See NBC, *supra* note 86.

²⁶⁹ See *Safer Neighborhoods*, *supra* note 47, at 2.

²⁷⁰ See NBC, *supra* note 86.