



**Assessing the Burden of Crime and the Criminal Sanction:
A Public Health Perspective on
Critical Issues in Criminal Justice**

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Dean Fried; colleagues:

I thank you for the invitation to speak with you today and am honored to be included in a speaker series with luminaries in the public health and criminal justice fields such as Ernest Drucker, Homer Venters, Becky Pettit and Marc Mauer. This is good company, and I know they have set a high bar for those of us who follow.

But I hasten to point out this is not just a typical speaking invitation. We are also gathered together today to celebrate an evolving collaboration between John Jay College of Criminal Justice, the institution I am privileged to lead, and the Mailman School of Public Health. Over the past several months we have gotten to know each other well. We have realized that both institutions are committed to open intellectual inquiry on some of the critical issues facing our society and that the scholarly perspectives of each institution bring unique strengths to those inquiries.

I am also very excited about the larger initiative -- called the Punishment to Public Health (P2PH) partnership -- that we have created, bringing together medical schools, schools of public health, government agencies, universities and non-profit organizations to explore the intersection between the public health and public safety perspectives. This collaboration holds enormous potential for interdisciplinary research and the development of innovative and effective public policies. I thank Dean Linda Fried, Dr. Ernest Drucker, the faculty and the entire team here at the Mailman School of Public Health for your commitment to these important ideas.

In particular, I commend the Mailman School of Public Health for its institutional commitment to exploring the public health perspective on mass incarceration, and the launch of this speaker series. I have a deep concern about the path our country has chosen regarding the use of prison as a response to crime and applaud the Mailman community for bringing your unique talents and perspectives to the table.

Over my years in public life I have found great value in the public health perspective on criminal justice issues. Let me give three quick examples. First, when I was Deputy Commissioner for Legal Matters in the New York City Police Department, hired by the new Police Commissioner, Lee Brown, I was thrown off balance when he started talking about violence as a public health problem. This was not the traditional perspective of a law enforcement chief executive. But he forced us to think deeply about the community and societal preconditions for the epidemic of violence that was then sweeping our City, and to develop new strategies for addressing the issue of violence. Out of that examination came a new focus on the sources of illegal guns in New York City and a new task force between the NYPD and the Bureau of Alcohol, Tobacco and Firearms investigating the phenomenon of interstate gun-running.¹

A second example is also related to gun violence. Early in 1993, soon after the election of President Bill Clinton, I was invited to a small White House workshop on public safety, convened by William Galston, then The Saul Stern Professor and Acting Dean at the School of Public Policy, University of Maryland. One of the presenters was a public health researcher who

¹ Jeremy Travis and William Smarrito, "A modest proposal to end gun running in America," *Fordham Urban Law Journal* 19(4), (2009): 795.

demonstrated vividly the impact of gun violence on young African-American men. With dramatic flair, he unfolded a chart comparing the probability of death by firearm for young black men to probabilities for other demographic groups. He stood in the circle of advisors to our new president as the chart illustrating these probabilities grew, and grew, and grew some more until it spread across the room. There were audible gasps of shock. He made his point.

The third example is closer to the topic at hand. In my research on prisons and prisoner reentry, I have been strongly influenced by the work of Dr. Robert Greifinger and his seminal article, published in 1993 with his co-author Jordan Glaser, entitled “Correctional Health Care: A Public Health Opportunity.”² The authors argued that our correctional institutions present an opportunity to meet “broad public health imperatives through treatment and prevention of highly prevalent diseases. Without such attention, these diseases will pose a risk to the communities to which the inmates return.”³ They then documented the high levels of disease – particularly communicable diseases – in our nation’s prisons and jails and argued, persuasively, that we should leverage the unfortunate reality of high rates of incarceration, and the inevitability of reentry, to address the challenges of these health conditions in the community, as well as in the institutions. This way of thinking had a profound influence on the reentry movement as it gained steam in the early years of this century. Indeed, in the new era of the Affordable Care Act, with its emphasis on linking health care systems on both sides of the prison walls, this public health perspective will revolutionize our approach to providing health care for incarcerated populations.⁴

So as I stand here today I wish to acknowledge my debt to the public health perspective on my thinking – and on public policy – as we deal with the challenges of crime and the administration of justice.

For the topic of my talk I have intentionally chosen NOT to address the issue of “mass incarceration.” That decision is in part dictated by the reality that I now chair the consensus panel convened by the National Academy of Sciences to explore the “causes and consequences of high rates of incarceration in the US” and have studiously avoided public comments on this topic in advance of the release of our report later this year. But I also confess that I have been thinking about a different set of questions that are related to the topic of mass incarceration and would like to use this speech, and the discussion that will follow, to explore the value of a public health perspective in unpacking those questions.

Let me be more specific. In the world of criminal justice policy, we often focus our attention on two distinct metrics – the incidence of crime and the incidence of incarceration. So, for example, we calculate and report with great frequency the latest changes in the crime rate – in New York City, in different neighborhoods, in the country and, more recently, in comparison with other countries.⁵ We celebrate the fact that crime rates have declined sharply since the early 1990s. In this political season we expect our candidates for elective office to promise to bring those crime rates even lower. At the same time, we calculate and report the rates of

² Jordan B. Glaser and Robert B. Greifinger, “Correctional Health Care: A Public Health Opportunity,” *Annals of Internal Medicine* (1993) Jan 118(2): 139-145.

³ Jeremy Travis, “But They All Come Back,” (Washington D.C.: The Urban Institute Press, 1995), 204.

⁴ Jeremy Travis, “Understanding The Public Health Challenges In The Era Of Mass Incarceration” (speech presented at the fifth annual academic and health policy conference on correctional health, Atlanta, Georgia, March 22, 2012).

⁵ The Economist, “Where have all the burglars gone?” (July 20th, 2013).

incarceration – in our city, our state, our country and in comparison with other countries. We note with deep concern that the rates of incarceration in the US increased more than four-fold between 1972 and 2011.⁶ We note that the incarceration rates in the US are five to ten times higher than in Europe.⁷ With some pride we point to the fact that prison rates in New York State have come down by 24% between 1999 and 2013.⁸

Our policy discussion gets confounded, however, when we try to link these two phenomena. Some observers claim that these two trends are causally linked – that we have low crime rates because we have high incarceration rates. Some academics have attempted to quantify the impact of high incarceration rates on crime rates and arrive at estimates falling within a relatively large range.⁹ Still others argue that even exploring this causal connection is starting with the wrong framework– that we should examine the appropriateness of prisons as a matter of sentencing jurisprudence and social values rather than as a vehicle for crime control.

In the midst of this larger debate in the criminal justice policy world, we New Yorkers have been having a separate debate – about the practice we now call “stop and frisk.” We have been debating whether the practice is constitutional. (As you certainly know, Judge Shira Scheindlin has ruled that the current NYPD practices regarding stop and frisk violate the Fourth and Fourteenth Amendments to the Constitution.)¹⁰ We have heard arguments that the practice is effective because it has resulted in historically low crime rates in New York City. Indeed, its proponents, most notably Mayor Bloomberg and Police Commissioner Kelly, have explicitly argued that the practice has saved thousands of lives, particularly, lives of New Yorkers living in high crime minority neighborhoods.¹¹ On the other hand, we have seen the data showing high concentrations of stop and frisk in those same neighborhoods, the low yield rates in terms of arrests and weapons seized, and have calculated the high probabilities that a young man of color in those neighborhoods will be stopped. Critics of the practice argue that this is undermining the respect for the rule of law and the relationship between the police and those communities.¹²

As I have watched this debate unfold – and shared my concerns about the practice – I have been struck by the way the discourse on stop and frisk, and the discourse on the connection between incarceration rates and crime rates, have – unwittingly – opened a window on a larger issue, namely the impact of our enforcement policies on the communities that are putatively the beneficiaries of those policies. In both instances, we are caught in a paradigm that seeks to weigh the costs of enforcement against the asserted benefits of a reduction in crime. So I have

⁶ The 1972 incarceration rate is calculated from counts of the prison and jail population reported in the Sourcebook of Criminal Justice Statistics 1976, Tables 6.1, 6.43. The 2011 prison and jail incarceration and the incarcerated population is reported in the 2012 Sourcebook of Criminal Justice Statistics, Table 6.13.2011.

⁷ Ibid.

⁸ Andrew M. Cuomo, Governor and Anthony J. Annucci, Acting Commissioner, Press Release: “New York State Department of Corrections and Community Supervision announces prison reforms that will save taxpayers over \$30 million annually following decline in crime rate and inmate population” (July 26, 2013).

⁹ John Dilulio and Anne Piehl. “Does prison pay? The stormy national debate over the cost effectiveness of imprisonment,” The Brookings Review, Fall (1991): 28-35 ; John Dilulio and Anne Piehl. “Does Prison Pay Revisited? Returning to the Crime Scene,” The Brookings Review Winter (1995): 21-25.

¹⁰ *Floyd, et al. v. City of New York, et al.*, 813 F.Supp.2d 457 (2011), Leagle.

¹¹ Ray Kelly, *The NYPD: Guilty of Saving 7,383 Lives*, The Wall Street Journal, Opinion (July 22, 2013).

¹² Following the delivery of this lecture, the Vera Institute published a report documenting the experiences of young people who had been stopped by the police in high crime neighborhoods. Jennifer Fratello, Andres F. Rengifo and Jennifer Trone. “*Coming of Age with Stop and Frisk: Experiences, Self-Perceptions, and Public Safety Implications*” (September 2013). This survey underscores the value of empirical assessments of the experience of interactions with the justice system.

been wondering whether it is possible to construct a calculation that assesses costs and benefits in ways that could help us break this logjam? Can we develop an analytical approach that allows us to examine separately yet simultaneously the incidence of crime and the realities of law enforcement and the criminal sanction, without getting tangled up in the complex questions regarding a causal relationship between crime rates and the operations of the criminal justice system?

In trying to come to grips with this analytical challenge, I have found myself constructing a conceptual framework that borrows heavily from the public health literature that explores the concept of the “burden” of disease. So I would like to play with this concept, apply it to the challenges of crime and the criminal sanction, and see whether it might offer some new ways of thinking about a research and policy agenda for our collaboration. I recognize at the outset that I am treading on the intellectual terrain of my audience, so I must immediately beg for your understanding – and your tolerance of a visitor in your house.

The Concept of the “Burden of Disease”

This audience is undoubtedly familiar with the Global Burden of Disease (GBD) Project. For more than two decades, the Institute for Health Metrics and Evaluation has published periodic studies designed, in their words, to provide “a consistent and comparative description of the burden of diseases and injuries and the risk factors that cause them” around the world. The first GBD study, analyzing data from 1990, looked at the health effects of more than 100 diseases and injuries for eight regions of the world. This study introduced a new metric – the Disability-Adjusted Life Year (DALY) – as a single measure presenting the burden of disease, injuries and risk factors. Since then, GBD reports have been released for the period 2000-2002, examining 26 global risk factors, and for 2010, providing regional estimates for deaths and DALYs. The 2010 report produced comparative metrics for 291 different causes of death and disability across 187 countries, 20 age groups, and both sexes. This report, which recalculated the metrics for 1990, 2004 and 2010 using the same methodology, documented significant changes in health patterns around the world. According to this analysis, many countries have witnessed significant progress in reducing child deaths and extending the lifespan of their citizens.¹³

From a criminal justice perspective, the conceptual framework of the “burden” is very attractive, for several reasons. First, it allows us to set aside traditional measures of crime and examine instead the impact of crime upon the health of individuals and, by extension, their communities. Second, it allows us to examine the impact of our response to crime – what I will refer to as the imposition of the criminal sanction, which ranges from enforcement policies to incarceration policies – in terms of the experiences of those individuals and communities. Of course the use of the “burden” framework does not solve the complex issues of causality – that requires a separate methodological discussion – but it does reframe the calculate of costs and benefits in ways that recognize the complexity of the human experience with crime and the criminal

¹³“About the Global Burden of Disease (GBD) project,” *World Health Organization* accessed September 5, 2013, http://www.who.int/healthinfo/global_burden_disease/about/en/.

sanction. Let's turn next to some implications of the "burden" metaphor for our understanding of these two phenomena.

Applying the Concept of "Burden" to Our Understanding of Crime

In my view, we can use the concept of "burden" to sharpen our focus on the community-level indicators that should matter when we think about crime and safety. If we were to pursue this analytical approach, we would view the "health" of the community as our ultimate metric, not just the level of crimes reported to the police. Our current system for reporting crime is limited in several important ways. First, we look at crime in its legal meaning. On a very simplistic level, a robbery is more important than a larceny because the law says so. Robberies are deemed more significant, and therefore the punishments that may be meted out are more severe, even though the consequences of a larceny may be more damaging, the losses more substantial, and the psychological harm more devastating. Compare, for example, a robbery that involves the theft of a metro card from a teenager who is threatened by another teenager to the loss of an elderly person's lifetime earnings through identity theft. The "burdens" of crime experienced by these two victims are quite different from each other, but our traditional crime reporting system does not allow us to capture these important differences.

The second limitation of our crime reporting system is that we rely on the police to tell us the level of crime in our communities.¹⁴ All official data on crime in New York City comes from the agency that holds itself responsible for reducing crime rates. This creates two distinct problems. First, this reporting system creates an incentive to downplay the seriousness of the crimes reported by victims, or to fail to record those crime reports in the first instance.¹⁵ Second, even if the current system operated properly, it would not record those crimes that victims choose not to report to the police. According to national data from the National Crime Victimization Survey, based on a household survey of crime victims, approximately half of all crimes are not reported to the police, and therefore are not reflected in the official records.¹⁶ I imagine the public health equivalent of this state of affairs would be a measure of disease in a community by recording only those individuals who present themselves at local emergency rooms. Certainly for a city the size of New York, we should be able to conduct regular victimization surveys that would record the true level of crime in our neighborhoods, both to accurately measure the "burden of crime" and to counterbalance the institutional incentive of the police to downplay the true level of crime.

The third limitation of our current system for reporting crime is that it measures an event – the criminal act – not the consequences of the event. We know that crime has significant consequences for individuals, families and communities, yet we do not routinely measure the

¹⁴ Crimes are reported to the NYPD either through 911 calls or direct reports to precincts. These crime reports are then tallied and ultimately reported to the FBI through the Uniform Crime Reporting (UCR) system. Since the early 1990s, the NYPD has made these numbers public prior to the official reports from the FBI.

¹⁵ According to recent research, the institutional incentives to keep crime rates low has created pressure on managers in the NYPD to falsify official records, either by recording less serious crimes than those reported, or by failing to report the crime at all. Eli B. Silverman, and John Eterno, *The Crime Numbers Game: Management By Manipulation*, (Boca Raton: CRC Press, 2012). See also, Graham A. Rayman, "The NYPD Tapes: A Shocking System of Cops, Cover-Ups, and Courage," (New York: Palgrave MacMillan, 2013).

¹⁶ Jennifer L. Truman, "Criminal Victimization, 2010," *National Crime Victimization Survey*, (2011), <http://www.bjs.gov/content/pub/pdf/cv10.pdf>.

harms caused by crime. A robust set of measures would examine the medical costs of injuries, the psychological damage associated with all types of crime, the lost wages incurred by crime victims, the increased feelings of insecurity and fear of going outside, the loss of trust in one's neighbors, and the loss of confidence in the agencies of government.

So let's imagine a set of measures, regularly implemented, that would allow us to quantify the concept of the "burden of crime." We would conduct annual household surveys, using the methodology of the National Crime Victimization Survey, to assess the level of crime in our city. This would allow us to compare these results with the official reports of the NYPD. We would augment this survey with in-depth questions about the experience of victimization – the costs incurred by crime victims, the changes in their behavior following the crime, and any shifts, positive or negative, in their assessments of the police and other government agencies.

Very importantly, of course, we would map these individual metrics of the crime burden at a community level so that we could assess the overall impact of crime. We would also examine the burden of crime upon certain demographic groups. It is this type of analysis that led my colleague John Klofas from the Rochester Institute of Technology to describe the risk of homicides in Rochester in an eye-opening way. In 2001, the homicide rate among 15-19 year old was nearly triple the rate of the nation as a whole: 22 per 100,000. Among males in that age group, it was more than quadruple the national rate, or 36 per 100,000. For African-American males aged 15-19 in Rochester, it was 264 per 100,000. Finally, for African-American males aged 15-19 in the "high-crime crescent," the most dangerous neighborhood in Rochester, the homicide rate was 520 per 100,000, or 65 times the national rate.¹⁷ This analysis opens an important policy discussion: given this elevated risk, are we devoting resources proportionate to the risk?

But this is more than a mere analytical exercise. Use of these metrics would also allow us to imagine a set of interventions that would reduce the burden of crime. In the first instance, our focus would be on victims of crime. Our goal, in the words of Susan Herman, the Pace University Professor who developed the concept of Parallel Justice, would be to "help crime victims rebuild their lives."¹⁸ For example, we might design programs that would work with mental health professionals to address the trauma experienced by crime victims, to help victims overcome their fear of public places, to work with employers to ensure that crime victims do not suffer lost wages because they must attend court proceedings. In constructing these interventions, we would rely heavily on the creativity of our public health colleagues. And we would use these metrics to measure the effectiveness of our interventions. For example, if we were successful in intervening to reduce retaliatory acts of violence, we would measure the impact of that strategy by estimating the reduced health expenditures.

I see enormous benefits in adopting this framework for understanding crime and the effectiveness of our interventions. In my view, we have been saddled by a highly inadequate

¹⁷ John M. Klofas, Ph.D., Christopher Delaney, Trisha Smith, "Strategic Approaches to Community Safety Initiative (SACSI) in Rochester, NY," Department of Criminal Justice, Rochester Institute of Technology, (November 2007).

¹⁸ Susan Herman, *Parallel Justice for Victims of Crime*, (Washington, DC: The National Center For Victims Of Crime, 2010), 29.

measure of crime and its impact, and a burden framework can free us from this intellectual straightjacket.

Applying the Concept of “Burden” to Our Understanding of the Criminal Sanction

We next examine whether the concept of “burden” as developed in the public health literature can help us unpack the impact of the criminal sanction on individuals and communities. I acknowledge at the outset that it may seem strange to talk about the “burden” of public policies. Indeed, there may be no direct public health analogy here – would one, for example, calculate the “burden” of an immunization program? Probably not, but bear with me and I hope you will agree that the burden concept is extraordinarily valuable in helping us think about the intersection between the apparatus of the justice system and the same communities most directly affected by the burden of crime.

Let’s start by discussing the theme of this lecture series: the burden of “mass incarceration.” It is by now a common observation that the burden of incarceration has increased significantly over the past forty years, that the burden has fallen disproportionately on young men of color, particularly those living in high crime neighborhoods. The net result of the rise in incarceration in America can be expressed in startling statistics. The Bureau of Justice Statistics reports that an African-American man living in the US has a one-in-three lifetime probability of serving at least a year in prison.¹⁹ Our colleagues Bruce Western and Becky Pettit have added another variable to this analysis, the level of education: they have calculated that an African-American man who did not complete high school has a 70 percent chance of serving time in prison.²⁰

Startling though these statistics might be, I think you will agree that they do not capture the whole story of the workings of the criminal justice system in modern America. The interactions with the criminal justice system extend far beyond the realities of incarceration in prison and jail. At a minimum, we need to add to our calculation of the “burden” of the criminal sanction an assessment of the realities of community supervision. This would include all forms of supervision—parole, probation and pretrial supervision. We would certainly include supervision of juveniles as well as adults, federal as well as state supervision. These realities of supervision constitute an important dimension of the burden of the criminal sanction.

Let’s look at some of the data for New York City. What data would we need? We would begin by calculating all the New York City residents who are incarcerated on a given day – in state prison, local jail, federal prison, juvenile detention. Because we are so locked into our system-centric view of the world, rather than a community well-being view of the world, we never calculate incarceration rates this way. Then we would add the data on the number of New Yorkers under parole supervision, probation supervision (state and federal), and pretrial release supervision.

We never think of the community burden this way because we are so focused on the working of the agencies of the justice system. We would then present these data at a community level and further disaggregate the data by age, gender, and race to fully understand the burden of incarceration and supervision. Allow me to share one analytical framework that presents the notion of “burden” in provocative ways. When my colleagues at the Urban Institute and I sought to present the impact of incarceration from a community perspective, we calculated the number of years spent in prisons for the reentry cohorts returning to the six high incarceration

¹⁹ Thomas P. Bonczar, “Prevalence of Imprisonment in the U.S. Population, 1974-2001,” U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Special Report (August 2003).

²⁰ Bruce Western, and Becky Pettit, “Incarceration & Social Inequality,” *Daedalus* 139, (3), (Summer 2010): 8-19.

neighborhoods. In 2001, for example, the cohort of individuals returning from prison to Austin had spent a total of 1,961 years in prison. Other neighborhoods had also experienced significant loss of human capital: Humboldt Park (939 years), North Lawndale (761 years), West Englewood (741 years), Englewood (598 years), and East Garfield Park (464 years). This is a thought-provoking and unconventional way of assessing the burden of incarceration on a community.²¹

A “burden” framework would require that we combine all these counts into one single metric reflecting the combined burden of incarceration and criminal justice supervision in our city. This would be very straightforward, but to my knowledge has never been done. I would hope that our colleagues here at the Mailman School would be willing to work with us to assess this reality in our city. Using these data, we would then start to explore the differential impact of these phenomena on our fellow citizens. We would disaggregate that number by gender, race, age, geography and schooling. We would conduct surveys to determine the lifetime probability of experiencing this form of criminal justice contact. We would then gather data on the consequences of these contacts – lost days of work, impact on families, diminished employment prospects, changing attitudes toward government. In particular, we would be concerned about their perspectives regarding the agencies of the justice system and the rule of law – allowing us to measure what scholars call “legal cynicism.”²²

In many ways, the approach suggested here is simply an extension of our analysis of the impact of incarceration to include the distinct phenomenon of community supervision. Yet it is noteworthy that we rarely combine these two analyses into a single calculation. Why not? I think we are too constrained by our fascination with the agencies of the criminal justice system, so count separately those incarcerated and those on community supervision without linking them under the same conceptual umbrella as related forms of state control. So I hope we get on with this project of creating these linkages.

But before we get started on that assignment, I would like to expand our inquiry one more step. In the title of my talk, I use the phrase the “criminal sanction” to describe the phenomenon we hope to measure and understand. In the strict meaning of that term, this describes any punishment that is meted out upon a finding of a violation of the criminal law. But for purposes of analysis of the “burden” I prefer a broader definition, namely “any exercise of state power under the auspices of the criminal law.” This broader definition allows us to include pretrial detention in jails, and pretrial supervision in the community as components of the burden imposed by the criminal justice system.

This broader definition allows us to look at another phenomenon that, in my view, also constitutes part of the “burden” of the criminal justice system, namely the exercise of the police powers to arrest, summons, issue citations, and stop (and sometimes frisk) citizens. These interactions between citizen and state are in many ways the retail operations of the justice

²¹ Travis, *But They All Come Back*, 285.

²² “Legal cynicism refers to a cultural orientation in which the law and the agents of its enforcement are viewed as illegitimate, unresponsive, and ill equipped to ensure public safety. Crime might flourish in neighborhoods characterized by legal cynicism because individuals who view the law as illegitimate are less likely to comply with it; yet because of legal cynicism, these crimes might go unreported and therefore unsanctioned.” David S. Kirk, Mauri Matsuda, “Legal Cynicism, Collective Efficacy, And The Ecology Of Arrest, “ *Criminology*, no. 49 (2011): 443–472. doi: 10.1111/j.1745-9125.2011.00226.x.

system. They are high volume, often fly below the radar of judicial and prosecutorial review, are highly discretionary, and are frequently the sources of irritation between the residents of our City and the police department of our city. And, as I hope to demonstrate, this aspect of the criminal justice apparatus has changed in important ways over the past two decades, with relatively little public discussion. If we include these phenomena in our assessment of the “burden of the criminal sanction,” the composite picture of the interaction between our fellow citizens and our system of laws becomes even more troubling.

Allow me to specify some ways that the realities of low-level law enforcement have changed in our city over the past two decades.

Let’s begin with the exercise of the police power to stop and frisk individuals they encounter on the street. The number of stops recorded by the NYPD increased substantially from 2003, when 160,851 were recorded to 2011, when the number reached 685,724.²³ (We should note that the level of stops has declined sharply in recent months; for the first quarter of 2013, the number dropped by 51 percent to 99,788 compared to the same time period in 2012).²⁴

These practices can be viewed through many different lenses. Some critics point out the low percent of stops that result in an arrest or the issuance of a summons, or the low percentage that result in confiscation of a gun or other contraband. But looking at the practice through the lens of the burden of the criminal sanction would require a different analysis. We would be very interested in the geographic and demographic distribution of this type of police activity. In particular, we would assess the frequency of stops within different demographic groups. For example, we would want to know the number of times over a year that a young man of color living in a high crime community is stopped. One particularly noteworthy study took this approach. The Center for Court Innovation, in surveying young men living in East New York found that they were stopped, on average, five times a year (in 2010) by the police.²⁵

By examining the phenomenon of stop and frisk through this lens, we can better assess the impact of the practice. We can begin to ask those most frequently stopped about their views on the police, the impact of these stops on their behavior, their willingness to cooperate with the police in the future, and their assessment of the legitimacy of the criminal justice system. This analysis would help us better understand the true costs (and benefits) of this practice.

But we should expand our sights beyond stop and frisk and include other low-level enforcement activity as well. Let’s take a closer look at misdemeanor arrests. In 2003, there were approximately 189,878 misdemeanor arrests in New York City²⁶; by 2012, that number had risen to 236,839, a 20 percent increase. This is a significant shift in the exercise of the law enforcement power in our City, yet it has gone largely unnoticed. Some commentators have examined the phenomenon of the rise in marijuana arrests, which have increased substantially.

²³ Delores Jones-Brown and Brett G. Stoudt, “Stop, Question, and Frisk Policing Practices in New York City: A Primer (Revised),” (2013).

²⁴ Raymond W. Kelly, Police Commissioner, “New York City Police Department Stop Question & Frisk Activity,” New York City Administrative Code Chapter 1 Title 14, Section 14-150, (Reports prepared during the period January 1, 2013 through March 31, 2013).

²⁵ Suvi Hynynen, “Community Perceptions Of Brownsville: A Survey of Neighborhood Quality of Life, Safety, and Services,” Center for Court Innovation, (2011).

²⁶ Division of Criminal Justice Services, “Parolee/Probationer Arrests Percent of Total Arrests within County 2003 – 2012,” Crimestat Report, prepared: February 21, 2013.

For example, in 1990 the NYPD made 2000 misdemeanor arrests for marijuana possession, while in 2012 the number of arrests had increased to 50,000²⁷. But I would submit that this is not just about marijuana, rather that we are witnessing a substantial expansion of the power of the state to regulate behavior by using the criminal law – the lowest severity level of the criminal law. Rather than simply presenting this phenomenon in terms of cases and arrests we should be examining this phenomenon from the perspective of the individuals who live in communities that are experiencing this expansive use of the power of the police. In other words, we should be using the concept of “burden” to describe the experience of being policed.

I submit that if we combined these two perspectives on the burden of the criminal sanction – the high rates of incarceration and supervision; and the high rates of low level enforcement activity such as stop and frisk and misdemeanor arrests – we will construct a deeply disturbing picture of the experience of growing up in New York City, particularly if one is a young man of color growing up in a high crime neighborhood. We could then include in our calculation all the summonses that are issued in New York City for violations such as riding a bike on the sidewalk or taking two seats on the subway. Then, if we were to add to this composite the experience of the police in our public schools, and the ways that traditional school discipline has been replaced by law enforcement and adjudication, we will have a picture that would be especially disconcerting. Finally, if we were to add to this understanding of the new era a full assessment of the consequences of low level arrests and enforcement activity, our concerns might well be heightened further. Consider the warrants that are issued when people do not appear in summons courts, the days lost from work to keep court dates, the jobs that are lost because someone gets a misdemeanor conviction for marijuana possession, the alienation that comes from trying to navigate a justice system that is impersonal and unforgiving.

It is my hope that we can harness all the intellectual firepower in our two institutions – and that found throughout the city – to construct an understanding of the burdens of crime and the criminal sanction that do not rely solely on official statistics and are not constrained by the boxes of the diagrams of the criminal justice system. These realities touch the lives of real people, their families and their communities. We need to find ways, as researchers, to understand crime and the criminal sanction from the ground up, beginning with the perspectives of the people most directly affected. To make this conceptual shift we need some new data and some new survey tools. That is the easy part. More difficult will be the challenge of developing a new framework that will allow us to think more creatively – and more critically – about the twin challenges of crime and the administration of justice. In my current thinking, the concept of “burden” – borrowed explicitly from the public health literature – is a liberating concept that can allow us to think differently. This is the important first step; everything else will follow.

Thank you.

²⁷ Andrew M. Cuomo, Governor, Press Release: *Governor Cuomo Announces Legislation to Bring Consistency and Fairness to the State's Penal Law and Save Thousands of New Yorkers from Unnecessary Misdemeanor Charges* (Albany, NY June 4, 2012).