

We Must Do Better Than Hasty Police Reforms

By **Marisa Darden**

History will remind us of May 25, 2020; the day a police officer killed George Floyd, sparking a reckoning with policing, and igniting a broader conversation about white privilege and the value of Black people and individuals of color in this country.

Many are beginning to acknowledge what Black people have known for centuries: We cannot afford to lose another life at the hands of law enforcement and institutional racism; criminal justice reform is vital and urgent; and perhaps America's policing strategy has not caused Americans to actually be safer.



Marisa Darden

In the last few weeks, legislators and leaders have raced to acknowledge the moment, and with the best of intentions, enacted and proposed reforms. However, this once-in-a-generation opportunity cannot be squandered by hastily drafted bills, rushed changes and police reforms that are not sensible, do not support the basic mission of protecting citizens, and most importantly, do not include relevant stakeholders, like the police, at the negotiating table.

As a state and federal prosecutor under both the Obama and Trump administrations, I have had the pleasure and honor of working side by side with law enforcement who work tirelessly every day, often without thanks, to make their communities safer. And yet, the stains of slavery are woven into the fabric of American society, and permeate policing and the criminal justice system in a way that have exacerbated other inequalities Black Americans endure.

The net effect is that even the best officers, and the best prosecutors, are complicit in a structure that is designed to disproportionately punish people of color for their actions, making their lives, and their livelihood, vulnerable. As a Black woman, navigating these spaces and wrestling with their inherent tension became, frankly, demoralizing.

I found myself frequently asking the same question — what can we do about it?

Like all relationships, it's complicated. There are approximately 18,000 independent police departments across the United States, all with relative autonomy. These are separate and distinct from federal law enforcement agencies, such as the FBI, the Drug Enforcement Administration, etc., that enforce federal laws and serve a wholly different function than local forces. Thus, a one-size-fits-all approach will not suffice, and lumping all "police" together squanders the opportunity to make lasting change.

Similarly, focusing solely on police strategy feels timely, but radically changing how we prosecute cases originating from those arrests can make a similarly lasting impact. Most prosecutorial reforms do not require legislation, but simply the will of locally elected officials and/or policy changes from within the U.S. Department of Justice at the federal level.

Based on some of the proposals permeating the conversation, the below are a few broad suggestions stakeholders and leaders should consider before pushing through any systemic changes or legislation.

Focus Federal Legislation on Demilitarizing Local Police

There are several bills currently pending in Congress, crafted in the wake of Floyd's death. They are broad, expansive and seek to address several categories of reforms.

Some are challenging to enact, given the federal government's limited jurisdictional authority over state and local police, which would be tied to acceptance of federal funding. That is a powerful carrot, but is less effective at altering local forces' day-to-day tactics.

One issue the federal government can immediately fix is to stop the U.S. Department of Defense from transferring military-grade weapons and supplies to local police departments. In 2014, the death of Michael Brown in Ferguson, Missouri, sparked a series of protests and public clashes with police. During the uprising, the images of the Ferguson Police Department's armored tank rolling down the main thoroughfare were disturbing and invoked an eerie feeling of foreign occupation. Ferguson has less than 25,000 residents. Why does it own a tank?

In the 1990s, Congress authorized the military to provide surplus equipment to local authorities. Police departments large and small received armored vehicles, battering rams, explosives, grenade launchers and other weapons-grade equipment. Though some supplies likely make sense to provide, a full ban on transferring unreasonable battlefield equipment would go a long way toward demilitarizing local police, and encouraging community policing, which emphasizes personal engagement over forceful, militaristic interactions with constituents.

Ask Local Elected Prosecutors the Hard Questions and Demand Accountability

Most cities have an elected district attorney or prosecutor who is responsible for evaluating police arrests and making charging decisions regarding local and state crimes. Prosecutors and their assistants in urban centers often are overworked, underpaid and are overwhelmingly white, not reflective of the communities in which they serve.

Some of the most impactful reforms should occur at this level, since prosecutors have almost sole discretion in deciding which cases are prosecuted, and evaluating the legal veracity of the cases police bring them. Community leaders should be asking their prosecutors to make changes, and hold them accountable come election season.

It seems obvious, but prosecutors should be actively working to diversify their staff, and consider establishing early relationships with diverse law students to tout the benefits of a prosecutorial career and the desperate need for diverse voices in a very white, male-dominated profession. Local prosecutors should be participating in diverse law job fairs, and actively identifying good talent in other city law departments. Communities should consider encouraging diverse candidates to run for prosecutor. Office leadership teams should be intentionally diverse to encourage varied experience and thought.

When questions regarding police misconduct arise, district attorneys presenting those cases to a grand jury is not the best way to ensure an objective presentation of the facts, and state and federal law has created an incredibly difficult burden-of-proof standard for convictions. Prosecutors should have a cogent and public plan for how to deal with these issues. Given the close, necessary, working relationship local law enforcement has with its prosecutors, they should pledge to bring in a neutral entity to investigate all police-involved death cases, make charging recommendations, and act as a neutral third party in any investigation.

This is a simple change that would still empower local prosecutors to make the final call in charging decisions, but could create necessary transparency and accountability throughout the process. This strategic partnership could be with a neighboring county prosecutor with similar demographics, a state attorney general's office, or the DOJ if it is able to reinstitute and fund the Civil Rights Division in a meaningful way.

Prosecutors should also be required to engage with the community. As a county prosecutor, I was necessarily focused on my heavy caseload; we were rarely encouraged to professionally engage with constituents outside the office. Many of my colleagues had never set foot inside the Black neighborhoods we served.

Prosecutors should consider, among other ideas, hosting public town halls and forums, and requiring everyone, not just leadership, to participate; promoting staff community service projects; and requiring prosecutors to give presentations in schools about the risk of criminal activity and sentencing consequences. Prosecutors must be incentivized to become partners in solutions to fixing systemic problems that often lead to crime — such as a lack of quality education and resources, concentrations of poverty, and scarce fresh food resources — through organizational partnerships, board seats, and inhabiting other leadership positions in the community.

Find a Way to Include Law Enforcement at the Negotiating Table

Some of the reforms currently being debated intimate that lawmakers did not consult on-the-ground law enforcement before suggesting them, or at least did not consider how the consequences of those reforms would make legitimate and safe policing difficult, or in some cases, impossible.

For example, the Justice in Policing Act of 2020,[1] introduced by congressional Democrats, seeks to ban the use of "no-knock search warrants." [2] A no-knock warrant is a search warrant authorizing police to enter the premises to be searched without first knocking or announcing themselves as police. Typically, this request must be accompanied by some legitimate reason for the need to enter in this surreptitious manner. The Justice in Policing Act specifically seeks to ban no-knock drug warrants at the federal level, and conditions federal law enforcement funding for state and local governments on the condition those departments similarly ban the practice.

This provision was no doubt included in response to the tragic shooting of Breonna Taylor.

In March, members of the Louisville, Kentucky, police department applied for, received and executed a no-knock warrant at Taylor's home based upon the belief that drugs were being sold (by others). Police maintain that they announced themselves, then used a battering ram to knock down the door. Upon entry, they allege someone shot at them first, and they returned fire, killing Taylor.

Taylor's boyfriend disputes the police's recounting of events, and her family suggested that the main target of the investigation was in custody at the time the search was executed. Police entered Taylor's home after midnight. Usually, entry into any premises at that hour requires additional probable cause and is a separate request that a judge must specifically authorize, similar to the no-knock provision.

This case remains under investigation, and is precisely the kind of case that would benefit from independent third-party review from another jurisdiction before prosecutors determine

whether officers were criminally culpable in Taylor's death.

Though horrific, this one incident should not be the impetus to strike an extremely important tool in combating crime. Lawmakers should have ample opportunity to explain the mechanics of these provisions before Congress outright bans them. The no-knock authority must be authorized by a judge, and is usually approved by at least one prosecutor before it is issued, to ensure the request is necessary and tailored to the facts.

Also, no-knocks are a vital tool in protecting evidence and solving crimes. Suspects often attempt to destroy or hide drugs, phones, firearms or other contraband when they detect police presence. More importantly, in today's climate, "drug cases" aren't always about drugs. Police cannot risk identifying themselves before entering a premises that may include vulnerable victims or others who could be harmed before law enforcement can intervene.

Moreover, federal law enforcement drug investigations are not your run-of-the-mill drug cases at the local level. Many federal drug cases are investigated over a series of months or years; facts are corroborated and painstakingly double-checked, and warrants often undergo several layers of supervisory approval long before they are presented to a judge.

This is in contrast to local and state police departments, which often lack the resources, time and manpower to implement such strict controls, which make it more likely that mistakes might occur. Reforms in smaller police departments are not the same changes that are right for federal police or big, urban departments. These nuanced discussions are missed when relevant stakeholders are not included in the debate surrounding reforms.

Though some departments, police unions and other law enforcement leaders have resisted acknowledging that reform is crucial, I cannot stress enough that police are not a monolith. Lawmakers should be looking for the helpers.

Several chiefs of large city departments have publicly agreed to examine their own police department training and protocols on excessive force, inherent biases and other areas to make recommendations for change. The National Black Police Association, the Fraternal Order of Police, and other organizations are also calling for change, publicly stating that they are open to reform and engaging in dialogue. Several departments are currently under monitorship through the DOJ, and have made significant strides in enacting changes recommended by reformers who could speak to best practices.

These incredibly hard decisions and policy discussions feel inherently personal and urgent. We cannot make systemic change on a whim, without thinking critically and deliberately, and engaging stakeholders at every level. George Floyd and Breonna Taylor deserve better than that.

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[1] Senate Republicans' Justice Act bill suggests creating the Breonna Taylor Notification Act, which would not ban no-knock warrants but would track their use and analyze their intent and effectiveness. The text of the proposed bill is available at <https://apps.npr.org/documents/document.html?id=6950175-Senate-Republicans-Justice-Act>.