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How Effective Are Police? The Problem of Clearance Rates and Criminal Accountability

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How Effective Are Police? The Problem of Clearance Rates and Criminal Accountability

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In recent years, the national conversation in criminal justice has centered on police. Are police using excessive force? Should they be monitored more closely? Do technology and artificial intelligence improve policing? The implied core question across these national debates is whether police are effective at their jobs. Yet we have not explored how effective police are or determined how best to measure police effectiveness.

This Article endeavors to measure how effective police are at their principal function—solving crime. The metric most commonly used to measure police effectiveness at crime-solving is a "clearance rate:" the proportion of reported crimes for which police arrest a person and refer them for prosecution. But clearance rates are inadequate for many reasons, including the fact that they are highly manipulable. This Article therefore provides a set of new metrics that have never been used systematically to study police effectiveness—referred to as "criminal accountability" metrics. Criminal Accountability examines the full course of a crime to determine whether crime that is committed is detected and ultimately resolved by police. Taking into account the prevalence and the number of crimes solved by police, the proportion of crimes solved in America is dramatically lower than we realize. Only with a clearer conversation, rooted in accurate data about the effectiveness of the American police system, can we attempt a path toward increased criminal accountability and public safety.

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INTRODUCTION

We are accustomed to think that people get caught for committing crimes.[1] If you commit murder and leave DNA behind, you are certain to get caught.[2] If you have left your fingerprints anywhere or were detected by a camera during a burglary, the police will come knocking at your door.[3] If you push your husband off a cliff in order to be with your lover, the detectives will eventually figure it out.[4] We assume or expect that crimes are generally solved by police, and the

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[1] Excepting the Blackstone principle that persists, which underlies a recognition that some guilty defendants will indeed go free. 4 WILLIAM BLACKSTONE, COMMENTARIES *352. For an excellent argument that we should stop reciting Blackstone as a "mantra" *see* Daniel Epps, *The Consequences of Error in Criminal Justice*, 128 HARV. L. REV. 1065, 1072 (2015).

[2] *See* Natalie Ram, *Genetic Privacy After* Carpenter, 105 VA. L. REV. 1357, 1383, 1411 (2019) (noting that genealogy websites such as 23andMe and Ancestry will share genetic information with law enforcement when "compelled by valid legal process[es]," or when required to "comply with a valid subpoena or a court-ordered request.").

[3] *See* Patrick Sawer, *Police Use Glove Prints to Catch Criminals*, THE TELEGRAPH, (Dec. 13, 2008), https://www.telegraph.co.uk/news/uknews/law-and-order/3740688/Police-use-glove-prints-to-catch-criminals.html (noting that in addition to using fingerprints as a means for catching criminals, forensic officers are beginning to compile thousands of prints from gloves, "allowing [officers] to match a set of prints from one crime to those found at the scene of another."); *see also* Clive Thompson, *The Myth of Fingerprints*, SMITHSONIAN MAGAZINE (Apr. 2019) (recognizing the rise of DNA use when investigating high-profile crimes. Even small and local police stations are utilizing DNA to "solve ho-hum burglaries." Police send swabs to crime labs, where the DNA swabs are run through a "'rapid DNA' machine," and minutes later, a match to the DNA is produced); ANDREW FERGUSON, *Predictive Policing Theory*, *in* THE CAMBRIDGE HANDBOOK OF POLICING IN THE UNITED STATES (2019) (discussing "how police can choose between prioritizing additional police presence, targeting environmental vulnerabilities, and/or establishing a community problem-solving approach as a different means of achieving crime reduction"); *but see* Todd S. Purdum, *Burglars: A Long Shot To Arrest*, N.Y. TIMES (Aug. 17, 1986), https://www.nytimes.com/1986/08/17/nyregion/burglars-fingerprints-a-long-shot-to-arrest.html (One experienced officer explains that he has "successfully identified 31 suspects in the 11 years he has been taking prints").

[4] Jack Hannah, *Montana Newlywed Jordan Linn Graham Gets 30 Years in Husband's Murder*, CNN, (Mar. 28, 2014) https://www.cnn.com/2014/03/27/justice/montana-newlywed-sentenced/index.html (discussing the case of Jordan Graham, charged with

unsolved mystery is the exception. People express outrage when prosecutors are unable to convict an individual whom the public believes is guilty.[5] People are appalled when justice is not served, or when the public determines that an individual who has harmed someone is not held accountable for those crimes.[6] Society generally assumes that when serious crimes are committed, justice is served.[7] In other words, the conventional wisdom is that police are generally effective at solving crimes. But do we know that they are?

Strangely enough, there has not been any challenge in the legal literature of this conventional wisdom, and little discussion of police effectiveness. Much of the scholarly discussion of police has focused on racial bias,[8] self-defense doctrine,[9]

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second-degree murder in December of 2013, after "admitting to luring her new husband . . . to Glacier National park and pushing him off a cliff.").

[5] *See* Alia E. Dastagir, *Surprising No One: What Lori Loughlin and Michael Jackson Uproar Teaches Us About Denial*, USA TODAY (Mar. 14, 2019) https://www.usatoday.com/story/news/investigations/2019/03/14/lori-loughlin-college-admissions-michael-jackson-leaving-neverland-catholic-abuse-denial-outrage/3152770002/ (explaining outrage of injustice, "Catholics don't want to think their church protected pedophiles. Michael Jackson fans don't want to associate music that brought joy at weddings and school dances with accusations of child molestation . . . . White people don't want to believe that police protect them but abuse black people.").

[6] Two prominent examples from both sides of the aisle include Presidents Trump and Clinton. *See* Amber Phillips, *Why Are Politicians Essentially Shrugging at the Latest Sexual Assault Allegations Against Trump?*, THE WASH. POST (June 26, 2019) (U.S. Senator Richard Durbin remarks, "'[t]here's so many allegations of sexual harassment and other things on this president . . . . I wouldn't dismiss it, but let's be honest, he's going to deny it and little is going to come of it.'"); *see also* Eyder Peralta, *A Brief History of Juanita Broaddrick, The Woman Accusing Bill Clinton of Rape*, NPR (Oct. 9, 2016), https://www.npr.org/2016/10/09/497291071/a-brief-history-of-juanita-broaddrick-the-woman-accusing-bill-clinton-of-rape (noting that almost 40 years ago, President Bill Clinton was accused of raping Juanita Broaddrick, and "Hillary Clinton helped him cover it up.").

[7] *See* Rick Muir, *Great Expectations: What Do The Public Want From The Police*, THE POLICE FOUND. (Sept. 23, 2016) http://www.police-foundation.org.uk/2016/09/great-expectations-what-do-the-public-want-from-the-police/ (The public expects police to "prevent crime, to help those in immediate danger, to investigate offen[s]es, to catch criminals, to sustain public order and to protect people," and at some level "protect particularly vulnerable people, from harm."). The exception to this general rule may be with rape. *But see* Katharine K. Baker, *Once A Rapist? Motivational Evidence and Relevancy in Rape Law*, 110 HARV. L. REV. 563, 584 (1997) (recognizing that "because rape is a significantly underreported crime, the truth is that even if rape allegations could be easily made, most are not made at all.").

[8] *See* Julian R. Murphy, *Is It Recording? – Racial Bias, Police Accountability, and the Body-Worn Camera Activation Policies of the Ten Largest Metropolitan Police Departments in the USA*, 9 COLUM. J. RACE & L. 141, 148–49 (2018) (Specifically, "[i]n the policing context, a paradigmatic example [of racial profiling] is the practice of some United States police departments in the 1980's and 1990's of purposefully targeting Black

monitoring of police behavior and preventing misconduct,[10] improving community and law enforcement relationships,[11] and artificial intelligence in policing.[12] The

and Latino people for drug-related investigation, a practice illuminated by the mention of race in police department training materials."); Paul J. Larkin, Jr. & David L. Rosenthal, *Flight, Race, and Terry Stops:* Commonwealth v. Warren, 16 GEO. J. L. & PUB. POL'Y 163, 205–06 (2018) ("Discrimination, both when it occurs and when it mistakenly appears to have occurred, exacerbates any police-citizen tensions that already exist within a community and dissuades the victims of crime in those neighborhoods from cooperating with the police."); Elias R. Feldman, *Strict Tort Liability for Police Misconduct*, 53 COLUM. J. L. & SOC. PROBS. 89, 100–01(2019) (finding that "[i]t is also fair to assume policing's risk of wrongful harm falls disproportionately upon racial minorities given what is known about how unconscious racial biases affect police decision-making.").

[9] *See* Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761 (2012) (addressing how law and policy can regulate police); Rachel Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 2 (2009) ("Countering the systemic causes of police misconduct requires doing more than punishing individual officers."); Rachel A. Harmon, *When Is Police Violence Justified?*, 102 NW. U. L. REV. 1119, 1174 (2008) (noting that "[i]n the context of policing, officers should be required to use their special training and skills to avoid force or minimize its harm. Self defense… is ever-present in evaluating whether a police officer's use of force is necessary."); *See Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1799–00 (2015) (explaining that the rise of police officers wearing body cameras may have been due to its "potential to expose office misconduct and exonerate civilians who actions have been falsely characterized by the police."); Aaron Goldstein, *Race, Reasonableness, and the Rule of Law*, 17 S. CAL. L. REV. 1189, 1195 (2003) (One of the "most politically polarizing types of cases involves police who claim self-defense in shooting an African American victim." The cases "involving police officers who shot unarmed African Americans, claimed self-defense, and then were later acquitted, gives credence to a perception of bigotry among law enforcement and the legal system that often refuses to hold them accountable."); L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961 (2015)(discussing the phenomenon of police killing unarmed black men).

[10] Benjamin Levin, *What's Wrong with Police Unions*, 119 COLUM. L. REV. (forthcoming 2020) (discussing the role of police unions in monitoring police behavior); John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV 1539 (2017) (discussing the role police liability insurance might play in preventing police misconduct); Seth Stoughton, *Police Body-Worn Cameras*, 96 N.C.L. REV. 1363 (2018) (discussing the police use of body cameras); Jocelyn Simonson, *Copwatching*, 104 CAL. L. REV. 391 (2016)(suggesting that private organized groups can help monitor police behavior); Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. DAVIS L. REV. 897, 907–08 (2017) (describing a police "camera cultural revolution"); Joey Dhillon, *Police Body-Mounted Cameras: Balancing the Interests of Citizens and the State*, 25 S. CAL. REV. L. & SOC. JUST. 69, 74 (2015) (noting that "[i]n addition to the positive behavioral changes that police body cameras may bring, it is also apparent that police body cameras are more favorable than using mass, indiscriminate surveillance such as street cameras and audio detectors in public places – an option which stands on the other end of the spectrum of tools to record police behavior."). See generally MICHAEL AVERY ET AL., POLICE MISCONDUCT AND LITIGATION (3d ed 2014).

scholarly discussion has focused on *how* police are doing crime solving: With too much force? With the right monitoring? With proper technology? These discussions assume that police *are* solving crimes. The prior scholarship has also tackled police performance in specific arenas,[13] but has not examined how to measure whether police are effective at their jobs.

[11] *See* Anthony A. Braga, *Better Policing Can Improve Legitimacy and Reduce Mass Incarceration*, 129 HARV. L. REV. F. 233, 238–39 (2016) ("Developing close relationships with community members would help the police gather information about crime and disorder problems, understand the nature of these problems, and solve specific crimes."); Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community-Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355, 1365 (2017) (stating that trust and legitimacy were the most important areas in need of improvement, as pointed out to President Obama); Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CAL. L. REV. 1513, 1539 (2002)(discussing new community police initiatives to improve public and police relationships); Rachel Abanonu, *De-Escalating Police-Citizen Encounters*, 27 S. CAL. REV. L. & SOC. JUST. 239, 241 (2018) (finding that "public awareness and education about constitutional rights during police encounters can reduce police-citizen confrontations."); Anthony V. Alfieri, *Race Prosecutors, Race Defenders*, 89 GEO. L. J. 2227, 2245 (2001) (noting that community outreach and police training assists in establishing "monitoring, compliance, and enforcement structures with the active participation of citizens of color.")

[12] *See generally* ANDREW FERGUSON, THE RISE OF BIG DATA POLICING (2017) (discussing the use of technology and artificial intelligence by police); Elizabeth Joh, *Automated Policing*, 15 OHIO ST. J. CRIM. L. 559 (2018) (discussing the challenges of artificial intelligence used by police).

[13] Prior literature has tackled clearance rates, unresolved crime in minority communities, and discussions of the lack of crime reporting.

Clearance rates—See e.g., Stephen J. Schulhofer, *Miranda and Clearance Rates*, 91 NW. U. L. Rev. 278, 294 (1996-1997); Paul G. Cassell & Richard Fowles, *Still Handcuffing the Cops? A Review of Fifty Years of Empirical Evidence of* Miranda's *Harmful Effects on Law Enforcement*, 97 B.U. L. REV. 685, 706–08 (2017); Hyunseok Jang, Larry T. Hoover & Brian A. Lawton, *Effect of Broken Windows Enforcement on Clearance Rates*, 36 J. CRIM. JUST. 529, 536 (2008); Charles Wellford & James Cronin, *Clearing Up Homicide Clearance Rates*, 243 NAT'L INST. JUST. J. 2, 6 (2000); Graham C. Ousey & Matthew R. Lee, *To Know the Unknown: The Decline in Homicide Clearance Rates*, 1980-2000, 35 CRIM JUST. REV. 141, 153 (2010).

Unresolved crime—See generally JILL LEOVY, GHETTOSIDE: A TRUE STORY OF MURDER IN AMERICA (2015) (describing that a failure of police to solve black homicide has led to increased endemic violence); Deborah Tuerkheimer, *Criminal Justice and the Mattering of Lives*, 116 MICH. L. REV. 1145, 1154 (2018) (explaining that "race-based underenforcement" has led to a lower clearance rate for homicides involving a black victim than homicides involving a white victim).

Lack of reporting—See Robert F. Kidd & Ellen F. Chayet, *Why do Victims Fail to Report? The Psychology of Criminal Victimization*, 40(1) J. OF SOC. ISSUES 39–50 (1984) ("reporting is the result of three factors acting singly or in concert: (a) victim fear, (b) feelings of helplessness and the perceived powerlessness of police, and (c) the threat of further victimization from authorities."); Heike Goudriaan et al., *Reporting to the Police in*

This Article takes this question on. It considers how to measure whether police are effective at solving crimes. It is truly a first step in the legal literature, and it generates more questions than answers. The Article's modest goal is to answer a question that remains largely neglected. What is the best way to determine police effectiveness? In answering this question, this Article reviews data on police effectiveness from the last fifty years.

Fundamentally, a police officer is charged with maintaining public order, detecting crime and enforcing the law.[14] To determine whether police are successful at two principle functions—detecting crime and enforcing the law—we need to measure how effective police are at solving crime. The most commonly used measure of police effectiveness is clearance rates—or the rate at which police are able to arrest people and turn them over to prosecution for crimes reported to police.[15] In examining whether clearance rates are the appropriate measure of

Western Nations: a Theoretical Analysis of the Effects of Social Context, 21 JUSTICE QUART. 933–69 (2004) (finding that the perceived competence of the police results in whether property crimes are reported); Heike Goudriaan et al., _Neighbourhood characteristics and reporting crime_, 46 BRITISH J. OF CRIMIN. 719–42 (2006); MARTIN GREENBERG & BARRY RUBACK, AFTER THE CRIME: VICTIM DECISION MAKING (1992) (discussing findings of 20 studies involving more than 5,000 people and exploring the decision to report and the immediate aftermath of a victimization); Stephen Schnebly, _The Influence of Community-Oriented Policing on Crime-Reporting Behavior_, 25 JUSTICE QUART. 223–51 (2008).

[14] Elizabeth E. Joh, _The Consequences of Automating and Deskilling the Police,_ 67 UCLA L. REV. DISC. 134, 138 (2019) ("To be sure, the police are tasked with enforcing the law, investigating crimes, and maintaining social order in sometimes unpredictable and violent situations"); JACK R. GREENE, THE ENCYCLOPEDIA OF POLICE SCIENCE (3d ed. 2007) at 217–18; Orin S. Kerr, _An Economic Understanding of Search and Seizure Law_, 164 U. PA. L. REV. 591, 598 (2016) ("The modern approach to enforcing criminal laws is through investigations by police officers, detectives, and agents, who are government employees tasked with collecting evidence"); WILLARD OLIVER, COMMUNITY-ORIENTED POLICING: A SYSTEMATIC APPROACH TO POLICING (2nd ed. 2001) (policing functions boil down to enforcing the law and maintaining order); Matthew C. Waxman, _National Security Federalism in the Age of Terror_, 64 STAN. L. REV. 289, 304 (2012) (finding that "local police functions include preventing and investigating crime as well as maintaining order, patrolling, and providing services"); Harmon, _Promoting Civil Rights_, _supra_ note 9, at 8 (Police departments exist to "prevent crime, protect life, enforce law, and maintain order.").

[15] GREENE, _supra_ note 16, at 182; A. KEITH BOTTOMLEY & KEN PEASE, CRIME AND PUNISHMENT (1994); _see also_ LARRY J. SIEGEL, CRIMINOLOGY: THE CORE 33–34 (7th ed. 2017); JAY ROBERT NASH, DICTIONARY OF CRIME (1992) (Clearance rates are used as the most common measure of police effectiveness because (1) they provide "direct assessment of the goal of "crime management" dealing with crime that has occurred and is reported' (2) they "reflect[] the internal goals of police departments and investigators" and are "highly valued by practitioners." And (3) "clearance data has been systematically collected through the Uniform Crime Reports (UCR), permitting long-term trend analysis.") For a study of clearance rates and police effectiveness, _see_ CHARLES WELLFORD & JAMES

police performance, we start by asking: Should police performance be measured by how many people police arrest and turn over to prosecutors? If the key is solving crime, we may need more information to determine whether police are effective. Indeed, clearance rates disregard any of the following pieces of information. How many individuals are victims of a crime but failed to report it to police? How often do police arrest the right people? Which crimes are police most likely to make arrests for? How many police clearances result in a conviction? How many crimes did police not make arrests for, but resolved in other ways? None of this information is tracked. And on top of that, a reported crime that does not result in an arrest is a failure by police as it lowers the clearance rate.

The questions left unanswered by clearance rates lead us to a new concept that this Article refers to as, "criminal accountability." Criminal Accountability examines the full course of a crime to determine whether a crime that is committed is detected and solved by police—whether by reporting, arrest, conviction or resolution outside of the criminal justice system. The rate of criminal accountability provides a more comprehensive way to determine the effectiveness of police in the United States.

This Article makes two essential contributions, one empirical and one theoretical. First, it relies on independently analyzed national crime data from the last fifty years to establish empirically that police are ineffective at solving major crimes. It establishes through this analysis that police are much less effective than we might think at solving all major crimes, and have not significantly improved in the last thirty years.[16] Second, this Article explores how to best determine whether police are doing a good job, examines the current approach and considers if there is a better way to measure police effectiveness.

Part I begins with an introductory discussion of the primary approach to tracking police effectiveness—clearance rates. Section I.B defines clearance rates and explores their use as the current measure of police effectiveness. It demonstrates that a crime cleared does not necessarily indicate that the perpetrator has been caught or convicted. A cleared case can mean that a suspect is identified but is later released (thus, the crime is *not* solved), or that a suspect is arrested and then due to faulty evidence, released, or that the crime *is* solved—but can mean any of the three without any clarity in simply looking at the statistics. Section I.C explores the challenges of clearance rates as a measure of police effectiveness. These include the reasons for clearance rate errors including police motivations to exaggerate or misreport, clearance rates advantaging certain groups over others, and the central data points missing in clearance rates. These challenges are

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CRONIN, AN ANALYSIS OF VARIABLES AFFECTING THE CLEARANCE OF HOMICIDES: A MULTISTATE STUDY (1999), WASHINGTON DC: JUSTICE RESEARCH AND STATISTICS ASSOCIATION.

[16] *See infra* notes 239–40 for discussion of reduction in crime rates which may indicate that police have improved. *But see* Tables 1–4 and Appendix Tables 5 and 6 on arrest, clearance, conviction rates in the last thirty years remaining stable.

important in considering alternatives for measuring police performance. Section I.D introduces the concept of "criminal accountability." Clearance rates do not account for the overwhelming number of crimes not reported to police, individuals who are apprehended but not turned over to prosecutors, or crimes resolved without arrest through alternative means. Criminal accountability considers all of these measures, and determines police effectiveness in solving crimes.

Part II explores whether criminal accountability constitutes a better way to track police performance, using thirty to fifty years of national data to inform the discussion. Determining the rate of criminal accountability is a complicated endeavor. It includes accounting for the large swath of crimes not reported to police and also considers conviction, incarceration and other crime resolution rates. Section II.A considers crime reporting more carefully and the discrepancy between "known crimes" and "reported crimes." In simpler terms, it demonstrates empirically the large number of crimes that occur that are not reported to police. Section II.B applies these more complete data metrics to the major crimes (murder, burglary, rape, robbery, etc.) and examines how effective police have been at solving these crimes in the last thirty years. The police effectiveness numbers are surprising—and demonstrate that we are worse at solving crime than we may have thought. In uncovering these numbers, this Article does not intend to condemn police or even prosecutors—or recommend any particular remedy to increase reports, arrests or convictions. There are important reasons why people are not reporting crimes to the police or that police are not arresting individuals that invoke police practice and strategy, police resource constraints, race and cultural issues and police accountability. All of these are and should be important considerations in criminal decisions, and are not dissected here. This Article simply reveals the data on police effectiveness for the major crimes in an attempt to start this conversation.

Part III moves beyond the data to discuss the implications of a new measure of police. Section III.B provides insights that may improve the study of police effectiveness—and in turn improve criminal accountability. One of these includes additional points of data that should be collected each year at local and national levels. It also discusses how we may consider the whole course of crime, improve police reporting rates, and consider arrest and conviction rates in a way that avoids siloing police and prosecutors. This new approach may reduce police incentives to fraudulently report arrest numbers or misrepresent clearance rates. Finally, it addresses counterarguments on whether criminal accountability is an improvement to the current approach.

The observations in this Article about police effectiveness may be unsettling. One may not sleep soundly knowing that 97% of burglars, 88% of rapists, and over 50% of murderers get away with their crimes.[17] Indeed, we live in a world where much more often than not, crimes go unsolved and unaccounted for. This Article

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[17] *See* Appendix Table 6 for true conviction rates.

operates under the assumption that providing this information will not exacerbate crime but motivate a critical conversation.[18]

I. HOW TO MEASURE POLICE EFFECTIVENESS

To measure the effectiveness of police, we must narrow the police functions we are considering and define the terms used in this Article—"crime" and "solve." We ignore the police function of maintaining public order and focus on the function of preventing and solving crime. Though this could lead to a broader more complicated and controversial discussion, for the purposes of this Article, we are concerned with measuring the proportion of major "crimes" committed that are ultimately "solved."[19] Defining a crime may be an ambiguous question that can involve some debate, but without entering the foray of these debates, this Article relies on the legal definition of a crime. A "crime" is behavior prohibited by law and subject to criminal sanction under political authority of the state.[20] This Article does not just focus on any crime, but relies on major crimes with the presumption that there is little dispute about the need for police involvement in major crimes. The major crimes considered here are murder, rape, burglary, robbery, aggravated assault, larceny and motor vehicle theft.[21]

There are several ways to define "solving" of a crime. One way is to consider a "clearance" a solving of a crime. Clearance involves police arresting an individual and turning them over to prosecution for a reported crime. At this point, arguably, police have done all that they can do and all that is technically in their jurisdiction to do. However, clearance does not mean that the true culprit has been

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[18] Tom Tyler's research is reassuring on this point. TOM TYLER, WHY PEOPLE OBEY THE LAW (2006) (finding that people obey the law because it is legitimate not because they fear punishment).

[19] AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO THE URBAN POLICE FUNCTION STANDARD 1–2.2 (1997)(A classic articulation of police responsibilities); see also HERMAN GOLDSTEIN, POLICING A FREE SOCIETY 21–44 (1990) ("anyone attempting to construct a workable definition of the police role will typically come away with old images shattered and with a new-found appreciation for the intricacies of police work").

[20] For the purposes of this paper, I adopt the traditional legal definition of a crime. Ronald C. Kramer, *Defining the Concept of Crime: A Humanistic Perspective*, 12 J. OF SOC. & SOC. WELFARE 469, 470 (1985); Ronald C. Kramer, *The Debate Over the Definition of Crime: Paradigms, Value Judgments, and Criminological Work*, in ETHICS, PUBLIC POLICY, AND CRIMINAL JUSTICE 33–58 (ELLISTON & BOWIE EDS. 1982) (articulating the debate over the definition of crime).

[21] Given that the scope of larceny can vary, larceny may not be a major crime. According to the FBI, the average larceny amount for the crimes they tracked was $1,153 in 2018 and for burglary it was $2,799. *2018 Crime in the United States, Larceny-theft, Burglary,* FBI: UNIFORM CRIME REPORTING (2018), https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/larceny-theft and https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/burglary.

found, so for the purposes of this Article, a clearance is not "solving" a crime.[22] An acceptable definition for "solving" a crime could be when a defendant is convicted of a crime.[23] This way, the person who committed the crime is arguably held accountable. Another way to solve a crime would be what I refer to as "resolving a crime," or solving a case without a conviction, through alternative means. In other words, the police know who to hold accountable, and hold that person accountable without a traditional conviction. This way to solve or "resolve" a crime will be discussed in Section I.C that introduces "criminal accountability." So for purposes of this Article, solving a crime will mean a conviction or resolution by alternative means. I recognize that criminal conviction is not in the hands of police alone, but also prosecutors and other factors. However, for the purposes of determining whether police are effective and whether clearance rates are accurate, conviction rates must be compared to clearance and arrest rates.

Section I.A goes on to define the most commonly used data point currently used to measure police effectiveness: Clearance rates. Section I.B discusses some of the problems with clearance rates as the primary measure of police effectiveness. And finally, Section I.C discusses an alternative measure for police effectiveness: criminal accountability.

A. Defining Clearance Rates

Now that we have defined the terms by which to measure police effectiveness, we must turn to understanding how to measure it. There are four key empirical measures of police performance. These are certainly not the best measures, but the most common. These four main data points include (1) clearance rates, (2) reported crimes,[24] (3) number of arrests, stop and frisks and fines, and (4) response time after a call.[25] The fourth measure, response time, is one that deals mostly with maintaining public order and responding to emergencies (some arguably criminal), but nonetheless we do not deal with it here. Similarly, we do not deal with stop and

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[22] Section I.B and C gives greater insight over why this is the case and deals with some problems with clearance rates.

[23] There are sometimes doubts when a person is convicted of a crime, whether they actually committed that crime as a legal conviction does not mean factual guilt. *See generally* D. Michael Risinger, *Innocents Convicted: An Empirically Justified Factual Wrongful Conviction Rate*, 97 J. CRIM. L. & CRIMIN. 761 (2007).

[24] MALCOM K. SPARROW, MEASURING PERFORMANCE IN A MODERN POLICE ORGANIZATION: NEW PERSPECTIVES IN POLICING BULLETIN, NATIONAL INSTITUTE OF JUSTICE (2015) NCJ 248476 at 2 (Police are most measured by "[r]eductions in the number of serious crimes reported, most commonly presented as local comparisons against an immediately preceding time period").

[25] ANTON MASLOV, MEASURING THE PERFORMANCE OF THE POLICE: THE PERSPECTIVE OF THE PUBLIC 1 (2015); SPARROW, *supra* note **Error! Bookmark not defined.**37, at 2.

frisk measures which more directly involve crime prevention.[26] We also do not deal with fines here, even though they have important implications for justice.[27] The other three measures of police performance—arrest rates, clearance rates and reported crime rates are critical to the empirical analysis in Section II. The Article turns first to defining the most common measure of police performance: clearance rates.

Clearance rates are the most commonly used measure of police effectiveness.[28] Clearance rates are crimes reported to police which result in arrest and turning over a suspect to prosecutors.[29] By some accounts, clearance rates are the percentage of crimes solved by arrest by a police department or a specific division of a police department.[30] Clearance rates are also sometimes referred to as the proportion of recorded offenses that have been 'cleared up.'[31] For the purposes of this Article, the relevant definition of clearance rates is the one used by the Federal Bureau of Investigation (FBI). The FBI tracks clearance rates by the nation's police departments.

The official FBI definition of clearance rates includes offenses cleared by arrest, or cleared by exceptional means.[32] These are two distinct ways to clear a crime. The first (and what should be the most common way) is by arrest. To clear a crime by arrest, a crime must fulfill three specific conditions according to the FBI. At least one person must be: (1) arrested; (2) charged with the commission of the offense; and (3) turned over to the court for prosecution (whether following arrest, by court summons, or by police notice).[33] It is important to note that clearance rates are different from arrest rates, since to "clear" a crime there must be an arrest, a charge *and* turning over of the case to prosecution. This is not the only way to clear a crime, however.

According to the FBI, the second way police can "clear" crimes is by "exceptional means." Exceptional means is basically an exception to arrest that allows police to clear a crime. It is supposed to encompass situations when the

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[26] Barry Friedman and Rachel Harmon have independently presented the challenges in this area. *See* Friedman and Janszky, *supra* note **Error! Bookmark not defined.**30; Harmon, *The Problem of Policing, supra* note 9.

[27] *See Timbs v. Indiana*, 586 U.S. __ (2019) (excessive fines violate the Eighth Amendment).

[28] DEAN J. CHAMPION, THE AMERICAN DICTIONARY OF CRIMINAL JUSTICE (2005). *See also supra* note 17.

[29] CHAMPION, *supra* note 41.

[30] GREENE, *supra* note 16, at 182. NASH, *supra* note 17.

[31] BOTTOMLEY & PEASE, *supra* note 17.

[32] FBI, *Offenses Cleared,* CRIME IN THE UNITED STATES 2017, https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017 (Fall 2018).

[33] *Id.*

police have done all they can do but cannot obtain a suspect.[34] To be cleared by exceptional means under FBI standards, the law enforcement agency must have: identified the offender; gathered enough evidence to support an arrest, made a charge, turned over the offender to the court for prosecution; identified the offenders exact location so that the suspect could be taken into custody immediately; but then encountered a circumstance outside the control of law enforcement that prohibits the agency from arresting, charging, and prosecuting the offender.[35] Examples of exceptional means are where the offender is killed, the victim fails to cooperate after the offender has been identified or the offender cannot be extradited from a foreign jurisdiction.[36] There are key differences between crimes cleared by arrest and those cleared by exceptional means.[37] Again, this should be the less common way to clear a crime and an exception to the primary method: arrest. However, as discussed in the next section, this exception is exploited to inflate police clearance rates.

B. The Problems of Clearance Rates

Clearance rates, alone, are not an effective measure of police performance. They miss critical data points, as discussed more fully in the next section.[38] Aside from the incompleteness of clearance rates, there are other problems with relying on clearance rates to measure police performance. This section discusses the various problems with accuracy of clearance rates. First, clearance rates are not accurately measured from year to year. Second, they are not a useful measure of police performance and effectiveness unless they take into account the specific characteristics of the jurisdiction and crime under consideration. Third, clearance

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[34] *Id.* According to the FBI, offenses cleared by exceptional means include situations that include "elements beyond law enforcement's control prevent[ing] the agency from arresting and formally charging the offender."

[35] FBI, *supra* note 45, at 2.

[36] *Id.*

[37] John P. Jarvis & Wendy C. Regoeczi, *Homicides Clearances: An Analysis of Arrest Versus Exceptional Outcomes*, 13(2) HOMICIDE STUD. 174 (2009). Jarvis and Regoeczi completed a study comparing arrest versus exceptional outcome that identified important implications for measuring clearance rates. The study used data from the FBI's National Incident-Based Reporting System (NIBRS) to analyze all incidents of murder and nonnegligent manslaughter reported between 1996 and 2002. *Id.* at 178–79. The NIBRS data was employed in a logistic regression analysis used to examine the impact of independent variables, such as victim characteristics or weapon use, on the outcome variable of cases cleared by arrest or exceptionally cleared. *Id.* at 180–81. The study concluded that a "number of factors influence the clearance categories differently," and that "exceptional clearances are not simply a residual category of clearance outcomes that may be either included or excluded at the discretion of the policing agency or the researcher." *Id.* at 174, 183.

[38] SPARROW, *supra* note 37 at 2. Clearance rates are difficult to measure accurately so they may receive less emphasis.

rates may lead police to overemphasize arrest rather than other ways to deal with crime, or focus on arrests of some crimes over others.[39] Finally, clearance rates can be manipulated by police or even fraudulently collected to distort the appearance of criminal activity in the jurisdiction.

Clearance rates are often not accurately measured from year to year.[40] Clearance rates are rarely comprehensive or accurate.[41] Some claim they are not useful data points.[42] Clearance rates can also be manipulated because of the ability of law enforcement officers to double count clearances and report clearance upon warrants for arrest.[43] Specifically, murders that occur in a prior year and are solved in the current year count towards the current year's clearance rate, which can skew numbers.[44] Also, in New Orleans, a warrant issued in one year and an arrest in the following year allows a murder to count as being "cleared twice."[45] So taking this

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[39] Even though we are dealing with major crimes and there is an argument that all of them should lead to an arrest and conviction, there are some victims that are not interested in working with police toward that outcome, even with serious crimes. LYNN LANGTON ET AL., VICTIMIZATIONS NOT REPORTED TO THE POLICE, 2006–2010 2 (Aug. 2012).

[40] GREENE, *supra* note 14, at 182; Jeff Asher & Ben Horwitz, *The Missing Numbers in Preventing Murders*, N.Y. TIMES (Aug. 28, 2019), https://www.nytimes.com/2019/08/28/upshot/preventing-murders-missing-data.html; William Gregory Kennedy, *The Impact of Police Agency Size on Crime Clearance Rates*, UNC DISSERTATION 56 (2009) https://pdfs.semanticscholar.org/ef68/be7e585cf7a0c83fec2ba2ed9249d93f4e79.pdf ("[T]he use of clearance rates is not without issues and there have been several concerns about the validity of their use. A major concern is that clearance rates may not be very accurate. In many instances, clearance rates can be either artificially improved or they can be misleading low.").

[41] *Id.*

[42] This is because police forces employ different methods of measuring clearance rates. *See* MASLOV, *supra* note 38 (studying performance of police in the U.S., Canada, and Europe, finding that although clearance rates are a classic mechanism to measure police performance, "it is prone to definition and measurement errors, making cross-comparisons difficult.").

[43] Matthew Clarke, *U.S. Murder Clearance Rates Among Lowest in the World*, CRIM. LEGAL NEWS 22 (Mar. 2018); *see also* Kevin Rector, *2017 Homicide Data Provide Insight Into Baltimore's Gun Wars, Police Say*, THE BALT. SUN (Jan. 3, 2018), https://www.baltimoresun.com/news/crime/bs-md-ci-2017-homicide-data-breakdown-20180103-story.html (claiming that the Baltimore Police Department raised clearance rates from 30% in 2015 to over 50% in 2017, by doubling the number of cases closed administratively). *See also infra* note 85 for further evidence of Baltimore clearance manipulation.

[44] Asher & Horwitz, *supra* note 52.

[45] Clarke, *supra* note 55.

discrepancy into account, the reported clearance rate for murder in New Orleans in 2016 was 41% and should actually have been 29.9%.[46]

Clearance rates may lead to an over-focus on arrests and on certain crimes over others. Clearance rates may change in response to police departments trying to "create incentives for individual officers to control crime."[47] Using clearance rates as a job performance measure may actually encourage officers to value more arrests, not necessarily solving crimes.[48] Police may also be incentivized to arrest an individual when other avenues of crime solving may be more appropriate or lead to a better result. Prosecutors sometimes pressure police to arrest individuals in certain cases, adding to the problem. A police officer is less likely to work out restorative outcomes with victims and perpetrators if she is measured by the number of arrests per the number of reports brought into the office.[49] Police may also focus on certain crimes to protect clearance numbers, when other crimes pose an equal threat to the public. For instance, police may be overfocused on gun violence that ends in a death. However, a person is struck in a small fraction of all gunfire episodes,[50] and less than a third of all shooting victims die.[51] If a police department solves only fatal shootings at a high percentage, a significant segment of gun violence will remain unsolved. While it is understandable that police emphasize shootings that end in a death over nonfatal shootings, whether a shooting ends in a death is largely a matter of chance.[52] Police may also prioritize crimes with white victims and perpetrators as according to one study, 75% of unsolved crimes had African American victims.[53]

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[46] *Id.* (The official murder clearance rate issued by the New Orleans police for 2016 is 41.0 %, but the actual percentage of 2016 murders cleared is 29.9%, or 52 of the 174 murders that occurred in the city in 2016).

[47] Richard H. McAdams, *The Political Economy of Entrapment*, 96 J. OF CRIM. LAW AND CRIMIN. 107, 132 (2005).

[48] *Id.* at 132–33. Indeed what the studies demonstrate is that most crimes are not cleared and police do a lot unrelated to solving crimes. GREENE, *supra* note 14, at 182.

[49] *See infra* note 130, discussing arrest rates as a metric by which to judge police performance.

[50] Jillian B. Carr and Jennifer L. Doleac, *The Geography, Incidence, and Underreporting of Gun Violence: New Evidence Using Shotspotter Data*, BROOKINGS INST. (Apr. 27, 2016), https://www.brookings.edu/research/the-geography-incidence-and-underreporting-of-gun-violence-new-evidence-using-shotspotter-data/.

[51] Jeff Asher, *Why Are Shootings Deadlier In Some Cities Than Others?*, FIVETHIRTYEIGHT (Feb. 21, 2017, 3:30 PM), https://fivethirtyeight.com/features/why-are-shootings-deadlier-in-some-cities-than-others/ (last visited Feb. 16, 2020).

[52] *Id.*

[53] Asher & Horwitz, *supra* note 52 ("Based on an analysis of over 55,000 murders in the U.S., 26,000 were unsolved and 75% of the victims in unsolved cases were African American.").

In order to be useful, clearance rates may have to be adjusted based on jurisdictional and incident characteristics.[54] As such, clearance rates alone are not a fair or appropriate measure of police effectiveness. For instance, one study of 85 law enforcement agencies considered variables such as police workload, firearm use, distant victim-offender relationship, and low visibility/exposure incident time.[55] The study concluded that raw homicide clearance rates do not legitimately measure police performance because an increase in those incident and jurisdictional variables, especially those impeding collection of evidence or increasing workloads, may lower clearance rates despite being out of police control.[56] Clearance rates standing alone are incomplete measures of police performance.

Variations in how clearance rates are recorded by individual police departments make it difficult to compare agencies with each other.[57] Agencies also define arrest differently, making it even more problematic to track clearance rates between agencies.[58] Particular local practices are cited as offensive distortions of murder clearance rates. For instance, New Orleans police consider a murder "cleared" when a suspect is identified and a warrant is issued for arrest. However, the FBI does not recognize issuing warrants as clearance of a crime.[59] Additionally, Columbus, Ohio reportedly used "warrant clearance" for homicides to improve numbers. Columbus had an official clearance rate for murders of 41.0 percent, but an adjusted clearance rate of only 34 percent when taking account "warrant" clearances.[60] These sorts of misrepresentations in reporting can make police departments appear to be solving more crimes than they actually are.

There is intense pressure in certain police departments to pad or even falsify clearance rate numbers—either internally or to the FBI. Police funding even linked to clearance of crimes and could lead to both over arrests and manipulation

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[54] Aki Roberts, *Adjusting Rates of Homicide Clearance by Arrest for Investigation Difficulty: Modeling Incident- and Jurisdiction-Level Obstacles*, 19(3) HOMICIDE STUDIES 1 (June 2014). Roberts argues that adjusted homicide clearance rates form a better police agency performance measure than raw rates because the adjusted level accounts for jurisdictional and incident characteristics related to investigation of crimes. The study calculated difficulty-adjusted homicide clearance rates for 85 U.S. law enforcement agencies to create a multilevel logistic regression model that examines the effect of jurisdiction- and incident-level variables affecting an agency's *expected* homicide clearance rate. *Id.* at 7–11.

[55] *Id.* at 11–12.

[56] *Id.* at 20–22.

[57] GREENE, *supra* note 14, at 183.

[58] *Id.* at 183; Lawrence Sherman & Barry Glick, *The Quality of Police Arrest Statistics*, POLICE FOUND. (1984).

[59] Clarke, *supra* note 55.

[60] *Id.*

of rates.[61] In New Orleans, the FBI reported a clearance rate of 15% but the department's internal records indicate a clearance rate of over 45%.[62] Another study reports that Tulare, California Police Department's reported 94% clearance rate was incorrect and that the number was closer to 70% in some years and 50% in other years.[63] Particular clearance rate numbers may be called into question due to incentives police may be given by commanding officers or public officials. For example, officers from Biscayne Park in Miami, Florida admitted to targeting random individuals with charges in order to improve the Department's clearance rate.[64] Commanding officers at the Biscayne Park police department allegedly told police officers to pin random blacks for open cases such as burglaries in order to close the cases and improve clearance rates.[65] One police chief in particular had a record of 29 out of 30 burglary cases solved during his tenure as chief, but zero out of 19 cases solved the year following his departure.[66] Out of the burglary arrests documented, nearly all were black males, and in some cases the prosecution would simply drop the charges after the Biscayne police would fail to cooperate.[67]

Similarly, in Los Angeles, police allegedly misclassified cases to manipulate clearance rates. The Los Angeles Police Department (LAPD) has had a number of high-ranking officers charged with purposefully misclassifying cases as less serious offenses in order to manipulate public outlook.[68] In particular, police underreported aggravated assaults in 2016 and 2017 by about 10% and misclassified them as less serious offenses.[69] Another report documented misclassification of nearly 1,200 violent crimes by the LAPD in a one-year span

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[61] Sources indicate that this may be the case in Alabama and potentially other states, though it is difficult to verify without additional research.

[62] Asher & Horwitz, *supra* note 52 (noting that a 2012 report from New Orleans to the FBI indicated a murder clearance rate of 15 percent, but in actuality, the New Orleans Police Department cleared at least 45 percent of murders that year).

[63] Eric Witzig, *Murder Clearance Rates Decline at Most Major Police Agencies*, MURDER ACCOUNTABILITY PROJECT 1, 3–4 (June 12, 2017), http://www.gutnviolence.issuelab.org/resources/27695/27695.pdf (finding that a close source of the Tulare County Sheriff's Department indicated "that the data reported to the F.B.I. was incorrect," finding that instead of a 94 percent clearance rate in the last decade, the County had "an average rate of 70 [percent] for the last two and a half years" and a 50 percent clearance rate for the decade prior).

[64] Charles Rabin et al., *The Chief Wanted Perfect States, So Cops Were Told to Pin Crimes on Black People, Probe Found*, MIAMI HERALD (July 12, 2018).

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] Matt Hamilton, *LAPD Captain Accuses Department of Twisting Crime Statistics to Make City Seem Safer*, L.A. TIMES (Nov. 6, 2017), http://www.latimes.com/local/lanow/la-me-ln-lapd-crime-stats-claim-20171103-story.html.

[69] *Id.* (The analysis was done by the commanding officer, Carranza, who lodged the complaint, but it closely mirrors a report done by the LA Times which documented massive misclassification of aggravated assaults).

that ended in September 2013.[70] The 2013 report found that if the numerous beatings, stabbings and robberies were classified correctly as aggravated assaults, then the rates for aggravated assault would have been nearly 14% higher. It turns out that the LAPD misclassified nearly 14,000 aggravated assaults as lesser offenses, effectively lowering the violent crime rate by 7% and serious assault by 16% for the period of 2005 to fall of 2012.[71] Indeed, an LA audit in 2015 estimated a misclassification of over 25,000 crimes from 2008 to 2014.[72]

In yet more underreporting, Chicago seems to have also majorly underreported violent crimes to skew perceptions of public safety.[73] In a twelve-month study from 2013, individuals who were beaten, burned or shot were downgraded to more minor crimes for unclear reasons.[74] Some crimes actually disappeared from the police records.[75] During this period, Chicago experienced a "dramatic crime reduction" while curiously the department also lost many officers.[76] An independent city audit in 2012 found that the Chicago police department "undercounted aggravated assaults and batteries by more than 24 percent" during this period.[77] Indeed, misreporting of clearance rates can dramatically change perceptions of police effectiveness.

Many agencies across the country also use the "cleared by exceptional means" category to misrepresent clearance rates. Police departments can use "exceptional means" to report crimes in the cleared category since they are often not considered separately. The majority of police reporting systems (more than 60%) still do not require agencies to declare *how many* of their cases are cleared by exceptional means.[78] One study compared the FBI Uniform Crime Report ("UCR") numbers

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[70] Ben Poston & Joel Rubin, *Times Investigation: LAPD Misclassified Nearly 1,200 Violent Crimes as Minor Offenses*, L.A. TIMES (Aug. 9, 2014, 6:04 PM), https://www.latimes.com/local/la-me-crimestats-lapd-20140810-story.html.

[71] *Id.*

[72] Ben Poston, Joel Rubin, & Anthony Pesce, *LAPD Underreported Serious Assaults, Skewing Crime Stats for 8 Years*, L.A. TIMES (Oct. 15, 2015).

[73] David Bernstein & Noah Isackson, *The Truth About Chicago's Crime Rates*, CHI. MAG. (Apr. 7, 2014).

[74] *Id.* Shockingly, the study "identified 10 people … who were beaten, burned, suffocated, or shot to death in 2013 and whose cases were reclassified as death investigations, downgraded to more minor crimes, or even closed as noncriminal incidents—all for illogical, or at best, unclear reasons."

[75] *Id.* ("Chicago's crime statistics were altered as murders and "dozens of other crimes … were misclassified, downgraded to wrist-slap offenses, or made to vanish altogether.").

[76] *Id.*

[77] *Id.*

[78] Mark Fahey, *How We Analyzed Rape Clearance Rates*, PROPUBLICA (Nov. 15, 2018, 10:00 AM) https://www.propublica.org/article/how-we-analyzed-rape-clearance-rates ("[m]ore than 60 percent of law enforcement agencies reporting to the UCR program still use the older summary system, which does not distinguish between the two types of clearance."). This article sought "to uncover the arrest and exceptional clearance rates

with those of the FBI's National Incident-Based Reporting Systems (NIBRS) which does require law enforcement to disclose arrests and exceptional clearances separately, demonstrating overinflated clearance rate numbers.[79] A study compared rape data from 103 national police agencies to see whether clearance rates were accurate.[80] It compared how many rape cases were resolved by arrest and exceptional means with total rape counts and asked agencies to explain. The study found that "[a]cross the country, dozens of law enforcement agencies are making it appear as though they have solved a significant share of their rape cases when they simply have closed them."[81] This is because the agencies declare cases as cleared through exceptional means "when they have enough evidence to make an arrest and know who and where the suspect is, but can't make arrests for reasons outside their control."[82] Specifically, the study found that "[n]early half of the law enforcement agencies that provided records cleared more rapes through exceptional means than by actually arresting suspects in 2016."[83] Around a dozen police departments that gave reporting information included twice as many exceptional clearances than arrests, resulting in agencies reporting nearly three times as many solved rape cases as compared to actual arrests.[84] One extreme example was the Baltimore County Police Department which reported a 70 percent clearance rate for rape cases in 2016, but made arrests only about 30 percent of the time.[85] Rather than using exceptional means as a minor exception, some police departments are using it as a way to inflate clearance numbers.

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previously hidden from the public by requesting data from police internal case management systems."

[79] *Id.* NIBRS aims to provide more detailed information about the incidents cleared by police. *See* FBI, NATIONAL INCIDENT-BASED REPORTING SYSTEM (NIBRS) at https://www.fbi.gov/services/cjis/ucr/nibrs.

[80] Fahey, *supra* note 78. Authors sent requests under state open records law to 103 different agencies, 77 of which were summary UCR reporters and 26 were NIBRS reporters. Not all the agencies were willing to communicate, but from those that did the study was able to "identif[y] the fields that contained case dispositions, including those that aligned with arrests and exceptional clearances, and calculated clearance rates by dividing the total number of cases cleared by arrest and exceptional means in the data by the total number of what the FBI calls 'actual' rapes – reported rapes minus any unfounded cases." *Id.*

[81] Bernice Yeung et al., *When it Comes to Rape, Just Because a Case Is Cleared Doesn't Mean It's Solved*, PROPUBLICA (Nov. 15, 2018, 10:00 AM), https://www.propublica.org/article/when-it-comes-to-rape-just-because-a-case-is-cleared-does-not-mean-solved.

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.* As evidence of the possible negative effects of clearing rape incidents by exceptional means, the study cites the unfortunate incident involving a 13 year old girl, who, after having her case referred to Baltimore County Police Department, had her case closed by exceptional means despite never interviewing the suspect or attempting to arrest

In sum, clearance rates provide an imperfect measure of police effectiveness as they are difficult to measure accurately and may be exaggerated. They may lead to poor police incentives to arrest individuals rather than deal with crimes in alternative ways. Police may be motivated to make certain arrests over others to help clearance numbers, rather than to improve public safety. Police may also be motivated to make crimes appear "solved" when they are actually not.

A meaningful evaluation of police effectiveness will require attention to other measures. This is not to say that clearance rates are irrelevant. Although clearance rates may not provide a full picture, they do give us good insight into how much crime is solved. Other factors are also important to determining whether police are effective, as discussed in the next section.

C. "Criminal Accountability": Police Effectiveness at Solving Crime

The classic measures of police effectiveness are missing several data points. These classic measures include clearance rates, "reported crimes" and arrest rates.[86] A clearance rate is an important—albeit flawed—measure of police effectiveness. Clearance rates consider the proportion of crimes reported to police that are followed by an arrest and referral to prosecution.[87] "Reported crimes" consider how often people report crimes to police and are important in determining the level of public trust in police. And arrest rates are integral to determining clearance rates, as arrest is a prerequisite to clearance. To be clear, there is currently no systematic way that all three of these data points are used nationally to measure police performance.[88] These three measures, along with four other data points, will be introduced to measure police effectiveness: "known crimes," conviction rates, imprisonment rates and "crime resolution rates." This constitutes the first attempt at creating a criminal accountability measure that includes seven data points.

Acknowledging upfront that there is no perfect measure to judge police, this Article undertakes the task of creating one that is better than the classic measure. The term "criminal accountability" is the overall measure of police effectiveness at solving crime. It attempts to consider the entire course of a crime and in doing so considers seven data points. It considers what happens before a crime is reported to police and after police clear a crime. Criminal Accountability considers all of the data from the time a crime occurs (or is known to the public) to where a person is

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him simply because the detective had not heard back from the girl. The suspect went on to be accused of raping another underage girl in Wisconsin. *Id.*

[86] *See* SPARROW, *supra* note **Error! Bookmark not defined.**37.

[87] Part of this consideration is also crimes cleared by exceptional means—which should be a small exception of crimes where police are unable to make arrests for reasons out of their control but as we see in Section I.A is an exception that has sometimes swallows the rule.

[88] *See supra* notes **Error! Bookmark not defined.**37–**Error! Bookmark not defined.**38.

imprisoned or a crime is resolved in an alternative way. Currently, we are not measuring nationally in any coordinated way, the complete sequence of a crime. And police departments are typically not considering at all the following four data points: known crimes, conviction rates, imprisonment rates, and resolved crime rates. Two of these measures are new ones—"known crimes" and "resolved crimes." The next sections consider each of the four measures in order.

1. Known Crimes

Many crimes occur without a police report. In other words, the victim never reports the crime to police. These are what this Article refers to as "known crimes." These crimes are discovered because people admit in confidential surveys that they have been a victim of a particular crime in a given year, but never report these crimes to police. These national victims surveys may provide a better measure of how many crimes are actually "known" to have occurred than the number of crimes reported to police.[89] These surveys demonstrate that there are quite a large percentage of crimes that are not reported. The intricacies of this reporting are discussed in Section II.A. We acknowledge as well that some crimes may never be reported to anyone, and remain unaccounted for.

It is important for police to consider when a crime occurs, why it is not reported to police. The crimes reported to police are referred to as "reported crimes."[90] There are many reasons why individuals may not report a crime to the police. The individual may fear that police will not address the problem, may feel police are ineffective,[91] may fear retribution, blaming or charges by police for their own behavior, or they may fear reporting a crime to police will somehow make their situation or even the perpetrator's worse.[92] The victim of a larceny, for

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[89] While it is unclear whether NCVS or UCR numbers are more accurate, it may be assumed that NCVS numbers provide a more accurate picture of crime. *See* Marvin E. Wolfgang, *Uniform Crime Reports: A Critical Appraisal*, 111 U. PA. L. REV. 708, 715 (1963) ("Perhaps a more damaging and direct criticism of the UCR is the fact that the number of crimes recorded as 'known to the police' may be only a proportion of the crimes actually known to them."); John J. Donohue, *Comey, Trump, and the Puzzling Pattern of Crime in 2015 and Beyond*, 117 COLUM. L. REV. 1297, 1304 (2017) ("While the goal of the NCVS and UCR data is to provide an accurate picture of violent and property crime in America, one needs to be mindful that they cover distinct subsets of crime . . . and that NCVS counts of violent and property crime tend to be far higher than the UCR measures.").

[90] For a complete discussion of reported crimes *see* Section II.A.

[91] A 2006-2010 study demonstrates that when it comes to burglary, motor vehicle theft and theft, 36% of people did not report to the police because they believed that the police could not or would not help. LYNN LANGTON ET AL., VICTIMIZATIONS NOT REPORTED TO THE POLICE, 2006–2010 2 (Aug. 2012). Another 15% dealt with the crime in another way. *Id.*

[92] *See supra* note **Error! Bookmark not defined.**15. *See also* GOLDSTEIN, *supra* note **Error! Bookmark not defined.**22, at 30–31.

instance, may not want the perpetrator of the crime to be arrested, but may just want her iPhone back. A rape victim who was using drugs before the rape may not want to report the rape for fear of charges against him. A study of violent crime between 1994 to 2010 reveals that individuals who did not report their crimes to police dealt with them in three main ways.[93] The majority of individuals (between 30-40%) dealt with the crime independently as they considered it a "personal matter."[94] Another twenty percent or so did not report the crime because it was not important enough to the victim to report to police.[95] And finally about 35-40% of individuals did not report because they believed that police would not or could not help, feared reprisal or getting the offender in trouble if they reported.[96] We acknowledge here that 100% reporting of crime to police is not our goal. Given that some people do not report to police because they chose to address crimes personally, it is possible that a portion of crimes may best be mediated or resolved individually, without the assistance of police. Though the reasons people fail to report to police are important to track, particularly when individuals fail to report because they fear police will not help or fear that reporting will make their situation worse. The factors that go into why an individual does not report a crime are important as some may be improved by police.

Police could potentially improve the way they handle crime or community perceptions to improve reporting rates. When the public perceives police as a part of the community, rather than an outside force, crime reporting becomes more natural.[97] When individuals trust police follow fair processes, they are much more likely to report crimes to police.[98] It is possible that changes in police practice and

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[93] LANGTON ET AL., *supra* note 101, at 4.

[94] *Id.*

[95] *Id.*

[96] *Id.* Between 1994 to 2010, the percentage of violent crime victimizations not reported because the victim believed the police would not or could not help doubled from 1994 to 2010. *Id.*

[97] Tom R. Tyler, *From Harm Reduction to Community Engagement: Redefining the Goals of American Policing in the Twenty-First Century*, 111 NW. U. L. REV. 1537, 1549 (2017) ("[T]he police could use this discretion to lower the rates of investigatory contact with the public, particularly the large portions of the public not involved in serious criminal activity.").

[98] Tom Tyler's research demonstrates that when communities believe that police follow fair processes when exercising authority, individuals are more likely to cooperate with police. *See* Jason Sunshine & Tom Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, LAW AND SOCIETY REV. 37(3), 513–48 (2003) (Procedural justice is the term given to represent the community's perceptions of legitimacy which are based primarily on concerns about the fairness of processes that police follow when exercising authority); Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 267 (2008) (interviewing individuals both before and after their personal experience with police, and finding empirical evidence supporting their conclusion that "cooperation increases not only when the public views the police as

policy could lead to more trust and in turn result in people feeling more comfortable to report crimes.[99] A desire for restitution rather than arrest and punishment may also be a factor for people not turning to police with crimes.[100] Police using discretion not to arrest may also improve reporting rates. Police should not be responsible for individual choices of people not to report crimes or their refusal to help convict perpetrators. These situations should be accounted for. The focus of police should be on systematically improving reporting numbers which come when there is more trust of police in a community. Improved police relationships should eventually lead to more crime reporting, and higher criminal accountability overall.

Considering known crime numbers with reported numbers helps validate the accuracy of police reporting. There have been instances where police report a crime in a way to make their community seem safer—by underrepresenting violent crime or classifying a serious crime as a minor one.[101] If we consider both reported crimes and known crimes, this can be mitigated since we can cross-check these crime reports to hold police accountable. Police may be less likely to underreport violent crime if they expect that known crimes will be considered alongside reported crimes. Police departments could also consider all of the reasons individuals do not report crimes to the police and work hard to improve reporting numbers. Indeed, a victim is more likely to report a crime if she believes that police can and will address it. Section II.B addresses the issue of reported versus known crimes in more detail. But for now, it is sufficient to simply acknowledge that known crimes are an important indicator of police effectiveness.

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effective in controlling crime and maintaining social order, but also when citizens see the police as legitimate authorities").

[99] Anthony A. Braga and Desiree Dusseault, *Can Homicide Detectives Improve Homicide Clearance Rates?*, 63 CRIME & DELINQUENCY, 283, 283–308 (2018) (showing how with interventions Boston's clearance rate improved between 10-20% over a few years); Anthony Williams, *Police Aren't Getting Better at Solving Murders*, CITY LAB (June 26, 2017), https://www.citylab.com/equity/2017/06/police-arent-getting-better-at-solving-murders/531642/) (discussing Santa Ana's increase in homicide clearance from 28% in 1993 to 83% in 2012).

[100] *See* R. Barry Ruback, *The Benefits and Costs of Economic Sanctions: Considering the Victim, the Offender, and Society*, 99 MINN. L. REV. 1779, 1791 (2015) (finding that many scholars "support restitution because it forces offenders to confront the harms they caused victims, makes them responsible for correcting those harms, and gives them a sense of accomplishment when they have paid the restitution." On that same line of thinking, there is research that suggests "victims prefer restitution from the offender over compensation from the state because restitution means that the offender must acknowledge the harm that was inflicted."); Stephen P. Garvey, *Punishment as Atonement*, 46 UCLA L. REV. 1801, 1846 (1999) ("[v]ictims do indeed rightly desire . . . restitution for the harm they've suffered.").

[101] *See supra* notes 52–56. Underreports of violent crimes are less likely to happen if we expect to compare NCVS data with police reports.

2. *Conviction Rates*

A key piece of measuring police effectiveness is tracking national rates of conviction. While police are certainly not to be held singularly accountable for conviction rates, they are a key piece of data for measuring police effectiveness. In order to determine if arrest rates are accurate, it is best to consider conviction rates at the same time. As demonstrated in Section I.C, many police departments have manipulated and fraudulently reported higher clearance numbers than deserved.[102] Police cannot manipulate convictions in quite the same way, since a person is either convicted of a crime or not. It is not like clearance where police can use the "exceptional means" exception,[103] double count clearances in a given year in the next year,[104] or claim that arrest warrants are equal to clearance.[105] A conviction is something that only happens once for a particular crime. Certainly police have less to do with conviction than prosecutors,[106] but it is important to know how many police arrests lead to convictions.

There are two reasons to track convictions as a measure of police performance. First, if police are pressured to arrest more individuals to increase clearance rate numbers, the conviction rate in a jurisdiction will likely be much lower than what is typical.[107] If this is the case, it will be an indication that a police department should evaluate arresting practices and policy to investigate properly before an arrest. It can also indicate that the department is under too much pressure from leadership.   to arrest individuals and they may be over arresting or not as careful in arresting the right individuals. Focusing on arrest, clearance *and* conviction may reduce the current incentive in some police departments to arrest random individuals just to improve clearance.[108] Also, as with clearance rates, it is important to consider unique jurisdictional characteristics—like work load or incident time—to ensure that police are judged fairly on all of these measures.[109]

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[102] *See supra* notes 47–56, discussing Los Angeles and Chicago police departments.

[103] This can be a major loophole for police to "clear" crimes that are not actually resolved. *See supra* notes 57–65.

[104] It is not possible to double count clearance rates if police have to reconcile arrest, clearance and conviction rates. *See supra* notes **Error! Bookmark not defined.**31–**Error! Bookmark not defined.**36.

[105] *See supra* notes **Error! Bookmark not defined.**31–**Error! Bookmark not defined.**36.

[106] Prosecutor decisions and behavior are integral to criminal justice. For a broader discussion of how prosecutors fit in criminal justice decision making. *See* Shima B. Baughman, *Subconstitutional Checks*, 92 NOTRE DAME L. REV. 1071 (2017).

[107] And yet there are also plenty of other reasons that conviction rates may vary by jurisdiction. For instance, some jurisdictions require a guilty plea for diversion and others don't. Some prosecutors offices are more committed to convictions than others.

[108] *See supra* notes 41–46, for discussions of arrests for the sake of improving clearance, including Biscayne and Tulare police departments.

[109] *See supra* note 54.

Second, wrongful convictions can result if police arrest without proper evidence and prosecutors continue to convict based on the same flawed evidence. The enormous pressure on police to arrest individuals—particularly after a violent crime—can lead to wrongful convictions.[110] It is important to remember that crime is difficult to solve. Police are working hard and yet are not solving most crimes.[111] With this realization, there should be a decreased emphasis on arrest and clearance to mitigate bad police incentives that result in convicting the wrong people. The appropriate measurement should be to convict a higher percentage of the individuals arrested and cleared, so that clearance is not the end goal. This is not to say that police should convict all of the people police arrest, or that they should increase arrest rates or even conviction rates. However, in judging police, it is important to consider the percentage of defendants convicted of those arrested and cleared. This percentage should be higher where police are careful in arresting the right people.

3. Imprisonment Rates

Imprisonment rates are also important in tracking overall criminal accountability. Imprisonment rates have very little to do with police effectiveness, however, in order to meaningfully track criminal accountability, the final metric must be imprisonment. A smaller percentage of people who are convicted are imprisoned.[112] In order to track the full course of a crime, it is important to consider how many people end up imprisoned for each major crime. This is the end of criminal accountability. I acknowledge here that police have very little to do with whether a convicted person ends up with a prison sentence. Though considering how many people we imprison and for what crimes is important in guiding broader public conversations on who police should be arresting or holding accountable for crimes. Further, whether a person is imprisoned after they are convicted may in some cases demonstrate the unnecessary nature of their conviction. This may be contestable but arguably, if a person did not need to serve prison time, what purpose did it serve for them to be convicted of a crime? Or arrested? Could police have dealt with the crime in an alternative way that didn't result in a formal record? Though one could certainly also argue that imprisonment often serves no deterrent or retributive aim,[113] and thus using it as often as we do is

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[110] Jennifer E. Lauren, *Still Convicting the Innocent*, 90 TEXAS L. REV. 1473 (2012)

[111] *See* Section II.B.

[112] *See* Figure 4. Special thanks to Barry Friedman for discussions on this issue.

[113] This is a topic I will leave until another day. *See* MICHAEL H. TONRY, WHY PUNISH? HOW MUCH? : A READER ON PUNISHMENT 29 (2011) ("For all three (Kant, Hegel and Bentham) (Proportionality in punishment was essential in a just system of punishment. Kant and Hegel famously insisted that punishments be apportioned to the degree of the offender's wrongdoing. Bentham's insistence on proportionality is less well known. His proportionality principles, based on the premise that no more punishment should be imposed than is absolutely necessary").

equally unnecessary.[114] Imprisonment numbers are a key data point in criminal accountability, though less directly relevant to police effectiveness.

4. Crime Resolution Rates

A potentially important data point to track is an alternative way to solve crimes, or "crime resolution rates." As discussed above, this Article defines police effectiveness as crimes solved by conviction or by "resolution in an alternative way." Criminal accountability does not require an arrest, and if police are able to find the perpetrator and either mediate the dispute, send the perpetrator for drug or mental health treatment, or otherwise settle the issue between perpetrator and victim, the case should be considered resolved.[115] Police officers maintain discretion to resolve crimes in various ways,[116] but this is just not measured in any meaningful way. For data tracking purposes, there could be a category of "cases resolved" that measures all cases "resolved without arrest," and potentially subcategories of crimes "resolved by mediation or restitution," or "resolved through treatment." This way, cases where criminal accountability is achieved are accounted for—even if there was no arrest. This Article does not provide a comprehensive list of ways police can resolve crimes, but leaves it to the creativity and individual community needs of particular police departments to do so. A broader national agreement on these categories is important for data tracking purposes.[117] The only unifying theme of crimes resolved is that they are *not* resolved with arrest.[118]

Many police departments have had success in resolving crimes using methods that do not involve arrest and punishment.[119] Communities are better able to solve

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[114] *See generally* ALEX KARAKATSANIS, UNUSUAL CRUELTY: THE COMPLICITY OF LAWYERS IN THE CRIMINAL INJUSTICE SYSTEM (2019).

[115] Tyler, *supra* note 107, at 1549 (Police "can use diversionary approaches, such as directing people toward counseling or support services and avoiding arrests whenever possible. Instead of arresting a mentally ill person, for example, the police can take them to a mental health clinic.").

[116] Rachel A. Harmon, *Why Arrest?*, 115 MICH. L. REV. 307, 346 (2016) (finding that police officers "can prevent someone from continuing a crime by removing him from the scene of the incident briefly rather than by an arrest."); Tyler, *supra* note 107, at 1549 ("[P]olice have huge amounts of discretion over how they handle low-level crimes."); Christopher Cooper, *Training Patrol Officers to Mediate Disputes*, 69 FBI L. ENFORCEMENT BULL. 7, 7 (2000) (noting that the use of mediation can "drastically reduce repeat calls for service." Further, evidence reveals that mediation "represents a substantive, not superficial, treatment of interpersonal disputes").

[117] Potentially the FBI through UCR could ask local police for rates of criminal resolution (without arrest).

[118] There are certainly cases that may start with an arrest that police later resolve without clearance or conviction. These numbers should also be tracked separately.

[119] *See e.g.*, Aaron Chalfin & Justin McCrary, *Criminal Deterrence: A Review of the Literature*, 55 J. ECON. LITERATURE 5, 32 (2017) (recognizing that traditionally, the

crimes when police are trusted members.[120] As such, it is important in measuring police performance to track police ability to resolve such crimes. If police are not arresting certain individuals after a report, it is possible they are doing this in order to comply with a victim's wishes or because the officer is using other methods to prevent future crime and appease both parties. Police certainly exercise discretion and do not arrest all individuals who violate the law.[121] This should be understood and accounted for—and to say it in another way—police should not be penalized in measures of performance for instances where they resolve crimes without an arrest.[122] None of these considerations are currently accounted for in police performance.

By considering the entire cycle of a crime—from occurrence until imprisonment or a different resolution, it is possible to deemphasize arrest and clearance as the only way to solve a crime. A resolved case can be one where a perpetrator receives treatment, a warning or a restitutionary punishment is agreed upon by both parties. When the only way to solve a crime is clearance or conviction, police initiatives to resolve crimes in alternative ways are not considered appropriately. If the focus is not simply on clearance, but improving reporting rates and crime resolution rates, police may be incentivized to think more broadly about how to earn community trust to improve reporting and resolve crimes rather than simply arresting more people.[123]

In sum, tracking criminal accountability numbers may help create a more comprehensive measure of police effectiveness and avoid some of the temptations to manipulate numbers that exist when examining clearance rates alone. First, considering criminal victimizations not reported to police helps us understand the number of crimes police never hear about, and thus are unable to address. Second, conviction rates at the state and federal level show that an even smaller percentage of crimes that make up clearance rate numbers end in a conviction, and give us a

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approach by police after a crime has been committed was to arrest and punish, but there is a new trend towards a "proactive approach." More recently, police are seeking out alternatives to punishment—alternatives that can prevent crime from occurring in the first place. The goal is to lower crime by increasing communities' economic and social vitality); *see also supra* note 69.

[120] Tyler, *supra* note 107, at 1559 ("For example, officers become more appreciative [that] . . . in high-crime neighborhoods, almost all of the residents are not involved in criminal activity. When officers deal primarily with a neighborhood because they are responding to calls, they view the people in the neighborhood as those who either need help or cause problems. They have little everyday contact with people who are law-abiding and would potentially be willing to help the police.").

[121] GOLDSTEIN, *supra* note **ERROR! BOOKMARK NOT DEFINED.**22, at 23 (discussing a study revealing that police "exercised a great deal of discretion in deciding whether or not to arrest and prosecute in situation in which there was ample evidence that a criminal law had been violated").

[122] *See supra* note 69.

[123] *See supra* notes 28–30.

better understanding of how effective the police work was leading to arrest. Imprisonment rates provide further insight on how many offenders are ultimately held accountable. Finally, resolved crime rates track and give credit to police for considering alternative ways to solve crimes. Collecting national data and considering all relevant data points is critical to get an accurate picture of crime trends, the relationship of communities with police, and how effective police are at solving crime.[124] However, it is also important to remember in tracking this data that individual police departments have challenges unique to them that may make it difficult for them to solve crimes.[125] For this reason, comparing police departments against themselves over time may be the best way to track police performance. Even with careful measurements, criminal resolution numbers may be subject to manipulation or fraud.[126]

II. MEASURING CRIMINAL ACCOUNTABILITY

This section undertakes the first attempt to empirically measure criminal accountability. The extent we currently measure criminal accountability is limited. It is important to acknowledge at the outset that this measure of criminal accountability is incomplete for several reasons. First, there is no national data on crimes resolved (without arrest)—which is a key datapoint in measuring police performance.[127] Second, there is no data on conviction and imprisonment rates after 2006. Until 2006, even though these numbers were not tracked together to measure police performance, we at least had national data on known crimes, reported crimes, arrest rates, clearance rates, conviction rates and imprisonment rates. Unfortunately, post-2006 we lack data on conviction rates and imprisonment rates. This confounds our ability to effectively measure police performance. The first step to criminal accountability is making sure all seven data points are tracked each year on a national level: known crime, reported crime, arrest rates, clearance rates, conviction rates, imprisonment rates, and crime resolution rates.

This empirical analysis begins with the question: What percentage of crimes are reported to police? Section II.A considers crime reporting more carefully and the discrepancy between "known crimes" and "reported crimes." In simple terms, it demonstrates empirically the large number of crimes that occur that are not reported to police. This analysis covers almost fifty years of data. The large

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[124] A uniform way to track between departments on the seven data points discussed here is needed to get an accurate picture of crime and the effectiveness of police. *See supra* notes 34–40, and accompanying text.

[125] Considering unique police department factors is important, *see supra* notes **Error! Bookmark not defined.**38–**Error! Bookmark not defined.**40.

[126] These could be compared to crime victims resolution numbers for cross-verification. See e.g., LYNN LANGTON ET AL., VICTIMIZATIONS NOT REPORTED TO THE POLICE, 2006–2010 2 (Aug. 2012).

[127] *See supra* notes 68 and 87–88, for discussion of alternative ways to resolve crimes.

number of unreported crimes are significant to consider in measuring police effectiveness. Section II.B then delves into the numbers to see how effective police are, and have been for the last thirty years. It explores major crimes and how often they occur (known crimes), how often they are reported (reported crimes), and how often they are followed by arrest or conviction.[128] "Known crimes" will inform measurement of arrest rates, clearance rates and conviction rates in Section II.B.[129] We operate under the assumption that "known crimes" get us closer to determining true criminal accountability, or in other words what percentage of the time police are able to solve crimes. Considering all of these measures helps provide a more comprehensive account of police effectiveness.

The first section further articulates the case for why the full sequence of a crime needs to be considered—particularly known crimes. Without considering all of the crimes committed and comparing them to police reports, we may miss up to half of the crimes committed.

A. Reported and Known Crimes

One of the classic metrics used to determine police effectiveness is reported crime. The higher the crime in a given neighborhood, the presumption is that police are less effective. This reasoning is probably heavily flawed, but I will not address that here. Police departments focus more on reducing reports of serious crimes than on any other data measure.[130] Police consider a low reported rate of serious crime as a positive measure, one that shows that police are controlling crime.[131] This may not be the case, however. Indeed, reported crime numbers are missing a large category of "known crimes"—crimes that occur but are simply not reported. Indeed a jurisdiction with low crime rates may actually be a lot more dangerous than it appears because of high levels of "known crimes."

There are two data sources used to obtain information on reported crimes. Reported crimes are defined for the purposes of this Article as those where an individual visits a police station and files a formal report. These crimes are reported to individual police departments and then collected by the FBI each year in the Uniform Crime Reports. The Uniform Crime Reports (UCR) includes information collected by the FBI about violent crime offenses (murder and nonnegligent manslaughter, rape, robbery, and aggravated assault) and property

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[128] Although crime resolution by alternative means is also considered a key data measure in criminal accountability, we currently do not have these numbers, therefore this data measure is not tracked here.

[129] These are referred to below in Section II.B 2, 4, 6 and 7 as true arrest, true clearance, true conviction and true accountability rates.

[130] SPARROW, *supra* note **Error! Bookmark not defined.**37, at 2–3 ("reductions in the number of serious crime reports — tend[] to dominate many departments' internal and external claims of success, being the closest thing available to a genuine crime-control outcome measure.").

[131] *Id.* at 2.

crime offenses (burglary, larceny-theft, motor vehicle theft, and arson).[132] UCR tracks reported crimes, clearance rates and arrests.[133] Another source for reported crimes is the National Criminal Victimization Survey. The NCVS is a self-reported survey that the Bureau of Justice Statistics administers to determine crimes that are reported and not reported to police.[134] The survey asks individuals about the number and type of crime they experience during the past six months and the crimes are classified by year.[135] The NCVS collects information on nonfatal crimes including rape, robbery, aggravated assault, larceny and household property crimes (burglary, motor-vehicle theft).[136] Each victimization, according to the survey, represents one person or one household affected by a crime, so that each household is counted as having a single victim.[137] The NCVS has reported victimization data from 1972,[138] until the latest survey in 2018.[139] These two sources both provide information on crimes reported to police. The numbers from UCR and NCVS are often close but not an exact match,[140] demonstrating the importance of checking definitions in a particular year and being careful in relying on exact numbers.[141]

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[132] FBI, *About CIUS,* CRIME IN THE UNITED STATES 2018, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/about-cius (Fall 2019).

[133] *Id.*

[134] BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION IN THE U.S. 1973-78 TRENDS, NATIONAL CRIME SURVEY REPORT iii (Dec. 1980) https://www.bjs.gov/content/pub/pdf/cvus78t.pdf ("Since its inception in 1972, the National Crime Survey has been conducted for the Department of Justice by the U.S. Bureau of the Census." "This report presents information on trends in crime rates from 1973 through 1978, using data obtained from the National Crime Survey . . . ."); Rachel E. Morgan & Barbara A. Oudekerk, *Crime Victimizations, 2018,* BUREAU OF JUSTICE STATISTICS, NATIONAL CRIMINAL VICTIMIZATION SURVEY 2 (Sept. 2019) https://www.bjs.gov/content/pub/pdf/cv18.pdf.

[135] Morgan & Oudekerk, *supra* note 142, at 1–2 ("Crimes are classified by the year of survey and not by the year of the crime."); *Data Collection: National Crime Victimization Survey (NCVS),* Bureau of Justice Statistics, https://www.bjs.gov/index.cfm?ty=dcdetail&iid=245 ("Each year, data are obtained from a nationally representative sample of about 240,000 interviews on criminal victimization, involving 160,000 unique persons in about 95, 000 households. Persons are interviewed on the frequency, characteristics, and consequences of criminal victimization in the United States.")

[136] *Data Collection: National Judicial Reporting Program (NJRP),* BUREAU OF JUSTICE STATISTICS, https://www.bjs.gov/index.cfm?ty=dcdetail&iid=245

[137] Morgan & Oudekerk, *supra* note 142.

[138] Harry A. Scarr, *Criminal Victimization in the U.S. 1973-78 Trends*, BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME SURVEY REPORT iii (Dec. 1980), https://www.bjs.gov/content/pub/pdf/cvus78t.pdf.

[139] *Compare* Scarr, *supra* note 146, *with* Morgan & Oudekerk, *supra* note 142.

[140] The definition of rape has changed dramatically over the years. *See* Appendix, notes 11, 36, 55 for some comparisons.

[141] There are many reasons why UCR and NCVS reporting numbers may not match in a given year. The definitions of crimes differ slightly between the FBI (UCR) and BJS

UCR and NCVS also collect data on different crimes. For example, the NCVS violent crime classifications include rape or sexual assault,[142] robbery, aggravated assault, and simple assault.[143] While the UCR violent crime figures include the offenses of murder, rape,[144] robbery, and aggravated assault.[145] These different definitions provide a challenge but we can still directly compare UCR and NCVS reported crimes for robbery and aggravated assault, and use both data sources to check each other.

A "known" crime is one where a crime occurs but is not reported to police. These crimes are tracked yearly by the NCVS. Throughout this Article, the terms "known crimes" and "NCVS crimes" are used interchangeably. It is important to consider known crimes carefully in determining how they affect police effectiveness. The only yearly national source for known crimes is NCVS as the UCR does not track this information.

Known crime numbers—like any reporting numbers—come with an important caveat. The NCVS estimates are not perfect as individuals may misrepresent information in reports. As indicated above, known crime numbers differ meaningfully from reported crime numbers. These numbers have to be considered carefully because arguably on the one hand, some may not admit crimes even to the NCVS and therefore they may not ever be accounted for and the total crime numbers could actually be a lot higher. On the other hand, someone can report a crime to NCVS that has no basis in fact without any repercussions that may exist if falsely reporting a crime to police.[146] This Article therefore uses NCVS numbers with the assumption that there are a percentage of false reports and that some individuals who were victims of crimes never report such crimes to anyone, including NCVS. There is no way to prove how many false reports, exaggerated reports or nonreports exist in known crime numbers, and whether they may balance each other out, or skew numbers in one direction or another. While

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(NCVS). These definitions have also changed over time. The NCVS also changed its method of collection in 2006 and 2016 so it is hard to compare crime estimates from year to year. See *Data Collection, supra* note 145. However, 2006 is also the latest year for state conviction data so it used to get a general sense of criminal accountability over the years. The actual numbers of victimizations reported have varied throughout the years and the survey itself has been redesigned multiple times since its conception. *See* Lisa Bastian, *Criminal Victimization 1993*, BUREAU OF JUSTICE STATISTICS NATIONAL CRIME VICTIMIZATION SURVEY 6 (May 1995), https://www.bjs.gov/content/pub/pdf/Cv93.pdf; *and* Michael Rand & Shannan Catalano, *Criminal Victimization 2006*, BUREAU OF JUSTICE STATISTICS NATIONAL CRIME VICTIMIZATION SURVEY 7–11 (Dec. 2007), https://www.bjs.gov/content/pub/pdf/cv06.pdf.

[142] *See supra* note 109.

[143] Morgan & Oudekerk, *supra* note 142, at 4; Table 1.

[144] *See supra* note 111.

[145] FBI, *supra* note 45.

[146] *See supra* note 100 for a comparison of NCVS and UCR numbers.

NCVS numbers are far from perfect, they may be the best source for national data on how many crimes occur each year in America.

Reported crimes only capture a small portion of crimes that occur each year. Typically, only about half of the violent crimes and a third of the property crimes that occur in the United States each year are reported to police.[147] According to the most recent NCVS report in 2018, individuals only reported 42.6 percent of violent victimizations and only 34.1 percent of property crime victimizations to police.[148] Underreporting is the largest problem for rape, as compared to other violent crimes. From current research, victims claim they do not report because they do not believe that it will be responded to appropriately or that something will be done about it.[149] This is especially the case with sexual assault but the principles apply to other crimes.[150]

In the last fifty years, only about half of violent crimes were reported to police.[151] Figure 1 represents reporting to police of violent victimizations in the last almost fifty years according to NCVS reports.[152] It demonstrates that in most years, less than half of overall violent crime is reported to the police. Individuals report

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[147] JOHN GRAMLICH, MOST VIOLENT AND PROPERTY CRIMES IN THE U.S. GO UNSOLVED, PEW RESEARCH CENTER (March 1, 2017) https://www.pewresearch.org/fact-tank/2017/03/01/most-violent-and-property-crimes-in-the-u-s-go-unsolved/ (last visited Feb. 16, 2020) (Among violent crimes, only a third of rapes and sexual assaults were reported to police in 2015).

[148] Morgan & Oudekerk, *supra* note 142, at 8; Table 5. It may be interesting to note that serious violent crime is reported to the police 49.9% of the time. Serious violent crime does not include simple assault. *Id.*

[149] GRAMLICH, *supra* note 155.

[150] Carter Sherman, *One Violent Crime in the U.S. Keeps Trending Up While Others Drop: Rape*,   Vice   (Sept.   30,   2019   10:13   A.M.) https://www.vice.com/en_us/article/a35nde/one-violent-crime-in-the-us-keeps-trending-up-while-others-drop-rape (The Bureau of Justice Statistics released its National Crime Victimization survey which estimated 734,630 people had been raped or sexually assaulted in 2018. A spokesperson for the National Sexual Violence Resource Center stated, "We have to keep in mind the criminal court system is a reflection of the communities that it operates in. It's real easy to sit on the outside and say the police need to do better or the prosecutors need to do better but ultimately they can't and they won't if we don't all do better. They need to believe that a jury in that community will convict."); see also GRAMLICH, *supra* note 155; *see also* supra Section I.D.1.

[151] It would be more accurate to create a discount rate for police reporting. There are a good percentage of people who do not report to police for personal reasons, not because they believe police are ineffective or will not help the situation. All of these reporting numbers should be discounted for each of the year discussed for a more accurate determination of police effectiveness. Police effectiveness is only implicated when people do not report to police for nonpersonal reasons. Though surveys are not perfect and "personal reasons" can involve a lack of trust in police. *See* LYNN LANGTON ET AL., VICTIMIZATIONS NOT REPORTED TO THE POLICE, 2006–2010 2 (Aug. 2012) (discussing the reasons people do not report serious crimes to police).

[152] *See* Appendix Figure 1 for sources.

robberies and aggravated assaults between 50 to 70% of the time. And there is a lot more fluctuation with rape. It ranges from 30% percent to nearly 60% reporting in some years. In 2018, the most recent year NCVS provides data,[153] roughly half of all *serious* violent crimes—rape, aggravated assault and robbery—were reported to police.[154] Overall, about half of violent crimes are reported to police.

Figure 1 - Percentage of Violent Victimizations Reported to Police 1973-2018 (NCVS)
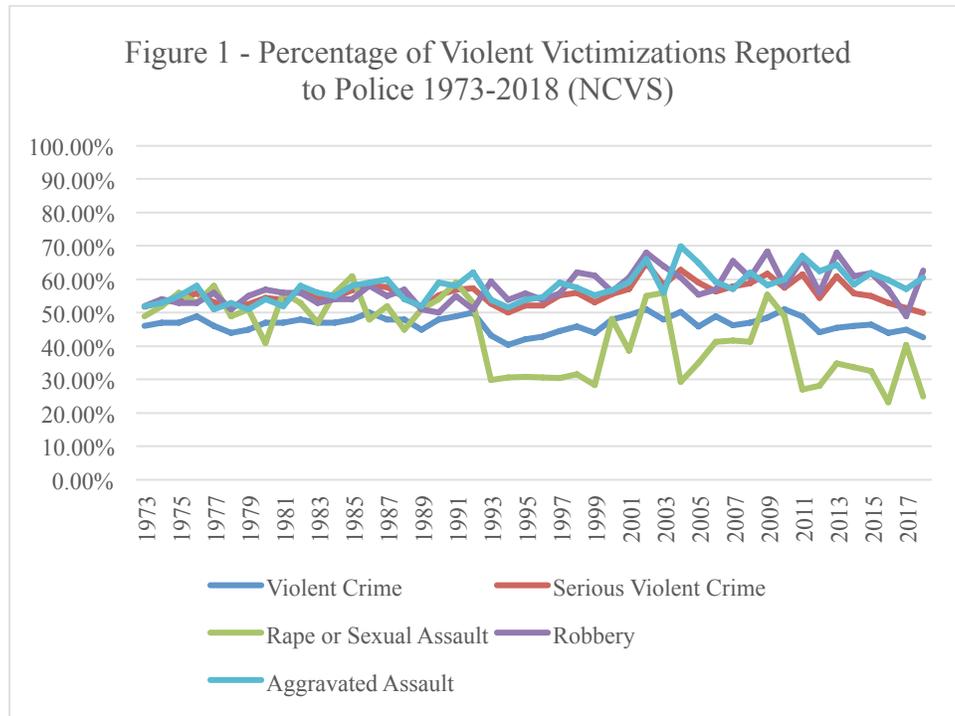
Reporting numbers are not better for property crimes, as Figure 2 demonstrates that in the last fifty years less than 40% of crimes were reported to police.[155] The NCVS property data demonstrates a remarkable degree of consistency over the years, with notable drops in reporting of property crimes in 1992 and 2010. Some of these changes in reporting numbers may be due to changes in definitions over the years.[156] People are most likely to report motor vehicle theft as they have 70-80% reporting rates. Larcenies are least likely to be reported to police, ranging between 20-30% reported to police. Overall, nearly 30-40% of property crimes are reported to police.

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[153] Morgan & Oudekerk, *supra* note 142, at 8; Table 5.

[154] *Id.*

[155] *See* Figure 1, n.97 in Appendix for sources.

[156] *See* Appendix, notes 37, 57, 69, and 71 for discussion on differences in motor vehicle theft definition.
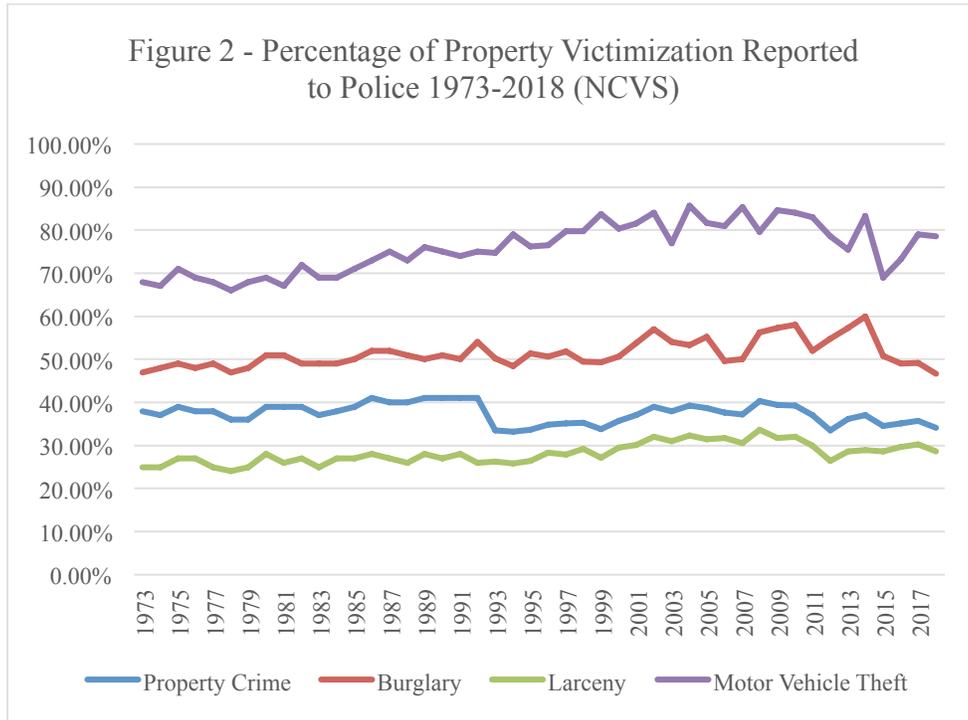
Comparing known crimes (from NCVS) and reported crimes (UCR) helps us determine whether people are turning to police, and why they may not be.[157] If we know how many crimes are not reported to police and that less of certain types of crimes are reported, we can determine how to address the underlying issues with police. Also, examining the dips in reporting for certain types of crime is helpful in targeting improvement in reporting. For instance, national police saw a dip in reporting of motor vehicle theft from 2014 (83%) to 2015 (69%).[158] If this was not caused by definitional changes (i.e. including snowmobiles with motor vehicles in one year and not in the next), then police can know that there may be gaps they can address within their communities. It may also be helpful for police to examine why only about 50-60% of burglaries are reported to police nationally. Would it improve community safety or trust in the police to know about the remaining burglaries? Why are these individuals not turning to police with these crimes? Understanding why people are not reporting crimes is critical to improving police effectiveness. Police departments typically do not consider known crimes, and considering these numbers and why people are not reporting might improve reporting rights.

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[157] Similar Figures considering FBI reported offenses and NCVS known crimes (Figure 4 and Figure 5) are reported in the Appendix.

[158] The differences in reporting were partly due to different definitions by the FBI and NCVS. 2014: Jennifer L. Truman & Rachel E. Morgan, *Criminal Victimizations, 2015,* BUREAU OF JUSTICE STATISTICS, NATIONAL CRIMINAL VICTIMIZATION SURVEY 6, Table 4 (revised Mar. 2018), https://www.bjs.gov/content/pub/pdf/cv15.pdf.

2015: Rachel E. Morgan & Grace Kena, *Criminal Victimizations, 2016,* BUREAU OF JUSTICE STATISTICS, NATIONAL CRIMINAL VICTIMIZATION SURVEY 7 Table 4 (Oct. 2018) https://www.bjs.gov/content/pub/pdf/cv16.pdf.

Figure 2 - Percentage of Property Victimization Reported to Police 1973-2018 (NCVS)


The overall reporting numbers in the last thirty years show that in most years less than half of crimes that occur are reported to police. Figure 3 below demonstrates overall crime reporting rates in the last thirty years using NCVS and UCR data.[159] The Appendix includes data for individual reporting numbers by year for selected years in the last thirty years.[160] One of the biggest fluctuations in reporting numbers over the years may be as a result of changes in the definition and reporting of rape. In 1990, 78.73% of rapes/sexual assaults were reported while in 2018 only 17.32% were reported. Part of the reason for such a low percentage reported in 2018 may be due to a drastic increase in the number of victimizations reported in the NCVS. In 2018, 734,630 victimization were reported compared to 284,350 in 2014 and 393,980 in 2017.[161] Either there were

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[159]In general, percentages were calculated taking: FBI Number of Offenses Reported / NCVS Number Known = Percent Reported. *See* Table 4 in Appendix for sources and calculations, starting at note 76.

[160] *See* Appendix for data on years: 1990, 2006, 2018 (Tables 1–3). Tables for 1995, 1998, 2004, 2009, and 2014 on file with author.

[161] Morgan & Oudekerk, *supra* note 142, at Tables 1, 4. The NCVS did not give an explanation for the sudden increase in 2018. In addition, while the number of rape/sexual assault offenses reported according to the FBI usually ranged from 70-80 thousand, in 2014 the number reported jumped to 99,765, and then jumped in 2018 again to 127,258. FBI, *Offenses Cleared (Table 25)*, CRIME IN THE UNITED STATES 2018, https://ucr.fbi.gov/crime-

dramatically more sexual assaults in 2018, or the "#MeToo" movement and policing initiatives seem to have influenced the willingness of individuals to both report sexual assault to police and in NCVS surveys.[162] The major fluctuations in rape reporting demonstrate that cultural shifts in relation to crime may affect reporting. Again, if police departments considered known and reported crimes, they would be able to track dips in crime reporting and attempt to improve them.

Figure 3 - Percent of Victimizations Reported to Police (FBI)
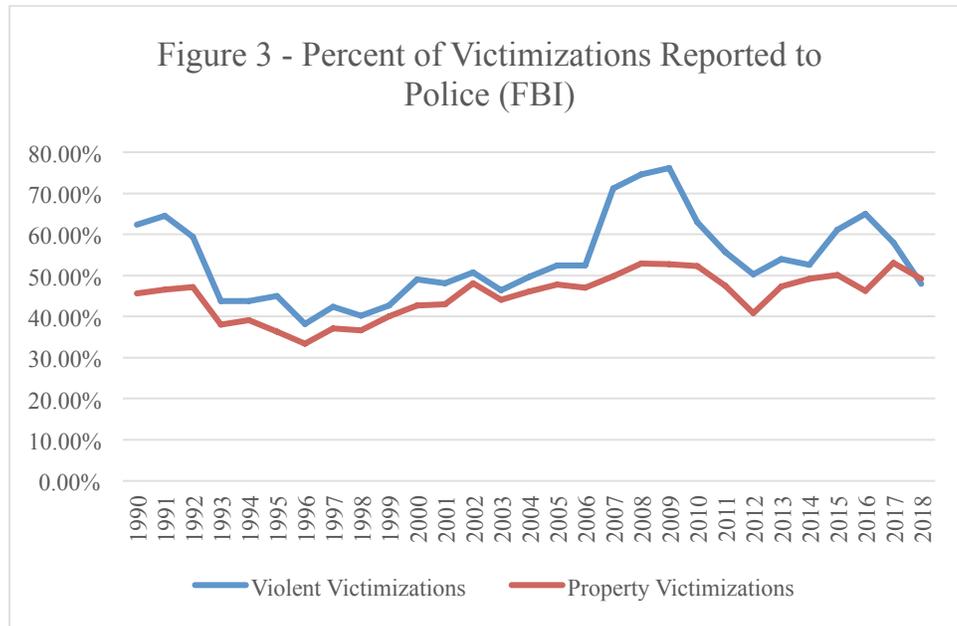
To get a more detailed look at where reporting problems lie, it is helpful to look at individual crime reporting over the last thirty years. Table 1 below demonstrates the percentage of major crimes reported to the police over a sample of years from 1990 to 2018. From 1990 to 2018, the total percent of crimes reported ranged for this collection of crimes from 47.21% in 1990 to 49.04% in

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in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-25 (Fall 2019). However, these increases were not as large as the changes in the numbers reported to NCVS, meaning the percent reported decreased overall. The change in definition over time may be a reason for these changes in numbers, rather than an actual increase in the number of rapes/sexual assaults committed.

[162] Deborah Tuerkheimer, *Underenforcement As Unequal Protection*, 57 B.C. L. REV. 1287, 1329–30 (2016)(noting that after new police policies and procedures were implemented, "more rape victims were apparently disclosing the crime to police and choosing to pursue their complaint"); Karen Oehme et. al., *A Deficiency in Addressing Campus Sexual Assault: The Lack of Women Law Enforcement Officers*, 38 HARV. J. L. & GENDER 337, 357 (2015)("large-scale studies indicate that the presence of women law enforcement officers actually increases the number of reported sexual assault cases").

2018. The percentage of crimes reported to police has remained consistently below 50% for the last 30 years. Slight changes can result due to dips or spikes in reporting but overall, reporting of crime rarely reached above 50% in the selected years between 1990 to 2018. Overall reporting numbers, except for 1990, demonstrate a less than 50% reporting rate for all crimes, and much lower than 50% in 1998 and 1995. Murder is not included in this analysis because the NCVS does not gather data on murder and it is assumed that the murder reporting rate to police agencies matches the known number of murders.

Table 1 – Percent of Crimes Reported to Police[163]								
	1990	1995	1998	2004	2006	2009	2014	2018
Total	47.21%	37.22%	37.15%	46.44%	47.69%	54.88%	49.59%	49.04%
Rape / Sexual Assault	78.73%	24.25%	21.37%	31.65%	29.54%	60.57%	35.09%	17.32%
Robbery	55.60%	44.00%	39.59%	53.47%	54.08%	65.97%	44.84%	45.49%
Aggravated Assault	65.9%	49.31%	44.41%	51.36%	56.15%	85.08%	61.78%	70.44%
Larceny-Theft	38.49%	30.94%	31.81%	40.63%	40.70%	47.46%	45.08%	46.59%
Burglary	59.71%	45.97%	44.14%	51.62%	55.26%	62.45%	52.57%	42.75%
Motor-Vehicle Theft	83.14%	78.73%	86.51%	101.45%	109.13%	97.06%	119.72%	131.24%

What we learn so far is that the number of known crimes is much higher than the number of reported crimes—often double.[164] In other words, over the last thirty year period, individuals are not reporting half of the crimes occurring to police. For violent crime, reporting to police has fluctuated dramatically over the years for rape and fluctuated in smaller amounts for other types of violent crime. For property crimes, reporting rates have been about one-third to forty percent in most years. Given the low reporting rates, it may not be accurate to base clearance and conviction numbers on just the proportion of crimes reported. People often do not report crimes largely because they fear that police either cannot help or will respond inappropriately to a situation.[165] It is possible for police to improve reporting numbers by improving trust of the community. If police use discretion not to arrest in some instances, reporting may increase and police may be able to better assist individuals in these communities. If police improve in solving crimes, this could also improve reporting. The point is, if the public perceives that police might be able to solve the crime or respond appropriately, they may be more likely to report a crime. If we want a full picture of how effective police are at their jobs, we need to determine whether individuals in the community trust police enough to report major crimes to them. Known crimes are critical in this determination. This Article acknowledges that police do not have ultimate control over known crimes—and never will—but we also find this a useful measure to examine whether police can improve over time. Presumably, the more crimes police know

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[163] In general, percentages were calculated taking: FBI Number of Offenses Reported / NCVS Number Known = Percent Reported. *See* Table 4 in Appendix for sources and calculations, starting at note 65.

[164] *See* Figures 1–3, Table 1 and Appendix for further support.

[165] *See supra* notes 119–30.

about, the more crimes they may be able to solve. As such, in order to have a comprehensive look at policing, we must take into account as many crimes as are committed in all of the data points. This is why the next section carefully reviews the crime numbers—with true rates considering the known crimes rather than just the reported crimes.

B. True Criminal Accountability Rates

To understand what percentage of offenders police are able to arrest, clear, convict and hold accountable, we need to first understand the important consideration missing from all of the standard calculations. The standard way to consider arrest rates for instance, considers the number of crimes reported to the police and the arrests based on those reports. The standard way to consider clearance of a crime is comparing reported crimes to police with the number of individuals arrested and turned over to police for prosecution or cleared by exceptional means. Similarly, conviction rates typically consider the number of crimes reported to police compared to the number convicted for that particular crime. This is the standard way to calculate the major data metrics. All of the standard calculations are determined by starting with reported crimes.

Instead, this Article argues that to determine true criminal accountability—or how effective police are at solving crime—we should begin with known crimes. The reasons why people are not reporting crimes to the police are important ones. Just looking at the range of reported rapes to police and to NCVS in the last thirty years will demonstrate this—individuals are much more likely to report rape to police and to victims surveys depending on climate towards victims in that particular year.[166] A large portion of individuals do not report to police because they fear reprisal or that police cannot address the crime.[167] It is possible that "known crime" numbers could be more accurate than UCR reporting numbers since the NCVS collects numbers without any identifying information and without any potential repercussions upon report. These numbers have always been higher than UCR numbers. It is well known over the years that many crimes are reported to NCVS that are not reported to police.[168] In considering police effectiveness, this is most likely a more accurate count of total crime.[169]

Even before we get to any calculations of these crimes, it's important to recognize that the total crime picture is unknown and is likely bleaker than it may seem. Many offenses are not even tallied in the crime data. Among the ones we know about: identity theft; sexual exploitation; ransomware attacks; drug

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[166] *See supra* note 136–37 and supporting text for further discussion of the changes in reporting due to the #MeToo movement.

[167] *See supra* 101–07 and 119–29 for further discussion.

[168] *See supra* note 100–07.

[169] Consider the caveat for known crime numbers. *See supra* notes 153–54 and accompanying text.

purchases over the dark web; human trafficking for sex or labor; revenge porn; credit card fraud; and child exploitation.[170] To many observers, motor vehicle theft and burglary may seem like relics that have been replaced with a modern era of crime that takes place exclusively on the internet. While this may be the case that crimes have changed, unfortunately these new crimes are not fully captured in law enforcement's reporting system. Thus an observer may be surprised to discover that not only do police lack a handle on traditional crime but they are often even worse off with digital crime. The lack of systematic national tracking for digital crimes may be part of the problem.[171] A police department focused on keeping clearance rates high may not focus on digital crimes that are not tracked nationally. It is also difficult to keep track of cybercrime because they can become easily outdated and change quickly. Nonetheless, it is important in the next parts of this section to keep in mind that we are not moving towards a full picture of crime since so many newer crimes are not accounted for. The clearance rate and accountability rates for identity theft, credit card fraud and revenge porn, for instance, will be much worse than those for larceny and rape, that are considered below. These crimes are not considered here due to a lack of data, but are vital to consider given the serious costs of these crimes to society and the individual victims.[172] However, to get a baseline of police effectiveness, we will consider the traditional major crimes.

The remainder of this section calculates "standard" and "true" rates for arrest, clearance and conviction rates. Standard rates rely on reported crimes and true rates rely on known crimes. Standard rates are demonstrated for comparison purposes in Section III.C.1 (arrest), C.3 (clearance), and C.5 (conviction). The known crimes will help calculate the "true rates" in Section III.C.2 (arrest), C.4

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[170] Al Baker, *An 'Iceberg' of Unseen Crimes: Many Cyber Offenses Go Unreported*, N.Y. TIMES (Feb. 5, 2018), https://www.nytimes.com/2018/02/05/nyregion/cyber-crimes-unreported.html.

[171] *Id.*

[172] Mary Anne Franks, *"Revenge Porn" Reform: A View from the Front Lines*, 69 FLA. L. REV. 1251, 1261–64 (2017) (describing harm from revenge porn with privacy implications, impact on employment and identity, significant emotional distress and suicidal thoughts and harassment); Jennifer Lynch, *Identity Theft in Cyberspace: Crime Control Methods and Their Effectiveness in Combating Phishing Attacks*, 20 BERKELEY TECH. L.J. 259, 263–64 (2005)(Identity theft losses "average $10,200 per identity theft case for businesses and $1,180 for consumers; however, these costs fail to depict the full scope of the problem. In addition to monetary losses, victims report suffering non-monetary harm including emotional distress from feeling personally violated by the theft, being harassed by creditors and collection agencies for debts they did not incur, being turned down for a loan or new account, or even being arrested for crimes committed by someone else in their name."); Daniel J. Solove & Danielle Keats Citron, *Risk and Anxiety: A Theory of Data-Breach Harms*, 96 TEX. L. REV. 737, 756 (2018) (discussing the compelling harms resulting from data breaches); Chris Jay Hoofnagle, *Identity Theft: Making the Known Unknowns Known*, 21 HARV. J.L. & TECH. 97, 102–03 (2007)(echoing reputational harm and emotional distress).

(clearance), and C.6 (conviction). Given the caveats above, it's important to recognize that "true" arrest and "true" conviction numbers may not actually represent the number of crimes committed, but arguably come closer than the number reported to police.[173] The known crimes are also the basis of the overall criminal accountability numbers reported in Section III.C.7. Criminal Accountability encompasses all of the important data measures that will help us judge the effectiveness of police—number of crimes known, reported, true arrest rates, true clearance rates, true conviction rates and eventually when there is data for it, crimes resolved without arrest. The criminal accountability numbers below take us through almost the entire course of a crime starting at arrest and following until conviction.[174]

1. Standard Arrest Rates

Standard arrest rates consider the number of arrests based on the number of reported crimes to police (FBI UCR numbers).[175] For example, in 1990, police arrested individuals for 15.98% of all reported crimes.[176] For 1995 and 1998, the total standard percent arrested went up to 24.49%,[177] and 25.72%, respectively.[178] In 2004 and 2006, the total standard percent arrested was 21.98%[179] and 21.16%

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[173] *See supra* note 101–07 for further discussion.

[174] Arguably this Section does not provide full criminal accountability numbers. Section III.B traces all the way to imprisonment for full criminal accountability. *See* Figure 4.

[175] Standard Percent Arrested = FBI Number Arrested / FBI Number Reported. FBI, *Persons Arrested*, CRIME IN THE UNITED STATES 2018, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/persons-arrested (Fall 2019) ("FBI's Uniform Crime Reporting (UCR) Program counts one arrest for each separate instance in which a person is arrested, cited, or summoned for an offense . . . . Because a person may be arrested multiple times during a year, the UCR arrest figures do not reflect the number of individuals who have been arrested; rather, the arrest data show the number of times that persons are arrested, as reported by law enforcement agencies to the UCR Program.").

[176] *See* Table 1 – 1990 (Part I) in Appendix for sources and calculations. Same calculation method is used for all years.

[177] FBI, *Offenses Cleared (Table 25),* CRIME IN THE UNITED STATES 1995, 199, https://ucr.fbi.gov/crime-in-the-u.s/1995/95sec3.pdf; FBI, *Persons Arrested (Table 29),* CRIME IN THE UNITED STATES 1995, 208, https://ucr.fbi.gov/crime-in-the-u.s/1995/95sec4.pdf.

[178] FBI, *Offenses Cleared (Table 25),* CRIME IN THE UNITED STATES 1998, 201, https://ucr.fbi.gov/crime-in-the-u.s/1998/98sec3.pdf; FBI, *Persons Arrested (Table 29),* CRIME IN THE UNITED STATES 1998, 210, https://ucr.fbi.gov/crime-in-the-u.s/1998/98sec4.pdf.

[179] FBI, *Offenses Cleared (Table 25)*, CRIME IN THE UNITED STATES 2004, https://www2.fbi.gov/ucr/cius_04/offenses_cleared/table_25.html; FBI, *Estimated Number of Arrests (Table 29)*, CRIME IN THE UNITED STATES 2004, https://www2.fbi.gov/ucr/cius_04/persons_arrested/table_29.html

respectively.[180] In 2009, the total percent arrested went up slightly to 24.52%,[181] and in 2014 it was 23.76%.[182] In 2018, the standard percent arrested overall was 21.55%.[183] Overall, standard arrest rates in the last thirty years range from a low of 15% in 1990 to about 20-25% in most years.[184] This is certainly a revelation to most people who would have never thought that on a good year, police only make arrests in 25% of the reported cases. The next section considers "true" arrest rates that consider the arrests of known crimes, not just reported crimes.

2. True Arrest Rates

The "true" arrest rates below consider the known crimes compared to the arrest rates for those crimes.[185] These numbers will demonstrate that police are solving even less crimes than we may have thought in the last section. In fact overall, a 10% arrest rate is typical for the major crimes combined—murder, rape/sexual assault, robbery, aggravated assault, larceny-theft, burglary, motor-vehicle theft.

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[180] *See* Table 2 – 2006 (Part I) in Appendix for sources.

[181] FBI, *Offenses Cleared (Table 25)*, CRIME IN THE UNITED STATES 2009, https://www2.fbi.gov/ucr/cius2009/data/table_25.html; FBI, *Estimated Number of Arrests (Table 29)*, CRIME IN THE UNITED STATES 2009, https://www2.fbi.gov/ucr/cius2009/data/table_29.html

[182] FBI, *Offenses Cleared (Table 25)*, CRIME IN THE UNITED STATES 2014, https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-25; FBI, *Estimated Number of Arrests (Table 29)*, CRIME IN THE UNITED STATES 2014, https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-29

[183] *See* Table 3 – 2018 (Part I) in Appendix for sources.

[184] *See* Appendix Table 1 – 1990, Table 2 – 2006, and Table 3 – 2018 for standard percentages. Full charts for 1995, 1998, 2004, 2009, and 2014 on file with author.

[185] Note that murder has the same percent arrested for standard and true because there is no NCVS Known Total for murder.

Table 2 – Percent of Crimes Known Where Police Make Arrest (True Percent Arrested)[186]								
	1990	1995	1998	2004	2006	2009	2014	2018
Total	7.54%	9.12%	9.55%	10.21%	10.09%	13.46%	11.78%	10.57%
Murder and Non-Negligent Manslaughter	78.06%	115.86%	132.86%	98.57%	89.88%	93.78%	82.08%	80.95%
Rape / Sexual Assault	23.77%	10.18%	9.34%	10.19%	9.01%	17.00%	7.39%	3.43%
Robbery	11.86%	15.05%	13.63%	17.68%	17.65%	23.74%	14.21%	15.38%
Aggravated Assault	23.55%	30.19%	30.27%	30.88%	33.06%	51.16%	34.13%	37.41%
Larceny-Theft	6.01%	6.95%	7.38%	8.05%	7.57%	11.40%	10.53%	8.59%
Burglary	6.63%	8.01%	8.16%	8.19%	8.61%	9.55%	7.95%	6.77%
Motor-Vehicle Theft	8.56%	11.60%	13.24%	13.89%	13.86%	11.12%	12.80%	17.16%

Overall, the true percent arrested stayed in the 10% range largely between 1990 to 2018. Even with some fluctuations of crimes known through surveys, police still made similar proportions of arrests from year to year. For instance, while the number of arrests has remained consistently in the 20-30 thousand range for rape/sexual assault, the number of victimizations reported to NCVS has fluctuated.[187] In 1990, there were an estimated 130,260 rapes committed.[188] In 2009 – 125,920, and 2014, there were 284,350.[189] But in 2018, there were more than double that—an estimated 734,630 rapes/sexual assaults committed.[190] While the numbers of arrests remained consistent, the estimated number of rapes/sexual assaults has skyrocketed, meaning the percent arrested has actually fallen for this

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[186] In general, percentages were calculated taking the: FBI Number of Estimated Arrests / NCVS Total Crime = % of Crimes Known Where Police Make Arrest. *See* Table 5 in Appendix for detailed sources and calculations.

[187] *See* Tables 1, 2 & 3 in Appendix.

[188] *See* Table 1 – 1990 in Appendix.

[189] JENNIFER L. TRUMAN & MICHAEL R. RAND, CRIMINAL VICTIMIZATION 2009, BUREAU OF JUSTICE STATISTICS 1, Table 1, https://www.bjs.gov/content/pub/pdf/cv09.pdf; JENNIFER L. TRUMAN & LYNN LANGTON, CRIMINAL VICTIMIZATION 2014, BUREAU OF JUSTICE STATISTICS 2–3, Tables 1 & 3 (Sept. 2015), https://www.bjs.gov/content/pub/pdf/cv14.pdf

[190] *See* Table 3 – 2018 in Appendix.

crime.[191] The example of sexual assault simply demonstrates the importance of considering known crimes, and considering crimes individually in measuring police performance. In just looking at overall true arrest numbers, it would appear that police have remained consistent in their arrest rates. Yet considering individual crimes it looks like police only arrested 3% of known rapes in 2018, but arrested 23% in 1990. The number of crimes known and reported for individual crimes are both important in measuring how effective police are at solving crimes.

3. Standard Clearance Rate

The typical method of determining the number of crimes cleared by police is through using the UCR numbers.[192] Under the UCR, the FBI will only count an offense as cleared for statistical purposes if it is either cleared by arrest or by exceptional means.[193] The FBI finds the percentage of crimes cleared by arrest or exceptional means by dividing the number of offenses cleared by the number of offenses reported.[194] So, of offenses reported, an estimate of the percent of criminals that are not cleared by arrest or exceptional means may provide an initial estimate of the percent of offenders who go free.[195]

Turning to standard clearance rates, in 1990, the overall percent cleared was 21.25%.[196] In 1995 and 1998, the standard clearance rates were similar at

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[191] Also of note—robbery experienced a general trend upward in the percent of arrest from 11.86% in 1990 to 15.38% in 2018. Aggravated assault jumped from 23.55% in 1990 to 51.16% in 2009 and ending at 37.41% in 2018. Larceny-theft mostly stayed the same over the period of 1990-2018. The percent arrested for larceny was at 6.01% in 1990, went up to 11.4% in 2009, and back down to 8.59% in 2018. Burglary stayed the same over the years from 6.63% in 1990 to 6.77% in 2018. Finally, arrests for motor-vehicle theft rose steadily from 8.56% in 1990 to 13.89% in 2004 to 17.16% in 2018. *See* Table 5 in Appendix for detailed sources and calculations.

[192] FBI, *Offenses Cleared, supra* note 169.

[193] FBI, *Clearance*, CRIME IN THE UNITED STATES 2018, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/clearances.

[194] FBI, *Data Declaration (Table 25)*, CRIME IN THE UNITED STATES 2018, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-25.xls/@@template-layout-view?override-view=data-declaration.

[195] This can be calculated by subtracting the "percent cleared" from 100% to give us "percent not cleared."

[196] SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS – 1992, BUREAU OF JUSTICE STATISTICS, Table 3.122, at 357 https://bjs.gov/content/pub/pdf/scjs92.pdf. It was 67.20% for murder, 51.80% for rape/sexual assault, 24.30% or robbery, 56.50% for aggravated assault, 20.30% for larceny-theft, 13.50% for burglary, and 13.90% for motor vehicle theft. See Table 1 – 1990 (Part II) in Appendix as an example of how to calculate overall standard clearance rates. Individual clearance rates come straight from the FBI. Tables for 2006 and 2018 are also in the Appendix, and 1995, 1998, 2004, 2009, and 2014 Tables are on file with author.

21.17%,[197] and 21.32% respectively.[198] In 2004 and 2006, the overall standard percent cleared were 19.94%,[199] and 19.26% respectively.[200] In 2009 and 2014, the overall percentages cleared were 22.04%,[201] and 23.61% respectively.[202] The overall standard clearance rate, comparing total crimes reported to police with clearance rates in 2018 is 21.64%, meaning 78.36% of crimes are not cleared.[203] It is interesting to note here that standard clearance rates are very similar to standard arrest rates—all between 20 to 25%. In other words, police cleared almost as many

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[197] *See* Table 1 – 1990 (Part II) in Appendix as an example of how to calculate overall standard clearance rates. Individual clearance rates come straight from the FBI. FBI, *Offenses Cleared (Table 25),* CRIME IN THE UNITED STATES 1995, 199, https://ucr.fbi.gov/crime-in-the-u.s/1995/95sec3.pdf. Turning to individual crimes, 64.80% of murders were cleared, 51.10% of rape/sexual assault, 24.70% of robberies, 55.70% of aggravated assault, 19.60% of larceny-theft, 13.40% of burglary, and 14.10% of motor vehicle theft.

[198] *See* Table 1 – 1990 (Part II) in Appendix as an example of how to calculate overall standard clearance rates. Individual clearance rates come straight from the FBI. FBI, *Offenses Cleared, supra note 186,* at 201. For murder it was 68.70%, rape/sexual assault was 49.90%, robbery was 28.40% aggravated assault was 58.50%, larceny-theft was 19.20%, burglary was 13.60%, and motor vehicle theft was 14.20%.

[199] *See* Table 1 – 1990 (Part II) in Appendix as an example of how to calculate overall standard clearance rates. Individual clearance rates come straight from the FBI. FBI, *Offenses Cleared, supra* note 187. For murder it was 62.60%, rape/sexual assault was 41.80%, robbery was 26.20%, aggravated assault was 55.60%, larceny-theft was 18.30%, burglary was 12.90%, and motor vehicle theft was 13.00%.

[200] *See* Table 2 – 2006 (Part II) for overall calculation. FBI, *Offenses Cleared, supra* note 206. Focusing on individual crimes, murder was 60.70%, for rape/sexual assault 40.90%, 25.20% for robbery, 54% for aggravated assault, 17.40% for burglary, 12.60% for larceny-theft, and 12.60% for motor-vehicle theft.

[201] *See* Table 1 – 1990 (Part II) in Appendix as an example of how to calculate overall standard clearance rates. Individual clearance rates come straight from the FBI. FBI, *Offenses Cleared supra* note 189. Murder was 66.60%, rape/sexual assault was 41.20%, robbery was 28.20%, aggravated assault was 56.80%, larceny-theft was 21.50%, burglary was 12.50%, and motor vehicle theft was 12.40%.

[202] *See* Table 1 – 1990 (Part II) in Appendix as an example of how to calculate overall standard clearance rates. Individual clearance rates come straight from the FBI. FBI, *Offenses Cleared, supra* note 190. The percent cleared for murder was 64.50%, it was 38.63% for rape/sexual assault, 29.60% for robbery, 56.30% for aggravated assault, 23% for larceny-theft, 13.60% for burglary, and 12.80% for motor vehicle theft.

[203] *See* Table 3 – 2018 (Part II) for overall calculation. FBI, *Offenses Cleared*, *supra* note 169. For 2018 it would mean: 37.7% of murder and nonnegligent manslaughter offenders go free; 66.6% of rape offenders go free; 69.6% of robbery offenders; 47.5% of aggravated assault offenders; 86.1% of burglary offenders; 81.1% of larceny offenders; 86.2% of motor vehicle theft offenders. Calculation--% NOT Cleared = 100% - FBI % Cleared.

crimes as they arrested in most years.[204] However, the true clearance rates are lower, as discussed in the next section.

4. True Clearance Rates

Here we examine true clearance rates, a potentially more accurate measure of clearance rates that considers known crimes.[205] To calculate true clearance rates, we consider the NCVS known crimes with the number of crimes cleared according to the FBI.[206] True clearance rates presumably consider a large swath of crimes that could be reported to police but are not. Starting in 1990, the overall true percent of crimes cleared was 10.03%.[207] In 1998, the true percent cleared was 7.92.[208] For 2004 and 2006, the overall true percent cleared was 9.26%,[209] and

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[204] This could be due to misreported "clearance" due to improper definitions, misrepresentation or faulty counting. *See supra* notes 57 to 97 for further discussion.

[205] *See* Table 1 – 1990 (Part II) in Appendix as an example of how to calculate true clearance rates for other years. Tables 2 and 3 (2006 and 2018) are also in the Appendix, and 1995, 1998, 2004, 2009, and 2014 are on file with the author.

[206] *See* Appendix Table 1 – 1990 (Part II), note 17 for an example. The "Number Cleared" is calculated by taking: Percent Cleared by Arrest (as a decimal). FBI Reported Crimes = Number of Crimes Cleared. The "True Clearance Rate" is calculated by: Number of Crimes Cleared / NCVS Known Crimes. *Note: for murder, the standard and true percent cleared are the same since NCVS does not measure murder.

[207] *See supra* 177 and Appendix Table 1 – 1990 (Part II) for sources and calculations. For individual crimes, the true percent cleared was: 64.8% for murder, 12.39% for rape, 10.87% for robbery, 27.47% for aggravated assault, 6.06% for larceny-theft, 6.16% for burglary, and 11.10% for motor vehicle theft.

[208] *See supra* 177 & 213 for information on sources and calculations. DEPARTMENT OF JUSTICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES 1998 – STATISTICAL TABLES, BUREAU OF JUSTICE STATISTICS 2, Table 1, https://www.bjs.gov/content/pub/pdf/cvus98.pdf; FBI, *Offenses Cleared, supra* note 186 at 201. For murder it was 68.70%, for rape 10.66%, robbery was 11.24, aggravated assault was 25.98%, larceny-theft 6.11%, burglary was 6.00%, and motor vehicle theft was 12.28%.

[209] *See supra* 177 & 213 for information on sources and calculations. Jennifer L. Truman & Lynn Langton, *Crime Victimizations 2013*, BUREAU OF JUSTICE STATISTICS, NATIONAL CRIMINAL VICTIMIZATION SURVEY Tables 1 & 3, 2–3 (Sept. 2014), https://www.bjs.gov/content/pub/pdf/cv13.pdf.; FBI, *Offenses Cleared supra* note 187. Individual crimes were: 62.6% for murder, 13.23% for rape, 14.01% for robbery, 28.55% for aggravated assault, 7.44% for larceny-theft, 6.66% for burglary, and 13.19% for motor vehicle theft. The true percent cleared for motor vehicle theft was higher than the standard percent cleared in 2004, 2006, 2014, and 2018 because the number reported to police was higher than the NCVS number known. We are not sure why people reported fewer crimes to the NCVS than to the police. *But see* Table 4 in Appendix, notes 69–72 for possible explanations due to differences in definition.

9.19% respectively.[210] For 2009, police improved clearance to 12.10% of overall crimes,[211] and in 2014 it was 11.71%.[212] Finally, in 2018 the overall true percent cleared went back down to 10.61%.[213] Overall, true clearance rates in the last thirty years remained around 10%.

Comparing standard clearance rates to "true clearance rates" demonstrates a disparity. In 2018, the overall standard percent cleared was 21.64% while the overall true percent cleared was 10.61%. Considering a few individual crimes, the standard percent cleared was 30.4% for robbery while the true clearance was 13.83%. For burglary in 2018, the standard clearance rate was 13.9% and the true rate was 5.94%.[214] These numbers demonstrate that police are clearing less crimes when we consider the number of crimes that are not reported to police. Although we certainly do not hold accountable police to clear crimes they do not know about, we could determine whether police can increase reporting for these crimes. Considering true clearance also helps to provide a more accurate perspective of the total crime solved by police.

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[210] *See supra* 177 and Appendix Table 2 – 2006 (Part II) for sources and calculations. Looking at 2006 individual crimes: murder was 60.7%, rape was 12.08%, robbery was 13.63%, aggravated assault was 30.32%, larceny-theft was 7.08%, burglary was 6.96%, and motor vehicle theft was 13.75%.

[211] *See supra* 177 & 213, for information on sources and calculations. TRUMAN & RAND, *supra* note 197, at 1, Table 1; FBI, *Offenses Cleared*, *supra* note 189. For individual crimes, the true percent cleared was 66.60% for murder, 24.96% for rape, 18.6% for robbery, 48.32% for aggravated assault, 10.20% for larceny-theft, 7.81% burglary, and 12.04% for motor-vehicle theft.

[212] *See supra* 177 & 213 for information on sources and calculations. Truman & Langton, *supra* note 197; FBI, *Offenses Cleared, supra* note 190. For individual crimes, 64.5% of murders were cleared, 13.55% of rapes, 13.27% of robberies, 34.78% of aggravated assault, 10.37% of larceny-theft, 7.15% of burglary, and 15.32% of motor-vehicle theft.

[213] *See supra* 177 and Appendix Table 3 – 2018 (Part II) for sources and calculations. Breaking that down by individual crimes, the percent cleared for each was: 62.30% for murder, 5.79% for rape, 13.83% for robbery, 36.98% for aggravated assault, 8.81% for larceny-theft, 5.94% for burglary, and 18.11% for motor vehicle theft.

[214] *See supra* note 184. Of the number of burglaries reported to the police in 2006, 12.6% were cleared according to standard clearance, which means 246,478 of burglaries were cleared. FBI, *Clearance Rate (Table 25),* CRIME IN THE UNITED STATES 2006, https://www2.fbi.gov/ucr/cius2006/data/table_25.html Calculation: (.126)(FBI – Table 25, Clearance Rate) x 1,956,175 (FBI – Table 25, Known Offenses) = 246,478.05 (Number Cleared). Even though the reported clearance rate for burglaries for 2006 was 12.6%, due to the fact that there were many who did not even report their crimes to the police (and we only know about them from crime victim's surveys), in actuality, only 6.96% of the burglaries were truly cleared by police. *Id.* Rand & Catalano, *supra note* 149, at 3, 5 Calculation: 246,478.05 (Number Cleared) / 3,539,769 (NCVS – Table 2, Number of Victimizations) = 6.96% or 7%.

To step out of the weeds for a minute, the standard clearance rates for violent crimes in general are around 45 percent from 1995 to 2018.[215] And for property crimes, standard clearance rates are typically between 15 and 20 percent.[216] For instance, in 2018, the average standard clearance rate for property crimes was 17.5% (excluding arson).[217] These numbers are much lower than the public might expect, as discussed further below.

This next section addresses conviction rates. Going beyond clearance to conviction, as discussed above, is a more accurate measure of how good the initial arrests police made were and whether the police gathered appropriate witnesses and information during the arrests. These two measures—standard conviction rates and true conviction rates—are actually both more comprehensive than considering clearance rates alone for measuring police effectiveness.

5. *Standard Conviction Rates*

Standard conviction rates take the number of convictions (state and federal)[218] and divide them by the number of crimes reported to the FBI (UCR numbers). This

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[215] FBI, CRIME IN THE UNITED STATES 1995, https://ucr.fbi.gov/crime-in-the-u.s/1995/95sec3.pdf. *and* FBI, CRIME IN THE UNITED STATES 2018, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-25 (it increased from 45.4 percent in 1995 to only 45.5 percent in 2018); FBI, *Offenses Cleared supra* note 187; FBI, *Offenses Cleared supra* note 189; FBI, *Offenses Cleared supra* note 191; FBI, *Offenses Cleared, supra* note 170. For example, percent of violent crimes cleared - 2004: 46.3%; 2009: 47.1%; 2014: 47.4%; 2018: 45.5%.

[216] FBI, *Offenses Cleared, supra* note 187; FBI, *Offenses Cleared supra* note 189; FBI, *Offenses Cleared, supra* note 191; FBI, *Offenses Cleared, supra* note 170. For example, percent of property crimes cleared - 2004: 16.5%; 2009: 18.6%; 2014: 20.2; 2018: 17.6%. *Note, the FBI includes arson in overall property crime calculations but the effect is small. *See supra* note 188.

[217] FBI, *Offenses Cleared, supra* note 170. The FBI, who includes arson, has the percent of property crimes cleared at 17.6%. Excluding arson the average standard clearance rate is calculated at 17.51%.

[218] The estimated percent of crimes where someone was held responsible can be calculated using conviction data. The National Judicial Reporting Program (NJRP) provides estimates for the number of felony convictions in state courts. The NJRP collected data on felony sentencing from a nationally representative sample of state courts in 300 countries. The NJRP collected data biannually from 1986-2006. The Federal Justice Statistics Program (FJSP) reports the number convicted of a felony in U.S. district courts each year. *Data Collection: Federal Justice Statistics Program (FJSP),* Bureau of Justice Statistics, https://www.bjs.gov/index.cfm?ty=dcdetail&iid=262; *Federal Justice Statistics 2006 – Statistical Tables*, Bureau of Justice Statistics, https://www.bjs.gov/content/pub/html/fjsst/2006/fjs06st.pdf. Adding these numbers together gives the estimated number of felony convictions in both state and federal court. Taking the estimated number convicted for the crime and dividing by the estimated number

is the standard way to measure the percentage of individuals who are convicted of crimes. It goes beyond the standard measure of clearance rates (comparing reported crime to offenses cleared) because it considers reported crime and conviction rates. We only have conviction numbers up until 2006.[219]

For standard conviction rates, we start with reported numbers and compare them with conviction numbers. In 1990, the standard percent convicted for murder was 47.05%.[220] For other crimes, it was 17.72% for rape, 7.63% for robbery, 5.15% for aggravated assault, 1.19% for larceny-theft, 3.57% for burglary, and 1.30% for motor vehicle theft. In 1998, the conviction numbers were 72.56% for murder, 42.64% for rape, 11.54% for robbery, 9.6% for aggravated assault, 1.68% for larceny-theft, 4.92% for burglary, and 1.48% for motor vehicle theft.[221] And for 2004, the standard percent convicted for crimes was 62.88% for murder, 13.14% for rape, 6.53% robbery, 6.69% for aggravated assault, 0.70% for larceny-theft, 2.61% for burglary, and 1.59% for motor vehicle theft.[222]

Standard conviction rates for 2006 may provide an estimate on the percentage of crimes solved by police. In 2006, there were 14,948 reported murders and of those, 8,845 people are convicted (federal and state),[223] so that is a total of 59% of murders resulting in a conviction.[224] So, in other words, 41% of murderers got away with murder.[225] For other crimes, it is a lot worse. If there were a total of 760,753 reported aggravated assaults in 2006 and 101,108 aggravated assault convictions,[226] that means 13% of individuals who committed assault are held responsible, or in other words 87% of people who commit aggravated assault are not convicted of it.[227] Similarly in 2006 for burglary, 1,956,175 burglaries were

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of total crimes committed, results in the estimated percent of crimes where there was a conviction. *See* Appendix Tables 1, 2 & 6 for calculations along with the data sources.

[219] 2006 is the last year the NJRP produced data on state court convictions. *See Data Collection: National Judicial Reporting Program (NJRP)*, Bureau of Justice Statistics, https://www.bjs.gov/index.cfm?ty=dcdetail&iid=241.

[220] *See* Table 1 – 1990 (Part III) in Appendix for sources and calculations.

[221] *See* Table 1 – 1990 in Appendix as an example for calculations. *See* Table 1, note 2 for list of tables on file with author.

[222] *See* Table 1 – 1990 in Appendix as an example for calculations. *See* Table 1, note 2 for list of tables on file with author. . The true percent convicted for motor vehicle theft was higher is 2004 and 2006 than the standard percent convicted because the number reported to police was higher than the NCVS number known. We are not sure why people reported fewer crimes to the NCVS than to the police but see Appendix, Table 4, notes 69-72 for possible explanations.

[223] *See* Table 2 (Part III) in Appendix for sources and calculations.

[224] *Id.*

[225] 100% - 59% = 41%

[226] *Id.*

[227] *Id.* With assault, it may be that police are resolving with these crime in other ways and we do not have evidence of this. This is why we need to better track criminal resolution that does not end in an arrest or conviction.

reported to the FBI, and there were only 99,964 convictions in the same year,[228] so only 5% of burglars were held accountable and 95% got away with burglary.[229] For rape, there were 80,440 reported and 33,618 convictions, meaning the standard percent convicted was 41.79% and 58.21% of rapists got away.[230] And finally with robbery, in 2006 there were 384,844 reported robbery offenses and 43,059 convictions for robberies,[231] therefore 11% of people are held accountable for robbery and almost 90% got away with it.[232] We cannot get too attached to these numbers because they only include the reported crimes and therefore do not consider other known crimes (as reported to NCVS). However, it is a measure to consider as possibly the lower range of actual crimes if the truth in crime numbers is somewhere between the numbers reported to police and those reported to NCVS.

6. True Conviction Rates

The "true conviction" measure takes the number of convictions (state and federal) and divides them by the number of "known" crimes, or NCVS's estimated number of total crimes. It considers both conviction rates (which are better measures than arrest or clearance rates) and known crimes reported to NCVS rather than those reported to police, which are presumably more comprehensive.

Table 3 below demonstrates the percentage of crimes in a sample of years where an individual was held accountable. For instance, in 1990, the estimated percent of crimes where police convicted an individual was 47.05% of the time for murder, 13.95% for rape, 4.24% for robbery, 3.39% for aggravated assault, 0.46% for larceny-theft, 2.13% for burglary, and 1.08% for motor vehicle theft.[233] So in other words, murderers escaped police 52.95% of the time and burglars, 97.87% of the time. These are dramatically low numbers of individuals convicted for very basic felony offenses. Keep in mind that the numbers for internet and misdemeanor offenses are presumably much worse.[234]

In considering the overall true conviction rate, there are a very small number of convictions in the sample years considered. These numbers consider the total number of known crimes in the particular year—including murder, rape, aggravated assault, burglary, robbery, larceny and motor vehicle theft compared to the number of convictions. These numbers are largely skewed by the theft offenses rarely being solved (particularly larceny, robbery, burglary and motor vehicle theft). The true conviction rate was 1.65% in 1990,[235] 1.35% in 1998,[236] 1.81% in

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[228] *Id.*

[229] *Id.*

[230] *Id.*

[231] *Id.*

[232] *Id.*

[233] *See* Appendix Table 1– 1990 (Part III) for sources and calculations.

[234] *See supra* note 179–81 and accompanying text.

[235] *See* Table 1– 1990 (Part III) for sources and calculations.

2004,[237] and 1.95% in 2006.[238] That is to say that the conviction rate for the major crimes in these sample years is less than 2% per year. Table 3 provides a visual comparison of true conviction rates for a sample of years from 1990 to 2006.

Table 3 – True Conviction Comparison (Considering NCVS Known Crime and FBI Conviction Rates)[239]				
	1990	1998	2004	2006[240]
Total	1.24%	1.35%	1.81%	1.95%
Murder and Non-Negligent Manslaughter	47.05%	72.56%	62.88%	59.17%
Rape/Sexual Assault	13.95%	9.11%	13.14%	12.34%
Robbery	4.24%	4.57%	6.53%	6.05%
Aggravated Assault	3.39%	4.26%	6.69%	7.46%
Larceny-Theft	0.46%	0.53%	0.7%	0.75%
Burglary	2.13%	2.17%	2.61%	2.82%
Motor-Vehicle Theft	1.08%	1.28%	1.59%	1.88%

Overall, there are two important points to consider with true conviction numbers. First, prosecutors (in collaboration with police) are convicting individuals only about 2% of the time for serious crimes.[241] Second, murder is the priority with the highest conviction rates, at up to 72% in some years, but down to only 47% in other years. Convictions for larceny, motor vehicle theft and burglary are the lowest, and signify that these are the crimes most difficult (or of lowest priority) for police to solve.

The next section puts the data from the previous six sections together to measure criminal accountability, or the effectiveness of police in solving crime.

7. Criminal Accountability

"Criminal Accountability" is the comprehensive term that encompasses all of the important data measures used to judge the effectiveness of police—number of crimes known, reported, true arrest rates, true clearance rates, true conviction rates and eventually when there is data for it, crimes resolved. These criminal accountability numbers take us through the entire course of a crime starting at

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[236] *See* Table 1 – 1990 in Appendix for sources and calculations. See note 2 on the Table for list of tables on file with author.

[237] *Id.*

[238] *See* Table 2 – 2006 (Part III) for sources and calculations.

[239] *See* Tables 1 & 2 for sources and calculations.

[240] 2006 is the last year the NJRP produced data on state court convictions. *See* DATA COLLECTION: NATIONAL JUDICIAL REPORTING PROGRAM (NJRP), BUREAU OF JUSTICE STATISTICS, https://www.bjs.gov/index.cfm?ty=dcdetail&iid=241.

[241] Again, this is probably even lower because these crimes do not consider serious internet crimes.

known crimes and ending at conviction or resolution without arrest. The tables in this section put together the data from the previous six sections to give perspective on how effective police are at solving crimes. The one piece of data that is missing in these numbers is a category of crimes resolved without arrest. Ideally, to track criminal accountability, police departments will track all crimes resolved in an alternative way so that these are also accounted for—this way a success is not necessarily only clearance or conviction, but any resolution.

The criminal accountability data in this section gathers information for the major crimes to help put into perspective how effective police are. Table 4 expresses the full criminal accountability data for 2006.[242] A few examples are illuminating. In 2006, according to the FBI, there were 384,844 robberies reported to police.[243] But NCVS estimated that there was actually a total of 711,570 robberies, meaning that about 306,687 robberies were not reported to police.[244] Of the total number of known robberies, 43.1% were not reported to the police.[245] Of the number of robberies reported to the police, only 25.2% of those were cleared, which means the number cleared was 96,980 robberies.[246] However, due to the fact that there were many who did not even report their crimes to the police, in actuality, only 13.63% of the total number of robberies were actually cleared by police.[247] And of those robberies cleared, in 2006, only 6.05% of all robberies were resolved by conviction.[248] Or to think of it another way, more than 93% of robbers in the U.S. got away with their crime in true criminal accountability numbers.[249]

The picture is equally bleak when we consider burglaries and murders in 2006. Of the total number of 3.54 million burglaries in 2006, 1.78 million were not reported to the police, which is more than 50% of burglaries.[250] During that year,

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[242] This criminal accountability chart with full references is Appendix Table 7. The Appendix includes criminal accountability charts for 1990, 2006 and 2018. *See* Tables 1, 2 & 3. Full criminal accountability data including conviction information for 1998 is on file with author. 2018 does not have conviction data so it is not a full criminal accountability chart. See Table 3, I–II.

[243] FBI, *Offenses Cleared, supra* note 222.

[244] Rand & Catalano, *supra note* 149, at 3, Table 2; FBI, *Offenses Cleared, supra* note 222. Calculation: (.569)(NCVS – Table 8, % Reported to Police) x 711,570 (NCVS – Table 2, Number of Victimizations) = 404,883 (number of robberies reported to police) 711,570 (NCVS – Table 2, Number of Victimizations) – 404,883 (number of robberies reported to police) 306,687 (estimated number of robberies not reported to police).

[245] This is according to NCVS reporting numbers, not FBI reporting numbers. Rand & Catalano, *supra note* 149, at 5, Table 8. Calculation: 100% - 56.9 (% reported to police) = 43.1% (estimated % not reported to police)

[246] *See* Table 2 – 2006 (Part II) in Appendix.

[247] *Id.*

[248] *See* Table 2 – 2006 (Part III) in Appendix.

[249] *Id.* Calculation: 100% - 6.05% = 93.93% or 94% (estimated % held responsible)

[250] Rand & Catalano, *supra note* 149, at 3,5. Calculation: 3,539,760 (NCVS – Table 2, Number of Victimizations) – 1,755,720.96 (number of burglaries reported to police, *see supra* note 141) = 1,784,048.04 (estimated number of burglaries not reported to police).

6.96% of burglaries were cleared by police.[251] And of those burglaries cleared, only 2.82% of people who were burglarized had their perpetrator held responsible by conviction.[252] In other words, more than 97% of burglars in the U.S. got away with their crime when considering the criminal accountability numbers. In 2006, 14,948 people were murdered in the United States.[253] The number of people arrested for murder in 2004 was 13,435.[254] Police cleared 9,073 murders in 2006.[255] There were 8,845 convictions for murder in state and federal court,[256] meaning 59.17% of murderers were held responsible.[257] So in other words, in 2006, police never captured 40.83% of murderers.[258] The full criminal accountability chart for 2006 is illustrated in Table 4 below.[259]

Then we take 1,784,048.04 (estimated number of burglaries not reported to police) / 3,539,760 (NCVS – Table 2, Number of Victimizations) = 50.4% (estimated percent of burglaries not reported to the police)

[251] See Table 2 – 2006 (Part II) in Appendix.

[252] *Id.* By way of comparison, the federal conviction rate is much higher, especially for violent crime. In 2012, the federal overall conviction rate was 93%. DEPARTMENT OF JUSTICE, UNITED STATE ATTORNEYS ANNUAL STATISTICAL REPORT (Oct. 28, 2013), https://www.justice.gov/sites/default/files/usao/legacy/2013/10/28/12statrpt.pdf. This has gone up federally from 75% to 85% between 1972 and 1992. Sara Sun Beale, *Federalizing Crime: Assessing the Impact on the Federal Courts*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 543 (1996).

[253] *See* Table 2 – 2006 (Part I) in Appendix for sources and calculations.

[254] *Id.*

[255] *See* Table 2 – 2006 (Part II) in Appendix for sources and calculations. According to the Murder Accountability Project the number of murders cleared is slightly higher at 8,774. UNIFORM CRIME TABLE FOR HOMICIDES 1965– 2018, http://www.murderdata.org/p/blog-page.html (last accessed Feb 16, 2020).

[256] *See* Table 2 – 2006 (Part III) in appendix for sources and calculations.

[257] *Id.*

[258] *Id.* Calculation: 100% - 59.17% = 40. 83%

[259] Citations and explanations of all calculations in this chart are in Appendix Table 2 –2006 (Parts I–III).

Table 4 - Criminal Accountability - 2006					
Types of Offenses	(a) Number Known	(b) Percent Reported (FBI) (% of col. a)	(c) True Percent Arrested (% of col. a)	(d) True Percent Cleared (% of col. a)	(e) True Percent Convicted (% of col. a)
Total	21,162,438	47.69%	10.09%	9.19%	1.95%
Murder and Non-Negligent Manslaughter	NA	NA	89.88%	60.70%	59.17%
Rape / Sexual Assault	272,350	29.54%	9.01%	12.08%	12.34%
Robbery	711,570	54.08%	17.65%	13.63%	6.05%
Aggravated Assault	1,354,750	56.15%	33.06%	30.32%	7.46%
Larceny-Theft	14,275,150	40.70%	7.57%	7.08%	0.75%
Burglary	3,539,760	55.26%	8.61%	6.96%	2.82%
Motor-Vehicle Theft	993,910	109.13%	13.86%	13.75%	1.88%

Overall, the criminal accountability numbers teach us a few things. First, for most of the major crimes there are more known crimes (NCVS) than crimes reported to police (UCR). Indeed this reiterates what was illustrated in Section II.A, that less than half of crimes are reported to police. An exception to this is motor vehicle theft. More people report motor vehicle theft to police than to NCVS victims surveys. This reiterates the importance of having both numbers in order to understand why people report some crimes to police more than others. Second, it is also important to track crimes resolved without arrest. An example of motor vehicle theft is fitting here. Even though police are able to convict individuals for motor vehicle theft in only 1.88% of cases, the cases resolved are much higher. The Department of Transportation estimates that 59% of stolen cars are recovered each year.[260] Police play a major role in these efforts, which may be why reporting for motor vehicle theft is disproportionately high.[261] But clearance rates and conviction rates do not take these efforts into account, and in this instance make the overall crime picture look worse than it is. And finally, the overall criminal accountability picture is much worse than we might have thought. There are less than 7% conviction rates for all crimes besides murder and rape, and with a less than 2% true conviction rate overall. Potentially tracking crimes resolved without arrest may improve this picture for other crimes. Some crimes may also be resolved after arrest, but not with conviction. These must also be accounted for. In sum, it is important to simply understand how low criminal accountability numbers

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[260] U.S. DEPARTMENT OF TRANSPORTATION, VEHICLE THEFT PROTECTION, www.nhtsa.gov (last accessed Feb. 16, 2020).

[261] *Id.* It's over a 100% due to definitional differences between the FBI and NCVS. *See* Appendix Table 2 – 2006 (Part I) note 37 for further details.

are. The neglect of these numbers and the potential path forward, as well as counterarguments are addressed in the next section.

III. THE PATH FORWARD FOR CRIMINAL ACCOUNTABILITY

We learn from the data in the last section that for all major crimes criminal accountability is low—and crimes are not solved either by arrest, clearance or later conviction. Police apprehend very few of the individuals who commit crimes. This section is about what needs to change in order for us to measure criminal accountability more effectively, and ultimately to improve police performance. Section III.A delves into the neglect of criminal accountability and explores how this has been ignored by scholars and media. Criminal commentary has neglected discussion of low clearance and conviction rates, and low criminal accountability. It also demonstrates with Figure 4 and 5, the low criminal accountability in America with a "crime funnel." Section III.B addresses the areas of potential reform in tracking police effectiveness and counterarguments against potential changes.

A. The Neglect of Crime Accountability

Scholars and commentators have been largely silent on how few crimes are addressed by police. It is understandable that there has not been a discussion of low criminal accountability, but there is also a similar neglect in discussion of police clearance rates in the scholarly literature and media.[262] There is very little focus on the low rate of clearance or conviction for crimes nationally.[263] For

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[262] Clearance rate articles have focused on the decrease in clearance rates over time, without discussion on what low clearance rates mean for police effectiveness or how they affect public safety. *But see* German Lopez, *There's a Nearly 40 Percent Chance You'll Get Away with Murder in America*, VOX (Sep 24, 2018) https://www.vox.com/2018/9/24/17896034/murder-crime-clearance-fbi-report (explaining that police should do more and dedicate more resources to solving crimes rather than focusing on preventative measures).

[263] While very few commentators have noticed low clearance rates, German Lopez noted bleakly in 2017, "[i]f you murder someone in America, there's a nearly 40 percent chance you'll get away with it." *Id. See also* Anthony Williams, *Police Aren't Getting Better at Solving Murders: Why is the Clearance Rate in U.S. Cities so Low?*, CITYLAB (Jun. 26, 2017) https://www.citylab.com/equity/2017/06/police-arent-getting-better-at-solving-murders/531642/ (Anthony Williams the former mayor of Washington D.C. laments that U.S. law enforcement is the worst in the Western world at solving crimes and cites clearance rate statistics like one-eighth of burglaries leading to arrest, or only one third for rape, and two thirds for murder); Martin Kaste, *Open Cases: Why One-Third of Murders In America Go Unresolved*, NPR (March 30, 2015, 5:04 A.M.) https://www.npr.org/2015/03/30/395069137/open-cases-why-one-third-of-murders-in-america-go-unresolved ([i]f you're murdered in America, there's a 1 in 3 chance that the police won't identify your killer").

instance, The National Academies of Sciences recently published a 326-page report on policing.[264] Clearance rates are mentioned exactly once in the body of the report and only in passing.[265] There is a field of scholarship dedicated to addressing the rights of victims of crime. Yet this growing victims' rights movement has not addressed low clearance or conviction rates at all, or the large group of individuals affected by unsolved crimes.[266] Proportionately, there are many more individuals—more than double with some crimes—where the victims never even reach police to get help. And when you consider the number of victims

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[264] COMMITTEE ON PROACTIVE POLICING, PROACTIVE POLICING: EFFECTS ON CRIME AND COMMUNITIES 64 (2017).

[265] *Id.*

[266] The victims' rights movement speaks to the (vital) rights of the small percentage of victims who enter the criminal system. *See generally*, Douglas E. Beloof, *Constitutions Implications of Victims as Participants*, 88 CORNELL L. REV. 282 (2003) (addressing the Constitutional complications that come into play when victims are granted rights during criminal trials), Jayne W. Barnard, *Allocution for Victims of Economic Crimes*, 77 NOTRE DAME L. REV. 39, 74 (2001) (discussing the complexity of involving victims of economic crimes in receiving restitution), Susan Bandes*, Victim Standing*, UTAH L. REV. 331 (1999) (addressing the complexity of victims entering a criminal proceeding built for prosecution and defendant); Josephine Gittler, *Expanding the Role of the Victim*, 11 PEPP. L. REV. 117 (1984) (detailing the accomplishments of the Victim's Rights movement and advocating for victims to play a more active role in criminal trials beyond being a witness); Dena M. Gromet et al., *A Victim-Centered Approach to Justice? Victim Satisfaction Effect on Third-Party Punishments*, 36 LAW & HUM. BEHAV. 375 (2012) (examining studies of victim and third-party satisfaction with restorative justice processes); Arthur Lurigio, *Are all Victims Alike? The Adverse Generalized, and Differential Impact of Crime*, 33 CRIME AND DELINQ. 452 (1987) (studying the differences between victims and non-victims when it comes to psychological, behavioral and attitudinal health); Vik Kanwar, *Capital Punishment as "Closure": The Limits of a Victim-Centered Jurisprudence*, 27 N.Y.U. REV. L. & SOC. CHANGE 215 (2002) (arguing that a death penalty sentence fails to provide closure to a victim's family and may even be more damaging); Ellen M. Bublick, *Citizen No-Duty Rules: Rape Victims and Comparative Fault*, 99 COLUM. L. REV. 1413 (1999) (explaining that citizen entitlements should be considered by courts as a compelling factor when considering defenses to rape victim comparative fault equations), Lynne N. Henderson, *The Wrongs of Victim's Rights*, 37 STAN. L. REV. 937 (1985) (examining the impact that victim's rights procedures have had on the criminal process and the potential impact of such rights on the goals of the justice system such as crime prevention); Robert Davis and Barbara Smith, *The Effects of Victim Impact Statements on Sentencing Decisions: A Test in an Urban Setting*, 11 JUST. Q. 453 (1994) (examining the impact of victim statement on the sentences of offenders and trying to determine if that impact has resulted in sentences more in line with the harm committed or not); Jongyeon Tark & Gary Kleck, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, 42 CRIMINOLOGY 861 (2004) (assessing the impacts on crimes and outcomes of various types of victim self-protection); Douglas E. Beloof, *Weighing Crime Victims' Interests in Judicially Crafted Criminal Procedure*, 56 CATH. U. L. REV. 1135 (2007) (detailing the manner in which victim's rights are being incorporated into judicial process and the challenges they present).

who never reach resolution (conviction or otherwise), in 2006, 20,749,770 victims (around 98.05%)[267] received no resolution.[268] Yet none of the victims' rights scholarship discusses the lack of criminal accountability, only a few articles deal with the phenomenon of under reporting or under prosecution,[269] and the majority of the literature focuses on the rare case in which a crime victim is brought through the justice system.[270]

[267] *See* Appendix Table 2 – 2006 (Part III) for citations and sources, including the true percent convicted. Michael Rand & Catalano, *supra* note 149, 3 (Table 2); State: Sean Rosenmerkel et al., *Felony Sentences in State Courts, 2006*, BUREAU OF JUSTICE STATISTICS NATIONAL JUDICIAL REPORTING PROGRAM 3, Table 1.1 (Dec. 2009). Federal: Mark A. Motivans, *Federal Justice Statistics, 2006 – Statistical Tables*, BUREAU OF JUSTICE STATISTICS FEDERAL JUSTICE STATISTICS PROGRAM, 25, Table 4.2 (May 2009), https://www.bjs.gov/content/pub/html/fjsst/2006/fjs06st.pdf. Calculation: 100%-1.95% = 98.05% (percent of victims who had no resolution/estimated percent not convicted)(.9805)(estimated percent not convicted) * 21,162,438 (number of known crimes) = 20,749,770 (estimated number of crimes where no one is held responsible – victims that have no resolution).

[268] A large caveat here is that we have no record of crimes resolved without resolution. We know a large number of motor vehicle thefts are resolved (i.e. the cars are returned) even though there is no accountability for the crime (no arrest or conviction). This is important to consider with these numbers. It is possible that some crimes were resolved independently, without the help of police. *See* LANGTON ET AL., *supra* note 103, at 4 (noting that sometimes up to 40% of individuals resolve crimes without the help of police).

[269] Though no legal scholars have focused on the lack of criminal accountability as a problem in our criminal justice system, a few scholars have noted the problem of underreporting and noted that victims should have rights before charges are filed. *See*, Paul G. Cassell et al., *Criminal Law: Crime Victims' Rights During Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges are Filed*, 104 J. CRIM. L. & CRIMINOLOGY 59 (2014) (advocating for victims to have CVRA rights during investigations before charges are filed), Abraham Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 MISS. L. REV. 515 (1982) (arguing that much of the phenomenon of under reporting has to do with the victims perceived or actual separation from the criminal justice process), Paul G. Cassell & Heidi Nestel, *In Re: Petition for Appointment of a Prosecutor Pro Tempore*, Utah Supreme Court (2019) (advocating for the appointment of a special prosecutor by the Supreme Court in order to pursue victim-initiated prosecutions for sexual assault victims who have seen very low rates of prosecution), Marcus & McMahon, *Limiting Disclosure of Rape Victims' Identities*, 64 SO. CAL. L. REV. 1020, 1030 (1991) (arguing that often the underreporting of rape and sexual assault is because of the lack of privacy that victims experience related to this already invasive crime after reporting and charging); *see also* Robinson, *supra* note 19 at Table 1.

[270] Often the Victim's Rights movement remains focused on rights relevant after charging such as trial rights and sentencing rights. *See* Margaret Garvin & Douglas E. Beloof, *Crime Victim Agency: Independent Lawyers for Sexual Assault Victims*, 13 OHIO ST. J. CRIM. L. 67 (2015) (presenting a case for victim's rights such as right to counsel, right to a speedy trial, right to discovery, right to make a victim impact statement before trial and a right to be informed of release or probation), Douglas E. Beloof & Paul Cassell,

The amount of attention by the media on crime clearance rates constitutes a drop in the bucket compared to other criminal justice topics. For instance, in the last ten years, there have been 8,000 articles in international newspapers discussing mass incarceration and 29 articles discussing police clearance rates.[271] There is very little attention on how low clearance and conviction rates are and what this means for police and society.

Criminal accountability has been ignored in the literature, except for some mention of the crime "funnel." The closest reference to the lack of criminal accountability is reference to a crime "funnel" or "sieve."[272] The idea of a crime funnel is that many crimes enter at the outset with a police report and very few are resolved with a defendant being arrested, then convicted, then imprisoned.[273] The crime funnel is different from the criminal accountability numbers here in that it starts from a police report and tracks a crime to imprisonment. By ignoring known crimes, it misses up to half of the crimes committed.[274] Even with the existence and very brief mention of the crime funnel, the implications of it for police effectiveness or criminal policy have not been explored or discussed.[275]

The Crime Victim's Right to Attend the Trail: The Reascendant National Consensus, 9 LEWIS & CLARK L. REV. 481 (2005).
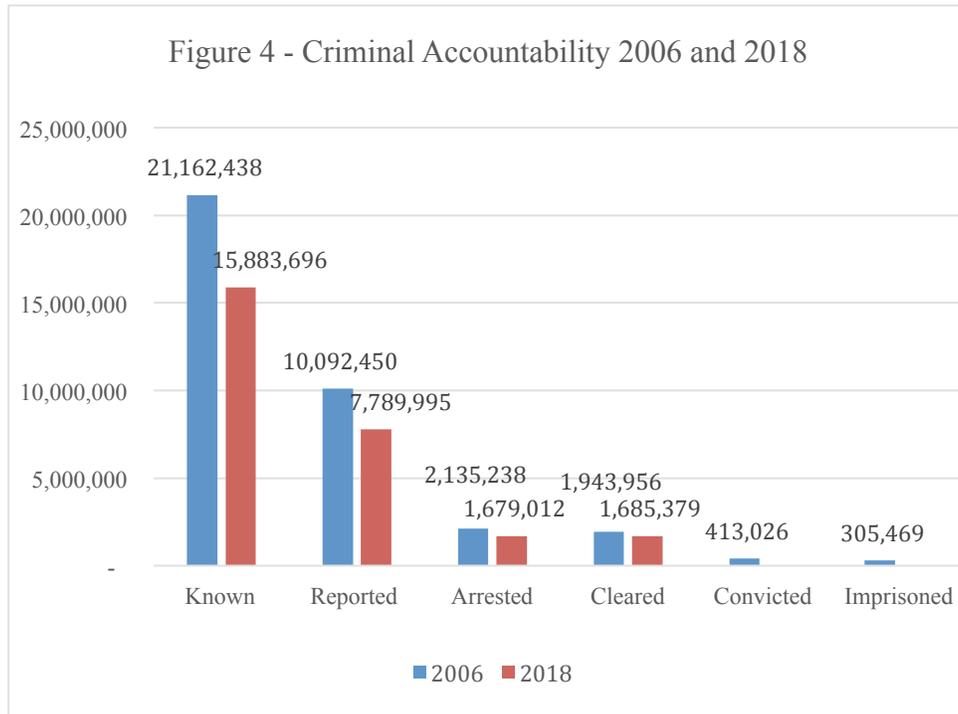
[271] An international search of all newspapers worldwide in Lexis-Nexis from Sept. 2009 to Sept. 2019 shows that "overcrowded jail" returned 8964 articles; "overcrowded prison" 1361 articles; "mass incarceration" 9479 articles; "police clearance" 2756 articles; "crime clearance rates" 89 articles and "police clearance rate" 29 articles. And in the US, a similar newspaper search demonstrates the underemphasis on clearance is even more stark: "overcrowded jail" 689 articles; "overcrowded prison" 1171 articles; "mass incarceration" 2857 articles; "crime clearance rate" 26 articles; "police clearance" 12 articles and "police clearance rate" 1 article. Certainly this search could have missed articles but the broader point likely stands.

[272] For an especially thorough example of a crime funnel *see* ELISE HANSELL ET AL., THE CRIME FUNNEL, ROSE INSTITUTE OF STATE AND LOCAL GOV. (2016); Robinson, *supra* note 19, at Table 1.

[273] LYNN ADDINGTON, A DIALOGUE BETWEEN THE BUREAU OF JUSTICE STATISTICS AND KEY CRIMINAL JUSTICE DATA USERS, DEPARTMENT OF JUST. L. AND SOC. (2008)("Most of us are familiar with elaborate diagrams of the criminal justice "funnel" depicting the channeling of crimes through the criminal justice system. But when numbers are attached to the diagram, it becomes clear that this is more of a sieve than a funnel. About 8 to 10 million felonies are reported to the police each year, and the National Crime Victimization Survey (NCVS) tells us that about as many go unreported.")

[274] *See supra* Section III.A for discussion of known crimes.

[275] One notable exception is Lynn Addington, who remarks "So we have something like 15 to 20 million felony victimizations annually in the United States, and fewer than 1 million of these cases end in conviction. The police are precisely in the middle of this extraordinarily leaky sieve. Yet, we have little by way of reliable empirical evidence on the relationships between police operations, tactics, and policies on the one hand, and the leakages at each stage, on the other—from victimization to reporting to recording to arrest to conviction—which the police could conceivably do much more to close." ADDINGTON, *supra* note 281. She also remarks: "In today's world of information and the ready

Figure 4 - Criminal Accountability 2006 and 2018

Category	2006	2018
Known	21,162,438	15,883,696
Reported	10,092,450	7,789,995
Arrested	2,135,238	1,679,012
Cleared	1,943,956	1,685,379
Convicted	413,026	
Imprisoned	305,469	

■ 2006 ■ 2018

The "crime funnels" in Figures 4 and 5 demonstrate the consistently low rates of criminal accountability and that crime has gone down in America over the last thirty years. Overall, many more people are victims of crime than report to the police. A small fraction of police reports result in arrest and a small portion of those end in a conviction. Figure 4 below illustrates the criminal accountability rates for 2006 and 2018,[276] or a more complete "crime funnel." The general trend is the same for both years. Though, one positive note is that there is much less known crime and reported crime in 2018, so even victims reports demonstrate that crime has gone down in America.[277] There are many more crimes committed than reported, arrested, cleared and much fewer convicted or imprisoned.[278] These do

availability of statistical tools to analyze it, one can only marvel at how little we know about what the police could do to raise the rate at which victimizations end in conviction from well below 10% to perhaps 20% or more. We rarely bother even to consider the prospect. It seems somehow negligent that we have failed to seize opportunities to learn what the police can do at each stage to reduce the enormous social costs associated with this vast, largely ignored sequence of justice lapses between crimes and convictions. BJS can help by providing statistical indicators of lapses at each of these stages, and its data sets can be exploited creatively for another purpose: to permit in-depth research about what works to reduce the leakages." *Id.*

[276] *See* Appendix Table 2 – 2006 and Table 3 – 2018 for sources and calculations.

[277] *See* Figure 4 and Appendix Table 2 – 2006 and Table 3 – 2018 for sources and calculations.

[278] Note that we do not have the conviction or imprisonment data for 2018.

not consider any alternatives to resolving crime besides conviction and imprisonment, however these are important data points that police should consider. It is also significant to emphasize here that Figure 4 is incomplete since we stopped tracking national data of conviction and imprisonment rates after 2006.[279] In order to consider the full cycle of a crime, it is vital to have these data points.

Figure 5 below considers criminal accountability from 1990 to 2006, demonstrating a similar pattern to Figure 4.[280] This Figure confirms, even with known crimes, that crime has decreased in America in the last thirty years.[281] And also that at every stage in the life of a crime, police and then prosecutors lose the ability to help victims.

Figure 5 - Criminal Accountability 1990-2006
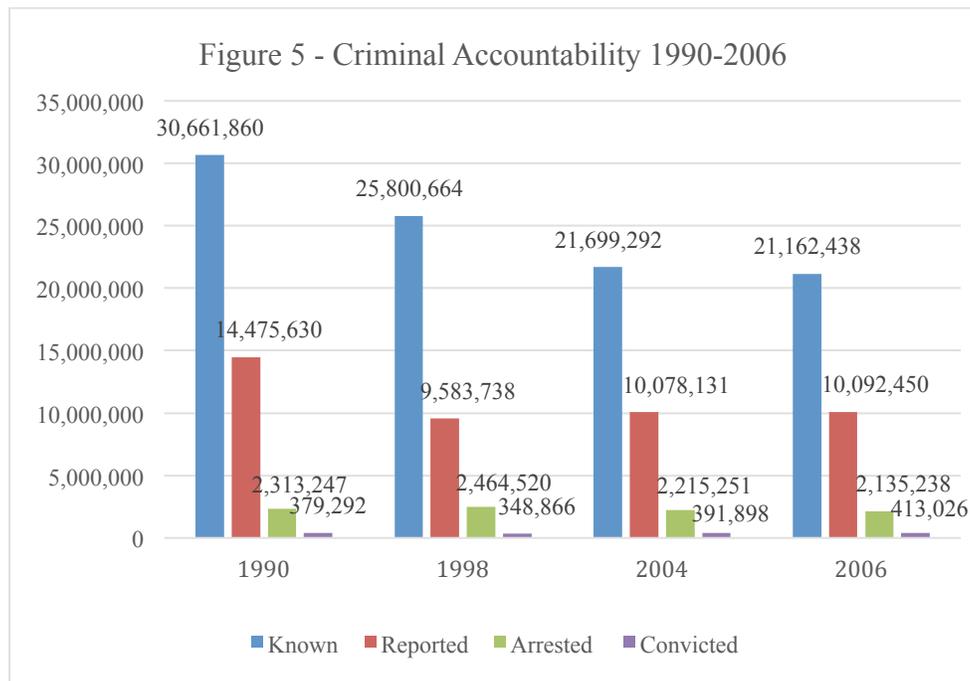
It will be difficult to improve police effectiveness if we continue to neglect criminal accountability. The next section provides some thoughts on police

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[279] The last year when BJS tracked the data relevant for incarceration, prison and conviction rates nationally is 2006. *See* BUREAU OF JUSTICE STATISTICS, FELONY SENTENCES IN STATE COURTS 2006 at 5, Table 1.2.1, http://www.bjs. gov/content/pub/pdf/fssc06st.pdf.

[280] *See* Appendix Table 1 – 1990 and Table 2 – 2006 for sources and calculations. See Table 1 – 1990, note 2 for a list of tables on file with author.

[281] This could mean that police are more effective at *preventing* time than *solving* crime, but more study is necessary on this issue.

effectiveness and considers the challenges to tracking and improving criminal accountability.

B. Thoughts and Counterthoughts on Police Effectiveness

Now that we know that police are not very effective at solving crime,[282] several questions remain. Some of these questions we pose and leave for another day. We also discuss some potential reforms and counterarguments against reform.

At the outset, it is important to acknowledge the criticism of including known crime numbers in measuring police effectiveness. It is perhaps not fair to judge police based on known crimes because they may not be able to improve these numbers, or clearance numbers because of a lack of trust in their neighborhood. Arguably, improving trust and legitimacy can take many years or may be impossible in some neighborhoods. Yet, the research demonstrates that police may be able to improve reporting without substantially improving clearance or conviction rates. Indeed, research demonstrates that a police department response to a crime report and an individual's perception of how police will respond to their report may be more important to reporting rates,[283] than whether police can actually solve a crime.[284] The studies show that to improve reporting, police must improve relationships with the communities they serve.[285] Indeed several other

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[282] Only half of crimes are typically reported to police, and of those known police clear about 10% overall and then convict less than 2%. These numbers are very rough estimates based on numbers in Part II, and do not consider cases that are resolved without arrest—which would hopefully demonstrate police resolve many cases without arrest or conviction.

[283] In some ways low criminal accountability can be a self-perpetuating problem. Police are not effective at solving crimes and therefore people feel like it is not worthwhile to report a crime to the police. Indeed, one study shows that the ability of police to solve crime is directly linked to how good officers are at solving crime and how well police interact with the public. Kristina Murphy & Julie Barkworth, *Victim Willingness to Report Crime to Police: Does Procedural Justice or Outcome Matter Most?*, 9 VICTIM & OFFENDERS: AN INT'L J. OF EVIDENCE-BASED RES., POL'Y & PRAC. 178, 194 (Apr. 1, 2014). *See supra* note 107–08 for discussion of Tom Tyler's research on this point.

[284] Low criminal accountability may not be critical to reducing crime rates. It is unclear whether solving more murders deters future murders. The conventional wisdom might predict that higher clearance rates would mean less future murders. However, one analysis of clearance rates in 2015 and 2016 showed no correlation between murder clearances and future murders. *See* Asher & Horwitz, *supra* note 35 (analyzing FBI's Uniform Crime Reports for 2015 and 2016). In Charlotte, North Carolina, murder rates actually increased with an increase in clearance rates. *Id.*

[285] Bret D. Asbury, *Anti-Snitching Norms and Community Loyalty*, 89 OR. L. REV. 1257, 1311 (2011) ("Experiments in community policing over the past three decades have shown that community attitudes toward police officers can change pervasively in a short period of time."); Jamie Masten, *"Ain't No Snitches Ridin' Wit' Us": How Deception in the Fourth Amendment Triggered the Stop Snitching Movement*, 70 OHIO ST. L.J. 705, 755

countries have less disparity between reporting and known crime rates, so this is something that could theoretically improve in the U.S.[286] Police may be able to improve reporting without necessarily solving more crimes.

So with that caveat, *what* would make police more effective? Certainly, we need more research on this point. But the suggestions below are an important first step to consider. These are improvements that can be made without encroachments on civil liberties or increased surveillance that may threaten privacy rights.[287]

First, police departments and the federal government need to track national conviction and imprisonment rates.[288] This first step is simple but absolutely critical. As a part of better criminal accountability, the federal government must track data for national convictions and imprisonment numbers. The Bureau of Justice Statistics stopped tracking national conviction and imprisonment data in 2006, which makes it very difficult to determine the full course of a crime.[289] Pressure on the federal government to restore this program will allow us to consider criminal accountability nationally.

Second, providing knowledge about how low criminal accountability generally is—and how effective police are—could help improve policing. This may be the major contribution of this piece, providing a national review of police effectiveness for major crimes. The information in this Article is surprising, and may spark change. If police are compared to other emergency services of fire and ambulance, it would be like the fire department only responding to two out of ten fires that are reported and only putting out the fire in two out of every 100 fires. The general public has no idea how ineffective police are at solving crime. Police may be more likely to focus on improving reporting numbers, for instance, if this

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[286](2009). ("Trust is paramount in any relationship, and this notion is no different when applied to the intricate interplay between the public and the police.").

[286] THE SWEDISH COUNCIL OF CRIME PREVENTION, THE CLEARANCE RATE IN SWEDEN AND IN OTHER COUNTRIES (May 2015) https://www.bra.se/bra-in-english/home/publications/archive/publications/2015-06-10-the-clearance-rate-in-sweden-and-in-other-countries.html (noting that in Sweden victims known crime rates and reporting rates are similar).

[287] Elizabeth Joh, *Policing by Numbers: Big Data and the Fourth Amendment*, 89 WASH. L. REV. 35 (2014)(encouraging the drawing of 4th Amendment lines with growth of big data policing); Elizabeth Joh, *Reclaiming 'Abandoned' DNA: The Fourth Amendment and Genetic Privacy*, 100 N.W. L. REV 857 (2006) (discussing the problem of loss of rights with abandoned DNA);

[288] Rachel Harmon makes a compelling case that we should track police data more carefully. Rachel Harmon, *Why Do We (Still) Lack Data On Policing?,* 96 MARQ. L. REV. 1119, 1124 (2012) ("If data about crime rates and the costs and benefits of policing practices are crucial to voters, they are equally important to police chiefs and other high-ranking department officials who develop and implement law enforcement strategies and procedures.").

[289] The FBI should also compare NCVS data on reported crime with reports to police departments and provide information so that police departments can have easy access to this information.

were a national or state focus. Some countries have higher rates of reporting because they allow police reports for serious crimes via telephone or internet.[290] We could experiment with such tactics if the rate of low accountability were a national concern.

One counterargument to providing this information broadly is that it may incentivize more people to commit crimes. Is it possible that knowing how little criminal accountability there is leads to chaos and lawlessness rather than police reform? Will people be incentivized to commit more crimes because of how many people get away with it? There is a risk in informing the public about low accountability, or demonstrating how easy it is to get away with crime. Given that these threats already exist, many criminals often do not act rationally, and the costs of crime are so great,[291] the risk may be worth it.

Indeed this information could lead to important discussions within communities of how resources should be allocated to police. Some jurisdictions may experiment with providing more police resources to improve crime reporting and others may allocate resources towards crime resolution without arrest. Still others might focus on improving arrest and conviction numbers for violent crimes to improve safety. An integral part of tracking criminal accountability may include prioritizing crimes that are important to the community. If a police department's arrest rates in a given year include 50% drug offenses and 10% violent crime, a community may provide input and refocus the police on areas they are most troubled by. Experimenting to improve police effectiveness would be possible when police departments are aware of the crimes occurring in their neighborhood. And an overall understanding of how low accountability rates are in general could pressure police to refocus their efforts to resolve the most harmful crimes in their particular community.

Third, we must track the full course of a crime, and consider whether police are effective—nationally and locally. Crimes must be followed all the way from incidence to victim report, police report, arrest, clearance, conviction or resolution

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[290] THE SWEDISH COUNCIL OF CRIME PREVENTION, *supra* note 303, at 11 (providing an example of high reporting numbers in Sweden, and noting that individuals can file police reports in person, via telephone and on the internet); *id.* at 12 (noting that Norway allows reporting at the police station or on the internet); *id.* at 14 (noting that Denmark allows reporting at the police station, at the scene of the crime, via telephone or internet); *id.* at 20 (England and Wales allow reporting at the police station, via telephone or internet). *But see id.* at 16, Germany and Netherlands only allowing reporting at the scene of the crime or at a police station, and on the telephone and internet less commonly, and mostly for minor crimes). Like Germany, jurisdictions in the U.S. only allow online reporting of crimes for less serious crimes, *see e.g.* D.C.Gov, *File a Police Report Online,* https://mpdc.dc.gov/service/file-police-report-online (last accessed Feb. 17, 2020) (reporting allowed online for minor thefts and lost property).

[291] *See e.g.,* Shima B. Baughman, *Costs of Pretrial Detention*, 97 B.U. L. REV. 1, 9 (2017) (discussing the tangible and intangible costs of major crimes including murder, rape, robbery, aggravated assault).

in another way, and imprisonment. In other words, the criminal accountability charts provided as samples in this Article should become a staple in every jurisdiction (with added columns for alternative ways to resolve crimes).

The first point of police effectiveness occurs when an individual decides whether to report a crime to police. If police focused on improving this metric, it could improve their effectiveness in helping solve crimes. Though there is an argument that focusing on known crimes is not a better measure of police effectiveness than reporting. First, one may argue that what I refer to as "true" clearance or "true" conviction is not any more true than the standard method of measuring these rates. There is error in any reporting of crime—whether by NCVS or FBI. There are potential fraud problems with NCVS or FBI reports, and arguably this is worse for NCVS given that it is a self-reported survey where no evidence is required.[292] Filing a police report requires evidence and signing statements and may be a more reliable source. However, on the other side, with most serious crimes—more than half are not reported to police.[293] Is it possible that over fifteen million people are fabricating crimes in NCVS reports each year? Anything is possible, but given the massive scope of known crimes, it seems wise to at least consider them. If we could consistently track the reason people are not reporting to police and study this locally, we could get a targeted answer as to how to improve reporting rates.[294] Police could study NCVS data on victim reporting for their particular county to see where they can improve reporting numbers. Indeed, tracking crimes from incidence to reporting is likely to help improve police effectiveness over the current system.

Police must know their particular jurisdiction and compare known crimes with reporting rates and the various ways cases are resolved. This will take local coordination with FBI and NCVS—which can be difficult.[295] This may seem like a chicken and egg problem, but measuring police effectiveness starting at known crimes will help motivate police departments to track this metric. If police are not aware of crimes occurring in their jurisdiction that are not reported to police, they will never improve reporting rates or gain trust in the community. Gaining trust in the community can in turn improve clearance rates. This will further improve police legitimacy and perceptions of fairness.[296] This may be circular but

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[292] *See* notes 101–07 and 145–46 for further discussion of this counterargument.

[293] *See* Table 4 in Appendix for more detailed reporting for each crime and for various years.

[294] NCVS tracks the reasons people do not report to police, but these numbers are best studied by police departments as they apply to local jurisdictions. Currently police are not focused on tracking these known crimes or improving reporting rates.

[295] Obtaining data from local jurisdictions is extremely difficult. *See e.g.,* Sam Bass Warner, *Crimes Known to the Police - an Index of Crime?*, 45 HARV. L. REV. 307, 309 (1931) ("These statistics are not obtained by the United States Department of Justice by virtue of state or federal laws requiring city police departments to send in such figures, but merely as the voluntary offering of the chiefs of police of various cities.")

[296] *See supra* note 108–09.

improving in any one category can improve the others. Knowing all of the criminal accountability data is the first step.

Tracking police effectiveness from incidence of crime to conviction or case resolution avoids some incentives to falsely arrest or misrepresent clearance numbers. With the current focus on clearance rates, police can arrest suspects to improve clearance numbers, or rely on faulty evidence that does not result in a conviction, with little measurable effect on their performance. This system, as discussed in Section I.C has led to many police departments falsifying or double counting clearance and arrest numbers and unfairly counting too many crimes as "cleared by exceptional means." Motivating police to focus on case resolution rather than clearance helps police to create the best case possible for prosecutors or to resolve the case in other ways. The current silo effect where police are accountable only to the point of clearance and prosecutors are accountable until conviction/imprisonment, is not helping police effectiveness.[297] Having police accountable for the entire criminal cycle—from occurrence to imprisonment—is the only way to avoid the current compartmentalism of police and prosecutors. For instance, a police department would have less incentive to arrest individuals on faulty evidence or clear a case "by exceptional means" when they are accountable in resolving cases rather than simply clearing them. This could have incidental positive impacts on police thinking twice before arresting and imprisoning individuals if they have an option to safely resolve a case without arrest. Police can track whether any community initiatives improve reporting or case resolution rates. Simply by tracking case resolution on par with arrest and conviction numbers allows police to change their focus (to restitution rather than conviction for instance) without being penalized by the data. Right now, not arresting a person for a reported crime is a failure and police act accordingly.

In all of the suggested proposals above, there is a reliance on tracking data and numbers—of crimes known, reported, arrested, convicted and resolved. Anytime there is a focus on numbers, there is a concern that behavior shifts in order to improve perceptions of crime. Prior experience demonstrates that when police departments focus excessively on clearance rates, it has led to incentives to inaccurately report numbers or worse yet, falsely arrest people.[298] It is possible that false reporting would increase with a greater understanding of how low criminal accountability is nationwide. There is an argument that the temptation to

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[297] Kate Levine, *Who Shouldn't Prosecute the Police*, 101 IOWA L. REV. 1447, n.82 (2016)("Police officers investigate and arrest suspects, often without any input from the prosecutors who will eventually try the case"); Daniel Richman, *Prosecutors and Their Agents, Agents and Their Prosecutors*, 103 COLUM. L. REV. 749, 758 (2003) (describing the relationship of federal prosecutors and police as a "bilateral monopoly"; STEPHANOS BIBAS, THE MACHINERY OF CRIM. JUST. 32 (2012) ("Police decide whom, where, and what to investigate; whether and whom to arrest or issue citations; and whether and which charges to file. Sometimes they even decide whether to refer a case to federal or state prosecutors.").

[298] *See supra* Section I.C for further discussion.

fraudulently report arrests would increase if there was more of a focus on clearance rates. Even with these issues receiving limited attention, there have been reports of select police departments misrepresenting these numbers.[299] Indeed, there will always be a desire for police departments to protect local reputations by keeping crime rate statistics low and clearance rates high.[300] At the same time, we know that time and resources dedicated to solving cases increases the probability of an arrest.[301] How do we place an appropriate amount of attention on the fact that so few crimes are solved without creating improper police incentives to over arrest or fraudulently report numbers? The approach recommended here focuses on many numbers—besides clearance—as criminal accountability tracks known crimes to cases resolved. The hope is that by tracking the entire cycle of a crime (seven datapoints), we are able to track police effectiveness without having a *single metric* that police are punished for not improving. Police cannot increase clearance numbers falsely because conviction rates will be unnaturally low. Indeed—inflating numbers in one category will create problems in another category and will be harder to achieve. Police have to constantly improve reporting of crimes by improving their relationships with the community. The hope is that the full picture will result in several other data points (known crimes/conviction/case resolution) that will help improve police effectiveness without incentivizing misrepresentation of one category.

Tracking the entire cycle of the crime will also allow police to "solve" or resolve crimes without arrest. Police currently "clear" a case only by arresting someone and turning them over to prosecution. We know that police use discretion and arrest only a small amount of the time. Currently, police departments do not track cases resolved without an arrest and this can reflect negatively against a police department if a police officer decides not to arrest. Police should be able to track other crimes and report when they resolve cases by alternative means. These "case resolution" numbers are one way to incentivize police to openly report the cases they solve without resorting to arrest. This acknowledges that police can use mediation, restitution, referral to treatment, or other methods to address a crime.[302] The next step is settling on a measure of how effective police are at resolving

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[299] *Id.*

[300] Donald Cressey, *The State of Criminal Statistics*, 3 NAT'L PROBATION & PAROLE ASS'N J. 232 (1957) ("police have an obligation to protect the reputation of their cities, and when this cannot be done efficiently under existing legal and administrative machinery, it is sometimes accomplished statistically").

[301] GREENE, *supra* note 13 at 184; Steven Brandl & James Frank, *The Relationship Between Evidence, detective effort and the Disposition of Burglary and Robbery Investigations*, 13 AM. J. OF POLICE 149–68 (1994); similar findings for homicide see CHARLES WELLFORD & JAMES CRONIN, AN ANALYSIS OF VARIABLES AFFECTING THE CLEARANCE OF HOMICIDES: A MULTISTATE STUDY, JUSTICE RESEARCH AND STATISTICS ASSOCIATION (1999) (finding that the numbers of detectives assigned and the time taken to arrive at the scene and follow up on witnesses impacted clearance rates).

[302] *See supra* note 125–27 for further discussion.

crimes. Indirect measures including community and victim surveys and independent studies have been used successfully and may be an approach to consider.[303] If we stop measuring police simply by clearance, we may incentivize them to arrest and convict only when necessary and use creativity to resolve crimes. Careful tracking of all criminal accountability numbers—known crimes, reporting to police, arrest rates, clearance, conviction, imprisonment and crimes resolved at a local and national level is an important first step.

CONCLUSION

How effective are police at solving crime? It turns out, unfortunately, not very effective.[304] This may be the major contribution of this Article, providing a national review of police effectiveness for major crimes. People turn to police when they are victims of serious crime only about half the time, and much less often for some crimes.[305] Of the crimes we know about, police are able to arrest individuals on average about 10% of the time for major crimes committed, and convict individuals less than 2% of the time. In other words, police bring less than 2% of criminal defendants to criminal accountability for major crimes. The ranges of criminal accountability vary with the seriousness of the crime, with murder having the highest rate of accountability. At police's best, in some years, 40 to 52% of murders are getting away with their crimes.[306] With rape, individuals are getting away with it up to 90% of the time.[307] And property crimes are much worse with burglars getting away with it 97% of the time, robbers 94%, and those who commit larceny 99% of the time.[308] This lack of police effectiveness means people are getting away with serious crime and victims are suffering as a result.

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[303] MASLOV, *supra* note 38, at 2 (Some "indirect" measures of police include "surveys, direct observations of social behavior, situational studies and independent testing." "Measurements of police performance through public opinion polling include: 1) general questions on satisfaction with police and 2) specific questions on police performance. The general questions on satisfaction with police asked on surveys is supposed to be the simplest and quickest way to measure the overall level of satisfaction of citizens with the police. It is important to ask these types of questions because: a) they provide a quick indicator for the overall support for police among citizens; b) they carry implications for the support constituents give to police work; and c) a decrease in the perceived legitimacy of the police could potentially lead to non-compliance with the authority of the police and increased crime rates."). A few departments now use citizen satisfaction surveys on a regular basis, but most do not. *Id.* at 2.

[304] Police may certainly be effective at maintaining order and preventing crime, but these were not measured here.

[305] *See supra* Section II.A for discussion.

[306] See Table 6 in Appendix for sources and calculations. This considers the percentage of murders that do not result in a conviction.

[307] *Id.*

[308] *Id.*

This lack of criminal accountability can have devastating effects on victims and their families. Just the sheer number of victims of crime revealed in this Article should give us pause. In 2006, for instance, 20.7 million victims (98% of all victims),[309] received no resolution for the crime they endured.[310] Minority populations suffer most acutely since accountability is lowest in those populations.[311] Other effects include a lack of trust in the police and a self-perpetuating cycle of nonreporting—indeed as police solve less crime, individuals are less likely to turn to police which creates a problematic cycle.[312]

Low criminal accountability can also lead to a lack of public security and can threaten law and order.[313] This is certainly a concern of mine in revealing the crime accountability rates in this Article. Now that the public is aware of how easy it is to get away with crime, are they going to accept the dangerous invitation to perpetrate crime with the promise of going unnoticed? Although an attack on the conventional wisdom that police are largely effective in crime solving might be viewed by some as a dangerous invitation to criminals to attempt more criminality with the promise of going unnoticed, the reality is that these threats already exist, and continuing to ignore them is not good law or good policy.

So, how can we improve police effectiveness? Better tracking the full course of a crime—starting at reporting. First, scholars and policymakers need to have a critical conversation about the rates of low criminal accountability in the U.S. and our overall failure at measuring police effectiveness. Criminal accountability helps us track and consider the full picture of crime. The full accounting of police data as demonstrated above is disturbing, but considering these numbers is the first step in improving the effectiveness of police. Second, police departments should individually study why reporting rates are so low, and explore how to increase trust in the police. It is possible that the punitive nature of some police departments may prevent many from turning to police because they do not want to ruin the lives and future job prospects of their family or friends.[314] Third, the federal government should work with local governments to create uniform national recording of all crime metrics,[315] and uniform definitions of all points of criminal accountability—including clearance and crime resolution rates.[316] This includes tracking the entire cycle of a crime from when a crime is known to case resolution—with all seven datapoints recorded for each jurisdiction. With a focus on case resolution that does

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[309] *See supra* note 235 (exact calculation is 98.05% of victims and 20,749,770 million victims).

[310] *See supra* note 236.

[311] LEOVY, *supra* note 14, at 8 (discussing the disproportionate failure of the criminal justice system to solve black homicide); *see also supra* notes 7 and 15.

[312] *See supra* note 11 and 86.

[313] *See supra* note 86.

[314] *See supra* notes 119–22 and 129 for further discussion.

[315] This includes recording of the entire cycle of crime—known, reported, arrests, clearance, convictions and case resolutions with uniform definitions of each category.

[316] *See* Section I.D.4.

not involve arrest, police may focus on obtaining results for victims that do not necessarily involve conviction and punishment. Tracking the entire course of a crime helps us to better track police performance in hopes of one day improving police performance.