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**CYCLES OF THREAT:  
GRAHAM V. CONNOR, POLICE VIOLENCE, AND  
AFRICAN AMERICAN HEALTH INEQUITIES**

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ABSTRACT

*This Essay explores how Graham v. Connor and the policies it codified contribute to multiple and interacting levels of health inequities caused by police violence in African American communities. First, police violence leads to higher rates of deaths, physical injuries, and psychological harm among affected individuals. Second, police violence contributes to a general climate of fear, chronic stress, and lowered resistance to diseases in communities even among those not directly harmed by police. In addition, use of excessive force and hyperpolicing in African American communities reduce opportunities for employment, education, housing, and social integration for residents in those areas. The socioeconomic marginalization of these communities makes them breeding grounds for crime, which increases levels of policing and related violence. Finally, Graham illustrates how African Americans and other marginalized groups suffer from police violence through framing black health problems as crimes needing policing and punishment instead of as illnesses requiring treatment and other forms of public health interventions. From this perspective, African Americans with mental health problems, drug problems, and chronic diseases such as diabetes, as in the case of Dethorne Graham, are targets of police violence in communities with few health resources and high levels of policing.*

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CONTENTS

INTRODUCTION ..... 1049

    I. IMPACT OF POLICE VIOLENCE ON THE HEALTH OF  
        AFRICAN AMERICAN INDIVIDUALS AND COMMUNITIES..... 1049

    II. CRIMINALIZATION OF BLACK SICKNESS: MENTAL HEALTH  
        AND DRUG PROBLEMS..... 1056

    III. *GRAHAM V. CONNOR* AND THE CRIMINALIZATION OF  
        DIABETES ..... 1061

CONCLUSION..... 1066

## INTRODUCTION

In 1984, Charlotte police officer M.S. Connor stopped diabetic Dethorne Graham for “unusual” behavior while Graham was leaving a convenience store. The police officer prevented Graham, who was in the process of seeking relief from severe insulin imbalance, from showing his diabetic identification card and from drinking orange juice to alleviate his symptoms because the officer believed he was merely drunk. The police arrested Graham on grounds that he was acting suspiciously despite being unarmed and without any report or indication of a crime being committed. While he was in custody, the police severely injured Graham, who sustained a broken foot, cuts on his forehead and wrists, and an injured shoulder. Graham also stated that he developed a ringing in his right ear.<sup>1</sup>

To address his treatment at the hands of police, Graham sued five police officers and the City of Charlotte, arguing that the police violated his civil rights and subjected him to excessive force.<sup>2</sup> Graham did not prevail, and the Supreme Court not only affirmed the legitimacy of the police use of force but also allowed new interpretations and standards for assessing police violence using police perceptions as the standard by which use of force would be deemed a “reasonable” response to encounters with lay people.<sup>3</sup> As noted by other scholars,<sup>4</sup> use of these standards set the precedent for justifying numerous future cases of police use of force and violence against African Americans and other marginalized populations.<sup>5</sup> This Essay explores how *Graham v. Connor*<sup>6</sup> and the policies it codified contribute to the multiple levels of health inequities spurred by police violence in African American communities.

I. IMPACT OF POLICE VIOLENCE ON THE HEALTH OF  
AFRICAN AMERICAN INDIVIDUALS AND COMMUNITIES

This Essay adopts the World Health Organization’s definition of police violence as: “The intentional use of physical force or power, threatened or actual,

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<sup>1</sup> See *Graham v. Connor*, 490 U.S. 386, 390 (1989); Jill I. Brown, Comment, *Defining “Reasonable” Police Conduct: Graham v. Connor and Excessive Force During Arrest*, 38 UCLA L. REV. 1257, 1258 (1991).

<sup>2</sup> *Graham*, 490 U.S. at 390.

<sup>3</sup> *Id.* at 395.

<sup>4</sup> See, e.g., Osagie K. Obasogie & Zachary Newman, *Police Violence, Use of Force Policies, and Public Health*, 43 AM. J.L. & MED. 279, 287 (2017) (noting that *Graham* standard is used in many police department policies and provides for broad range of reasonable behaviors).

<sup>5</sup> See, e.g., Osagie K. Obasogie & Zachary Newman, *The Futile Fourth Amendment: Understanding Police Excessive Force Doctrine Through an Empirical Assessment of Graham v. Connor*, 112 NW. U. L. REV. 1465, 1479 (2018) (arguing that *Graham* is counterproductive because it hinders “sound police tactics and training”).

<sup>6</sup> 490 U.S. 386 (1989).

against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.”<sup>7</sup> The Essay also draws on the following 2018 policy statement by the American Public Health Association: “Consistent with domains of violence defined by the World Health Organization (WHO), law enforcement violence has been conceptualized to include physical, psychological, and sexual violence as well as neglect (i.e., failure to aid).”<sup>8</sup>

Police violence fuels health inequities in African American communities and other marginalized communities in a number of ways. First, police violence directly affects the rates of deaths and injuries among individuals.<sup>9</sup> African Americans are greatly overrepresented in police killings and in suffering direct physical harm from police encounters.<sup>10</sup>

A 2018 study reveals that past estimates of police killings are underrepresented.<sup>11</sup> This research shows that “[p]olice kill, on average, 2.8 men per day,” and that police “were responsible for about 8% of all homicides with adult male victims between 2012 and 2018.”<sup>12</sup> Moreover, it shows that the risk of African American men being killed by the police is more than three times that of white men, despite their much lower prevalence in the population.<sup>13</sup> African American men’s mortality risk is between 1.9 and 2.4 deaths per 100,000 per year, Latino men’s risk is between 0.8 and 1.2 deaths per 100,000 per year, and white men’s risk is between 0.6 and 0.7 deaths per 100,000 per year.<sup>14</sup>

However, police killings are just the tip of a much larger iceberg of harm caused by law enforcement officers. Research shows that from 2001 to 2014, emergency departments in hospitals treated 683,000 people for injuries caused by the police.<sup>15</sup> Research on the causes of injury for 51,668 emergency-department visits attributed to law enforcement interventions in 2012 showed

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<sup>7</sup> WORLD HEALTH ORG. [WHO], THE WORLD REPORT ON VIOLENCE AND HEALTH 1084 (Etienne G. Krug et al. eds., 2002), [https://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/en/](https://www.who.int/violence_injury_prevention/violence/world_report/en/) [<https://perma.cc/6F6L-D3ZU>].

<sup>8</sup> *Policy Statement 201811: Addressing Law Enforcement Violence as a Public Health Issue*, AM. PUB. HEALTH ASS’N (Nov. 13, 2018), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/29/law-enforcement-violence> [<https://perma.cc/RLT5-F52S>].

<sup>9</sup> See generally Justin M. Feldman et al., *Temporal Trends and Racial/Ethnic Inequalities for Legal Intervention Injuries Treated in Emergency Departments: US Men and Women Age 15-34, 2001-2014*, 93 J. URB. HEALTH 797 (2016).

<sup>10</sup> See generally Frank Edwards, Michael H. Esposito & Hedwig Lee, *Risk of Police-Involved Death by Race/Ethnicity and Place, United States, 2012-2018*, 108 AM. J. PUB. HEALTH 1241 (2018).

<sup>11</sup> *Id.* at 1241.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Feldman et al., *supra* note 9, at 799 tbl.1.

that the majority of injuries were caused by blows (39,556), followed by blunt objects (2160), tasers (1639), and firearms (1051).<sup>16</sup> In 5115 cases the causes were unspecified.<sup>17</sup> Feldman and colleagues' research also showed that for men aged fifteen to thirty-four years, the rate of emergency-department visits due to legal intervention is about equal to the number of pedestrians injured by cars in a given year.<sup>18</sup> These rates increased over time despite the constant rate of emergency-department visits for other assaults. In addition, African Americans compared to whites were 4.9 times more likely to experience police-related injuries.<sup>19</sup>

Aside from the risk of death and injury caused by police violence, a recent systematic review described significant associations between law enforcement encounters and a range of mental health problems, including anxiety, PTSD, psychotic experiences, psychological distress, depression, and suicidal ideation and attempts.<sup>20</sup> For example, police stops in Chicago resulted in high rates of hypervigilance in racial and ethnic minorities.<sup>21</sup> A majority of study participants (59%) had been directly or indirectly exposed to neighborhood violence and had been stopped by police (55%).<sup>22</sup> Almost one-fifth of participants (18%) reported experiencing traumatic police stops.<sup>23</sup> The mean hypervigilance score for the sample exceeded scores associated with clinical PTSD, indicating a high prevalence of trauma.<sup>24</sup> Exposure to police violence was associated with hypervigilance scores that were nearly twice those associated with exposure to community violence, while exposure to traumatic police stops (defined by participants as exposure to actual or threatened death or serious injury) was associated with even higher rates.<sup>25</sup> Scoring in the highest quartile of hypervigilance was associated with higher systolic blood pressure.<sup>26</sup>

Another study of 1543 adults in ten diverse Chicago communities showed that men reporting a high number of lifetime police stops have three times the risk of experiencing PTSD symptoms compared with men not reporting these encounters after adjusting for relevant social characteristics that could also

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<sup>16</sup> Ted. R. Miller et al., *Perils of Police Action: A Cautionary Tale from US Data Sets*, 23 *INJ. PREVENTION* 27, 28 tbl.1 (2017).

<sup>17</sup> *Id.*

<sup>18</sup> Feldman et al., *supra* note 15, at 806.

<sup>19</sup> *Id.* at 799 tbl.1.

<sup>20</sup> Melissa N. McLeod et al., *Police Interactions and the Mental Health of Black Americans: A Systematic Review*, 7 *J. RACIAL & ETHNIC HEALTH DISPARITIES* 10, 11 (2020).

<sup>21</sup> Nicole A. Smith et al., *Keeping Your Guard Up: Hypervigilance Among Urban Residents Affected by Community and Police Violence*, 38 *HEALTH AFF.* 1662, 1666 (2019).

<sup>22</sup> *Id.* at 1665 exhibit 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1666.

<sup>25</sup> *See id.* at 1666 exhibit 3.

<sup>26</sup> *Id.* at 1667 exhibit 4.

influence the onset of PTSD (e.g., age, race/ethnicity, education, history of homelessness, prior diagnosis of PTSD, and neighborhood violent crime rate).<sup>27</sup> Women reporting a high number of lifetime police stops have twice the odds of experiencing current PTSD symptoms, although the results are not statistically significant after adjusting for relevant social characteristics.<sup>28</sup> Similar findings were reported from research conducted in New York City, where a study of 1261 young men showed that participants who reported more contacts with the police were also more likely to report high levels of trauma and anxiety symptoms that were related to the invasiveness of police encounters and to perceptions of police fairness.<sup>29</sup>

Research on police victimization among adults in four U.S. cities (Baltimore, New York, Philadelphia, and Washington, D.C.) confirms and expands upon findings that police violence is associated with major mental health consequences.<sup>30</sup> Findings from analyses based on this research show that each dimension of police victimization of civilians (physical, sexual, psychological, and neglect) was associated with depression, psychological distress, and psychotic experiences by respondents.<sup>31</sup> Additionally, the odds of suicide attempts were greatly elevated among participants who indicated that police physically assaulted them, especially sexually or with weapons.<sup>32</sup>

Findings from the above studies are especially significant because research has shown that large numbers of people, especially in low-income communities and minority communities, are subject to police stops that often involve being searched or exposed to threats and police violence. For example, between 2004

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<sup>27</sup> J.L. Hirschtick et al., *Persistent and Aggressive Interactions with the Police: Potential Mental Health Implications*, 29 EPIDEMIOLOGY & PSYCHIATRIC SCI. 1, 1 (2020) (“Men reporting a high number of lifetime police stops have three times greater odds of current PTSD symptoms compared with men who did not report high lifetime police stops.”).

<sup>28</sup> *Id.*

<sup>29</sup> Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321, 2324 (2014) (“[S]top intrusion was a significant predictor of PTSD, with more invasive stops predicting higher levels of trauma.”).

<sup>30</sup> J.E. DeVlyder et al., *Prevalence, Demographic Variation and Psychological Correlates of Exposure to Police Victimization in Four US Cities*, 26 EPIDEMIOLOGY & PSYCHIATRIC SCI. 466, 475 (2017).

<sup>31</sup> *Id.* at 474 (“All indicators of police victimisation exposure were associated with both of our clinical outcome measures (i.e., depression and psychological distress.”); Jordan E. DeVlyder et al., *Psychotic Experiences in the Context of Police Victimization: Data from the Survey of Police-Public Encounters*, 43 SCHIZOPHRENIA BULL. 993, 995, 996 tbl.1 (2017) (detailing increased prevalence of psychotic experiences after police victimization).

<sup>32</sup> Jordan E. DeVlyder et al., *Elevated Prevalence of Suicide Attempts Among Victims of Police Violence in the USA*, 94 J. URB. HEALTH 629, 629 (2017) (“[O]dds of [suicide] attempts were greatly increased for respondents reporting assaultive forms of victimization, including physical victimization (odds ratio = 4.5), physical victimization with a weapon (odds ratio = 10.7), and sexual victimization (odds ratio = 10.2).”).

and 2012, more than four million *Terry* stops—better known as “stop and frisks”—were conducted in New York City alone.<sup>33</sup> Data from the New York Civil Liberties Union for 2011—the peak year for these stops—showed that of 685,724 pedestrian stops, nearly 90% involved either African Americans or Latinos, over 55% involved frisking, and over 20% involved police use of physical force.<sup>34</sup> In addition, the Bureau of Justice Statistics reported that 53.5 million (21.1%) U.S. residents age sixteen or older had experienced contact with the police in the twelve months prior to the 2015 Police-Public Contact Survey.<sup>35</sup> The same report recorded that 1.8% of the population (representing 985,300 people) experienced police threats and/or use of force.<sup>36</sup> Within this group, African Americans reported a rate almost three times higher than their white counterparts.<sup>37</sup> These types of harsh encounters with police may trigger stigma, stress responses, and depressive symptoms.<sup>38</sup>

In addition to the harm experienced by individuals, other data show that indirect exposure to police violence worsens the physical and mental health of communities. Several basic mechanisms have been discussed to account for the toll that police violence takes on neighborhoods as a whole apart from individuals’ direct experience with police violence. Invasive encounters with the police, such as through *Terry* stops, contribute to a widespread climate of fear in affected areas, which can activate psychological symptoms even in people not specifically targeted by police.<sup>39</sup> In addition, hyperpolicing in communities leads to chronic stress, heightened coping behavior, earlier aging, and an increased allostatic load that lowers resistance to disease and increases physiological strain among community members.<sup>40</sup> The targeting of minority communities by police is also perceived as a blatant form of discrimination and unfair treatment that is linked with higher rates of disease.<sup>41</sup>

The findings of recent research on the burden of disease in communities affected by police violence bear out some of these assumptions. A study of

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<sup>33</sup> Second Supplemental Report of Jeffrey Fagan, Ph.D. at 10 tbl.1, *Floyd v. City of New York*, No. 08 Civ. 01034 (SAS) (S.D.N.Y. Oct. 15, 2010).

<sup>34</sup> Abigail A. Sewell & Kevin A. Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J. URB. HEALTH S42, S42 (2016).

<sup>35</sup> ELIZABETH DAVIS, ANTHONY WHYDE & LYNN LANGTON, U.S. DOJ, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2015, at 1 (2018), <https://www.bjs.gov/content/pub/pdf/cpp15.pdf> [<https://perma.cc/6SDQ-MSXE>].

<sup>36</sup> *Id.* at 16.

<sup>37</sup> *Id.* at 16 tbl.18.

<sup>38</sup> Bruce G. Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 ANN. REV. SOC. 363, 374 (2001).

<sup>39</sup> Sewell & Jefferson, *supra* note 34, at S43 (“Invasive encounters can operate as ecological stressors and contribute to a ‘climate of fear’ among persons living in areas inundated by SQF practices.” (footnote omitted)).

<sup>40</sup> *Id.* (detailing “costs of coping” for those living in highly policed neighborhoods).

<sup>41</sup> *See id.* (noting limited disease resistance of those living in highly policed areas).

pregnant African American women revealed that anticipation of negative police encounters with youth predicted depression symptoms among this group.<sup>42</sup> In addition, police killings were significantly associated with syphilis and gonorrhea rates among African American residents in seventy-five large metropolitan areas in the United States.<sup>43</sup> In 2015, each additional police killing was associated with syphilis and gonorrhea rates that were 7.5% and 4.0% higher, respectively, in 2016.<sup>44</sup> Similarly, Sewell and Jefferson found that in neighborhoods where *Terry* stops were more likely to culminate in frisking, “the prevalence of poor/fair health, diabetes, high blood pressure, past year asthma episodes, and heavier body weights is higher.”<sup>45</sup>

Professor Jacob Bor and colleagues reported that police killings of unarmed African Americans could lead to 1.7 additional poor-mental-health days per person per year—or fifty-five million additional poor-mental-health days per year among African American adults in the United States.<sup>46</sup> These authors concluded that the mental health burden from police killings among African Americans is almost as large as the mental health burden associated with diabetes.<sup>47</sup> These kinds of findings support the notion that African American communities experience collective stress, suffering, and trauma associated with being close to people killed by the police and witnessing police violence in the media.

Although little research has addressed this topic, police violence, use of excessive force, and hyperpolicing can be considered key drivers of the social determinants of health with far-reaching impacts on the economic, political, and social factors that shape health outcomes in communities and populations.<sup>48</sup> The social determinants of health include factors that greatly influence the health and longevity of populations, such as employment, education, housing,

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<sup>42</sup> Fleda Mask Jackson et al., *Anticipated Negative Police-Youth Encounters and Depressive Symptoms Among Pregnant African American Women: A Brief Report*, 94 J. URB. HEALTH 259, 262 (2017).

<sup>43</sup> Umedjon Ibragimov et al., *Police Killings of Black People and Rates of Sexually Transmitted Infections: A Cross-Sectional Analysis of 75 Large US Metropolitan Areas, 2016*, SEXUALLY TRANSMITTED INFECTIONS, Aug. 23, 2019, at 1, 1.

<sup>44</sup> *Id.*

<sup>45</sup> Sewell & Jefferson, *supra* note 34, at S54.

<sup>46</sup> Jacob Bor et al., *Police Killings and Their Spillover Effects on the Mental Health of Black Americans: A Population-Based, Quasi-experimental Study*, 392 LANCET 302, 308 (2018).

<sup>47</sup> *Id.* at 306.

<sup>48</sup> Vickie M. Mays, Susan D. Cochran & Namdi W. Barnes, *Race, Race-Based Discrimination, and Health Outcomes Among African Americans*, 58 ANN. REV. PSYCHOL. 201, 213 (2007).



neighborhood characteristics, income level, social integration or marginality, and access to medical care.<sup>49</sup>

Deaths, injuries, disability, and community-level disease and stress from police violence hamper the ability of families and communities to have gainful employment, secure good housing and schools, engage in political and civic life, acquire healthy foods, engage in healthy activity, and provide healthy and supportive environments for having and raising children—all of which are cornerstones for creating healthy individuals and communities. For example, statistics reported by the Centers for Disease Control suggest that the economic consequences of police violence are severe.<sup>50</sup> They estimate that for 2010, the overall cost of killings and injuries at the hands of police was \$1.8 billion as a result of medical expenditures and inability to work.<sup>51</sup>

Another researcher noted that police violence affects the economic productivity of African American community members “because loved ones take time away from paid work to grieve, plan and attend funerals, and organize protests.”<sup>52</sup> In addition, police encounters have been linked with distrust in government, lower levels of voting and civic engagement,<sup>53</sup> and higher levels of crime.<sup>54</sup> Police violence also contributes to neighborhood fragmentation,<sup>55</sup> perceptions of second-class citizenship on the part of African Americans,<sup>56</sup> and an overall climate of fear.

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<sup>49</sup> Office of Disease Prevention and Health Promotion, *Social Determinants of Health*, HEALTHYPEOPLE.GOV, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health> [<https://perma.cc/JD83-HXUE>] (last updated Apr. 11, 2020).

<sup>50</sup> *Cost of Injury Data*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/injury/wisqars/cost/index.html> [<https://perma.cc/48TL-9SJ4>] (last updated Mar. 30, 2020).

<sup>51</sup> *See id.*

<sup>52</sup> Sirry Alang et al., Commentary, *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662, 663 (2017) (discussing why and how police violence negatively impacts community’s productivity).

<sup>53</sup> Vesler M. Weaver & Amy E. Lerman, *Political Consequences of the Carceral State*, 104 AM. POL. SCI. REV. 817, 817-25 (2010) (highlighting effect of police violence on civic engagement).

<sup>54</sup> Susan A. Bandes et al., *The Mismeasure of Terry Stops: Assessing the Psychological and Emotional Harms of Stop and Frisk to Individuals and Communities*, 37 BEHAV. SCI. & L. 176, 184 (2019).

<sup>55</sup> Marisela B. Gomez, *Policing, Community Fragmentation, and Public Health: Observations from Baltimore*, 93 J. URB. HEALTH S154, S154-60 (2016) (“Community fragmentation, or lack of social cohesion, can result from many processes and is associated with poor health. One process that may be linked to community fragmentation and ill health is violent policing.” (footnotes omitted)).

<sup>56</sup> *See* Bandes et al., *supra* note 54, at 184-86 (positing effect of *Terry* stops as reducing societal status of African Americans).

From this perspective, high levels of intrusive policing and police violence constitute another important stressor that exacerbates health, economic, and social problems in neighborhoods already suffering from a range of these problems. These neighborhoods often lack green space, full-service grocery stores, and adequate health care resources and may be polluted and blighted.<sup>57</sup> And of critical importance for this analysis, many residents in these areas are suffering from chronic diseases, like diabetes and hypertension; infectious diseases, such as HIV; and untreated addictions and mental health problems.<sup>58</sup> These rates often greatly exceed those experienced by white Americans and affluent Americans.

## II. CRIMINALIZATION OF BLACK SICKNESS: MENTAL HEALTH AND DRUG PROBLEMS

*Graham* also illustrates how African Americans and other marginalized groups suffer from police violence through the criminalization of black health problems. The criminalization of black disease refers to the framing of black health problems as crimes needing policing and punishment instead of as illnesses requiring treatment and other forms of public health interventions. This process is part of a broader criminalization of black life evident in the targeting of black people for carrying out normal routines of life—for example, driving while black, sleeping while black, barbecuing while black, and attending church while black.<sup>59</sup> Structural racism and discrimination have led to blighted

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<sup>57</sup> David R. Williams & Pamela Braboy Jackson, *Social Sources of Racial Disparities in Health*, 24 HEALTH AFF. 312, 325-34 (2005).

<sup>58</sup> See *National Vital Statistics System*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/nchs/nvss/index.htm> [https://perma.cc/3PAA-GZGD] (last updated Apr. 3, 2020). See generally JONAKI BOSE ET AL., SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., KEY SUBSTANCE ABUSE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2017 NATIONAL SURVEY ON DRUG USE AND HEALTH (2018), <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHFFR2017/NSDUHFFR2017.pdf> [https://perma.cc/N9A9-6XEY]; CTRS. FOR DISEASE CONTROL & PREVENTION, 29 HIV SURVEILLANCE REPORT: DIAGNOSES OF HIV INFECTION IN THE UNITED STATES AND DEPENDENT AREAS, 2017 (2018), <https://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-report-2017-vol-29.pdf> [https://perma.cc/9V3R-HEH4]; SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., RACIAL/ETHNIC DIFFERENCES IN MENTAL HEALTH SERVICE USE AMONG ADULTS (2015), <https://www.samhsa.gov/data/sites/default/files/MHServicesUseAmongAdults/MHServicesUseAmongAdults.pdf> [https://perma.cc/7K5U-ETA2].

<sup>59</sup> Roberto E. Barrios, *You Found Us Doing This, This Is Our Way: Criminalizing Second Lines, Super Sunday, and Habitus in Post-Katrina New Orleans*, 17 IDENTITIES 586, 586-90 (2010) (describing attempts to criminalize everyday actions taken by African Americans); David A. Harris, *The Stories, the Statistics, and the Law: Why "Driving While Black" Matters*, 84 MINN. L. REV. 265, 265 (1999) (same); see also Keith Ellison, *Opinion, The Link Between Police Tactics and Economic Conditions Cannot Be Ignored*, THE GUARDIAN

neighborhoods, where high rates of unemployment, poor housing stock, limited social amenities, and toxic environmental exposures create unsafe areas that can be a breeding ground for crime.<sup>60</sup> The response to this kind of structural racism has been the increasing transformation of societal resources and support, such as social services, health care, and community development, into greater criminal justice surveillance, targeting, and punishment. Economic resources have been used to build up policing, jail, and prison systems rather than to provide increased economic development, educational opportunities, and other human services for these neighborhoods.<sup>61</sup>

Within this context, existing research has described how individuals from African American communities and poor communities suffering from mental illness and drug problems or addiction are much more likely to be killed and injured by police than are others. People with mental illnesses are at especially high risk for experiencing police violence. Studies show that between one-quarter and one-half of all people killed by the police suffered from mental illness, which is a rate at least sixteen times higher than for other civilians.<sup>62</sup> In addition, mentally ill people are three times more likely to be incarcerated in

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(June 8, 2015 8:15 AM), <https://www.theguardian.com/commentisfree/2015/jun/08/police-tactics-economic-conditions-republican-policies> [<https://perma.cc/C92L-ZACN>]; David Greising, Opinion, *In Chicago, Even Going to Church While Black Can Be Dangerous*, CHI. TRIB. (Feb. 11, 2019, 3:30 PM), <https://www.chicagotribune.com/opinion/commentary/ct-persec-cpd-consent-decree-police-racial-bias-harassment-greising-0212-20190211-story.html>; Carla Herreria Russo, *Woman Calls Police on Black Family for BBQing at a Lake in Oakland*, HUFFPOST (May 11, 2018, 10:24 AM), [https://www.huffpost.com/entry/woman-calls-police-oakland-barbecue\\_n\\_5af50125e4b00d7e4c18f741](https://www.huffpost.com/entry/woman-calls-police-oakland-barbecue_n_5af50125e4b00d7e4c18f741) [<https://perma.cc/RUT9-A6ZZ>]; Cleve R. Wootson Jr., *A Black Yale Student Fell Asleep in Her Dorm's Common Room. A White Student Called Police.*, WASH. POST (May 11, 2018, 8:07 AM), <https://www.washingtonpost.com/news/grade-point/wp/2018/05/10/a-black-yale-student-fell-asleep-in-her-dorms-common-room-a-white-student-called-police/>.

<sup>60</sup> Zinzi D. Bailey et al., *Structural Racism and Health Inequities in the USA: Evidence and Interventions*, 389 LANCET 1453, 1453-63 (2017) (discussing impact of structural inequalities on public health); Lauren J. Krivo, Ruth D. Peterson & Danielle C. Kuhl, *Segregation, Racial Structure, and Neighborhood Violent Crime*, 114 AM. J. SOC. 1765, 1766-802 (2009) (discussing how structural inequality causes increased crime in marginalized neighborhoods).

<sup>61</sup> See Ellison, *supra* note 59.

<sup>62</sup> Emma Frankham, *Mental Illness Affects Police Fatal Shootings*, CONTEXTS, Spring 2018, at 70, 70-72 (comparing police-shooting data with mental illness status of victims). See generally DORIS A. FULLER ET AL., TREATMENT ADVOCACY CTR., OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS (2015), <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf> [<https://perma.cc/5KDE-QWLC>].

jails or prisons than to be hospitalized. In some states, rates of incarceration versus those of hospitalization are tenfold.<sup>63</sup>

African Americans with mental illnesses are especially vulnerable. Impoverished African Americans and Hispanics suffer much higher rates of psychological distress for which they are far less likely to receive treatment.<sup>64</sup> Their encounters with police often end with them being fatally injured. For example, one news report describes a series of tragic deaths among African Americans that occurred at the hands of the police in just the past year:

The list of black deaths is so long. This past May, Pamela Turner, a 44-year-old black woman experiencing a mental health crisis was shot and killed by police in Texas. In Oklahoma this past April, 17-year-old Isaiah Lewis, also naked and in a mental health crisis, was shot and killed by police. This past June, Taun Hall called 911 for support with her 23-year-old-son, Miles, who had a mental illness. Police shot and killed him.<sup>65</sup>

The report concludes that “no single group of people is more likely to be killed by police than young black boys and men — registering even higher than white people with mental illnesses. Consequently, young black men with mental illnesses are in the single most at-risk category in the nation for fatal police violence.”<sup>66</sup>

Although drug addiction and other drug problems are recognized as complex public health issues by researchers in the field, the primary governmental response to addressing illicit drug use and sales in the United States has been to promote a “War on Drugs” that criminalizes individuals and disproportionately targets ethnic minorities and other vulnerable populations.<sup>67</sup> Not only has this framing intensified drug problems, but it has also led scholars to argue that the

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<sup>63</sup> See generally E. FULLER TORREY ET AL., TREATMENT ADVOCACY CTR. & NAT’L SHERIFFS’ ASS’N, MORE MENTALLY ILL PERSONS ARE IN JAILS AND PRISONS THAN HOSPITALS: A SURVEY OF THE STATES (2010), [https://www.treatmentadvocacycenter.org/storage/documents/final\\_jails\\_v\\_hospitals\\_study.pdf](https://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf) [<https://perma.cc/AB7F-SN8V>].

<sup>64</sup> Charles Brooks, *System Stacked Against Minorities with Mental Illness*, TREATMENT ADVOC. CTR. (July 22, 2014), <https://www.treatmentadvocacycenter.org/fixing-the-system/features-and-news/2593> [<https://perma.cc/7CSS-VYBA>].

<sup>65</sup> Shaun King, *If You Are Black and in a Mental Health Crisis, 911 Can Be a Death Sentence*, THE INTERCEPT (Sept. 29, 2019, 8:00 AM), <https://theintercept.com/2019/09/29/police-shootings-mental-health/> [<https://perma.cc/JA36-5PMM>] (positing existence of trend between black families calling 911 for mental-health-related crises and police violence).

<sup>66</sup> *Id.*

<sup>67</sup> See, e.g., James F. Mosher & Karen L. Yanagisako, *Public Health, Not Social Warfare: A Public Health Approach to Illegal Drug Policy*, 12 J. PUB. HEALTH POL’Y 278, 281 (1991) (“Drugs used by disfavored ethnic and racial populations are the most likely target for symbolic action, while drugs favored by the majority are likely to remain exempt.”).

“War on Drugs” is a “war on the disenfranchised, people of color, the poor, the homeless and the unemployed.”<sup>68</sup>

The two major waves of the American War on Drugs have been associated with challenges to civil rights, expansion of police power and resources, and heightened criminal justice activity. In the late 1980s, arrests and convictions for illicit drug offenses increased dramatically, while health data at the time indicated that illegal drug use had declined substantially.<sup>69</sup> In addition, there were twice as many arrests for drug-related offenses than there were admissions for drug-dependence treatment.<sup>70</sup> Overall arrests for drug possession increased threefold (from 500,000 to 1.5 million) between 1982 and 2007.<sup>71</sup> In addition, drug offenses accounted for most of the steep rise in U.S. federal prisoners and state prisoners between 1985 and 2000.<sup>72</sup> Currently, drug arrests constitute the largest category of arrests in the United States.<sup>73</sup>

African Americans are much more likely to be arrested and incarcerated for drug violations than are whites despite using drugs at similar rates.<sup>74</sup> Rates of incarceration for drug violations among African Americans are six to ten times those for whites, and staggering proportions of young black males (over 50%) in large U.S. cities are under control of the criminal justice system.<sup>75</sup> While these men are overpoliced and overincarcerated, they are far less likely to receive drug-related treatment, and if they do, the main treatment option for opioid addiction is methadone maintenance, which is highly stigmatized and under heavy surveillance by the DEA.<sup>76</sup>

War on Drugs tactics include pervasive policing strategies, which have increased the level of police violence experienced by poor communities and minority communities. *Terry* stops proliferated during the War on Drugs, particularly among African American and Hispanic communities, totaling about five million stops between 2002 and 2014 in New York City alone.<sup>77</sup> These stops often involve invasive, discriminatory, and traumatic elements, and they are

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<sup>68</sup> *Id.* at 278.

<sup>69</sup> *Id.* at 293.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Julia Netherland & Helena B. Hansen, *The War on Drugs That Wasn't: Wasted Whiteness, "Dirty Doctors," and Race in Media Coverage of Prescription Opioid Misuse*, 40 *CULTURE MED. & PSYCHIATRY* 664, 669 (2016).

<sup>73</sup> Mona Lynch, *Theorizing the Role of the 'War on Drugs' in US Punishment*, 16 *THEORETICAL CRIMINOLOGY* 175, 186 (2012).

<sup>74</sup> See, e.g., Mosher & Yanagisako, *supra* note 67, at 293; see also Netherland & Hansen, *supra* note 72, at 669.

<sup>75</sup> See Netherland & Hansen, *supra* note 72, at 669.

<sup>76</sup> See *id.*

<sup>77</sup> Hannah L.F. Cooper, *War on Drugs Policing and Police Brutality*, 50 *SUBSTANCE USE & MISUSE* 1188-94 (2015).

associated with a wide range of mental health problems and physical health problems both at the individual level and at the community level.<sup>78</sup> African Americans and Hispanics are greatly overrepresented in these stops, comprising over 80% of those detained by the police.<sup>79</sup>

In addition to *Terry* stops, the War on Drugs has been associated with the repurposing and expansion of SWAT teams. Where these teams were formerly used to deal with isolated hostage situations and terrorist attacks, they are now deployed about 40,000 times a year to serve warrants for drug offenses, often for low-level drug possession.<sup>80</sup> SWAT raids resemble the military attacks for which they were designed, except they are currently used to arrest suspects residing in private homes in residential communities.<sup>81</sup> As described in one account, SWAT teams' actions appear innately violent and are likely to cause psychological and other types of health problems:

These teams typically serve warrants late at night, when the target and the rest of his/her family/household are sleeping, and enter the home without warning (i.e., "no-knock warrants"). During these nighttime raids, SWAT teams may be heavily armed and use battering rams to enter the home, diversionary grenades, and other urban warfare tactics.<sup>82</sup>

The War on Drugs has also resulted in "drug crackdowns" using rapidly initiated, targeted, and sustained efforts to conduct surveillance and arrests of drug users and street-level sellers.<sup>83</sup> These drug sweeps and crackdowns deployed hundreds of law enforcement officers in urban communities for up to two years.<sup>84</sup> They often resulted in physical, verbal, and sexual abuse of community residents who found themselves in areas labeled as drug "hot spots" while engaged in mundane activities, such as shopping, going to school, or taking the subway.<sup>85</sup> Residents with HIV and injection drug users were particularly vulnerable to police violence in these areas.<sup>86</sup>

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<sup>78</sup> See *supra* Part I (reviewing impact of police violence on African American communities).

<sup>79</sup> See *supra* notes 33-38 (describing data from studies on *Terry* stops).

<sup>80</sup> See Cooper, *supra* note 77, at 1191 (discussing evolution of purpose of SWAT teams).

<sup>81</sup> See *id.* (discussing ACLU's analysis of SWAT team drug raids, which indicated that "SWAT teams violently invade the homes of many innocent families").

<sup>82</sup> See *id.* (citation omitted) (citing RADLEY BALKO, CATO INST., OVERKILL: THE RISE OF PARAMILITARY POLICE RAIDS IN AMERICA (2006), [https://www.cato.org/sites/cato.org/files/pubs/pdf/balko\\_whitepaper\\_2006.pdf](https://www.cato.org/sites/cato.org/files/pubs/pdf/balko_whitepaper_2006.pdf) [<https://perma.cc/F7J2-GGHL>]).

<sup>83</sup> Hannah Cooper et al., *Characterizing Perceived Police Violence: Implications for Public Health*, 94 AM. J. PUB. HEALTH 1109, 1110 (2004).

<sup>84</sup> See *id.* at 1109-18.

<sup>85</sup> *Id.* at 1114.

<sup>86</sup> See *id.* at 1109 (discussing study in which participants, particularly injection drug users, reported cases of police violence).

In contrast to the criminalization and incarceration of a substantial proportion of the African American population for using drugs or committing low-level drug offenses, the current opioid addiction crisis engulfing white suburban neighborhoods is viewed primarily as a health problem.<sup>87</sup> From this perspective, opioid addiction (both the abuse of prescription medication and the abuse of heroin) has been framed as a medical problem that requires support and treatment for users; penalizes drug companies and “dirty doctors” (often immigrants and people of color) as the source of the problem instead of individual drug users; devotes vast amounts of public resources to treatment, crisis intervention, and research to address the issue; and portrays users in a highly sympathetic light as “victims” whose promise and potential has been eclipsed by unscrupulous doctors or unfortunate social circumstances.<sup>88</sup> Instead of arresting and incarcerating these individuals, law enforcement officers and first responders are equipped with lifesaving drugs to reverse overdoses and prolong lives. In addition, private physicians give these illicit opiate users drugs with some of the same properties as methadone but without the heavy DEA surveillance and restrictions suffered by poor racial and ethnic minorities.<sup>89</sup>

### III. *GRAHAM V. CONNOR* AND THE CRIMINALIZATION OF DIABETES

Compared to the literature on the impact of police violence on people suffering from mental illness and drug problems, research on police brutality’s effect on other chronic diseases, such as diabetes, is practically nonexistent. However, Graham’s encounter with the police is far from unique.<sup>90</sup> A recent newspaper article indicates that a number of people with diabetes have been treated with hostility, severely injured, or killed by police because they displayed symptoms of illness.<sup>91</sup> For example, when a man named Roberson had a diabetic insulin crisis, his fiancée called 911 to get emergency medical help.<sup>92</sup> However, when police arrived on the scene, they shot and killed Roberson and later reported that he posed a threat because he was brandishing a knife. The family

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<sup>87</sup> See Netherland & Hansen, *supra* note 72, at 666 (analyzing how white opioid users and nonwhite heroin users receive “different public responses and policy interventions”).

<sup>88</sup> *Id.* at 668-69.

<sup>89</sup> See *id.* at 669 (stating that African American drug users “are more likely than their white counterparts to receive methadone, under DEA surveillance in stigmatized methadone clinics, than to receive buprenorphine, which is pharmacologically similar to methadone but can be prescribed in the privacy of a doctor’s office and taken at home”).

<sup>90</sup> *Graham v. Connor*, 490 U.S. 386, 388-90 (1989).

<sup>91</sup> Radley Balko, *Cops vs. Diabetics*, WASH. POST (June 20, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/06/20/cops-vs-diabetics/>.

<sup>92</sup> *Georgia Police Kill Diabetic Man After Family Calls 911 for Ambulance*, NEWSONE (Oct. 8, 2013), <https://newsone.com/2735867/jack-lamar-roberson-waycross-georgia-police/> [<https://perma.cc/2H3T-298M>].

disputed that account.<sup>93</sup> In another case, police attacked a sixty-seven-year-old man named Miguel Angel Llamas, forcefully slamming and injuring him because they thought that the insulin he was attempting to inject was heroin.<sup>94</sup> Similarly, Eric Griglen, a fifty-seven-year-old Navy veteran, began experiencing a diabetic crisis while driving.<sup>95</sup> Police stopped him and believed that he was intoxicated or high on drugs and that the insulin pump attached to his waist was a weapon.<sup>96</sup> Police then beat Griglen severely, delivering blows to his upper chest, near the base of his neck, and to his head.<sup>97</sup> Afterwards, Griglen went into a coma and subsequently died.<sup>98</sup> In a string of similar cases, diabetic police-brutality victims described severe harms, including being beaten, bruised, tased, cut, and slammed against objects; having bones broken; and being denied medications.<sup>99</sup>

Problems with law enforcement's mistreatment of people with diabetes are so prevalent that the American Diabetes Association posted the following statement on its website<sup>100</sup>:

People with diabetes have the right to be treated equally in all areas of life, including in the criminal justice system. Unfortunately, this does not always happen. The following situations are of great concern to the American Diabetes Association:

- Law enforcement officers failing to identify hypoglycemia emergencies, mistaking them for intoxication or noncompliance. This can lead to the individual being seriously injured during the arrest, or even passing away because the need for medical care was not recognized in time.
- Individuals in short-term custody, for example, in police stations or jails before being charged with a crime, are denied

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<sup>93</sup> *Id.*

<sup>94</sup> Stephanie Rivera, *Diabetic Man, 67, Files Lawsuit Against Long Beach Police Who Confused Insulin Injection for Heroin*, LONG BEACH POST NEWS (June 22, 2016, 7:17 PM), <https://lbpost.com/news/diabetic-man-67-files-lawsuit-against-long-beach-police-who-confused-insulin-injection-for-heroin> [<https://perma.cc/YC6P-XGTH>].

<sup>95</sup> Maria Nikias, *Police Beat Man in Diabetic Shock – and Nevada City Pays for It*, ABC NEWS (Feb. 8, 2012), <https://abcnews.go.com/blogs/headlines/2012/02/police-beat-man-in-diabetic-shock-and-nevada-city-pays-for-it/> [<https://perma.cc/94EZ-5HDB>].

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> See Balko, *supra* note 91 (detailing encounters between diabetics and police that became violent).

<sup>100</sup> *Law Enforcement*, AM. DIABETES ASS'N, <https://www.diabetes.org/resources/your-rights/discrimination/rights-with-law-enforcement> [<https://perma.cc/2HF7-NEHM>] (last visited Apr. 11, 2020) (providing information and resources for diabetics experiencing unfair treatment within criminal justice system).



all diabetes care, resulting in severe complications like diabetic ketoacidosis, which can develop in a matter of hours.

- Individuals serving their sentences receive inadequate care and develop serious complications like blindness, kidney failure, and loss of limbs as a result.<sup>101</sup>

To address these inequities, the Association website recommends that patients know their rights and provides resources for patient self-care, filing lawsuits, and educating police and first responders about recognizing diabetes symptoms and providing proper care.<sup>102</sup> The Association also focuses heavily on training law enforcement personnel to intervene in the violent treatment that diabetics often suffer at the hands of police.<sup>103</sup>

The most widely accepted explanation for why people with diabetes experience police violence is that symptoms of the disease mimic behavior associated with being under the influence of alcohol or drugs. Hypoglycemia (low blood sugar) can occur when the ratio of insulin to blood sugar is out of balance.<sup>104</sup> Symptoms of mild to moderate hypoglycemia include shakiness, fatigue, anxiety, sweating, and irritability. More severe symptoms of hypoglycemia include confusion, abnormal behavior, or a combination of both, “such as the inability to complete routine tasks,” as well as problems with eyesight, such as blurred vision, seizures, and loss of consciousness.<sup>105</sup>

When police encounter people with diabetes displaying some of the above symptoms, they often assume that such persons are drunk or high on drugs. In addition, if diabetics act irritably or are unresponsive or unable to complete police commands, police may assume they are belligerent or noncompliant. This was the case for Dethorne Graham when police assumed he was drunk, not ill.<sup>106</sup> Similar circumstances have been reported in a number of other cases.<sup>107</sup> For example, seventy-year-old Thomas Mathieu was severely beaten by police after he fell into diabetic shock while driving.<sup>108</sup> Mathieu was unresponsive when police ordered him out of his car, after which they proceeded to punch him in

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<sup>101</sup> *Id.*

<sup>102</sup> *See id.*

<sup>103</sup> *Law Enforcement Training*, AM. DIABETES ASS'N, <https://www.diabetes.org/resources/know-your-rights/discrimination/rights-with-law-enforcement/law-enforcement-training> [<https://perma.cc/XVM3-6BQP>] (last visited Apr. 11, 2020) (describing available law enforcement training resources on responding to diabetic episodes and distinguishing between hypoglycemia and intoxication).

<sup>104</sup> *See Hypoglycemia*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/hypoglycemia/symptoms-causes/syc-20373685?p=1> [<https://perma.cc/ASU7-XTBQ>] (last visited Apr. 11, 2020).

<sup>105</sup> *Id.*

<sup>106</sup> *Graham v. Connor*, 490 U.S. 386, 388-90 (1989).

<sup>107</sup> *See Balko*, *supra* note 91 (collecting cases).

<sup>108</sup> *See id.*

the face and beat him until he was lying face down on the ground.<sup>109</sup> They questioned him about his drinking and asked why he'd been sleeping behind the wheel; it was a full minute later that an officer asked him if he was a diabetic.<sup>110</sup> Mathieu was admitted to the hospital "with three broken ribs and several cuts and bruises to his body."<sup>111</sup> As in *Graham*, officers were cleared of any wrongdoing.<sup>112</sup>

The main approach adopted by advocates for diabetics, such as the American Diabetes Association, is to educate police about the signs and symptoms of diabetes to clear up the medical confusion putting ill people at risk of being mistaken as drug or alcohol users and exposed to police violence.<sup>113</sup> While educating the police about diabetes is a laudable goal, this focus prompts the question why people experiencing drug or alcohol problems should be criminalized and treated punitively and why the police should be able to use excessive force in any civilian encounter.

From this perspective, the criminalization and use of excessive force associated with a number of diabetes cases can be seen as an outgrowth of broader systemic patterns. These include social factors associated with the War on Drugs, such as the vast expansion of police power, toleration of use of force as routine procedures,<sup>114</sup> and stigma and demonization of drug users in drug use policies.<sup>115</sup> The criminalization of drunk drivers during the same period as the development of the War on Drugs may have also had an effect on the incidence of excessive police force against people with diabetes.<sup>116</sup> In addition, the landmark *Graham* case, which promotes subjective, police-centered criteria for excessive force determinations, is highly significant.<sup>117</sup> This case set an

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See *id.*; Eileen Sullivan, *Supreme Court Case to Shape Ferguson Investigation*, ASSOCIATED PRESS (Aug. 22, 2014), <https://apnews.com/6286d74574014edeb2cbb48fda368884> [<https://perma.cc/H22D-7LCT>] ("After the Supreme Court decision vacating an appeals court ruling against Graham, he had a new trial, in which the police actions were judged on new standards. Graham lost again.").

<sup>113</sup> See, e.g., *Law Enforcement Training*, *supra* note 103.

<sup>114</sup> See Cooper, *supra* note 77, at 1191 ("[T]he relentless stop and frisks for 'no reason' became a routine and pernicious form of harassment.").

<sup>115</sup> See Mosher & Yanagisako, *supra* note 67, at 281 ("Problems associated with drug use are likely to be explained primarily as failures of the individual user, because of moral weakness, disease, or other shortcomings . . .").

<sup>116</sup> Craig Reinerman, *The Social Construction of an Alcohol Problem: The Case of Mothers Against Drunk Drivers and Social Control in the 1980s*, 17 THEORY & SOC'Y 91, 111-12 (1988).

<sup>117</sup> See Obasogie & Newman, *supra* note 4, at 286 ("Across the use of force policies of the twenty largest cities, there is generally a lack of substance and depth in conferring guidance, restriction, or description beyond the constitutional bare minimum articulated by the U.S.

important precedent that legitimizes excessive force by police across a wide variety of criminal justice encounters.<sup>118</sup> Finally, police have viewed people with diabetes with the same stigmatizing lens as those suffering from other conditions, such as mental illness, deafness, and cerebral palsy.<sup>119</sup>

Although diabetes is widely prevalent in the United States and affects many population groups, rates among African Americans, Hispanics, Native Americans, and poor people are much higher than they are among whites and affluent Americans.<sup>120</sup> In addition, hospitalizations<sup>121</sup> and amputations<sup>122</sup> from the disease—symptoms of unmanaged diabetes—are proportionately much greater in ethnic minorities and impoverished populations, which likely reflects the overall poorer health status, inequity in health services, and neighborhood disadvantage experienced by these groups.<sup>123</sup> African American communities and other marginalized communities are also at greater risk for stress-related conditions that increase allostatic load and inflammatory diseases like diabetes and heart disease.<sup>124</sup> Given this background, the criminalization and violence

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Supreme Court in *Graham v. Connor* that police use of force must be reasonable.” (footnote omitted)).

<sup>118</sup> *See id.* at 287 (referring to *Graham* standard as “bare minimum standard”).

<sup>119</sup> David M. Perry & Lawrence Carter-Long, *How Misunderstanding Disability Leads to Police Violence*, THE ATLANTIC (May 6, 2014), <https://www.theatlantic.com/health/archive/2014/05/misunderstanding-disability-leads-to-police-violence/361786/> (describing series of police violence cases against people with disabilities, including diabetes).

<sup>120</sup> *See, e.g.*, CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP’T OF HEALTH & HUMAN SERVS., NATIONAL DIABETES STATISTICS REPORT, 2020, at 4 fig.2 (2020), <https://www.cdc.gov/diabetes/pdfs/data/statistics/national-diabetes-statistics-report.pdf> [<https://perma.cc/4HQV-X8SB>].

<sup>121</sup> Sandra L. Decker, Susan M. Schappert & Jane E. Sisk, *Use of Medical Care for Chronic Conditions*, 28 HEALTH AFF. 26, 28 (2009) (reporting study that found about 4.45 million more African American adults had ambulatory care visits for diabetes from 2005-2006 than did white adults); James N. Laditka, Sarah B. Laditka & Melanie P. Mastanduno, *Hospital Utilization for Ambulatory Care Sensitive Conditions: Health Outcome Disparities Associated with Race and Ethnicity*, 57 SOC. SCI. & MED. 1429, 1429-41 (2003) (studying associations between race/ethnicity and hospitalization for ambulatory-care-sensitive conditions, including diabetes).

<sup>122</sup> *Diabetes and African Americans*, U.S. DEP’T HEALTH & HUM. SERVS.: OFFICE OF MINORITY HEALTH, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=4&lvlid=18> [<https://perma.cc/W9UQ-M5EW>] (last visited Apr. 11, 2020) (“In 2016, non-Hispanic blacks were 2.3 times more likely to be hospitalized for lower limb amputations as compared to non-Hispanic whites.”).

<sup>123</sup> Darrell J. Gaskin et al., *Disparities in Diabetes: The Nexus of Race, Poverty, and Place*, 104 AM. J. PUB. HEALTH 2147, 2147 (2014) (exploring whether race disparities in diabetes stem from nexus of race, poverty, and neighborhood racial composition).

<sup>124</sup> Vickie M. Mays, Susan D. Cochran & Namdi W. Barnes, *Race, Race-Based Discrimination, and Health-Based Outcomes Among African Americans*, 58 ANN. REV.

associated with diabetic police encounters are likely to have a much stronger impact on African American and similarly disadvantaged groups than on white or wealthier populations.

#### CONCLUSION

Police violence has far-reaching and multidimensional effects that worsen the health of African Americans and other vulnerable populations. Individuals from these groups are much more likely to be killed or injured by law enforcement officers.<sup>125</sup> The negative consequences of police violence are not limited to individuals; violent encounters with police produce a strong ripple effect of diminishing the health and well-being of residents who simply live in areas where their neighbors are killed, hurt, or psychologically traumatized.<sup>126</sup> In addition, invasive police behavior has collateral effects on communities, effects that increase social fragmentation, civic disengagement, and economic problems that also harm health.<sup>127</sup>

Police violence also drives the cycle of poor health in African American communities and disadvantaged communities in other ways. People in these communities who become sicker due to direct and indirect effects of police violence are also more likely to be targets of criminalization and violence at the hands of the police. This perpetuates the cycle of ill health and vulnerability to law enforcement. Communities experiencing significant police violence, resulting in damage to their social, political, and economic fabric, are also more likely to become breeding grounds for crime, creating the “hot spots” that become major areas for police surveillance and invasive behavior.<sup>128</sup>

Structural racism and discrimination are at the root of the widespread systematic increase in police violence occurring in ethnic minority communities and poor communities.<sup>129</sup> The War on Drugs—or the war on poor and disenfranchised communities—substantially increased police presence, the militarization of the police, and the culture of routine police violence in these neighborhoods.<sup>130</sup> These settings have become ripe for the criminalization of African American diseases, where people with serious mental health problems, drug problems, and chronic diseases are more likely to be killed or harmed by police than to be treated in health facilities for their problems.<sup>131</sup> In addition,

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PSYCHOL. 201, 209 (2007) (describing model in which “race-based discrimination could be viewed as creating a chronic biological challenge”).

<sup>125</sup> See *supra* text accompanying notes 11 and 15.

<sup>126</sup> See *supra* text accompanying notes 34, 39, and 42.

<sup>127</sup> See *supra* text accompanying note 53.

<sup>128</sup> See *supra* text accompanying notes 54 and 84.

<sup>129</sup> See *supra* text accompanying note 60.

<sup>130</sup> See *supra* text accompanying notes 67 and 77.

<sup>131</sup> See *supra* text accompanying notes 63 and 72.

court decisions such as *Graham v. Connor* and *Terry v. Ohio*<sup>132</sup> rolled back civil rights protections and court oversight of police actions. Policies stemming from these rulings have increased police discretion and power and limited the accountability of law enforcement officers for police killings and injuries.<sup>133</sup> Collectively, these forces have contributed to major inequities in the health of African Americans and other marginalized communities.

Improving the health status of ethnic minority communities and marginalized communities will require the de-escalation of police power, presence, and resources, as well as targeted attempts to sensitize police and lawmakers about the pressing health needs of these populations. Currently, efforts to educate police departments about chronic diseases like diabetes have been met with only limited success. Statements such as, “If he had not had asthma and a heart condition and was so obese, almost definitely he would not have died,”<sup>134</sup> have been used to attempt to exonerate the police from the harm they cause and to deflect responsibility onto the victims of police violence. Greater change needs to happen at the level of reversing the impact of court decisions amplifying police autonomy; providing antiracism training; and implementing policies, such as school and housing desegregation, economic development, investment into health resources, and political empowerment. Such change is necessary to make any real or lasting progress toward breaking the cycle of police violence as a major social determinant of African American early mortality and disease.

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<sup>132</sup> 392 U.S. 1 (1968).

<sup>133</sup> See *supra* text accompanying note 5.

<sup>134</sup> Nia-Malika Henderson, *Peter King Blames Asthma and Obesity for Eric Garner's Death. That's a Problem for the GOP.*, WASH. POST (Dec. 4, 2014, 12:07 PM), <https://www.washingtonpost.com/news/the-fix/wp/2014/12/04/peter-king-blames-asthma-and-obesity-for-eric-garners-death-this-is-a-problem-for-the-gop/> (detailing Representative Peter King's statement about Eric Garner, who was asthmatic and diabetic and was choked to death by NYPD Officer Daniel Pantaleo).