**1NC**

**Counterplan Text: The fifty states and all relevant territories should < insert the plan>.**

**Solvency: Criminal Justice reform on a state level provide models to ensure better future reform**

**Lesser 18** (Eric,State Senator published in Harvard Law Review Blog, 1-11-2018, "Criminal Justice Reform Starts and Ends with the States (Harvard Law Review),",<https://blog.harvardlawreview.org/criminal-justice-reform-starts-and-ends-with-the-states/> //EN

**Criminal justice reform has the attention of the country, but *it is at the state and local level where reform will be implemented.* Much of the conversation about criminal justice reform has revolved around high-profile incidents in major U.S. cities like Cleveland and New York City — and on what the federal Department of Justice can do in response. But state and local officials are responsible for** [***90 percent* of the prison population**](https://harvardlawreview.org/2017/01/the-presidents-role-in-advancing-criminal-justice-reform/)**.** Most observers agree that our federal and state prisons have a mass incarceration problem: too many people are locked up for minor offenses and too large a proportion of those behind bars are people of color, both of which point to inherent biases in our criminal justice system. **Many local factors influence who goes to prison and why, from the number of public defenders available to serve the accused to the number of clinic beds available for drug addicts who need treatment instead of jail time. These are some of the reasons why I continue to advocate for** [**increased funding**](http://senatorlesser.com/2017/11/senator-lesser-welcomes-8-million-grant-for-legal-assistance-to-victims-of-violent-crime/) **for local legal aid and** [**measures to combat our opioid epidemic**](http://www.masslive.com/politics/index.ssf/2016/11/state_bulk_buying_of_anti-over.html) **as a State Senator. States are the traditional *“laboratories of democracy,”* the places where new ideas and approaches can be experimented with despite political paralysis in Washington.** State governments have *considerable latitude* to direct their own policymaking and, if successful, *provide models* for national policies. Reforming Criminal Justice. **In October, the Massachusetts State Senate** [**passed a comprehensive criminal justice reform bill**](https://www.bostonglobe.com/metro/2017/10/26/senate-vote-sweeping-criminal-justice-bill/Y6V2XutTQYlyNGoQOR7k3O/story.html) **which tackled a host of issues, including excessive bail, mandatory minimums, and solitary confinement sentencing. The Massachusetts House** [**passed its own version**](https://www.bostonglobe.com/metro/2017/11/14/the-house-passes-major-crime-bill/qCaBVG1Bj1r1v1gCvtxCJO/story.html) **in November, and the two bodies are now negotiating a final version to present to Governor Charlie Baker. Because low-income offenders are often jailed due to their inability to pay criminal fines, the Senate bill lowered the fee brackets on a number of offenses. The Senate bill also reduced or removed a number of mandatory minimum sentences on drug offenses, allowing judges greater discretion in assigning jail time or other deterrents such as community service hours. Additionally, the Senate bill limited the use of solitary confinement in recognition of the fact that it can be harmful to inmates’ mental health and can** [**exacerbate already existing mental disorders**](https://perma.cc/B8V9-NKZA)**. Indeed, any attempt at criminal justice reform must reckon with the realities and inadequacies of our mental health care system — another realm that is largely under local control. There is a constellation of state agencies and organizations that are outside the justice system but *can have substantial impacts* on it — and on how effective reform can be. These include state departments of health, education, and child services, as well as community organizations like Boys and Girls Clubs and homeless shelters. All of these provide services that keep people, especially young people, from turning to criminal activities.** **They can also help formerly incarcerated people transition back into civilian life.** Focusing on the Right Things. **One of the more significant pieces of the** [**criminal justice reform package**](https://malegislature.gov/Bills/190/S2185) **passed by the Massachusetts Senate was the emphasis on treating drug addictions instead of criminalizing them. Sixty-eight percent of individuals in local jails** [**have a substance abuse disorder**](https://perma.cc/M9GT-BXSL)**. In response, the bill expands** [**drug diversion programming**](http://www.mass.gov/eohhs/gov/departments/dph/programs/hcq/drug-control/drug-diversion/)**, requires the examination of prisoners for drug dependency and whether medication-assisted treatment is appropriate, and establishes a pilot program within select state prisons to evaluate inmates’ access to appropriate treatment for opioid addictions. Sending these people to prisons instead of treatment centers creates a vicious cycle of unmonitored drug use, inevitable hospital visits, and short-term jail sentences that do nothing to cure addictions or curb criminal behavior — a revolving prison door.** Working with (and Against) the Federal Government Of course, **state and local governments are also the primary entities that can implement federal regulations and recommendations regarding most law enforcement, since the federal government *does not control local police forces.*** In December 2014, President Obama [created the Task Force on 21st Century Policing](https://perma.cc/7VT8-QZZG) to identify and share policy recommendations with state and local leaders. The goal was to improve police-community relations and make crime prevention efforts as effective — and fair — as possible. The Task Force’s [recommendations](https://perma.cc/BZS8-K94W) included strategies to achieve more diversity in police forces, expand civilian oversight of law enforcement and prohibit racial profiling in policing, all of which Massachusetts can and should do more to act on. I’m proud that, in the Massachusetts Senate, we included in our criminal justice reform legislation a requirement that law enforcement train officers in bias-free policing and de-escalation techniques, one major recommendation of the Task Force. The federal government can give states an incentive to follow its policy recommendations through the use of federal grants, and the Justice Department under President Obama backed up the Task Force’s recommendations with $100 million in grants to state and local police departments. **On the other hand, the states are also a bulwark against federal encroachment and overreach. While the states are responsible for implementing federal policies, they can also limit federal influence where they see state law taking precedence.** In our federal system of government, the residual power not included in the Constitution rests with the states, not with the Federal government. **In the absence of a specific federal question, state law prevails. This tremendous power can be used on behalf of defendants, as we have seen with** [**California’s “sanctuary state” law**](https://perma.cc/PE9S-YC24) **shielding immigrants by limiting how state and local law enforcement cooperate with federal Immigration and Customs Enforcement.** Or it can be used to increase the state’s own authority, as with [Florida’s alleged subversion of medical marijuana dispensaries](https://www.usnews.com/news/best-states/florida/articles/2017-11-21/lawsuit-state-of-florida-ignoring-medical-marijuana-law) approved by voters in 2016. Our Framers designed a system that would put the states themselves, and the three branches of the federal government, in competition with one another. Through that competition between the Judiciary and the Presidency, the Congress and the state legislatures, the governors and the judges, the Framers believed that two things would happen. First, freedom would be protected because no single authority would become absolute. Second, just like competition in the free market economy, competition between states, and between the three branches, would allow the best ideas to bubble to the surface while continuously being refined and improved. **When it comes to criminal justice reform, those ideas are being developed and implemented *at the state level*, whether or not they receive support from the Congress or the Executive Branch.**

**CP Solves Sentencing Reforms**

#### **States are far better at sentencing reform**

**Barkow 5** [Rachel E. Barkow, Associate Professor, NYU School of Law. FEDERALISM: OUR FEDERAL SYSTEM OF SENTENCING. Stanford Law Review, 2005. www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/04/Barkow\_0.pdf]

There are lessons to be learned from the differences between the state and federal approaches to sentencing. First, **to the extent that states do a *better job* evaluating the *trade-offs* of *different punishment strategies* against each other because of a *greater concern* with *costs*, the *state approach* to sentencing appears likely to be *more informed* than that of the *federal government***. Just as **cost-benefit analysis *improves*** the ***decisionmaking*** in other regulatory areas, so, too, should it improve decisionmaking about sentencing. Consequently, **this analysis provides another reason for states to play the primary role in criminal law enforcement. Its advantages extend *not only* to determinations of *substantive liability*, but to *sentencing as well*.**

**CPs solves Forensic Science Reforms**

#### **Local forensic science reforms solve best**

**Goldstein 11** [Ryan M. Goldstein, lawyer. “Improving Forensic Science Through State Oversight,” Texas Law Review, Vol. 90:225, 2011]

With attention concentrated on the NAS Report and possible federal legislation, commentators have ignored the role of state forensic science oversight.66 This lack of focus on state oversight is striking. **In the American system of federalism, criminal law is traditionally reserved to the states under the police or welfare power.67 Since any unresolved problems affect state criminal justice systems at their core, *state oversight should play a critical role in forensic science oversight*.** A postconviction exoneration or the discovery of a negligent technician puts the credibility of the state criminal justice system in question. **The decisions of state legislatures and state executives—and not those of the United States Congress—determine a state‘s forensic science policies, the structure of its laboratories, and changes to its regulatory scheme.68** Although the body of federal criminal laws has ballooned in recent decades,69 state and local law enforcement and prosecutors still ―process the lion‘s share of U.S. criminal offenders.‖70 While the federal government pro-vides grants for laboratory operations,71 helps fund research,72 and influences state laboratories through its own laboratories and procedures,73 **the operation of state and local laboratories remains under the control of the state in which they are located.** At the same time, formal federal regulation of non-DNA forensic science has lacked.74 The spending power triggers the only current federal regulations.75 The National Science Foundation and the National Institute of Standards and Technology have little experience with forensic science.76 And only in response to the NAS Report did the White House form an advisory committee on forensic science.77 The NAS Report charged **the federal government** with **implementing its recommendations**.78 But, as mentioned above, this i**gnores the direct control that states have over their laboratories and criminal justice systems.** Furthermore, **federal reform requires uniformity and *ignores the benefits of state experimentation*.79 It ignores *geographic differences in values and the differences in the ways that states administer their systems of criminal justice* and criminal investigation.80 Finally, with the current political climate in Washington, federal reform may be difficult to pass. And even if it were to pass, it may reflect a compromise between differing interests rather than the most robust oversight possible.81 States, on the other hand, are well positioned to implement reforms, especially reforms that target reliability. States understand the structure of their own criminal justice systems and can experiment with new or nontraditional forms of oversight.82 They operate on a smaller scale and *are more likely to act quickly*,** especially those states that have experienced embarrassing scandals.83 When reforms are implemented, **a local presence allows for better enforcement and ground-level monitoring. When reforms prove unsuccessful or require tweaking, states can make the necessary changes without undue delay.** Most importantly, **state officials bear responsibility for the failures of the state‘s forensic science laboratories. State officials are accessible to those directly affected by reform, such as forensic scientists and state police, and to state citizens who support the criminal justice system by paying taxes and serving on juries. *Local forensic scientists are likely to view reforms implemented from the state capital as more credible than those implemented by anonymous regulators in Washington*, since the forensic science community within a state is more familiar with that state‘s government.** Finally, professional regulation has been successful at the state level in other contexts.84 Here, as in other areas of professional regulation, each state could determine its own qualification standards and disciplinary rules.

 **2NC/1NR Generic Solvency Extensions**

#### **State-Level Criminal Justice Reform is best because they fix problems specific to their communities and correct the Federal Government’s mistakes**

#### **Zoukis 18** (Christopher, Managing Director of the Zoukis Consulting Group, is the author of Directory of Federal Prisons (Middle Street Publishing, 2019), Federal Prison Handbook (Middle Street Publishing, 2017), Prison Education Guide (PLN Publishing, 2016), and College for Convicts (McFarland & Co., 2014). He regularly contributes to The Huffington Post, New York Daily News, Prison Legal News, Criminal Legal News, and the New York Journal of Books, 7/2/2018, "State Criminal Justice Reform Efforts Gaining Traction," Prison Legal News,<https://www.prisonlegalnews.org/news/2018/jul/2/state-criminal-justice-reform-efforts-gaining-traction/> //EN

**Louisiana’s 2017 criminal justice reform package consisted of 10 bills intended to reduce the state’s astronomically-high incarceration rate. Governor John Bel Edwards touted the legislation as a *bipartisan effort,* but given the state’s dubious distinction as the nation’s top jailer, it is perhaps no surprise that Louisiana law enforcement officials fiercely opposed the reforms. “**We always talk about a return on investment in every other area of state government, why shouldn’t that also apply to criminal justice?” Edwards asked prosecutors from across the country at a meeting of the Association of Prosecuting Attorneys’ Major County Prosecutors’ Council in January 2018. **Edwards emphasized that the state’s reform efforts were based on successful policies implemented in other states, such as expanding probation to third-time non-violent crimes and first-time crimes involving low-level violence, as well as expanding parole and increasing the use of drug treatment and drug courts. His administration employed a task force to research best practices.** “Nobody wants to experiment with public safety,” Edwards said. **A similar slate of reform options – expanding eligibility for probation, re-designating low-level felonies as misdemeanors, smoothing out wrinkles in parole administration and keeping technical violations from returning parolees to prison – has been taken up in Arkansas, Hawaii, Michigan and Montana. New York and North Carolina took steps to address draconian laws, unique in those states, that require minors aged 16 and 17 to be tried as adults. New York raised the age for misdemeanors and most felonies to 18, while North Carolina did the same for nonviolent crimes**. **Addressing racial disparities was another focus of criminal justice reform efforts in Arkansas and New Jersey, through the use of legislative racial impact statements similar to those utilized in three other states: Connecticut, Oregon and Vermont.** The statements are used to help lawmakers identify apparent racial bias that may result from proposed sentencing changes before they are made. While the Arkansas bill died in the House of Representatives, the one in New Jersey passed and was signed into law in January 2018. **Additionally, Vermont lawmakers established a 15-member racial justice oversight board in May 2017 to examine racial biases in the state’s criminal justice system. State-level reform efforts have also extended to convicted felons after their release. The federal government denies public assistance for food and cash aid to people with felony drug convictions unless the state administering the program opts out – which is what at least 18 states have done, including Maryland, Alabama and North Dakota. [See: PLN, Jan. 2016, p.44]. Twenty-six other states “have partly eased those restrictions, often by providing the benefits only if the recipient complies with parole, does not commit a second offense, enrolls in treatment, etc.,” The Marshall Project, an independent criminal justice news organization, reported in February 2016.**

**State reform breaks the national fever of punitive criminal justice**

**Gardner 19** [Trevor George Gardner, Assistant Professor of Law, University of Washington School of Law. Right at Home: Modelling Sub-Federal Resistance as Criminal Justice Reform. Florida State University Law Review, Vol. 46: 527, 2019]

Consider specific examples. In 2014, the U.S. Department of Justice directed the distribution of military equipment to the Ferguson, Missouri, police department while at the same time insisting that public officials in Ferguson adopt “community-oriented” policing programs in the wake of the police shooting of Ferguson resident Michael Brown.20 In the field of immigration, **the federal government has spent** nearly all of the past t**wo decades pursuing** the **incorporation of every state and local police department into** the **federal immigration enforcement** system. Over the same period, **it has *clung* to the** role of chief architect of the ***War on Drugs*** **despite considerable evidence of the initiative’s futility.**21 If **the federal government is *not the savior*, but** instead **a *frequent bad actor* in** the emerging narrative of **criminal justice reform**, reform advocates face a difficult question: who or what will reform the federal government? To credibly answer this question, criminal justice reformers must discard conventional assumptions regarding the relationship between criminal federalism and social justice. **Rather than reducing state** and local **governments to sites of penal oppression, reformers should appreciate these sites for their capacity to function as a *check* against *unbridled federal ambition* in** the field of *criminal justice*.22 **This point falls in tension with** certain **political dogmas**. Given that **the most heralded political achievements** in support of the socially and economically marginalized (e.g., the War on Poverty, the Civil Rights Acts, and, most recently, the Affordable Care Act) **were based on federal statutes** and managed by federal agencies, the notion that state and local government activism can help to deliver a more equitable and more effective system of criminal justice will strike many as misguided. **But these federal achievements obscure the role that *state* and local *governments* now play in *breaking the national fever* for *punishment*.** Accordingly, **this Article** captures the legal and administrative tools at the disposal of sub-federal governments as part of a larger toolkit provided within the framework of criminal federalism.23 It **endorses *sub-federal* government *resistance*** within this framework **as critical to *challenging* conventional *penal practices* and the *cultural norms* that sustain them**

#### **States are better suited to manage every level of criminal justice – federal involvement causes policy failure *even when* statutes are identical**

**Ashdown 96** [Gerald G. Ashdown, Professor of Law, West Virginia University College of Law; B.B.A., 1969, Univ. of Iowa; J.D., 1972, Univ. of Iowa. Federalism, Federalization, and the Politics of Crime. April 1996. https://researchrepository.wvu.edu/cgi/viewcontent.cgi?article=1810&context=wvlr]

Discussion of the federalization of crime must eventually come around to a consideration of the value of federalism and the concomitant virtue of decentralization in the criminal justice system. **Crime**, whatever its shape, **is usually committed on a *local victim* and its *effects* and threats are primarily *local*. Citizens look to their state**, county, and city police, prosecutors and courts to protect them from and deal with crime. Our constitutional government, based on delineated federal authority, combined with the Tenth Amendment’s express reservation of remaining governmental power to the states, is a recognition of these facts. It is the concept of local law-making authority that gives rise to the police power of the states. Federal jurisdiction, on the other hand, emanates directly from the constitutional text**. There is *no* general *federal police power*, absent an expansive view of the Commerce Clause. This *diffusion of power* within the criminal justice process is *clearly worthwhile*.** First, on a practical level, ***state* and *local prosecutors* and *judges* are both *more attuned to local problems* and *more beholden* to the *local* political *pressures*. State** prosecutors and **courts are more convenient for those who participate** in their processes, and **state correctional facilities** and institutions **are better geographically suited to inmates, their families and friends**. Second, from a policy perspective, **it is *preferable* to have *state* and local *legislative bodies* define crimes, supply defenses, and *impose penalties*. Policies can best be *tailored to local conditions*,** and local policy-making facilitates experimentation within the criminal justice system. States and localities are well-equipped to handle criminal activity which is characteristically street crime or which primarily affects local interests. The states have historically enforced over ninety percent of the criminal law covering this kind of conduct. **When the federal government gets involved at this *level of*** criminal law ***enforcement*, things get *muddled* at both the practical and policy levels**. For instance, of practical concern is the disparity in treatment of defendants. ***Although* a federal crime may be *virtually identical* to its *state* counterpart** (narcotics offense, for example), **a defendant** prosecuted **in the *federal system* will be subject to *different procedures* and** much harsher sentencing **under** the **federal** sentencing **guidelines**. This difference, in fact, conflicts with the basic policy of the Guidelines to make sentencing uniform among criminal defendants. Federal involvement in crimes of local concern also can create questionable policy decisions. Politics is often the primary reason for the decision to prosecute a particular crime (domestic violence) or class of crimes (drugs and weapons offenses). A United States attorney who wants to bring recognition to his or her office would be better served by prosecuting either white collar or truly organized crime. Drugs, guns, domestic violence, failure to pay child support, and carjacking really do not belong in federal court. If the federal government wants to contribute to this aspect of criminal law enforcement, the currently popular notion of providing block grants to the states appears to be a better choice. Wholesale ***federal* criminalization and *enforcement*** of local crime **heads the country in the direction that the framers of the Constitution wanted to avoid — the creation of a *strong* and *pervasive national police* and *criminal justice system*.** It is politically en vogue to argue that we too often turn to the federal government for the solution to local problems. Irrespective of the degree to which one subscribes to this view, it is ever-increasingly true with regard to crime. We need to resist the temptation to walk across the street to the federal courthouse.

### **2NC/1NR Answers to CP links to Elections**

#### **State action has no influence on voting**

**Disanto 16** [Jill Disanto, writer for PhysOrg citing Daniel Hopkins who is a political scientist and researcher at UPenn. Researcher explores why voters ignore local politics. March 18, 2016.<http://phys.org/news/2016-03-explores-voters-local-politics.html>]

**Daniel Hopkins, a political scientist at the University of Pennsylvania, says that, while today's voters are more engaged in federal elections, they've pretty much abandoned state and local politics.** In a book that he's developing, The Increasingly United States, Hopkins, whose research as an associate professor focuses on American elections and public opinion, says **American federalism was based on the idea that voters' primary political loyalties would be with the states. But *that idea has become outdated.* "With today's highly nationalized political behavior, Americans are no longer taking full advantage of federalism. Contemporary Americans are markedly more engaged with national politics than with the state or local politics,"** Hopkins says. "*We now know more about national politics, vote more often in national elections and let our national loyalties dictate our down-ballot choices."* **The book presents evidence about Americans' voting and political engagement and offers two reasons to explain why today's voters are paying more attention to federal elections. The first, Hopkins says, is a landscape in which the political parties offer similar choices at the national level. "Just as an Egg McMuffin is the same in any McDonald's, America's two major political parties are increasingly perceived to offer the same choices throughout the country," Hopkins says. The second reason is the changes in the media and how Americans get their news, an environment that allows people to follow their interests in national-level politics, making local and state-level politics easy to ignore, he says.** "As Americans transition from print newspapers and local television news to the Internet and cable television, they are also leaving behind the media sources most likely to provide state and local information," Hopkins says. **"The result is a growing mismatch between the varied challenges facing states and voters' near-exclusive focus on national politics.***"* For The Increasingly United States, Hopkins examined historical and *recent surveys from the 50 states*, *along with election results* from gubernatorial and mayoral races dating back nearly a century. He also traced the evolution of political media coverage from The Los Angeles Times' coverage during the Great Depression through the expansion of local television news during the 1960s and the role of social media today. "**Voters' attention, engagement and campaign contributions are targeted more toward national politics," Hopkins says.** "This 'nationalization' is likely to have profound consequences for state and local politics and policymaking. Accordingly, this book seeks to document and explain the nationalization of contemporary Americans' political behavior." With a secondary appointment in Penn's Annenberg School for Communication, Hopkins studies questions related to racial politics, ethnicity, immigration and urban politics.

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#### **2NC/1NR Answers to the Perm**

#### **Perm doesn’t solve: Federal duplication undermines constitutional allocation of power**

**Barkow 5** [Rachel E. Barkow, Associate Professor, NYU School of Law. FEDERALISM: OUR FEDERAL SYSTEM OF SENTENCING. Stanford Law Review, 2005. www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/04/Barkow\_0.pdf]

The constitutional balance should not rest on technicalities such as the inclusion of a jurisdictional nexus element. ***Limited federal jurisdiction* under the Constitution is based on the *rationale* that *divided powers* protect liberty and that *states* should *bear responsibility* for crime because the effects of crime are**, in most cases, **localized and have no repercussions outside a community**, let alone outside a state.18 **A mere nexus to interstate commerce falls short of the kinds of crimes that require federal intervention. *To be consistent* with the *constitutional allocation of power*, federal criminal law should *duplicate* state criminal law *only when* state enforcement of criminal law is *inadequate*.**

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#### **“Cooperative” federalism reduces states abilities to implement to policies in a way that benefits their residents**

**Epstein 14** [Richard A. Epstein, the Laurence A. Tisch Professor of Law at New York University, the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution, and the James Parker Hall Distinguished Service Professor of Law (emeritus) at the University of Chicago; and Mario Loyola, senior fellow at the Texas Public Policy Foundation, Summer 2014, “Saving Federalism,” National Affairs, Issue #20, http://www.nationalaffairs.com/publications/detail/saving-federalism]

There was only one problem: Like New York, Printz left the door wide open for the **cooperative-federalism *programs* that are almost as effective in *establishing federal control* of the states *as direct rule would be*. Cooperative federalism uses either fiscal or regulatory *inducements* to *rope states* into *implementing federal policy*. Examples include state Medicaid programs and state implementation plans under the Clean Air Act** (such as the EPA's new state-based carbon rule), **both of which require states to seek federal approval to gain benefits and avoid penalties.** The Rehnquist Court held fast to the fiction that such programs are voluntary for the states and constitute mere "encouragement" on the part of federal authorities, which is permissible unless and until it rises to the level of coercion. As the Court explained in New York, "Where Congress encourages state regulation rather than compelling it, state governments remain responsive to the local electorate's preferences; state officials remain accountable to the people." But **what is the conceptual difference between encouragement and coercion? Both involve free will but both involve the imposition of onerous penalties** if states refuse to comply with federal policy. Federal funds, which now account for 32% of state budgets on average, often come with so many conditions attached that any state variations to a program can be only marginal. **If states refuse to comply, they lose funds under programs that their citizens have already been taxed for.** Likewise, through what scholars call "conditional preemption," **the federal government,** exercising its commerce power, **grants states permission to implement federal regulations** in areas such as health care, the environment, education, and transportation — **but only if the states comply with a host of conditions**. The conditions are normally **so extensive that if *states* comply *they are reduced* to mere *field offices* of the *federal government*. But *if they don't comply*, the federal government *preempts them* and *imposes its own* implementation *program*,** often **with *little consideration* for *local constituents*.** Indeed, **sometimes the federal agency comes to "crucify" local constituents,** as former EPA regional administrator Al Armendariz boasted at a closed-door meeting in the first months of the Obama administration. One troubling example of such "crucifixion" arose when Texas refused to implement the EPA's first greenhouse-gas regulations: EPA preempted the field and then massively delayed the implementation of the regulation, leaving key industries with no access to necessary operating permits. Texas was forced to back down. Unlike the Supreme Court, the National Federalists have no trouble praising ***cooperative-federalism* programs that *increase federal control* of state governments. *Federal conditions shape* most *state policies***, chiefly because they are almost impossible for state officials to resist as a matter of political reality. The blandishment of hard tax dollars, which if rejected will go to other states even if raised from the citizens of the refusing state, plus the specter of unfriendly federal regulators stepping in if state regulators refuse to comply, are usually more than enough to force the hands of state officials.’

**2AC States CP Answers**

**No Solvency: Too many local agencies, the federal government has more resources to solve reform**

**Stoughton, Noble, and Alpert 6/3** (Seth W., Professor of law at the University of South Carolina, Jeffrey J., Former deputy chief of police at the Irvine Police Department in California, and Geoffrey P., Criminology professor at the University of South Carolina, JUNE 3, 2020, How to Actually Fix America’s Police, https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/)/DD

**George floyd’s death is the latest in a long series of brutal encounters between the police and the people they are supposed to serve. Police abuse has targeted people of every race and class, but members of vulnerable populations and minority groups, particularly young black men, are especially at risk. This is well known.** The solutions are also well known. Prior tragedies have resulted in a string of independent, blue-ribbon commissions—Wickersham (1929), Kerner (1967), Knapp (1970), Overtown (1980), Christopher (1991), Kolts (1991), Mollen (1992), and the President’s Task Force on 21st Century Policing (2014)—to make recommendations for meaningful change that could address police misconduct. These groups have developed well-reasoned conclusions and pointed suggestions that are widely discussed and enthusiastically implemented—but only for a time. As public attention shifts, politics moves on and police-reform efforts wane. The cycle continues unbroken. Each weekday evening, get an overview of the day’s biggest news, along with fascinating ideas, images, and voices. The problem America faces is not figuring out what to do. As an industry, American policing knows how to create systems that prevent, identify, and address abuses of power. It knows how to increase transparency. It knows how to provide police services in a constitutionally lawful and morally upright way. And across the country, most officers are well intentioned, receive good training, and work at agencies that have good policies on the books. But knowledge and good intentions are not nearly sufficient. **The hyperlocalized nature of policing in the United States is one factor here; the country has more than 18,000 police agencies, the majority of which (more than 15,000) are organized at the city or county level. Reforms tend to target single agencies. But it is not just the Minneapolis Police Department that needs reform; it is American policing as a whole. What we desperately need, but have so far lacked, is political will. America needs to do more than throw good reform dollars at bad agencies. Elected officials at all levels—federal, state, and local—need to commit attention and public resources to changing the legal, administrative, and social frameworks that contribute to officer misconduct.** As the University of Colorado law professor Ben Levin recently wrote, “Feigned powerlessness by lawmakers is common & frustrating. It reflects political cowardice or actual acquiescence in the violence of policing.” It’s time for that to change. Here is a blueprint for what they should do. **FEDERAL INTERVENTION At the federal level, Congress should focus on three objectives. The first is getting rid of qualified immunity. Qualified immunity is a judicial doctrine that protects officers who violate someone’s constitutional rights from civil-rights lawsuits unless the officers’ actions were clearly established as unconstitutional at the time**. As the University of Chicago legal scholar William Baude has persuasively argued, the Supreme Court has provided multiple justifications for qualified immunity—including that it is the modern evolution of a common-law “good faith” defense, and that it ensures that government officials are not exposed to liability without “fair warning” that their actions are wrong—but neither the Court’s historical nor doctrinal justifications can bear the burden of scrutiny. Nevertheless, as the Court has described it, qualified immunity “provides ample protection to all but the plainly incompetent or those who knowingly violate the law.” The problem is that the Court has taken an inappropriately narrow view of what it means for a constitutional violation to be “clearly established.” Essentially, a constitutional violation is clear only if a court in the relevant jurisdiction has previously concluded that very similar police conduct occurring under very similar circumstances was unconstitutional. The Supreme Court has, for example, applied qualified immunity in a case where an officer standing on an interstate overpass shot at a fleeing vehicle, something that not only contravenes best practices, but that the officer was not trained to do, a supervisor had explicitly instructed him not to do, and was unnecessary because officers under the overpass had set up stop strips and then taken appropriate cover. Nevertheless, because no court had previously reviewed such conduct and found it to be unconstitutional, the Court held that any violation was not clearly established and, thus, that the officer could not be sued for his actions. In another case, the Court held that qualified immunity protected officers who, contrary to their training, their agency’s policies, and long-standing police procedure, rushed into the room of a mentally ill woman who they knew had a knife and had threatened officers—but was no threat to herself—without bothering to wait for the backup officers they had already called. When the woman predictably threatened officers with the knife, something she would not have been able to do had they done what they were trained and expected to do, they shot her. Again, the Court found that because no court had yet explicitly held such conduct unlawful, a “reasonable officer could have believed that [such] conduct was justified.” This ridiculous standard means that qualified immunity does not protect all but the “plainly incompetent”; it protects even the plainly incompetent. And these are just two of many egregious examples. As a judicially created doctrine, qualified immunity could be modified or eliminated by federal legislation. There is broad bipartisan support for doing so. The right-leaning commentator David French and the left-leaning UCLA law professor Joanna Schwartz have both made the case against qualified immunity. The American Civil Liberties Union, the NAACP Legal Defense Fund, the Cato Institute, and the Alliance Defending Freedom are among the groups that have filed amicus briefs or called publicly for the end of qualified immunity. The onetime Democratic presidential hopeful Julián Castro pledged to “end qualified immunity for police officers so we can hold them accountable,” and Representative Justin Amash, a former Tea Party Republican who is now a member of the Libertarian Party, recently introduced the Ending Qualified Immunity Act. With this scope of support, legislating the elimination of qualified immunity should be an easy first step. **A second thing Congress could do is pass legislation to further encourage better data collection about what police do and how they do it. For example, no one really knows how often American police use force, why force was used, whether it was justified, or under what circumstances it is effective. No one knows how many high-speed pursuits have been conducted or why they were initiated; how many fleeing drivers have been caught, or the number of collisions, injuries, or deaths that resulted. Only one state—Utah—requires agencies to report forcible entries and tactical-team deployments. Neither the police, nor anyone else, can tell us how many people have been injured when taken into custody, how many people have been arrested only to be later released without charges, or how many cases local prosecutors have refused to file for lack of evidence, constitutional violations, or police misconduct. Moreover, no state or federal officials know how many publicly owned surveillance cameras police have deployed or privately owned cameras they can access, or where those resources are allocated. No state or federal officials know how many internal or citizen complaints of officer misconduct exist, whether people were dissuaded from making a complaint or their complaint was ignored or minimized, or the ultimate disposition of the complaint and whether the offending officer was disciplined. These data are not the administrative minutiae of policing; this is basic information about the everyday actions of government officials that is crucial to ensuring that such actions are properly regulated.** Voluntary data sharing, such as the FBI’s current National Use-of-Force Data Collection efforts, is clearly insufficient. **Congress gave the Department of Justice the power to require agencies to provide information about the use of force, but the DOJ has never exercised that authority. The federal government can require agency- and state-level data collection, coupled with a robust auditing system to ensure that accurate data are provided.** This, too, is not a matter of partisan politics. Democrats tend to believe that policing suffers from systemic problems, the type that better data collection can help address, but that perspective is gaining support among Republicans, too. Tim Scott, a Republican senator from South Carolina, and Chuck Grassley, a Republican senator from Iowa, introduced the Walter Scott Notification Act, named after the man infamously shot in the back and killed by a North Charleston Police Department officer in 2017. Efforts like these are simply common sense. **The final thing the federal government should do is dedicate significantly more resources to supporting police training, local policy initiatives, and administrative reviews. Police agencies around the country regularly fail to meet what are generally recognized as minimum standards for use-of-force and arrest training, frontline supervision, and internal investigations. Some have a demonstrated pattern of violating the constitutional rights of their community members. Acting with legislated authority, the DOJ has intervened in a few of these agencies, mostly through consent decrees, assisted by an appointed monitor and enforced by a federal judge**. While the DOJ cannot intervene in the actions of the more than 18,000 police agencies in the United States, **Congress can instruct and empower it to offer technical assistance, identify conduct standards that can serve as references for courts in civil litigation, and provide a framework for responsive and democratically accountable community collaboration, opening additional avenues of reform.** It cannot do any of that, however, if the presidential administration continues to seek to cut funding for such efforts. **Congress could also better regulate the industry by requiring or encouraging clear, evidence-based conditions of accreditation, making them a prerequisite for federal funding and putting teeth into police-reform efforts by reducing or cutting off funding when agencies fail to meet those conditions.**

**Perm do both: States have not been able to reform the police on their own they need federal assistance**

**Simmons 11** (Kami Chavis, Wake Forest University Law School, 4/6/2011, COOPERATIVE FEDERALISM AND POLICE REFORM: USING CONGRESSIONAL SPENDING POWER TO PROMOTE POLICE ACCOUNTABILITY, https://pdfs.semanticscholar.org/1f4f/fa38c77d7710d5f6859fa70cabcb22a48a1c.pdf)/DD

E. Federalism and Police Accountability: Justifications For State Involvement Despite the benefits associated with federal intervention in local police practices, the shortcomings of the current federal model raise important federalism issues. **There are several important justifications in favor of maintaining local involvement in criminal-justice reform,** especially given that these issues involve inherently political issues such as police practices.124 **Thus, notwithstanding the availability of the tools the federal government has at its disposal, the ensuing discussion explores why states and local governments should play an active role in the oversight and implementation of local police accountability measures.** The local primacy of criminal-justice issues is well established.125 For example, even the former Chief of the Federal Bureau of Investigation, J. Edgar Hoover, publicly and frequently stated his opposition to the creation of a “national police force.” 126 Hoover explained that he was “unalterably opposed” to such a centralized police force because it “represent[ed] a distinct danger to democratic self-government,” and that a national police force would reduce “[t]he authority of every police officer in every community. . . in favor of a dominating figure or group on the distant state or national level.”127 The Supreme Court has also clearly articulated that “the suppression of violent crime and vindication of its victims” are “undeniably” local issues that are left to states.128 Thus, law enforcement is an area where states enjoy sovereignty.129 It is widely accepted that “law enforcement is and has been a local prerogative and responsibility.”130 Therefore, one might argue that the manner in which local police agencies accomplish these goals and the internal policies that impact training and hiring should also be left primarily to the states. In several contexts, the Supreme Court has articulated the local primacy of criminal-justice issues. For example, in criminal trials the Court has noted that states enjoy the primary responsibility to vindicate the constitutional rights of individuals. With respect to state criminal trials, the Court has recognized that “[f]ederal intrusions into state criminal trials frustrate both the States’ sovereign power to punish offenders and their good-faith attempts to honor constitutional rights.”131 As the Supreme Court has noted, “[t]he Constitution places a number of constraints on the criminal process of the states but if none of the constraints is violated, the state is free to proceed as it wishes.”132 However, **when local authorities fail to adequately address police misconduct, the federal government may intervene to vindicate the rights of victims.** The Supreme Court grappled with these “interjurisdictional tension[s]” that arose in the area of law enforcement in Screws v. United States, a case involving the federal prosecution of a local law enforcement officer for the beating to death of a suspect.133 **Here, the Court was faced with the decision to broaden or narrow the construction of the mens rea requirement of 18 U.S.C. § 242, which authorized the federal government to prosecute state law enforcement officers for violating citizens’ civil rights.134** The Screws opinion reflects the Court’s concern to maintain the delicate balance of federal and state power with regard to law enforcement issues and the Court’s reluctance to extend the power of federal prosecution of state law enforcement officers.135 Justice Douglas’s majority opinion reflects this sentiment when he notes, “the narrow construction which we have adopted more nearly preserves the traditional balance between the States and the national government in law enforcement than that which is urged upon us.”136 Similarly, Justice Rutledge’s concurring opinion noted that an “important consideration[ ]” was the “fear grounded in concern for possible maladjustment of federal-state relations if this and like convictions are sustained.”137 Even Justice Frankfurter, who dissented, noted that “[r]egard for maintaining the delicate balance ‘between the judicial tribunals of the Union and of the States’ in the enforcement of the criminal law has informed this Court . . . ‘in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict . . . .’”138 In addition to the federalism concerns echoed in the Court’s jurisprudence, the U.S. Department of Justice has itself been reticent to become involved in matters related to local criminal justice issues, including policing and police misconduct.139 **Historically, issues of law enforcement have enjoyed limited federal intrusion or oversight because “Congress is greatly restricted in the degree to which it can regulate a state’s administration of its local law enforcement agencies.”140 Thus, Congress, too, has been hesitant to increase the federal government’s involvement in measures aimed at addressing police misconduct.** For example, “the Justice Department opposed legislation in the 102nd Congress that would have required state and local law enforcement agencies to report data about police abuse and discipline to the federal government.”141 **Despite the recognition of federalism concerns in the criminal justice context, Congress has increased the role of the federal government in the development and expansion of federal criminal law. Some scholars attribute this intervention to the need to rescue states from their own failures to enact legislation involving important issues.** **For example, Sara Sun Beale notes: In 1937 a blue-ribbon congressional committee concluded that criminal activity was rampant and the states were incapable of responding to it. Responding to this alarm and fully conscious that it was extending federal law to matters previously left to the states, Congress enacted a series of federal crimes that targeted violence against private individuals** . . . [their involvement] reflected a willingness . . . to assert jurisdiction over an increasingly broad range of conduct clearly within the traditional police powers of the states.142 Critics of the “overfederalization” of substantive crime point to negative consequences of increased federalization of crime including an overburdened federal court system and overcrowded federal prisons.143 As one critic notes, “When Congress continues down the road to federalized crime, it assumes, perhaps wrongly, that the federal government can do a better job than the states. That assumption implicates serious concerns about federal and state comity.”144 Fears and criticism of federal overreaching in the enforcement of criminal laws and the development of substantive criminal law also extend to federal intervention into local police practices. Thus, where issues of constitutional significance are implicated, such as police misconduct that rises to a pattern or practice of constitutional violations, the federal government exercises its authority to remedy the situation. It is clear that minor individual instances of police misconduct do not warrant federal intervention into local internal police rules.145 **Yet, it is equally apparent that repeated failures of local entities to respond to systemic shortcomings justify federal intervention.**146 As Jonathan Jacobi asserts, “It is in the vast middle ground, where individual police officers abuse their positions and commit serious crimes that the tension between local desire to maintain hegemony in oversight of law enforcement and federal interest in bringing to justice bad cops is most pronounced.”147 **Similarly, where a local police department has a demonstrated pattern or practice of unconstitutional violations, it is appropriate for the federal government to ascertain the nature of those violations and ensure that the department adheres to minimum standards.** **The continued reluctance of states to adequately address these issues involving police misconduct signals that the federal government should expand its role in ensuring that the individual rights of citizens are protected. Expanding the federal government’s role does not mean, however, that states and the federal government cannot work cooperatively to resolve important issues related to police accountability. Cooperative-federalism regimes operate in numerous contexts outside of the criminal justice system and may achieve the appropriate balance of federal and local involvement with respect to reforming local police departments**.148 To address this dilemma, **I argue that federal funds issued to states pursuant to the COPS program should be conditioned upon the enactment and implementation of police accountability measures aimed at institutional reform. A provision such as the one proposed in the next section would allow the federal government to articulate minimum standards related to police accountability that states would have an incentive to adopt.** Such an amendment, however, as discussed below, would leave to the states and localities the power to determine how best to achieve these minimum standards, thus, encouraging local experimentation and avoiding rigid uniform standards. II. BRIDGING THE GAP: A PROPOSAL FOR FEDERAL–STATE COOPERATION IN THE IMPLEMENTATION OF LOCAL POLICE ACCOUNTABILITY MEASURES Although the federal government currently has the authority to implement widespread institutional reforms within local police departments, the barriers previously discussed prevent widespread federal oversight and intervention. The majority of police departments in the United States, many of which have demonstrated a need for intervention, have eluded federal oversight. Even in areas where the federal government has intervened, the local needs of the affected police departments may have been muted in favor of a “one size fits all” approach. Because states and local entities are best suited to determine the frailties of their local police departments, they should be an integral part of federal efforts to promote police accountability. However, **the failure of local entities to adequately address systemic police reform suggests that federal oversight and the implementation of higher standards are necessary.** Thus, a gap exists in terms of the standards the federal government has deemed desirable with respect to organizational police reform and the ability or the willingness of states to initiate their own models of institutional police reform. One possibility for bridging this gap would be to condition federal funds awarded to states via the Community Oriented Policing Statute (COPS) on the development and implementation of police accountability measures. This proposal envisions **a cooperative-federalism regime that could achieve the appropriate balance between the need for greater national standards to promote police accountability with the need for state and local experimentation within the context of police reform.**

#### **Federal leadership is key.**

**Cotter 20** [Robert, senior policy and politics fellow at Third Way, Nathan Kasai, senior policy counsel at Third Way “We Still Need Federal Action for Community-Based Policing Reform” Third Way 5-6 https://www.thirdway.org/report/we-still-need-federal-action-for-community-based-policing-reform]

Trump rolling back measures to increase police accountability. During the Obama administration, DOJ actively pursued its oversight duties by investigating state and local law enforcement agencies suspected of violating federal law. For example, in 2015, the Justice Department investigated the Chicago Police Department following the police-involved shooting death of a black teenager. From their two-year investigation, DOJ identified widespread use-of-force violations within the department and issued a comprehensive reform plan that CPD agreed to follow, anchored in community policing and officer accountability.7 Similar consent decrees were signed in cities like Baltimore, Cleveland, Ferguson, and New Orleans. However, this work ground to a halt in the Trump administration. In 2018, then-Attorney General Jeff Sessions signed a memorandum gutting the investigatory scope and capabilities of consent decrees, and three years into this administration, not a single new consent decree has been signed.8 The neglect of the Trump administration has left a *vacuum of leadership* to combat this difficult issue. Possible Solutions State and local action must play a significant role in policing reform, as we saw in the California example, but *f****ederal action* is also *crucial* to building a strong *foundation* of trust and accountability in law enforcement across the country. It is the job of the federal government to step in when strained relationships and abuse threaten the welfare and civil rights of Americans, no matter what state or community they live in.During the Civil Rights era, the federal government intervened to make sure federal law was adhered to in all communities. Enforcement mechanisms in the Civil and Voting Rights acts set a federal floor of civil rights protections—ensuring that the application of civil rights was not dependent on zip code. In the same regard, this nationwide problem now requires a nationwide response.The federal government has been investing in policing efforts for quite some time, helping to shape enforcement operations through data collection, grant funding, judicial action, and other means of influence. Continued Congressional action is essential to restore and increase trust in police.** All of us are less safe when bonds of trust are broken between our communities and police. What follows are reforms that promote better agency practices, increase officer support and training, and improve accountability and transparency in community-police relations.