

ARIZONA JOURNAL OF ENVIRONMENTAL LAW & POLICY

VOLUME 11

SUMMER 2021

ISSUE 3

ATTAINING CRIMINAL LAW ENDS THROUGH ENVIRONMENTAL MEANS

*Jessica Wakefield**

The criminal justice system is inefficient, ineffective, and fraught with laws and policies disparately impacting people of color and low-income individuals. There is no singular solution to crime, and the current system does not go far enough. If we are to achieve the goals set out by the criminal justice system of enhancing public safety and reducing crime, then we must resolve the root issues contributing to crime through other bodies of law and alternative mechanisms. This paper will analyze how criminal law ends may be achieved through environmental means; specifically, how the addition of green spaces in urban communities can reduce crime and improve communities. This paper argues that crime reduction and prevention goals can be achieved by using zoning law to create more green spaces in urban communities because communities with accessible green space experience lower rates of crime and an increase in community well-being and prosperity. Given that low-income individuals and people of color lack comparable access to green space and are most adversely affected by the criminal justice system compared to their White and more affluent counterparts, the addition of green spaces in these communities may help correct racial and economic injustices while improving the areas in which they live.

I. Introduction	229
II. The Criminal Law Regime & Its Flaws	230
A. Crime in Urban Communities	231
1. Racism	232

* J.D. Candidate, University of Arizona James E. Rogers College of Law, Class of 2022. This Note is dedicated to those who speak out against injustice and work tirelessly to protect vulnerable people from a broken legal system. Thank you to Professor Albertina Antognini for providing meaningful guidance and feedback every step of the way. Your wisdom and encouragement throughout this process has been invaluable. Many thanks to the Arizona Journal of Environmental Law and Policy for their thoughts, advice, and outstanding editorial skills. A special thank you to my husband for both supporting me in all that I do and challenging all of my arguments, forcing me to work harder and think bigger. You mean the most. Finally, I can never thank my amazing parents enough for teaching me that while nothing worthwhile comes easy, standing up for what is right and helping others is always worthwhile.

2. Poverty	234
3. Community Dynamics & Ineffective Policing	236
4. Environmental Hazards	237
III. Green Space	239
A. Social Cohesion	239
B. Property Values	240
C. Equity	241
IV. Looking Outside the Criminal Justice System	242
A. Zoning Law	242
B. Green Space as a Means to Control Crime	244
1. Crime Prevention Through Environmental Design	245
2. Criminal Law Ends, Green Space Means	246
3. A Note to Change Makers	247
C. Efficacy of Green Space Initiatives	247
V. Conclusion	249

I. Introduction

Urban communities¹ across the United States are plagued by increases in instances of violent crime, while the overall crime rate in the nation is at a historic low. Urban community crime and violence is impacted by lack of community well-being, poverty, and racial injustice. The criminal justice system, as it exists today, does not address the root issues that lead a person to commit or be involved in criminal activity. The current system applies a primarily punitive approach to addressing crime, rather than a preventative approach that empowers individuals to live a law-abiding life by investing in vulnerable, neglected, and disenfranchised communities.

Governments can overcome the shortfalls of the criminal justice system by looking to other bodies of law to invigorate impoverished areas and prevent crime. Zoning law, in particular, provides a flexible means for the government to design cities in such a way that allows them to flourish. Specifically, by zoning for green space in urban communities, the government can galvanize communities in a way that reduces instances of criminal activity.

Crime does not exist in a vacuum, and the factors that contribute to crime are countless.² It follows that crime cannot be addressed with a single solution. This paper does not suggest zoning for green space will eradicate crime in urban communities. Instead, it will discuss why

1 For the purposes of this paper, “urban community” is used to describe areas that have often been labeled as inner cities. The term “inner city” is commonly used to signify poor, Black, urban neighborhoods. It is not a technical term, and areas are referred to as inner cities regardless of whether they are actually located central to a city’s grid. The term was popularized in the early 1960s by North American sociologists to discuss urban migration trends resulting from the segregationist federal housing policies in the 1930s. Today, it has become politicized, with politicians referring to inner cities when making official remarks about crime and job programs. What started as a term used to describe the aftermath of redlining has become a reference to areas symbolic of poverty, violence, and urban decay. Because of the problematic nature of the term “inner city” and to avoid contributing to the negative connotation, this paper will refer to the subject areas as urban communities. See Justin Charity, What Does “Inner City” Mean, Anyway?, *COMPLEX* (Feb. 1, 2016) <https://www.complex.com/life/2016/02/inner-city-origin-and-proliferation-of-sloppy-political-language>.

2 Derek Gilna, Brookings Institute Study Finds Direct Connection between Poverty and Crime Rates, *PRISON LEGAL NEWS* (Dec. 7, 2018), <https://www.prisonlegalnews.org/news/2018/dec/7/brookings-institute-study-finds-direct-connection-between-poverty-and-crime-rates/>.

governments should look outside the criminal justice system to resolve criminal issues and how zoning for green space should be considered as an effective approach. Specifically, Part I describes some of the flaws in the current criminal justice system and its inability to address issues contributing to crime in urban communities including racism, poverty, and community dynamics and ineffective policing. Part II explains what green space is and the benefits it brings to a community including social cohesion and property values, which can contribute to a reduction in crime. It also discusses the inequitable distribution of green space between races and social classes. Part III asserts how zoning law can be used as an alternative to criminal law to address problems of crime in urban communities. It provides a history of zoning law, how governments currently use it to keep order and better ways to do so. It demonstrates how green space can be utilized as an effective way to reduce crime by creating environments that change behavior and how some cities have already successfully done so.

II. The Criminal Law Regime & Its Flaws

The primary aims of the criminal justice system in America are respect to victims, fairness to offenders, and protection of society through deterrence.³ Despite these noble goals, the system is actually an enormous failure that our society can no longer afford.⁴ Beyond the monetary costs, the failure of the criminal justice system is contributing to cultural decline, breakdown of families, and dependency on public assistance programs.⁵ The Honorable B. Michael Dann noted:

I believe the criminal justice system does not influence the local crime rate at all. Indeed, it may be that the very system which exists to protect us from crime actually contributes to crime, mainly due to lack of system credibility and insufficient attention paid to individual cases, offenders and victims.⁶

Some cities have areas that appear to be more like war zones than communities in some respects, with gunshots ringing out every night and death tolls that have eclipsed those of the U.S. troops in Afghanistan and Iraq.⁷ Other cities struggle to maintain civility and public order due to criminal behavior that eludes traditional measures.⁸

The statistics reflecting the failure of the American criminal justice system are incomparable to those of any other First World country.⁹ United States citizens are incarcerated

3 Hon. B. Michael Dann, *Arizona's Criminal Justice System*, ARIZ. ATT'Y, Oct. 29, 1992, at 12.

4 Craig DeRoche, *A Failing Criminal Justice System*, N.Y. TIMES (Mar. 12, 2012), <https://www.nytimes.com/roomfordebate/2012/03/12/young-black-and-male-in-america/a-failing-criminal-justice-system>.

5 *Id.*

6 Dann, *supra* note 3. The Honorable B. Michael Dann was a well-known and respected superior court judge in Maricopa County, Arizona for 20 years.

7 Jeremy Travis, *Critical Criminal Justice Issues: Task Force Reports from the American Society of Criminology to Attorney General Janet Reno*, NAT'L INST. OF JUST., vii (1984), <https://www.ncjrs.gov/pdffiles/158837.pdf>; Niall McCarthy, *Homicides in Chicago Eclipse U.S. Death Toll in Afghanistan and Iraq*, FORBES (Sept. 8, 2016), <https://www.forbes.com/sites/niallmccarthy/2016/09/08/homicides-in-chicago-eclipse-u-s-death-toll-in-afghanistan-and-iraq-infographic/?sh=357cbc1d7d75>. Between 2001 and September 6, 2016, Chicago experienced 7,916 murders. In that same period, the number of Americans killed in the war in Afghanistan was 2,384 and 4,504 killed in the war in Iraq.

8 Travis, *supra* note 7.

9 DeRoche, *supra* note 4.

at a rate five to ten times higher than those of other industrialized countries.¹⁰ The United States also spends approximately \$80 billion per year on corrections facilities alone.¹¹ Since the 1980s, government employment in the criminal justice system has grown by one million employees.¹² Despite this growth in criminalization, there has been no measurable decrease in recidivism, even though our prison population has increased at an astonishing rate.¹³ Once a person has entered the criminal justice system, it is often difficult to break free.¹⁴ A significant number of offenders released from incarceration are rearrested within a short period of time.¹⁵

Most Americans do not believe the current criminal justice system is working.¹⁶ In a national study, researchers found “most Americans believe the country’s criminal justice system comprises an ineffective, purely punitive approach to crime.”¹⁷ The majority of Americans believe that the underlying causes of crime should be addressed, rather than the symptoms; prevention of crime should be the primary criminal justice goal, and this function is currently lacking; and that the efficacy of harsh prison sentences should be reconsidered, especially in cases of non-violent offenders.¹⁸ These beliefs reflect a shift from the previous attitude towards criminal justice that favored a punitive approach.¹⁹

In the face of these alarming failures and lack of public faith in the system, the focus has remained almost exclusively on the capability of the criminal justice system to deter and rehabilitate offenders.²⁰ Rather than look outside the system, policymakers have doubled down on efforts to achieve benefits the system is likely unable to deliver.²¹ These efforts have led to more police, more arrests, longer sentences, and the construction of more prisons—all with little benefit to the communities these practices were designed to help.²²

A. Crime in Urban Communities

Despite the decrease in violent crime nationwide, urban community neighborhoods across the country are still experiencing a magnitude of collective distress.²³ America’s overall crime

10 United States Still Has Highest Incarceration Rate in the World, EQUAL JUST. INITIATIVE (Apr. 26, 2019) <https://ej.org/news/united-states-still-has-highest-incarceration-rate-world/>.

11 Id.

12 DeRoche, *supra* note 4.

13 Id.

14 Drew Kann, 5 Facts Behind America’s High Incarceration Rate, CNN (Apr. 21, 2019), <https://www.cnn.com/2018/06/28/us/mass-incarceration-five-key-facts/index.html>.

15 Id. In a recent study by the United States Sentencing Commission (USSC) that tracked 25,000 federal offenders over an eight-year period, researchers found almost half of them were rearrested for violating their supervision conditions or committing a new crime. For half of those rearrested, it took less than two years for them to enter the system again.

16 Majority of Americans Think U.S. Criminal Justice System is Broken, Ineffective; See Need for Change, OPEN SOC’Y FOUNDS. (Feb. 12, 2002), <https://www.opensocietyfoundations.org/newsroom/majority-americans-think-us-criminal-justice-system-broken-ineffective-see-need>.

17 Id.

18 Id.

19 Id.

20 Travis, *supra* note 7, at 89.

21 Id.

22 Id.

23 Dep’t of Just., Off. of Pub. Aff., FBI Report on Crime Shows Decline in Violent Crime Rate for the Third Consecutive Year, U.S. DEP’T OF JUST. (Sept. 28, 2020), <https://www.justice.gov/opa/pr/fbi-report-crime-shows-decline-violent-crime-rate-third-consecutive-year> (In the release of its 2019 edition of *Crime in the United States*,

rate is at a noticeable low and gun violence has decreased an astonishing 49 percent since 1993.²⁴ Yet, in marginalized urban communities, the inverse is true.²⁵ Historically, marginalized urban communities have experienced much higher rates of violence.²⁶ The rate of gun violence in many major cities for 2020 alone are alarming. Between Memorial Day, the day George Floyd was killed by police, and July 27, 2020, 113 people were shot in Minneapolis.²⁷ In Philadelphia, New York City, and Chicago, shooting incidents have increased by at least a third from the previous year.²⁸ “As of July 24, 2020, Chicago had 414 murders [that] year and 1,637 shooting incidents, up from 275 murders and 1,110 shooting incidents year-on-year.”²⁹ Further, in just one month, at least nine children were killed across the city.³⁰

Why is it that some American neighborhoods appear to be more prone to violence than the rest of the country? Scholars assert “high rates of Black crime” exist despite the national decline because African Americans live in deeply impoverished and highly segregated neighborhoods.³¹ In urban communities, “you often see high levels of poverty [and] a lack of economic opportunity for people who have been systematically disenfranchised by the criminal justice system.”³²

1. Racism

One of the most glaring failures of the American criminal justice system exists in the disparate treatment of persons of color, which occurs across the entire spectrum of the system.³³ This racial and ethnic disparity fosters public mistrust of the system and impedes its ability to achieve one of its primary goals of promoting public safety.³⁴ Reported arrest rates for many offenses suggest African Americans are disproportionately involved in certain crimes.³⁵ African Americans and Latinos are more likely to be sent to jail or prison than Whites and often receive longer sentences than Whites.³⁶ The assertion that these racial disparities reflect that people of color commit crimes at greater rates is incomplete.³⁷

For many, the term “segregation” is still primarily associated with the dark period of history, before the civil rights movement, in which racist laws and policies kept Black Americans

the Federal Bureau of Investigation (FBI) reported that violent crime decreased nationwide for the third year in a row. Violent crime decreased in both 2017 and 2018 and dropped an additional 4.5 percent in 2019); Heather Ann Thompson, *Inner-City Violence in the Age of Mass Incarceration*, *THE ATLANTIC* (Oct. 30, 2014), <https://www.theatlantic.com/national/archive/2014/10/inner-city-violence-in-the-age-of-mass-incarceration/382154/>.
24 Thompson, *supra* note 23.

25 See Josiah Bates, ‘We Should Have a Handle on This by Now.’ As Inner-City Neighborhoods See a Surge in Gun Violence, These Are the Changes Community Leaders Say They Need, *TIME* (July 27, 2020), <https://time.com/5757773/inner-city-gun-violence/>.

26 *Id.*

27 *Id.*

28 *Id.*

29 *Id.*

30 *Id.*

31 Thompson, *supra* note 23.

32 Bates, *supra* note 25.

33 *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, *THE SENT’G PROJECT*, 1 (2008), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf>.

34 *Id.*

35 *Id.* at 5.

36 *Id.* at 6.

37 *Id.*

separate from White people physically, socially, and economically. Yet segregation is not a thing of the past.³⁸ Historical policies, such as redlining, have left lasting segregation and diminished investment in urban communities.³⁹ At present in the United States, Blacks, Latinos, and other racial and ethnic groups continue to live in separate social spheres from Whites.⁴⁰ This separation is apparent in terms of both physical space and access to social, political, and economic resources.⁴¹ Such disparities have inevitably led to social problems, with violent crime being one of the most prevalent.⁴²

In response to the housing shortages in the 1930s, the federal government developed a program explicitly designed to increase and segregate housing in America.⁴³ The housing programs under the New Deal are a perfect example of institutional racism. The government created these programs with the primary purpose of providing housing to White, middle-class families, leaving African Americans out of the new communities, and pushing them into urban housing projects.⁴⁴ The government intentionally furthered segregation by engaging in redlining, a policy in which the Federal Housing Administration (FHA) refused to insure mortgages in and near African American neighborhoods.⁴⁵

The FHA had no qualms about the segregationist policies it put in place. The segregation was deliberate, blatant, and explicitly laid out in the FHA's *Underwriting Manual*.⁴⁶ It provided that, "incompatible racial groups should not be permitted to live in the same communities."⁴⁷ It recommended highways be used to separate African-American from White neighborhoods and subsidized builders that produced subdivisions for White people *en masse* with the specific requirement that the homes not be sold to African-Americans.⁴⁸ The FHA justified these policies by claiming, without any factual basis, that if African-Americans bought homes in or near White neighborhoods, the property values of the White homes they were insuring would decline, thereby putting their loans at risk.⁴⁹ In actuality, property values rose when African-Americans tried to buy homes in all-White or mostly White neighborhoods.⁵⁰ African-Americans were willing to pay more for properties than Whites because their housing supply was so restricted and they were left with limited choices.⁵¹

38 See Lauren J. Krivo & Ruth D. Peterson, Segregation, Racial Structure, and Neighborhood Violent Crime, 114 *AJS* 1765, 1765 (May 2009), https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1005&context=soc_pub.

39 See Ashley Luthern, How Milwaukee Became So Segregated and Why it Matters When it Comes to Crime, *MILWAUKEE J. SENTINEL* (Jul. 10, 2019), <https://www.jsonline.com/story/news/special-reports/milwaukee-violence/2019/07/10/how-segregation-milwaukee-shapes-violent-crime-including-homicides/1512301001/>.

40 Krivo & Peterson, *supra* note 38.

41 See *id.*

42 See *id.* at 1766.

43 Terry Gross, A 'Forgotten History' of How the U.S. Government Segregated America, *NPR* (May 3, 2017), <https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>.

44 *Id.*

45 *Id.* The term redlining comes from the practice the government engaged in in which it developed maps of every metropolitan area in the country, color-coding them to indicate where it was and was not safe to insure mortgages. Anywhere African Americans lived or lived nearby were colored red "to indicate to appraisers that these neighborhoods were too risky to insure mortgages."

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.* The rationale that the FHA used was never based on any kind of study, or any reality.

50 *Id.*

51 *Id.*

Redlining has had long-term economic and spatial effects.⁵² In the late 1940s and 50s, homes in suburban developments sold for approximately twice the national median income and were affordable to working class families.⁵³ Today, many of those same homes sell for, at minimum, \$300,000 to \$400,000 – six to eight times the national median income.⁵⁴ African-Americans were equally able to afford those homes in the 1940s and 50s, but explicitly prohibited from buying them through segregationist policies, excluding them from the ability to increase their wealth through equity appreciation decades later.⁵⁵ Redlining was ultimately outlawed by the Fair Housing Act of 1968.⁵⁶ But it was too little too late. Though Black Americans may now purchase homes in suburban subdivisions, the homes are no longer affordable.⁵⁷ As living in these areas is economically unattainable to most, many Black people remain in urban communities since being pushed into urban housing projects. At present, people of color “own homes at lower rates than their white counterparts and are more likely to encounter housing instability.”⁵⁸

It has been said, “Those who begin life on one side of the mountain rarely make it to the other.”⁵⁹ This seems to be the case for many families affected by redlining and discriminatory housing policies. For example, 62 percent of all Blacks in America live in highly segregated metropolitan areas, many of them residing in highly disadvantaged communities.⁶⁰ On the other hand, Whites almost exclusively live in highly advantaged areas.⁶¹ In 2010, it was reported that 70 of the 100 largest U.S. metropolitan areas, which are home to more than half the country’s population, “were so segregated that half of Blacks would need to change neighborhoods to be equally mixed with Whites.”⁶² Today, redlined areas have higher rates of poverty and crime.⁶³ Studies suggest “the more integrated a city, the less correlation between income and race, the healthier the city and the lower the violence.”⁶⁴ Municipal action and investment targeting communities most egregiously impacted by institutionalized racism is essential toward equalizing access to wealth, resources and opportunities, and reducing the crime and violence that has befallen segregated neighborhoods.

2. Poverty

52 Id.

53 Id.

54 Id. Figures based on the Daly City development of San Francisco and Levittown in New York, and others in between across the country.

55 Id.

56 Kevin E. Jason, *Dismantling the Pillars of White Supremacy: Obstacles in Eliminating Disparities and Achieving Racial Justice*, 23 CUNY L. REV. 139, 157 (2020).

57 Gross, *supra* note 43.

58 Jason, *supra* note 56 at 145.

59 Michael Cassidy, *Racial Segregation is Still a Problem*, THE CENTURY FOUND. (Jul. 1, 2013), <https://tcf.org/content/commentary/racial-segregation-is-still-a-problem/?session=1>.

60 Krivo & Peterson, *supra* note 38, at 1766.

61 Id.

62 Cassidy, *supra* note 59.

63 Luthern, *supra* note 39. Present-day census tracts do not match up perfectly with Milwaukee's historic redlined neighborhoods, but of the tracts that fill a majority of those historic areas it is reported that 36 percent of residents' income are below the poverty line, which is nine percentage points worse than the citywide poverty rate of 27 percent. Between 2014 and 2018, the homicide rate in these neighborhoods was 13 percent worse than the number for the city as a whole. The nonfatal shooting rate was 28 percent worse than the citywide average.

64 Id.

Both race and class impact the likelihood a person will be involved with the criminal justice system.⁶⁵ Areas with high rates of violent crime “also have higher than average rates of poverty, unemployment, and low homeownership.”⁶⁶ Some of the cities with the highest rates of violent crime also rank among the poorest in the country.⁶⁷ Poverty in urban communities is pervasive and the racial disparities are extreme. Low-income individuals are disproportionately involved in the criminal justice system, and people of color are disproportionately low-income.⁶⁸ The average Black neighborhood is two times as poor as the average White one.⁶⁹ In the wake of the 2008 recession, Black people were 60 percent more likely than any other ethnic group to live in an area with double digit unemployment rates.⁷⁰ In fact, the Black unemployment rate was double that of Whites and the average duration of their unemployment was one-third longer.⁷¹ Beyond income, other factors contribute to poverty, including wealth accumulation and quality education.⁷²

Institutional racism, and particularly redlining policies as discussed above, have all but ensured that Black people face numerous hurdles to achieving wealth equality at every stage of their life. African-American incomes today are, on average, about 60 percent of White incomes, but African-American wealth is about five percent of White wealth.⁷³ The enormous difference between the income ratio and wealth ratio is almost entirely attributable to the housing policies put in place in the 1930s.⁷⁴ In the United States, most middle-class families gain wealth from the equity in their homes.⁷⁵ As African-Americans were prohibited from buying homes in the suburbs in the 1940s, '50s, and into the '60s, they did not gain any of the equity appreciation Whites did.⁷⁶ The redlining that prevented Black people from purchasing homes gave White people a major wealth advantage: accumulating equity in their homes enabled White people to bequeath wealth to their children and send their children to college using home equities.⁷⁷ Furthermore, a significant portion of school funding is sourced through property taxes, with the amount a particular school receives varying dramatically, both state to state and district to district.⁷⁸ As a result, less is spent on educating children of impoverished communities than in more affluent communities.

Poor quality of education and lack of opportunity for upward mobility create conditions that contribute to poverty and solidify the status quo.⁷⁹ Approximately 75 percent of Black public school students attend segregated, predominantly poor schools.⁸⁰ Even when controlling for income, it is reported that White people are more than twice as likely to attend highly selective

65 THE SENT'G PROJECT, *supra* note 33.

66 Luthern, *supra* note 39.

67 Samuel Stebbins, *The Midwest is Home to Many of America's Most Dangerous Cities*, USA TODAY (Oct. 26, 2019), <https://www.usatoday.com/story/money/2019/10/26/crime-rate-higher-us-dangerous-cities/40406541/>.

68 THE SENT'G PROJECT, *supra* note 33.

69 Cassidy, *supra* note 59.

70 *Id.*

71 *Id.*

72 *See id.*

73 Gross, *supra* note 43.

74 *Id.*

75 *Id.*

76 *Id.*

77 *Id.*

78 Jennifer Park, *School Finance*, EDUC. WK. (Dec. 06, 2007) (updated June 20, 2011), <https://www.edweek.org/policy-politics/school-finance/2007/12>.

79 *See Cassidy, supra* note 59.

80 *Id.*

colleges than Blacks, with racial disparities widening in the last three decades.⁸¹ Going beyond the problem of access, Black people complete college at lower rates than Whites, yet accumulate significantly more loan debt and are at a greater risk for default.⁸² Thirty percent of Whites are college graduates, compared to just 18 percent of Blacks.⁸³

There is not much improvement in the workforce. Most occupations in America are racially segregated, even when controlling for education.⁸⁴ Professions predominantly held by Black men earn only 73 cents to the dollar compared to professions predominantly held by White men.⁸⁵ The discrimination is not necessarily deliberate. The ability to find a job through family or friends is an opportunity seldom available to people of color in poor neighborhoods, with informal networks being one of White people's strongest labor market advantages.⁸⁶ Differences in opportunity can result in negative effects to communities.

Data now confirms extreme poverty leads to increased crime rates.⁸⁷ In the vast majority of cities with the highest rates of violent crime, the poverty and unemployment rates exceed the national rate.⁸⁸ In almost every state, "between 40 and 50 percent of the prison population grew up in families in the bottom quintile [20 percent] of the income distribution."⁸⁹ Researchers have found males raised in families that fall within the bottom 10 percent of income distribution were 20 times as likely to be incarcerated by their early 30s than those who came from families at the highest income level.⁹⁰ The research confirms the idea that living in a low-income area increases the likelihood of being incarcerated.⁹¹ In evaluating income and employment for the three years prior to incarceration, it was found that only 49 percent of men were employed, and even when they were, their median earnings were just \$6,250.⁹² Only 13 percent of the men earned over \$15,000.

"Prisoners are also disproportionately likely to have grown up in socially isolated and segregated neighborhoods with high rates of child poverty and in predominantly African-American or American Indian neighborhoods."⁹³ Criminal justice experts suspect that policies that seek to address poverty and its causes may be more effective for reducing crime and recidivism than the current methods.⁹⁴ Specifically, policies that focus on investing in communities, children, reducing discrimination, and targeting economic distress in the most impoverished neighborhoods should be implemented as a way to prevent crime.⁹⁵

3. Community Dynamics & Ineffective Policing

81 Id.

82 Id.

83 Id.

84 Id.

85 Id.

86 Id.

87 Gilna, *supra* note 2.

88 Stebbins, *supra* note 67.

89 Gilna, *supra* note 2.

90 Id.

91 Id.

92 Id.

93 Id.

94 Id.

95 Id.

Crime, and particularly violent crime, has many causes.⁹⁶ Individual factors pertaining to the perpetrator and the victim matter, but it is becoming increasingly apparent that the environment also plays an important role.⁹⁷ Even in cities with high violent crime rates, the entire city is not unsafe.⁹⁸ Violence is hyper-local, typically confined to a few neighborhoods or even a few blocks.⁹⁹ As discussed above, institutional racism has resulted in people of color disproportionately living in such areas.

The norms and dynamics within the members of these communities, which have developed in part as a result of their environment, also contribute to violent crime.¹⁰⁰ Urban communities most affected by violent crime often have long histories of structural discrimination and neglect from government institutions, particularly law enforcement.¹⁰¹ Many of these communities suffer from over-enforcement and under-protection.¹⁰² Intrusive forms of policing in these areas have resulted in mass stop-and-frisk encounters and punishment for minor offenses, but police do not put the same level of attention or resources into preventing or solving more serious offenses, like violent crime.¹⁰³ This creates distrust between community members and the police.¹⁰⁴

Over-policing for minor offenses while expending minimal effort in addressing violence, shootings, and homicides sends a message that the government is uninterested or unwilling to protect community members from the most serious harm.¹⁰⁵ This leaves people feeling their only option is to take matters into their own hands. The result is that instead of relying on the police to protect them and settle disputes, they resort to other means, such as violence.¹⁰⁶ Street groups can offer community members the perception of safety, but in actuality the norms and behaviors within the groups produce more violence and increase risk to members.¹⁰⁷ Such norms include carrying weapons, resolving disputes with violence, and cycles of retaliation.¹⁰⁸ Such dynamics within the community and between the community and police are ineffective in preventing crime and create an unsustainable cycle of violence.

In urban communities plagued by systemic racism, pervasive poverty issues, and hostility and distrust between community members and the police, alternative methods to preventing crime are needed. Investment in these communities provides an opportunity for government and municipalities to heal relations and build trust with community members while increasing economic prosperity.

4. Environmental Hazards

96 Luthern, *supra* note 39.

97 See *id.*

98 Stebbins, *supra* note 67.

99 *Id.*

100 See Stephen Lurie, *There's No Such Thing as a Dangerous Neighborhood*, BLOOMBERG (Feb. 25, 2019), <https://www.bloomberg.com/news/articles/2019-02-25/beyond-broken-windows-what-really-drives-urban-crime>.

101 *Id.*

102 *Id.*

103 *Id.*

104 *Id.*

105 *Id.*

106 *Id.*

107 *Id.*

108 *Id.*

Environmental differences in urban communities have negative impacts on the health and wellbeing of the individuals who live there. As counties become more urban, air quality tends to decrease.¹⁰⁹ Air pollutants tend to be more concentrated in urban areas, and urban counties experience significantly worse air quality than fringe and rural counties.¹¹⁰ There is a higher prevalence of asthma and asthma morbidity amongst children living in urban environments than the general population.¹¹¹ The reasons for the disparity are complex, but airborne environmental and pollutant exposure is considered one of the more likely causes.¹¹² Homes in urban communities are often in disrepair, with problems such as leaky roofs, mold contamination, and water damage.¹¹³ Urban community residences are also plagued by high rates of cigarette smoking, cockroach and rodent infestation, and high levels of NO₂ (a reactive gas that primarily enters the air from the burning of fuel).¹¹⁴ Continued exposure to these allergens and pollutants in the environment contribute to respiratory illness and death.¹¹⁵

Additionally, urbanization increases the amount and types of pollutants that can be carried into the country's waters.¹¹⁶ The land surface in urban areas largely consists of buildings and pavement, and water cannot soak into the ground when these surfaces are present, which increases stormwater runoff.¹¹⁷ Pollutants from urban runoff typically include toxic chemicals from vehicles, viruses and bacteria from waste, and heavy metals.¹¹⁸ These pollutants have a dramatic impact on the environment.¹¹⁹ They kill and disrupt wildlife populations and vegetation, contaminate drinking water, and reduce the utility of recreational areas by making them unsafe and unpleasant.¹²⁰

Environmental contaminants have been found to reduce IQ and cause behavioral changes.¹²¹ Behavioral changes resulting from exposure to contaminants include shortened attention span, hyperactivity, and increased impulsive and antisocial behavior.¹²² Lower IQ and behavioral problems increase the likelihood that a person will be involved with the criminal justice system.¹²³ Improving environmental conditions in urban areas in ways that reduce exposure to pollutants can help prevent the onset of behavioral problems and reduction in IQ for residents of

109 Heather Strosnider, et al., *Urban Differences in Air Quality, 2008-2012, and Drinking Water Quality, 2010-2015 – U.S.*, U.S. DEP'T OF HEALTH & HUM. SERVS., 5 (2017), <https://www.cdc.gov/mmwr/volumes/66/ss/pdfs/ss6613.pdf>.

110 Id.

111 Elinor Simons, et al., *Indoor Environmental Differences between Inner City and Suburban Homes of Children with Asthma*, 84 J. URB. HEALTH, 577, 577 (2007),

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2219555/pdf/11524_2007_Article_9205.pdf.

112 Id. at 577-78.

113 Id. at 578.

114 Id.; See also U.S. EPA, *Basic Information About NO₂*, <https://www.epa.gov/no2-pollution/basic-information-about-no2#What%20is%20NO2> (last visited Jan. 31, 2021).

115 Simons, et al., *supra* note 111, at 578.

116 U.S. EPA, *Polluted Runoff: Nonpoint Source (NPS) Pollution*, <https://www.epa.gov/nps/nonpoint-source-urban-areas> (last visited Oct. 4, 2020).

117 Id.

118 Id.

119 Id.

120 Id.

121 David O. Carpenter & Rick Nevin, *Environmental Causes of Violence*, 99 PHYSIOLOGY & BEHAV. 260, 261-262 (Sept. 1, 2009), https://election.princeton.edu/wp-content/uploads/2013/01/violence_lead_Nevin.pdf.

122 Id.

123 Id. at 264-65.

urban communities, which in turn can in turn lower the likelihood that individuals will become involved in crime.

III. Green Space

Green spaces are open pieces of undeveloped land partially or completely covered with grass, trees, or other vegetation.¹²⁴ Urban green spaces are open to the public and often consist of parks, nature reserves, forests, athletic fields, trails, and community gardens.¹²⁵ They provide opportunities for people to get outside and interact with nature and each other in ways that may not be possible in other settings.¹²⁶ They are often used for leisure, social activities, and recreation.¹²⁷

The addition of green space in urban communities provides governments with a unique way to make broad improvement to their cities through a singular action. Green space benefits the physical environment where nature areas and greenery have become sparse due to urbanization. Increasing the number of green spaces in urban cities is beneficial to the environment because they can filter air, reduce the effects of noise, absorb pollution, and cool temperatures.¹²⁸ Green space also supports biodiversity and reduces stormwater runoff.¹²⁹

Green space has also been found to improve the social and economic aspects of communities through increased social cohesion and property values.¹³⁰ Improvements of social cohesion and increasing property values have the potential to reduce crime by remedying problematic community dynamics and addressing poverty related issues. Despite these known benefits, green space is inequitably distributed by race and socioeconomic status.¹³¹ By increasing the amount of green space in racially segregated and impoverished communities, municipalities can combat environmental racism and reduce crime.

A. Social Cohesion

Social cohesion is a term used to characterize the social environment.¹³² Specifically, it refers to “interpersonal dynamics and/or collective efforts that may be used to assess quality of life.”¹³³ Social cohesion also invokes feelings of trust, acceptance, connectedness, and belonging.¹³⁴ The presence and quality of urban green spaces such as parks and forests positively

124 U.S. EPA, What is Open Space/Green Space?, <https://www3.epa.gov/region1/eco/uep/openspace.html> (last visited Oct. 1, 2020).

125 *Id.*; Jennifer R. Wolch, et al., Urban Green Space, Public Health, and Environmental Justice: The Challenge of Making Cities ‘Just Green Enough’, 125 *LANDSCAPE & URB. PLAN.* 234, 235 (2014).

126 Viniere Jennings & Omoshalewa Bamkole, The Relationship Between Social Cohesion and Urban Green Space: An Avenue for Health Promotion, 16 *INT’L J. OF ENV’T RSCH. & PUB. HEALTH* 1, 1 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6388234/pdf/ijerph-16-00452.pdf>.

127 *Id.*

128 Wolch, et al., *supra* note 125.

129 Lorien Nesbitt, et al., Who has Access to Urban Vegetation? A Spatial Analysis of Distributional Green Equity in 10 US Cities, 181 *LANDSCAPE & URB. PLAN.* 51, 52 (2019).

130 Delfina Grinspan, et. al., Green Space: An Underestimated Tool to Create More Equal Cities, *WORLD RES. INST.* (Sept. 29, 2020), <https://www.wri.org/blog/2020/09/green-space-social-equity-cities>.

131 Nesbitt, et al., *supra* note 129.

132 Jennings & Bamkole, *supra* note 126.

133 *Id.*

134 *Id.*

influences social cohesion.¹³⁵ In addition, proximity to quality parks is positively associated with a sense of community.¹³⁶

Lack of social cohesion within a city or neighborhood is an important factor in explaining why some communities are susceptible to violence while others are not.¹³⁷ Cohesive communities tend to be able to work together to address problems to serve the common good.¹³⁸ Essentially, communities with high levels of social cohesion are able to act to prevent and/or curb criminal and violent behavior before it escalates.¹³⁹ Thus, policies that attempt to foster social cohesion have the potential to prevent crime and violence.¹⁴⁰

By increasing green space, municipalities can resolve some of the issues that contribute to the pervasiveness of crime in urban communities. Many urban communities in America appear to suffer from a lack of social cohesion. As discussed above, members of urban communities are often distrustful of police due to discriminatory policing practices and resort to violence to address their problems. Increased social cohesion may improve the ability of community members to address problems without violence.¹⁴¹ Improvements in social cohesion also have the ability to improve relationships between the community and police.¹⁴² Individuals who report higher levels of social cohesion also report higher satisfaction with police.¹⁴³ Given that distrust of police and a resulting unwillingness of urban communities to call on police to address crimes and disputes plays an important role in the perpetuation of violent crime in these communities, adding green space to urban communities and improving social cohesion has the potential to reduce crime by improving the way urban communities view and interact with police.¹⁴⁴

B. Property Values

Green space generally causes an increase in property values because homeowners and renters are willing to pay more for the perceived benefits of being close to green space.¹⁴⁵ The aesthetic appeal and recreational opportunities associated with green space attract potential residential buyers.¹⁴⁶ The opposite is also true: when an area is dilapidated, it drags down property values, discourages people living in the community from investing in their own properties, deters banks from lending money, and dissuades potential buyers.¹⁴⁷ Investing in the community in a

135 Id. at 2.

136 Id.

137 Vanessa Barolsky, et al., *Is Social Cohesion the Missing Link in Preventing Violence?*, RSCH. BRIEF (Apr. 2016), <https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/55667/IDL-55667.pdf>.

138 Id.

139 Id.

140 Id.

141 Id.

142 See *Neighborhoods and Crime: Collective Efficacy and Social Cohesion in Miami-Dade County*, NAT'L INST. OF JUST. (Mar. 9, 2016), <https://nij.ojp.gov/topics/articles/neighborhoods-and-crime-collective-efficacy-and-social-cohesion-miami-dade-county>.

143 Id.

144 Id.

145 Natasha Catrakilis, *Literature Survey: Green Space and Property Values*, URB. ECON. (Apr. 28, 2015), <https://sites.duke.edu/urbaneconomics/?p=1441>.

146 Emily Badger, *How Cities Are Starting to Turn Back Decades of Creeping Urban Blight*, THE WASH. POST (May 20, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/05/20/how-cities-are-starting-to-turn-back-decades-of-creeping-urban-blight/>.

147 Id.

way that makes it more appealing and encourages people to leave their homes also attracts businesses, which in turn creates jobs and further improves the community.

Increased property values result in increased property taxes.¹⁴⁸ If properly allocated, the increase in property tax revenue can be used to further improve the community.¹⁴⁹ In some cases, cities have used the additional taxes paid to cover the cost of acquiring, developing, and maintaining green space.¹⁵⁰ As such, the economic impact that green spaces can have on a community should be considered in urban planning.¹⁵¹

Increasing property values by incorporating green space in urban communities is a practical way for municipalities to address poverty, racial, and wealth inequality. Increasing property values through the addition of green space can help Black people accumulate home equity, an aspect of wealth that they were previously restricted from obtaining due to segregationist housing policies. Moreover, cities can utilize the additional property tax revenue to further improve long neglected communities. The tax revenue could be used to create job programs, improve schools, and create other programs to improve the community and correct disparities based on race and socioeconomic status. As poverty is often related to crime, reducing poverty by incorporating green space in urban communities can diminish incidents of crime.

C. Equity

Despite the known benefits of urban green spaces, there is evidence that the distribution of green space within some cities is inequitable.¹⁵² This is particularly problematic given the issue of environmental racism. Environmental racism is defined as “the disproportionate impact of environmental hazards on people of color.”¹⁵³ It refers to institutional rules, policies, and government and corporate decisions that intentionally target communities of color and low socioeconomic status for undesirable land uses and minimal enforcement of zoning and environmental laws.¹⁵⁴ One of the primary ways environmental racism is perpetuated occurs when government officials or companies are faced with where to place a hazardous waste facility or dump site.¹⁵⁵ Rather than place it in their own backyard, they opt for “communities filled with people who do not look like them or fall under the same tax bracket.”¹⁵⁶ Factors such as intentional neglect, lack of institutional power, and low land values of people of color also contribute to environmental racism.¹⁵⁷ The result is a disproportionate exposure to toxic and hazardous waste based on race.¹⁵⁸ Exposure to environmental pollutants lowers the quality of life and leads to a variety of diseases and cancers.¹⁵⁹

148 Catrakilis, *supra* note 145.

149 *Id.* For example, Central Park in New York City was created with the hope that direct and indirect economic contributions to city tax revenues would follow.

150 *Id.*

151 *Id.*

152 Nesbitt, et al., *supra* note 129.

153 Environmental Justice & Environmental Racism, GREENACTION, <http://greenaction.org/what-is-environmental-justice/> (last visited Jan. 31, 2021).

154 *Id.*

155 Victoria Peña-Parr, The Complicated History of Environmental Racism, UNM NEWSROOM (Aug. 4, 2020) <http://news.unm.edu/news/the-complicated-history-of-environmental-racism>.

156 *Id.*

157 GREENACTION, *supra* note 153.

158 *Id.*

159 Peña-Parr, *supra* note 155.

In studying access to green space in cities across the United States, researchers have found that Latino urban residents have the lowest levels of access, followed by African American and Indigenous residents.¹⁶⁰ While data suggests parks are more equitably distributed than other types of green spaces, they are sparsely distributed and do not provide the same psychological benefits that result from spending time in other types of green spaces that include more vegetation and trees.¹⁶¹ Green space protects against mood disorders, neurotic behavior, depression, and stress-related issues.¹⁶² The result of the disparity in distribution is that disadvantaged urban residents are more likely than more affluent and privileged residents to have to leave their homes to seek out green spaces that can provide these psychological benefits.¹⁶³

Urban areas with less green space have been associated with more traffic noise and less access to neighborhood resources.¹⁶⁴ Neighborhoods without resources and less desirable living conditions tend to lead to low housing rents which attract groups of lower socioeconomic status.¹⁶⁵ Many of these areas are susceptible to or are already experiencing environmental racism. Failure to incorporate green space in urban communities is another example of the occurrence of environmental racism.

IV. Looking Outside the Criminal Justice System

Rather than focusing primarily on deterrence and incarceration, a more strategic and comprehensive approach should be taken. Efforts should focus on understanding and analyzing a problem plaguing a specific area and finding ways to change conditions that give rise to crime.¹⁶⁶ Zoning law coupled with enhanced green space is a particularly promising method because of the level of flexibility and control it provides governments to address issues specific to their communities that directly and indirectly contribute to crime.

A. Zoning Law

Zoning legislation was first enacted in the early twentieth century, at a time when the United States was seeing great urban growth.¹⁶⁷ Zoning laws were created to address the issues of blight¹⁶⁸ and overcrowding that accompanied the growth, and to protect residential and commercial areas from encroachment of new development.¹⁶⁹ The use of zoning law for land use control became more popular, and eventually its constitutionality was challenged.¹⁷⁰ In upholding zoning law, the Supreme Court held that zoning is a reasonable extension of police power and zoning is

160 Nesbitt, et al., *supra* note 129, at 61.

161 *Id.* at 63.

162 Laura Rochio, Green Space is Good for Mental Health, NASA (2019), <https://earthobservatory.nasa.gov/images/145305/green-space-is-good-for-mental-health>.

163 Nesbitt, et al., *supra* note 129, at 63.

164 Oliver Gruebner, et al., Cities and Mental Health, *Deutsches Arzteblatt Int'l* 121, 125 (2017).

165 *Id.*

166 Travis, *supra* note 7, at 93.

167 Chelsea Smialek, Take A Walk Through the Cities' Gardens: Comparing Detroit's New Urban Agriculture Zoning Ordinance to Others of Its Kind, 91 U. DET. MERCY L. REV. 345, 347 (2014).

168 Blight is defined as "visible signs of decline of social systems, infrastructure, population, etc. of a place."

169 Smialek, *supra* note 167; Brentin Mock, The Meaning of Blight, BLOOMBERG, Feb. 16, 2017, <https://www.bloomberg.com/news/articles/2017-02-16/why-we-talk-about-urban-blight>.

170 Smialek, *supra* note 167.

justified where it is “exercised as part of the police power and in furtherance of the public welfare.”¹⁷¹

Standard zoning acts were subsequently printed by the United States Department of Commerce.¹⁷² The model acts were adopted by the states, which further popularized zoning as an effective tool for land use control.¹⁷³ Under the statutes, governments were delegated zoning power to divide an area into districts in accordance with a comprehensive plan.¹⁷⁴ The purpose of zoning law is to affect a plan for future development of the community.¹⁷⁵ It also functions to segregate incompatible land uses.¹⁷⁶

Efforts to keep order in urban communities have primarily focused on the use of police and criminal laws, and failed to acknowledge the ways in which government choices about property uses effect urban community environments.¹⁷⁷ Property regulations in general shape the order of American cities.¹⁷⁸ Housing and building codes are employed to target physical, and related social, disorders that contribute to urban decline.¹⁷⁹ Public nuisance lawsuits are used where code enforcements fail, with publicly prosecuted nuisance suits often targeting properties used for criminal activities, such as drug trafficking and prostitution.¹⁸⁰

Zoning laws are used to define and construct the proper order of urban land uses.¹⁸¹ At present, this is primarily implemented by Euclidian zoning, which consists of segregating one type of land use and area from another: economic activities from noneconomic activities, rich from poor.¹⁸² The idea behind this type of segregation is that changing surroundings can change behavior.¹⁸³ This has translated into a belief that by carefully ordering land uses through the separation of commercial and industrial establishments from residences, and primarily the segregation of single-family-homes, social order will be more easily kept.¹⁸⁴ In practice, Euclidean zoning is often too rigid to meet changing community needs as difficulties arise in determining the compatibility of different uses.¹⁸⁵

As a matter of federal constitutional law, land-use regulations are subject to rational basis scrutiny.¹⁸⁶ Thus, zoning laws are often upheld because the government need only show a conceivable government interest to justify the regulation.¹⁸⁷ Such a standard provides governments with more enforcement flexibility as it does not tend to raise the same constitutional concerns as other areas of law, such as criminal.¹⁸⁸

171 *Id.*

172 *Id.*

173 *Id.*

174 *Id.*

175 *Id.*

176 *Id.* at 348.

177 See Nicole Stell Garnett, *Ordering (and Order in) the City*, 57 *STAN. L. REV.* 1, 11-12 (2004).

178 *Id.* at 4.

179 *Id.*

180 *Id.* at 20.

181 *Id.* at 4.

182 *Id.* at 21.

183 *Id.* at 22.

184 *Id.*

185 Julian Conrad Juergensmeyer, et al., *Land Use Planning and Development Regulation Law* §4:15 (3d ed. 2021).

186 Garnett, *supra* note 177, at 23.

187 *Id.*

188 See *id.* at 4.

Zoning law has the potential, where implemented appropriately, to reduce crime and make once dilapidated urban communities plagued by violence feel safe and inviting. According to Jane Jacobs, activist and ardent critic of Euclidean zoning, “people make city streets feel safe and vibrant.”¹⁸⁹ In this respect, the law has the ability to ensure healthy streets by allowing for mixed-use environments, or “zoning for diversity.”¹⁹⁰ Current land use policies that separate economic and noneconomic activities can devastate neighborhoods because they preclude diversity that gives an area life and encourages people to be out and engaged in the community.¹⁹¹ Urban neighborhoods are more likely to thrive under zoning regulations that allow for a wide variety of land uses, as it will result in people being outside and on the street at different times of day and night.¹⁹² This prevents streets from being empty or “eerily deserted” at certain times, and thus makes them safer.¹⁹³ Mixed-use areas also provide a more fertile ground for new businesses as they can serve a neighborhood’s residents.¹⁹⁴ Such a structure can help to reinvigorate the economic and social climate of poor communities and work for crime prevention goals, rather than against, as current zoning practices tend to do.¹⁹⁵

B. Green Space as a Means to Control Crime

Zoning for green space would help curb the crime induced disorder that currently controls public spaces in urban communities by increasing the number of law-abiding citizens out in the streets in parks, gardens, and on sidewalks.¹⁹⁶ Strategic zoning for the inclusion of green space will provide opportunities for increased social cohesion. Mixed-use zoning that includes allocated green spaces will also increase property values and encourage businesses to open within the community. These positive effects on community well-being and the economic state of an urban community will help to reduce crime. In addition, and perhaps most notably, the mere presence of green space itself can reduce crime.¹⁹⁷

Notwithstanding the failure of policymakers to look for solutions beyond the criminal justice system, agencies and institutions outside the criminal justice system have been successful in controlling a variety of crimes.¹⁹⁸ The main opportunities to control crime outside of the system can be found in the use of situational interventions and Crime Prevention Through Environmental Design (CPTED).¹⁹⁹ While these methods are implemented differently, they serve the same “[four] broad objectives of: (1) increasing the difficulty of committing crime; (2) increasing the risks; (3) reducing the rewards, and (4) reducing the rationalizations that facilitate crime.”²⁰⁰ Greenspace can best be utilized as a form of CPTED.²⁰¹

189 Id. at 26.

190 Id.

191 Id.

192 Michael Lewyn, *New Urbanist Zoning for Dummies*, 58 ALLR 257, 267 (2006).

193 Id.

194 Id.

195 Garnett, *supra* note 177, at 35.

196 See *id.*

197 Tania Schusler, et al., *Research Note: Examining the Association Between Tree Canopy, Parks and Crime in Chicago*, 170 LANDSCAPE & URB. PLAN. 309, 309 (Jul. 2017).

198 Travis, *supra* note 7, at 89.

199 Id. at 89-90.

200 Id. at 90.

201 Schusler, et al., *supra* note 197.

1. Crime Prevention Through Environmental Design

CPTED is like “broken windows” policies in that it seeks to address the root causes of disorder and urban decay contributing to crime.²⁰² The “broken windows” theory asserts that uncorrected manifestations of disorder, including minor ones such as broken windows, signal a breakdown in social order which results in an acceleration of neighborhood decline and crime.²⁰³ The key difference between “broken windows” policies and CPTED is the approach to addressing disorder. “Broken windows” policies focus on utilizing police to restore order by enforcing criminal laws and regulating public places, whereas CPTED does not rely on police efforts and instead aims to create environments that deter, hinder, and prevent crime.²⁰⁴

CPTED is an approach to crime prevention focused on the idea that the built environment can influence behavior, and proper design of the physical environment can have a positive impact on human behavior.²⁰⁵ Through the effective design and use of the built environment, the incidence and fear of crime can be reduced and quality of life can be improved.²⁰⁶ CPTED involves the efforts of and benefits community residents, municipal leaders, and law enforcement.²⁰⁷ Community residents are given the opportunity to play a meaningful role in crime prevention. In turn, they see fewer crimes committed in their neighborhoods and have an improved sense of security and quality of life due to reduced fear of crime.²⁰⁸ Municipal leaders are able to enhance their consideration of public safety in planning and development projects and reap the benefits of improved perception of safety and livability in their community and stronger relationships with community members.²⁰⁹ Members of law enforcement are given clarification on neighborhood priorities related to crime and community quality of life, and benefit from better relationships with the community.²¹⁰

CPTED is “based on four principles: natural access control, natural surveillance, territorial reinforcement, and maintenance.”²¹¹ Natural access control is used in areas with distinct points of entry and exit.²¹² Offenders often avoid areas with only one way to enter or exit or with high visibility.²¹³ By designing businesses, parks, and public areas to have only one legitimate entrance

202 See Garnett, *supra* note 177, at 1-2.

203 See *id.*

204 See *id.*; see also Travis, *supra* note 7, at 89.

205 Salt Lake City Police Dep't, Crime Prevention Through Environmental Design, <http://www.slcpcd.com/ass3ts/uploads/2019/07/SLCPD-CPTED-Flyer.pdf>; Nat'l Crime Prevention Council, Crime Prevention Through Environmental Design Training Program, <https://www.ncpc.org/resources/home-neighborhood-safety/crime-prevention-through-environmental-design-training-program/> (last visited Nov. 15, 2020).

206 *Id.*

207 Nat'l Crime Prevention Council, *supra* note 205.

208 *Id.*

209 *Id.*

210 *Id.*

211 *Id.*

212 Seattle Police Dep't, CPTED, <https://www.seattle.gov/police/community-policing/cpted> (last visited Nov. 15, 2020).

213 *Id.*

and keeping areas well lit, crime is deterred.²¹⁴ Natural surveillance involves designing public spaces in such a way that the visibility of people and areas are maximized.²¹⁵ Examples include pedestrian-friendly sidewalks and streets and sufficient nighttime lighting.²¹⁶ Territorial reinforcement shows that a community “owns” an area.²¹⁷ This involves using features that define property lines and differentiate public and private spaces such as landscaping, pavement, and fences.²¹⁸ Physical design has the ability to influence a perception of control, and in doing so can discourage potential offenders from committing criminal acts on the property.²¹⁹ Similarly, management and maintenance sends a signal that an area is frequented on a regular basis. This signal deters offenders from committing crimes or disposing of weapons and evidence in such areas as it appears more likely they will be caught, or the evidence discovered.

CPTED has been implemented in cities and counties across the country including Seattle, Washington; Yavapai County, Arizona; Salt Lake City, Utah; and Los Angeles, California; among others, with impressive results.²²⁰ In some communities utilizing CPTED, crime has decreased by as much as 40 percent.²²¹ CPTED can be applied easily and inexpensively.²²²

2. Criminal Law Ends, Green Space Means

Green space has the potential to successfully function as a CPTED. Green spaces with large tree canopy cover and vacant lot greening have both been associated with reduced crime because of ‘eyes on the street’ and ‘cues to care’ effects.²²³ Trees with large canopies attract people to gather.²²⁴ Where more people are present, there are more ‘eyes’ directly observing activities in the area, thus deterring criminal activity out of fear of being seen.²²⁵ Similarly, well cared-for vegetation can deter criminals from committing crimes or disposing of weapons in the area because it implies surveillance.²²⁶ “An environment that appears cared for indicates human intention and that ‘a person has been in a place and returns frequently.’”²²⁷ Additionally, in some cities vegetation has been found to be a significant predictor of total, property, and violent crimes—the more greenery surrounding a building, the fewer crimes.²²⁸

214 Id.

215 Nat’l Inst. of Bldg. Scis., *Building Resilience: Crime Prevention Through Environmental Design*, Excerpted from the 12th Edition of *Architectural Graphic Standards* (Updated Jan. 8, 2018), <https://www.wbdg.org/resources/crime-prevention-environmental-design>.

216 Id.

217 Seattle Police Dep’t, *supra* note 212.

218 Nat’l Inst. of Bldg. Scis., *supra* note 215.

219 Id.

220 Seattle Police Dep’t, *supra* note 212; Yavapai Cnty. Sheriff’s Off., *CPTED (Crime Prevention Through Environmental Design)*, <https://www.ycsoaz.gov/community/crime-prevention/cpted-crime-prevention-through-environment-design> (last visited Nov. 15, 2020); Salt Lake City Police Dep’t, *supra* note 204; L.A. Police Dep’t, *Design Out Crime*, https://www.lapdonline.org/crime_prevention/content_basic_view/8852 (last visited Nov. 15, 2020).

221 Yavapai Cnty. Sheriff’s Off., *supra* note 219.

222 Id.

223 Schusler, et al., *supra* note 197.

224 Id.

225 Id.

226 Id.

227 Id.

228 Id.

While most of the research indicates green space effectively reduces crime, some studies have reported increased crime associated with certain types of vegetation.²²⁹ Specifically, view obstructing trees and dense shrubbery that blocks visibility can increase crime by offering a hiding place for criminals and an area to dump weapons and evidence.²³⁰ In some cases, parks have been associated with higher levels of crime; however, where specific park characteristics exist, crime rates tend to be lower.²³¹ Such instances should not deter municipalities from utilizing green space as a means to combat crime. When tailored to the specific needs and characteristics of the community, green space can effectively reduce crime.²³²

When implemented correctly, green space can replace some of the current problematic and ineffective means of crime prevention. For example, increased presence outside and maintenance of green spaces by community members creates opportunities for community policing.²³³ Where community policing deters crime, actual police may not be necessary to the current extent. By creating an environment where police presence can be decreased, issues of over-policing can be resolved and community relations with police improved.

3. A Note to Change Makers

Zoning for green space will not eradicate crime. Green space should be utilized in addition to other traditional and non-traditional methods of addressing crime and resolving factors that contribute to crime. Importantly, the use of green space to address crime will not be effective without thoughtful consideration to the needs of the specific community. As discussed above, the communities that will benefit most from the addition of green space have been disenfranchised. The relationships between government leaders and urban community members are strained due to discrimination, neglect, and problematic policing. Their voices should be heard and honored when addressing the specific needs of the community and determining how to incorporate green space to rejuvenate and increase safety in the community. Greater success is likely if governments use the incorporation of green space as an opportunity to mend and strengthen relationships with members of urban communities in design and utilization of the space.

Mindful policies must also be put in place to avoid gentrification. The addition of green space could improve communities in ways that may attract wealthy people and new businesses. However, it is important that government leaders and city planners take care to ensure the green spaces help the population they were intended to serve, the current members of urban communities. To avoid displacement due to cost-of-living increases, policy makers should utilize means to prevent gentrification such as rent control and strategic property taxation.

C. Efficacy of Green Space Initiatives

Cities across the country have begun to implement green space initiatives in an effort to rectify neighborhood deterioration and prevent criminal activity, with promising results.²³⁴ Cities notorious for high rates of violent crime such as Detroit, Michigan, Philadelphia, Pennsylvania,

229 Id.

230 Id.

231 Id.

232 Id.

233 Id.

234 Badger, *supra* note 146.

Chicago, Illinois, and Youngstown, Ohio, have successfully reduced crime while improving the environment of urban communities.²³⁵ While the addition of green spaces should be tailored to a specific community's attributes, problems, and needs, these cities provide good examples of strategic implementation of green space and its positive effects on crime. Philadelphia has come to be seen as a leader on the successful execution of green space initiatives.²³⁶

Philadelphia was faced with approximately 40,000 vacant lots that were an eyesore for neighborhoods and attracted crime and disorder.²³⁷ In the early 2000s, after trying and failing to address the issue the way many cities do, by responding to complaints, cleaning a lot, and putting up an eight-foot chain link fence, Philadelphia partnered with Pennsylvania Horticultural Society to find a better solution.²³⁸ Now, the city works to strategically clean vacant lots and leave them as informal parks, regardless of where they are located or who owns them.²³⁹ Rather than put up an uninviting chain-link fence, the informal parks are improved with a modest wooden fence that is just big enough to deter dumping yet still signal to neighbors that they are welcome.²⁴⁰ At a modest cost of one dollar per square foot, the horticultural society works with the city to remove trash, bring in topsoil, plant grass and new trees, and install a fence.²⁴¹ Today, the horticultural society maintains about 6,500 greened lots.²⁴² Paid neighbors care for another 2,100 lots once a month, and since the inception of the program approximately 700 lots have been redeveloped.²⁴³

Researchers who have studied the program found that Philadelphia has seen improvements in community well-being, property values, and reduction in crime.²⁴⁴ In studying Philadelphia residents on walking tours around vacant lots before and after they were greened, it was found that the greenery had a calming effect.²⁴⁵ When the lots were vacant and a disposal site for weapons and drug paraphernalia, the sight of the lots boosted heart rates, whereas the sight of the greenery after the lot had been transformed eased it.²⁴⁶ It was also found that cleaning and greening the blighted lots boosted the value of neighboring homes by up to 20 percent and eventually produced more tax revenue for the city.²⁴⁷ The improvements are not limited to monetary value: "Improvements in property value are an indicator of the value of neighborhoods to people."²⁴⁸ Simultaneously, researchers have found a significant drop in gun crime in these areas without the crime being pushed elsewhere.²⁴⁹ This is likely due to the fact that the lots are no longer good

235 *Id.*; Julian Spector, Another Reason to Love Green Space: It Fights Crime, BLOOMBERG (Apr. 13, 2016), <https://www.bloomberg.com/news/articles/2016-04-13/adding-green-space-in-cities-can-reduce-crime-research-suggests>.

236 See Badger, *supra* note 146.

237 *Id.*

238 *Id.*

239 *Id.*

240 *Id.*

241 *Id.*

242 *Id.*

243 *Id.*

244 *Id.*

245 *Id.*

246 *Id.*

247 *Id.*

248 *Id.* quoting Susan Wachter, professor at Penn's Wharton School of Business, research scholar on issues of blight.

249 *Id.*

places to dump weapons and as communities care for and use the greened lots, they also watch over them creating informal surveillance.²⁵⁰

Around the same time Philadelphia began transforming vacant lots, it also launched a program to convert roadside gray spaces into vegetated plots that soak up rain water.²⁵¹ In tracking the converted plots and comparing them to control sites that had not yet been upgraded, a significant reduction in narcotics possession around the green improvements was found.²⁵² “The rate was 18 to 27 [percent] lower there than at control sites, even as the citywide rate rose 65 [percent].”²⁵³ The reduction is attributed to the visible change to the previously anonymous spaces that now attract more positive attention and convey a stronger government presence.²⁵⁴ In addition to the reduction in drug crimes, the converted plots have also been beneficial to the environment as they prevent stormwater from overwhelming sewers emitting polluted sludge into the surrounding areas.²⁵⁵

Though Philadelphia shows that green space initiatives are effective at addressing crime and improving communities, cities in other climates and with different types of economic and crime problems will need to work with community members, environmentalists, and urban planners to determine the best approach for their community.

V. Conclusion

“[V]iolence is as much an issue of community safety as it is one of equity, disproportionately affecting economically distressed neighborhoods.”²⁵⁶ Governments can no longer afford to allow urban communities to be distressed by crime, poverty, and the lingering effects of institutional racism. The criminal justice system is incapable of addressing the root causes of crime. Alternatively, zoning law provides a viable means for governments to address such causes while addressing racial injustices and empowering communities. Where criminal law takes a primarily punitive approach to dealing with crime, zoning for green space is a restorative approach that empowers communities rather than contributing to the cycle of crime and incarceration. By utilizing mixed-use zoning practices that diversifies communities and includes green space, governments can bring vibrancy and safety to previously neglected communities.

250 Id.

251 Spector, *supra* note 235.

252 Id.

253 Id.

254 Id.

255 Id.

256 Melleny Gradillas, Romero to Use American Rescue Plan Dollars for Community Safety, Violence Interruption Efforts, KVOA (July 7, 2021), <https://kvoa.com/news/local-news/2021/07/07/romero-to-use-american-rescue-plan-dollars-for-community-safety-violence-interruption-efforts/>, quoting Regina Romero, Mayor of the City of Tucson.