Member	Kim Wells	Electorate	Rowville
Period	1 October 2025 to 31 December 2025		

Regulation 6 - Expense allowance and electorate allowance	
Total amount paid to member for electorate allowance	$12,802.65
Total amount paid to member for expense allowance	$0.00

Regulation 7 - Motor vehicle allowance	
Total amount paid to member for motor vehicle allowance	$6,443.43
Member did not receive the motor vehicle allowance in the previous quarter and member has elected to receive the motor vehicle allowance for this quarter	No

Regulation 9 - Parliamentary accommodation sitting allowance	
Total amount paid to member for parliamentary accommodation sitting allowance	$0.00
Suburb in which the member's parliamentary accommodation is located	n/a

Regulation 10 - Travel allowance claims

Date from	Date until	Reason for travel	Total amount paid	Town or city in which accommodation was located	Value of the accommodation

Total number of nights for travel allowance claims	0
Total amount paid to member for travel allowance	$0.00

Regulation 11 - Commercial transport allowance claims

Date from	Date until	Reason for travel	Total amount paid	Mode of transport	Value of transport
29-Aug-25	10-Sep-25	Electorate business, infrastructure, public policy and law and order. Electorate business regarding IOC Committee at ICAC in Hong Kong	$160.00	Airport Parking	$160.00

Total number of nights for commercial transport allowance claims	12
Total amount paid to member for commercial transport allowance	$160.00

Regulation 12 - International travel allowance claims

Date from	Date until	Reason for travel	Total amount paid
29-Aug-25	10-Sep-25	Electorate business infrastructure and public order (New York), Electorate business IOC Committee work at ICAC in Hong Kong	$8,474.99

Total number of nights for international travel allowance claims	12
Total amount paid to member for international travel allowance	$8,474.99

TRAVEL REPORT

UNITED STATES

AND

HONG KONG

30 AUGUST – 5 SEPTEMBER 2025

6 – 9 SEPTEMBER 2025

Kim Wells MP

State Member for Rowville

Itinerary

United States – 30 August – 5 September 2025

Hong Kong – 6 September – 9 September 2025

The Aim

Sam Groth, deputy leader of the Liberal Party spoke to me about the opportunity to visit New York to investigate several areas relevant to my Electorate Business and work as a Parliamentarian. The areas of interest include meeting with US Business Leaders and Investment Companies who wish to invest in Victoria and discuss any blockages which investors may have.

Antisemitism is a significant issue in Melbourne, and we are keen to meet with law and enforcement decision makers to reduce this dreadful scourge on our community, and to also meet with NYPD on how they enforce antisemitic laws.

There has been a lot of hype around former Mayor Sally Capp's vision for the Greenline project for Melbourne, but at a cost of over $300 million, it has become unaffordable. The model it was based on was the New York Hudson Highline Project which evidently was a disused rail line and was saved by community action. Today it is one of the great tourist attractions of New York. Therefore, we are keen for a visit and a brief on how it progressed from an eyesore to an outstanding asset.

An ongoing issue in Melbourne has been the railway lines between Richmond and Flinders Street. When I was Treasurer, we looked at various options put to us by the private sector, which allowed more housing, commercial buildings, and much more open space and parks to be built above this section of railway lines. In New York, they have built the Hudson Yards over the rail, so I am very keen to examine how they went about it, to achieve such a great result.

We will also seek to engage with public policy think tanks such as the Manhattan Institute to gain insight into cities, public safety, housing and land use, education, governance, economics and technology.

Sam and I will be travelling separately but will meet on Sunday 31/8/2025 for a lunch with Australian New Yorkers to get a brief on the opportunities that exist in New York for Victorians.

Hong Kong

I have been a member of the Parliamentary IBAC Committee and currently a member of the IOC. Therefore, I have organised a visit to the Hong Kong Independent Commission Against Corruption. This anti-corruption organisation is a world leader, and it is important for Victoria to keep pace with world's best practice.

In addition, I will visit the ICAC the day prior to my meetings to investigate the education and preventative measures that ICAC focus on. These meetings have been organised by IOC Manager, Sean Coley, who I am extremely grateful to.

30/08/2025

Arrive New York - 1.30 pm Saturday

Plan to walk down to the Highline and Hudson Yards to familiarize myself with the area and to compare it with the former Melbourne Lord Mayor's plan for the Greenline project and the covering of the railyards between Richmond and Flinders Rail stations. The covering of the railyards allows for more park land and office spaces and makes it a more vibrant area. Now better prepared for our briefing in this area later in the week.

Lunchtime meeting with Sam Groth. The plan is for Sam and I to travel separately because of different commitments in Melbourne and meet at the Old Mates Pub in New York to go through the meeting agendas and to discuss any last-minute updates or changes before we meet Daniel Weil the next day. Daniel had coordinated all the meetings.

Old Mates Pub is an Australian owned pub in New York, and we are keen to meet the owners and managers to get a first-hand brief on how New Yorkers view Victoria and Melbourne and where they see business opportunities rise in Victora and where Victorians are best suited to invest in New York.

Meeting cancelled as Sam is unavailable.

Catch up with Daniel Weil from Summit Global, based in New York. Daniel worked in the Liberal Opposition, primarily working in the Policy area. He left Victoria to work in New York to explore opportunities and has now set up his own company. This is incredibly impressive.

There needed to be some reorganising of our preplanned meetings, due to Sam's unavailability. So, we will expand our briefings with the Manhattan Institute, who are a right wing think tank, and excellent researchers on many social issues. We decided that we would focus on crime, housing, working from home policy and good governance.

The meeting with the Mayor's office will mostly centre on Anti-Semetism and the role they play with Police and other authorities. Our focus will be on enforcement, penalties, education and what polices are in place to prevent harm to the Jewish population.

We will also raise the issue of protests and how the city deals with them, and see what learnings there are for Melbourne, as we have become the protest capital of the world.

We will meet with Blackstone, one of the worlds largest investors worldwide and discuss their business interests in Victoria. Blackstone own Crown Casino, so we are keen to follow up if they are intending to expand their portfolio in Victoria, and what, if any, blockages they see which are restricting their expansion in Victoria.

Daniel and I will then have a zoom meeting with the Shadow Minister for Housing, Richard Riordan to discuss potential housing policies, based on the Manhattan Institute and other work Daniel has researched in other US States.

Manhattan Institute

Meeting Daniel Weil and Kerry Soropoulos, assistant to the President.

Areas of discussion:

a) **Working from home (WFH)**
WFH is not popular in the US and large companies; banking, legal, accounting and tech are actively opposing it, based on the need for collaborative approaches to solving problems and expanding their companies, something they believe is not possible over a zoom meeting.

On the other hand, there is an acknowledgement that public transport and city streets need to be free of crime, so workers feel it's safe to go into work. If workers feel unsafe to travel to work, there will be a strong push back to their employers' desire to get them to come into the office.

Companies such as JP Morgan CEO, are not in favour of working from home, and outline the benefits of coming into the office, namely human capital and advancement of creativity.

Manhattan Institute point to the San Francisco area, where there is a high number of high-tech companies which need joint creativity and insist employees work in the office to ensure expansion of ideas and growth.

The institute does not believe in incentives to get people to work in the office, but believe barriers need to be removed to ensure employees are happy to work in the office, such as reducing crime as well as clean and cheap public transport.

b) **Crime**
An interesting discussion centred around the "Broken Windows Theory" written by James Wilson. The bottom line is that through consecutive New York Mayors, especially under Mayor Giuliani in the 1990's, there was a massive turnaround in crime which made NYC the safest major United States city.

It meant that there was a crackdown on low level crime, graffiti, vandalism and anti-social behaviour and it automatically and psychologically resulted in a reduction of more serious offending because there is an atmosphere of order and lawfulness. If you allow small crime to continue, it leads to more serious crime and people see there is no public order and feel less safe. Part of this overall process is mandating drug addicts and vagrants off the streets and into care or rehabilitation centres in the interests of themselves and public safety.

The issue we raised is that, although that may sound good in theory, are there enough beds to cope with the demand – most likely not, so the problem remains.

Another issue is, how do you force a drug addict into care facilities if they are not prepared to go?

People in Victoria are sick and tired of all levels of crime and people are living in fear. Each night on the news, we hear of more youth offenders committing crime, who were out on bail, facing a magistrate and then being released out on bail again. This soft approach to youth crime is pathetic and clearly not working.

All sides of politics need to read the "Broken Windows Theory" (see document attached) so we can clean up our streets and make people feel safe again. If Police and Governments enforce public order, people will feel safe.

c) **Ban Mask Wearing at Protests**

Like Melbourne, the push to ban masks at protests is still a significant issue in New York, as protestors wear the mask to facilitate intimidation and hinder accountability in violent protests and crimes.

In Victoria, during COVID, masks were normalized but wearing them in violent protests must be outlawed.

- Reintroduce narrowly tailored anti-masking laws aimed at criminal concealment while maintaining exemptions for medical, religious, and occupational needs.
- Masks can facilitate intimidation and hinder accountability in violent protests and crimes.
- Polling in the U.S. shows strong public support; reforms are grounded in constitutional precedent.

Victorian Relevance: While COVID normalized masks, debates on protest violence and gang intimidation echo these concerns.

See document attached

Correctional Mental Health Reform

Shift responsibility for correctional mental health care to state governments and expand inpatient psychiatric options.

- Provide long-acting injectable medications pre-release and prioritise onsite clinical staffing.
- Untreated mental illness in prisons drives recidivism and violence, undermining rehabilitation.

Victorian Relevance: Similar issues exist at Melbourne Assessment Prison; lessons on continuity of care and oversight apply locally.

See document attached

Policing Playbook

- Recruit high-caliber officers and re-commit to community policing.
- Address visible disorder—fare evasion, drug use, untreated mental illness in

public spaces—as seriously as violent crime.
• Political leadership is central: mayors (and by extension ministers) must set priorities, back police, and ensure accountability.
Victorian Relevance: Knife crime, youth offending, and visible disorder on public transport parallel New York's challenges.

See document attached

d) <u>Application to Victoria</u>

For Victoria, these policy lessons converge on the importance of visible order and leadership. Anti-masking provisions, stronger correctional mental health care, and proactive community policing could together strengthen public trust in law and order. However, reforms must be implemented with clear safeguards to prevent overreach, ensure equity, and maintain civil liberties.

e) <u>Local Politics</u>

Far left person, Mr Zohran Mamdani has won the Democrat nomination to run for the Mayor for New York. Current Mayor for New York, Eric Adams wants people to work in the office, so they spend money in the city.

Even though Eric Adams is a former Policeman, he is deeply unpopular and has no chance of winning the election.

Meeting Notes

Meeting: NYC Mayor's Office to Combat Antisemitism – Executive Director Moshe Davis & Deputy Chief of Staff Menashe Shapiro

Establishment and authority

When asked about the authority underpinning the new office, Executive Director Moshe Davis and Deputy Chief of Staff Menashe Shapiro explained that the Mayor created the Office to Combat Antisemitism by executive order in May 2025 — the first municipal body of its kind in the United States. Both stressed that this was not symbolic; it was a deliberate decision to confront antisemitism as a governance issue, with powers to coordinate across the Law Department, Education Department, and the Human Rights Commission.

The commission of Jewish leaders

Davis and Shapiro described the commission of Jewish leaders as central to the office's legitimacy. While advisory rather than prosecutorial, it functions as a transparency and oversight mechanism, ensuring enforcement is grounded in community experience but remains subject to due process.

Education and curriculum

Both men agreed that education is critical, but warned against curricula that focus narrowly on antisemitism or the Holocaust, which can sometimes fuel resentment. Instead, they urged teaching about Jewish culture, the history of Jews in America and Australia, and Jewish contributions to civic and national life. They stressed this model could be applied across all communities in a multicultural society.

Compliance and enforcement

Turning to compliance, I asked how the office ensures that institutions uphold their obligations. Davis outlined a tiered system: where allegations arise, his office determines whether they can be managed internally by the institution, referred to the Human Rights Commission, or escalated to the criminal justice system. The key innovation, he argued, is embedding anti-discrimination provisions directly into funding and procurement agreements. By binding city funds to clear standards, enforcement becomes contractual as well as legal. Davis suggested that this approach has lessons for Victoria, where grant frameworks and procurement processes could similarly be used as levers to guarantee integrity and prevent tolerance of antisemitism within publicly supported institutions.

Protests and policing

Shapiro took the lead in describing how the NYPD handles protest management. He explained that at every major protest a lawyer is present to provide immediate legal backing for police actions. I raised concerns that this could unduly constrain police discretion. Shapiro also outlined the NYPD's use of "kettling" (encircling protestors to prevent escalation) and the city's permit system regulating when and where protests can occur. Freedom of speech remains broad — for example, the Hamas flag can be waved under the First Amendment unless directly linked to criminal conduct.

Data collection and performance

I asked what measures will be used to demonstrate progress. Davis described the development of a centralised incident-tracking system, capturing location, severity, type of conduct, and

referral outcome. The office's early key performance indicators will include case resolution times, campus compliance metrics, and the number of institutions brought into alignment with city standards. He stressed that publishing this data is central to building public confidence: "We will not eradicate antisemitism overnight, but we can prove that government responds quickly, consistently, and fairly."

Hate crime enforcement

Shapiro emphasised the scale of the problem: 60% of all hate crimes in New York target Jews. The NYPD has a specialised hate-crimes task force, designed to deliver swift and coordinated responses.

Targeting of institutions and donors

Davis described a disturbing trend: attacks on museums, hospitals, and cultural institutions linked to Jewish donors. Protesters attempt to "follow the money" and disrupt institutions associated with Jewish philanthropy. I noted parallels in Melbourne, where Jewish donors and synagogues have been targeted, including vandalism and graffiti. Davis and Shapiro agreed that freedom of speech does not require inaction until a crime occurs; persistent harassment linked to donor networks undermines civic trust and warrants proactive enforcement.

Community partnership and education

When asked whether the office's mandate is primarily legal, Davis was clear that enforcement is only one pillar. The second is partnership. His office works closely with synagogues, interfaith bodies, and civic organisations to deliver education programs, victim-support services, and public campaigns. He said success here cannot be measured in prosecutions but in reach, participation, and whether communities feel safer and more supported. He emphasised that combating antisemitism requires both deterrence and solidarity.

Lessons for Victoria

I invited Davis and Shapiro to reflect on what lessons might be most applicable to our own context. They highlighted three. First, embed compliance expectations into all public funding agreements, so that standards are not aspirational but enforceable. Second, construct an integrated, cross-agency data system to ensure that incidents are not siloed but tracked comprehensively. Third, institutionalise community oversight, so that enforcement is not merely bureaucratic but visibly anchored in the communities most affected. Ultimately, they argued, the measure of success is not simply the number of cases prosecuted, but whether citizens believe that antisemitism is being systematically addressed.

Closing reflections

Both men closed by stressing the dual nature of their work: legal enforcement combined with community partnership. Davis framed it as both a professional duty and personal calling, quoting the rabbinic teaching: "We may not complete the work, but neither are we free to desist from it." Shapiro echoed that this was not a short-term initiative but a structural shift in how the city responds to antisemitism.

Meeting Notes

Meeting: Alex Katz – Senior Managing Director, Government Relations, Blackstone

Date: 19 August 2025

Attendee: The Hon. Kim Wells MP

Topic: Blackstone's Australian Strategy, Build-to-Rent, and Regulatory Environment

Firm overview

Katz opened by describing Blackstone's scale and trajectory. As of Q2 2025, the firm manages over US$1.2 trillion in assets globally, with strong growth in private wealth, credit and insurance, and infrastructure. He noted that Blackstone employs approximately 6,000 people in Australia, with its single largest domestic asset being Crown Casino Melbourne.

Crown Casino and regulatory climate

Katz acknowledged that Crown remains central to Blackstone's Australian footprint, with over US$1 billion earmarked for refurbishment and redevelopment. However, he warned that regulatory uncertainty is delaying investment decisions. In particular, the Victorian Government's trial of mandatory carded play in pubs and clubs creates a distortion: Crown is already bound to mandatory carded play, but if the trial does not become permanent across the sector, Crown is competitively disadvantaged.

He described Victoria's regulatory climate as challenging, with state-by-state inconsistencies making cross-border capital allocation more complex. He argued that clarity, certainty, and proportionality in regulation are essential to attracting new large-scale investment, stressing that global investors allocate capital to jurisdictions where the rules are clear, consistent, and durable.

Broader Australian strategy

Blackstone currently has US$8–9 billion under management in Australia. Katz stressed that the firm remains bullish on the Australian market, especially given strong fundamentals in logistics, infrastructure, and housing. However, he flagged 'debt sustainability' as a macroeconomic concern — rising interest costs make investors highly sensitive to policy risk. He added that Blackstone's own 'piggy bank' (its diversified capital base and private wealth inflows) gives it capacity to expand, but only where frameworks provide long-term confidence.

Build-to-rent

Katz said build-to-rent (BTR) is one of Blackstone's fastest-growing global platforms and a proven model in markets such as the U.S. and UK. However, Australia lags behind. Institutional investors are eager to fund BTR developments, but the tax and regulatory settings remain uncompetitive. Current depreciation rules, GST treatment, and planning approval timeframes tilt the field against BTR compared with build-to-sell.

He expanded at length on how Victoria could create a viable BTR ecosystem:
- Tax reform: Ensure land tax and GST regimes do not penalise long-term rental ownership; consider depreciation allowances that reflect the long-horizon nature of BTR investments.

- Planning reform: Streamline approvals, reduce bureaucratic delays, and provide certainty around zoning, particularly for mixed-use developments.
- Regulatory recognition: Treat BTR as infrastructure-like, recognising that it produces stable, long-duration returns, and delivers public benefits through increased supply and professionalised rental management.

Katz emphasised that if Victoria modernises its BTR framework, it could unlock billions in private capital for new housing supply. He stressed that BTR can deliver not only high-quality rental stock but also affordable housing if linked to inclusionary zoning or incentive structures. Without reform, however, BTR in Australia will remain niche and undercapitalised.

Infrastructure and credit opportunities

Drawing on Blackstone's global market views, Katz said the firm sees strong momentum in infrastructure fundraising, private credit, and secondaries. He described private credit as an increasingly central tool for financing transitional sectors, particularly energy and logistics. On infrastructure, Katz suggested that Victoria's pipeline in data centres, renewable energy, and transport logistics could align well with Blackstone's deployment criteria, provided approval processes are streamlined.

Key takeaways

- Regulatory certainty is critical: Without consistent and durable rules across states, large-scale capital deployment stalls.
- Housing is a major growth avenue: Blackstone is ready to scale build-to-rent in Victoria if tax and regulatory barriers are addressed.
- Crown remains pivotal: Over US$1 billion in investment is planned, but conditional on a level regulatory playing field.
- Australia is attractive despite macro risks: Rising debt costs make investors cautious, but Blackstone's capital strength positions it to expand where settings are favourable.
- Victoria has a chance to lead: By reforming BTR and smoothing infrastructure approvals, the state can capture a disproportionate share of global investment flows.

Briefing: Hudson Yards (NYC) — Overview & Notes for Meeting with Charles J. O'Byrne

Prepared for: The Hon. Kim Wells MP — 19 August 2025

What Hudson Yards is

Hudson Yards is a 28-acre, master-planned precinct on Manhattan's Far West Side, built on platforms above the working rail yards. Developed by Related Companies and Oxford Properties, it is widely described as the largest private real estate development in the U.S. since Rockefeller Center. On completion, the precinct is planned for ~18 million sq ft of commercial and residential space and ~14 acres of public open space, plus a public school and cultural/visitor assets (e.g., The Shed, Edge).

Who's behind it

- Master developer: Related Companies (lead) with Oxford Properties Group (co-developer).
- The district integrates retail, office, residential, hospitality and public realm; major corporate tenants and cultural institutions anchor the site.

Financing & enabling infrastructure (city role)

- The City established the Hudson Yards Infrastructure Corporation (HYIC) to finance enabling works via special-purpose bonds — notably the No. 7 subway extension and public realm — supported by value-capture mechanisms (e.g., PILOTs) in the Hudson Yards Financing District.
- The High Line's third phase 'wraps around' Hudson Yards and connects the precinct to Chelsea/Meatpacking, supporting walkability and visitation.

What's there (Phase 1/Eastern Yard highlights)

- Commercial towers (e.g., 10, 30, 50, 55 Hudson Yards) and a premium retail centre ('The Shops & Restaurants at Hudson Yards').
- Public Square & Gardens (part of ~14 acres of open space), Edge observation deck at 30 Hudson Yards, and The Shed cultural centre.
- Residential components (approx. 5,000 apartments, including ~400 affordable), a public school (~750 students) and integrated civic spaces.

Current status & near-term pipeline (2025)

- Phase-1 operations continue to stabilise; leasing momentum at Hudson Yards remains a bellwether for premium Manhattan office.
- Phase-2 ('Western Yard') concepts include additional office/residential, parks (e.g., 'Hudson Green'), a school and community uses; a Wynn resort/casino element has been proposed subject to State processes.

Why it matters for Melbourne (Greenline link)

Melbourne's Greenline Project to revitalise the north bank of the Yarra has often been compared to New York's High Line — whose final phase wraps around Hudson Yards. Former Lord Mayor Sally Capp highlighted the High Line as an inspiration for Greenline's placemaking ambitions.

While Greenline is at river level (not elevated), both initiatives leverage connected public realm to catalyse adjacent private investment and visitor activity.

- Greenline aims to deliver ~4 km of connected promenades and green spaces along Northbank (Birrarung). Staged works have commenced; funding and delivery sequencing remain key.
- Discussion angle: how Hudson Yards used value-capture, staged delivery and design governance to anchor investment — lessons for Greenline-adjacent activation and partnerships.

Suggested questions for Charles J. O'Byrne (Policy EVP, Related)

- Which value-capture and zoning instruments were most decisive (e.g., PILOTs, air rights, density bonuses) and how were risks shared with the City?
- How was governance structured to coordinate rail operators, transit delivery (No. 7 extension) and staged platform construction over active yards?
- What metrics does Related track for public-realm performance (footfall, dwell time, retail turnover) and what interventions have proven most effective?
- Lessons for Melbourne: sequencing, approvals and mobilising private capital for large waterfront/precinct projects.

Briefing: Charles J. O'Byrne — Executive Vice President for Policy, Related Companies (Hudson Yards)

Prepared for: The Hon. Kim Wells MP — 19 August 2025

Overview

Charles John O'Byrne is Executive Vice President for Policy at Related Companies, the developer of Hudson Yards. He leads government affairs (federal, state and local), labour and litigation strategy, and policy across major projects in the Related portfolio. He also serves on the management team of EnergyRe, an energy-infrastructure company associated with Related's principals.

Background

Attorney admitted in New York (Columbia Law School).

Former Secretary to New York Governor David Paterson (the state's highest unelected post), with prior senior roles in the Governor's office.

Potential talking points

Hudson Yards: lessons on precinct-scale development, approvals, and public-private financing.

EnergyRe and transmission/renewables development — parallels with Victoria's energy transition.

Community and labour engagement frameworks on megaprojects.

Questions to ask

What policy settings were most critical to making Hudson Yards bankable and deliverable?

How does Related structure risk-sharing with government on infrastructure and public realm?

Best practices for integrating commercial, residential and civic uses at precinct scale?

Sources

Related leadership bio: https://www.related.com/our-company/leadership/charles-john-obyrne

NY attorney registry (address/role): https://opengovny.com/attorney/2220986

Biography/background (public roles): https://en.wikipedia.org/wiki/Charles_J._O%27Byrne

30 Hudson Yards property page: https://www.related.com/our-company/properties/30-hudson-yards

Unfortunately, the Hudson Yards meeting did not go ahead due to issues, but I will follow this up when I return to Melbourne.

Meeting Notes

Meeting: Richard Riordan MP & Daniel Weil (Summit Global Advisory) – via Zoom

Background on TIF

Weil began by outlining the concept of Tax Increment Financing (TIF). He stressed that TIF is not a new tax, but a way of capturing the incremental growth in property tax revenue from redevelopment areas. When a city declares a TIF district, the current property tax base is frozen. Any future increase in property tax receipts — as land values rise and new projects come online — is diverted into a ring-fenced TIF fund. These funds are then reinvested locally, paying for infrastructure, bridging development gaps, and offering incentives to private investors.

When asked how this differs from traditional municipal funding, Weil explained that instead of relying on upfront budget allocations or new levies, TIF allows governments to leverage the increased revenue their own policies help create. This reduces the need for immediate fiscal outlays while still driving visible results.

Chicago's experience with TIF

Weil pointed to Chicago as the most prominent U.S. city using TIF. He explained that over the past three decades, the city has declared more than 130 TIF districts, covering roughly one-third of its geography at one point. Chicago used TIF to transform blighted areas of the downtown Loop and South Side into vibrant commercial and residential precincts.

He gave specific examples: TIF proceeds were invested into new train stations, upgraded sewers and water mains, renovated schools, and subsidies for developers converting derelict warehouses into apartments. Weil acknowledged that Chicago's use of TIF has been controversial — critics argue it diverts funds from general education budgets and lacks transparency. But he stressed that, in his assessment, when applied with clear governance and oversight, TIF remains one of the most effective tools for attracting large-scale private capital into projects that would not otherwise proceed.

Application to Melbourne: converting offices to housing

Turning to Melbourne, Weil highlighted the structural vacancy in CBD office space post-pandemic, with work-from-home leaving whole floors underused. He argued that Melbourne could designate a central district where the property tax baseline is frozen, and then use the uplift from office-to-housing conversions to fund retrofits, public realm upgrades, and even affordable housing subsidies.

For example, if a vacant 20-storey office tower were converted into apartments, the increase in property values and rates could be captured and reinvested into further conversions in the district. Weil said this cycle of reinvestment creates a virtuous loop: initial conversions spark new activity, raise values, and generate more funds for subsequent projects. He emphasised that such a model would unlock private capital without requiring large immediate outlays from the state budget, aligning with the policy goal of revitalising the CBD.

Legislative requirements and investor perspective

Asked whether Melbourne councils already had the powers to do this, Weil clarified that Victoria would need enabling legislation. Currently, councils cannot ring-fence rate increments

in the same way U.S. cities can. Enabling laws would need to authorise local governments to declare TIF districts and dedicate the revenue to specific redevelopment purposes.

From an investor's perspective, Weil said that firms and institutions view TIF favourably because it creates predictable, dedicated cash flows. This predictability lowers investment risk and makes projects in revitalisation districts more attractive to institutional capital. He noted that in the U.S., many large investors specifically seek out projects in TIF districts because the financing model demonstrates government commitment and reduces exposure to political cycles.

Takeaways for Victoria

Weil concluded with several lessons Melbourne and Victoria could draw, emphasising that while TIF is not a 'magic bullet,' it can be a highly adaptable financing tool when applied carefully:

1. Aligning public and private incentives.
TIF ensures that when property owners and developers profit from rising land values, part of that gain is reinvested back into the district. This creates a virtuous cycle: private investors benefit from improved infrastructure and services, while government captures some of the uplift to support further development. For Melbourne, this alignment could mean that office-to-residential conversions are not just privately profitable but also generate funds for affordable housing, streetscape upgrades, and better transport links.

2. Strategic targeting of districts.
Chicago's experience shows that TIF works best when districts are carefully chosen — places with potential for growth but which are currently stalled by market hesitation. Weil argued that Melbourne should avoid blanket CBD-wide schemes, and instead focus on 'tipping point' areas where targeted support could unlock private redevelopment. He suggested precincts with high vacancy and older building stock, where conversions are technically challenging and costly, but where successful projects would have strong demonstration effects.

3. Embedding transparency and governance.
Weil acknowledged that Chicago has faced criticism over opaque TIF management. Some funds were alleged to have been used for politically favoured projects or without adequate public reporting. For Melbourne, he advised building safeguards into the system from the outset: annual reporting on collections and spending, sunset dates for districts (e.g., 20–25 years), and independent oversight. He also recommended earmarking a portion of TIF funds for visible public benefits — such as affordable housing quotas or infrastructure upgrades — to reinforce public trust.

4. Legislative clarity and investor confidence.
Finally, Weil stressed that Victoria would need enabling legislation clearly defining how TIF districts are declared, how funds are managed, and what projects qualify. For investors, clarity is essential. Global capital flows to cities where rules are transparent and revenues are predictable. If Melbourne designed a TIF framework that is clear, rules-based, and politically durable, it would likely attract substantial institutional investment into its renewal agenda.

Accommodation

New York	7 nights	$3,948.54
Hong Kong	4 nights	$1,898.01

Commercial Travel

Taxi – NY Airport to Hotel	$113.09
Taxi – HK Airport to Hotel	$ 93.42
Hotel to KH Airport	$ 87.34

HONG KONG OBSERVATORY

Status of Tropical Cyclone Warning Signal

No. 8 Southeast Gale or Storm Signal

Tropical Cyclone Warning Bulletin

Here is the latest Tropical Cyclone Warning Bulletin issued by the Hong Kong Observatory.

The No. 8 Southeast Gale or Storm Signal is in force.

This means that winds with mean speeds of 63 kilometres per hour or more are expected from the southeast quarter.

At 1 p.m., Severe Tropical Storm Tapah was centred about 210 kilometres west of Hong Kong (near 22.6 degrees north 112.2 degrees east) and is forecast to move northwest at about 18 kilometres per hour across inland Guangdong.

Tapah is moving into inland Guangdong and departing from Hong Kong progressively. Local winds are expected to weaken gradually. The Observatory will issue the Strong Wind Signal, No. 3 at 1:10 p.m.

The rainbands of Tapah will continue to bring squally showers and thunderstorms to the Pearl River Estuary today, showers will be heavy at times. Gale force winds will still affect parts of the territory at first. Seas will be very rough with swells. Members of the public are advised to stay away from the shoreline and not to engage in water sports.

In the past hour, the maximum sustained winds recorded at Ngong Ping, Waglan Island and Green Island were 83, 75 and 73 kilometres per hour with maximum gusts exceeding 116, 92 and 89 kilometres per hour respectively.

(Precautionary Announcements with No. 8 Signal)

1. Although the tropical cyclone is moving away from Hong Kong, gales are expected to persist for some time. Please continue to stay indoors until winds moderate. Do not touch electric cables that have been blown loose.

2. As gales and violent squalls are still occurring in places, precautions should not yet be relaxed.

3. Tropical cyclone brought different degrees of damages to Hong Kong. There may be hidden danger. Members of the public should remain on the alert for assurance of personal safety.

4. Flights at Hong Kong International Airport may be affected by the weather. Please contact your airline for the latest flight information before departing for the airport.

5. Please listen to radio or watch TV for the latest weather information broadcast. You can also browse the Hong Kong Observatory's website and mobile app for the information.

Dispatched by Hong Kong Observatory at 12:45 HKT on 08.09.2025

Integrity and Oversight Committee

19 March 2025

Mr Woo Ying-ming
Commissioner
Independent Commission Against Corruption
c/o International Cooperation Branch
ICAC Building, 303 Java Road, North Point
HONG KONG

VIA EMAIL: international@icd.icac.org.hk

Dear Mr Woo

Letter of Introduction for the Honourable Kim Wells MP

On behalf of the Honourable Kim Wells MP, I am pleased to submit this letter of introduction and request for a meeting during his upcoming visit to Hong Kong. Mr Wells would appreciate the opportunity to meet with you or a senior representative from ICAC to discuss probity and integrity in Hong Kong SAR and how these principles are reinforced through ICAC's strong focus on enforcement, prevention, and education.

Mr Wells is available for a meeting on the morning of **9 September 2025** and would be grateful for the opportunity to exchange insights on best practices in anti-corruption measures.

As the Deputy Chair of the Victorian Parliament's Integrity and Oversight Committee, located in Melbourne, Australia, Mr Wells plays a key role in oversighting Victoria's integrity agencies. He previously served as the inaugural Chair of the Independent Broad-based Anti-corruption Commission Committee and has an extensive parliamentary history, including roles as Victorian Minister for Police and the State's Treasurer. He has also been an active Member of Parliament for the Rowville District in Melbourne's southeast since 1992.

While this visit to Hong Kong is in a private capacity, Mr Wells is keen to engage in discussions that offer valuable perspectives for policy considerations in the anti-corruption and integrity area in Victoria.

We appreciate your time and consideration of this request. Should you require any further details, Mr Wells can be reached directly at kim.wells@parliament.vic.gov.au.

We look forward to hearing from you.

Yours sincerely

Sean Coley
Executive Officer

ICAC Hong Kong – Questions & Answers

17 Questions to be investigated in the operations of ICAC Hong Kong:

1. How does ICAC fit within the Hong Kong/China justice and integrity oversight/accountability organisational structure?

2. What is the legislative and legal framework that provides ICAC its operational functionality and its investigatory and enforcement powers?

3. With regards to ICAC's operations and powers, what works well and not so well?

4. What legislative changes are required, if any, to improve ICAC's operations?

5. How is the ICAC Commissioner selected and appointed – is it a decision of government or other and what is the process involved?

6. What is ICAC's jurisdictional scope as to its investigatory powers – ie. who exactly can it investigate and are there any legislative restrictions or limitations? For example, can ICAC investigate ministers directly or compel ministers to give evidence?

7. What powers does ICAC have to compel witnesses to give evidence and are there any restrictions on what evidence witnesses can and can't be compelled to provide?

8. With regards to ICAC Hearings, are they all held in public, private or a mix of both?

9. If both public and private Hearings, what is the criteria used for determining whether a matter is heard in public or in private?

10. How does ICAC ensure the safety of protected witnesses?

11. How does ICAC protect 'whistleblower' informants' identities and ensure their safety?

12. How does ICAC attract and recruit its investigators and staff?

13. As part of recruitment, what integrity and background checks are undertaken in relation to prospective investigators and staff?

14. How does ICAC ensure the personal safety of its investigators and staff?

15. Does ICAC have investigators based overseas as part of its operational structure?

16. Does ICAC have jurisdictional oversight of corruption allegations and complaints made against Hong Kong police?

17. What specific legislative powers does ICAC have in relation to the investigation of Hong Kong police corruption?

1. ICAC's Role in Hong Kong's Accountability Framework

Independent Anti-Corruption Agency: The Independent Commission Against Corruption (ICAC) is Hong Kong's dedicated anti-corruption agency, established in 1974. It was created in response to rampant corruption (especially in the police force) and a public outcry for reform[1]. The ICAC is **independent of the civil service and police** structure, operating as a separate entity that reports directly to the Chief Executive of Hong Kong[2][3]. Under Article 57 of Hong Kong's Basic Law, the ICAC *"shall function independently and be accountable to the Chief Executive"*[4]. This means ICAC is not part of the Hong Kong Police Force or any government department; it answers only to the Chief Executive, ensuring it can investigate corruption at all levels without bureaucratic interference.

Position within Hong Kong/China Governance Regime: In Hong Kong's governance system (under "One Country, Two Systems"), the ICAC serves as a cornerstone of integrity and accountability. It focuses exclusively on corruption-related offences across the public and private sectors[3]. While Hong Kong is part of China, law enforcement and judicial matters (including anti-corruption) are handled within Hong Kong's autonomous legal system. The ICAC has no direct counterpart in the mainland Chinese system – on the mainland, the Communist Party's Central Commission for Discipline Inspection (CCDI) and the National Supervisory Commission handle corruption involving mainland officials. By contrast, ICAC's jurisdiction is confined to Hong Kong. However, ICAC does cooperate with mainland and overseas anti-graft agencies when needed (for example, on cross-border cases or fugitive offenders)[5]. Its **international cooperation** role has grown in recent years, with greater ties to mainland authorities amid China's national anti-corruption drive[5]. ICAC even established the International Academy Against Corruption in 2024 to share expertise and training with global partners[6].

Oversight and Accountability: Despite being independent, the ICAC is subject to robust oversight to maintain public trust. Multiple independent committees, composed of respected citizens and professionals, oversee different aspects of ICAC's work[7]:

- **Advisory Committee on Corruption (ACOC):** Advises the Commissioner on broad policy and keeps ICAC's operational and administrative policies under review[8]. This committee reviews ICAC's annual report before it is submitted to the Chief Executive[9] and can draw any concerns to the Chief Executive's attention[10].

- **Operations Review Committee (ORC):** Monitors all ICAC investigations. The ORC receives reports on every corruption complaint and ensuing investigation (without revealing sensitive details) and scrutinises their progress and outcomes[11][12]. This ensures that ICAC's powerful investigative arm (the Operations Department) is not abusing its authority – every case, including those involving high-ranking officials or police, is subject to external review. The ORC is chaired by a non-official and includes members of the community.

- **Corruption Prevention Advisory Committee (CPAC):** Oversees the ICAC's Corruption Prevention Department, which examines procedures in government departments and public bodies to plug corruption risks[13]. CPAC reviews audit reports and recommends improvements to systems to reduce opportunities for corruption.

- **Citizens Advisory Committee on Community Relations (CACCR):** Advises on ICAC's education and outreach efforts, helping devise strategies to foster public support for anti-corruption and ethical values[13].

- **ICAC Complaints Committee:** A separate independent committee that handles any **complaints against the ICAC or its staff** (such as allegations of misconduct or abuse of power by ICAC officers). It monitors how such complaints are investigated and ensures any necessary follow-up[14][15]. This provides an external check on ICAC's own integrity.

Through these mechanisms, the ICAC is held accountable even as it operates independently. The ICAC Commissioner also issues annual reports and may be questioned by the Legislative Council (LegCo) Panel on Security on ICAC's work, providing additional transparency.

In summary, ICAC stands as an **independent pillar** in Hong Kong's justice and integrity framework – separate from the police and civil service, but accountable via the Chief Executive and several oversight bodies and working alongside the Department of Justice and courts to uphold the rule of law.

2. Legislative and Legal Framework of ICAC's Powers

The ICAC's authority and functions are grounded in specific Hong Kong laws. The **constitutional basis** is set out in the Basic Law (Hong Kong's mini-constitution), which establishes that Hong Kong *"shall have a Commission Against Corruption"* operating independently[4]. More concretely, three main ordinances provide the ICAC with its mandate and powers:

- **Independent Commission Against Corruption Ordinance (Cap. 204):** This 1974 law formally established the ICAC as an organisation[2]. It defines the duties and structure of the Commission and grants core law enforcement powers. Under the ICAC Ordinance, the Commissioner's functions and the parameters of investigations are specified. Importantly, it gives ICAC officers **powers of arrest, detention, and bail** for persons suspected of corruption, similar to police powers[16]. It also empowers ICAC to conduct **searches and seizures** with warrants, and even to take non-intimate forensic samples from suspects in custody[17]. The ICAC Ordinance ensures ICAC officers can exercise necessary investigative powers to pursue corruption cases effectively (e.g. entering premises, detaining suspects, etc., subject to legal safeguards).

- **Prevention of Bribery Ordinance (Cap. 201) – "POBO":** This is the principal anti-corruption law in Hong Kong, originally enacted in 1971 and strengthened over time[18]. It defines a broad range of bribery offences in both the **public sector and private sector**. Under POBO, it is illegal for any *"public servant"* or *"prescribed officer"* (which includes government officials, police officers, and other public employees) to solicit or accept any advantage in connection with their public duties without proper authority[19][20]. It is also illegal for anyone to offer bribes to public servants[21], and for agents or employees in the private sector to accept secret advantages in business dealings (Section 9). POBO gives the ICAC special investigative powers to uncover bribery schemes and hidden assets. For example, **Section 13** allows ICAC to obtain warrants to search bank accounts and examine financial records. **Section 14** allows the ICAC (with court approval) to require a person under investigation to furnish information or answer questions about their financial situation – including compelling disclosure of assets, income, and expenditures[22][23]. This helps **"unravel and identify transactions/assets concealed in different guises"[22]**. ICAC can also apply to courts to freeze a suspect's assets and **restrain disposal of property** if corruption is suspected, preventing suspects from hiding ill-gotten gains[24]. Furthermore, ICAC may **detain suspects' travel documents** to stop them fleeing Hong Kong during an investigation[25]. POBO also contains provisions to protect the

confidentiality of ICAC investigations (making it a crime to tip off someone that they are under ICAC investigation)[26]. In summary, POBO not only defines bribery offences (with penalties up to 7 years' imprisonment and fines) but also arms ICAC with robust powers to investigate those offences – far beyond what normal crimes might allow – given the secretive nature of corruption.

- **Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554):** Enacted in 2000, this law specifically addresses **electoral corruption** and malpractice. It ensures elections in Hong Kong (for the Chief Executive, Legislative Council, District Councils, rural committees, etc.) are conducted fairly, by criminalising vote-buying, voter intimidation, fraudulent registration, and other corrupt/illegal acts in elections[27]. The ICAC is empowered to investigate and enforce this ordinance as well. Essentially, ICAC handles not only bribery in day-to-day governance and business, but also election-related bribery or breaches of election rules, thereby safeguarding the integrity of Hong Kong's democratic processes[28].

In addition to the above, **common-law offences** complement the statutory framework. Notably, the common law offence of **"misconduct in public office"** allows prosecution of public officials who seriously abuse their office even if their conduct doesn't involve a bribe[29]. The ICAC is authorised to investigate such cases too. For instance, if a public official wilfully neglects their duties or behaves corruptly in a way not explicitly covered by POBO, they can still be investigated by ICAC and charged under this common law offence[30].

Summary: The legislative framework for ICAC can be summarised as *"one agency, three key ordinances."* The ICAC Ordinance provides the organisational backbone and general police-like powers; the Prevention of Bribery Ordinance provides the substantive offences and extraordinary investigative powers; and the Elections Ordinance extends ICAC's reach to electoral integrity. Together, these laws give ICAC a solid mandate to **"investigate and bring the corrupt to book"**[31] through effective law enforcement powers, while Hong Kong's Department of Justice handles prosecutions based on ICAC's findings. This framework has remained effective over decades, though it is periodically reviewed to address new challenges (see Q4 for possible changes).

3. ICAC Operations and Powers – What Works Well and What Challenges Exist?

What works well: Hong Kong's ICAC is often cited as one of the world's most effective anti-corruption agencies, and several aspects of its operations contribute to this success:

- **Independence and Authority:** The ICAC's independent status and direct line to the Chief Executive give it freedom to investigate "any person" suspected of corruption, *including senior officials*, without political interference[32]. No one is above the law: even the Chief Executive of Hong Kong can be investigated by ICAC if suspected of a POBO offence[32]. This broad mandate, combined with strong legal powers (arrest, search, seizure, etc.), means ICAC can pursue cases wherever the evidence leads. The **public perceives ICAC as powerful and impartial**, which in itself deters corruption.

- **Holistic Three-Pronged Approach:** ICAC's operations are not limited to reactive investigations. The agency's three-pronged strategy – **investigation, prevention, and education** – works very well in creating a culture of integrity[33][34]. The Operations Department (about 70% of ICAC's staff) relentlessly enforces the law, while the Corruption Prevention Department systematically reviews procedures in government and public bodies to "secure revision of methods which may be conducive to corruption"[35]. At the same time, the Community Relations Department conducts public education, outreach in schools and businesses, and massive media campaigns to promote zero tolerance of corruption[34]. This comprehensive approach attacks the problem from all angles – making it harder for corruption to take root and easier for citizens to reject and report it. Over the

decades, Hong Kong's general public has become one of ICAC's greatest allies: the majority of corruption ms now come from citizens (over 2,000 reports per year, with most complainants willingly revealing their identity, reflecting trust in ICAC)[36]. This public support greatly aids ICAC operations.

- **High Professional Standards and Success Rate:** The ICAC is a well-resourced and professional law enforcement body. Investigators are carefully recruited (see Q12/Q13) and extensively trained, including in financial investigations and forensic technology to tackle increasingly complex cases[37][38]. ICAC's use of modern techniques – from forensic accounting to undercover operations – has led to a strong track record. In 2023, for example, ICAC's prosecution success rate was about 75% (person-based) and 84% case-based[39] – indicating that most cases it brings to court result in conviction. Such results reinforce that its operations are effective. Hong Kong today consistently ranks among the **least corrupt jurisdictions in the world**, a dramatic change from the 1960s, thanks in large part to ICAC's work[40].

- **Oversight and Accountability (Building Trust):** The operational model of ICAC includes internal checks that work well to ensure it uses its powers fairly. The independent Operations Review Committee scrutinises all investigations' progress[11], and an ICAC Complaints Committee handles any allegations against ICAC officers[15]. These oversight bodies have been effective in preventing abuses and addressing public concerns, thereby maintaining a high level of public confidence in ICAC. As a result, people are not afraid that ICAC will be used as a political weapon; rather, it's seen as a trusted, impartial investigator. This broad legitimacy is crucial for its operations.

Challenges and areas that work less well: While ICAC is largely successful, it faces some challenges and limitations in its operations:

1. **Complexity of Proving Cases:** By its nature, corruption is a **"hidden" or consensual crime – a secret deal between willing parties**[31]. Unlike crimes with immediate victims, both the bribe-giver and taker usually want to keep it secret. This makes investigations inherently difficult. ICAC has extensive powers, but gathering sufficient admissible evidence can still be challenging – especially for **"grey-area" corruption** such as indirect advantages or conflicts of interest that are not obviously illegal. For example, cases where officials offer favourable treatment to friends or family (nepotism or "policy favouritism") in exchange for intangible future benefits are hard to prosecute under current laws[41]. The ICAC must often rely on accomplice testimony or paper trails, which are not always available. So, one thing that doesn't work perfectly is that **some corrupt acts slip through because they don't neatly fit existing offences or are too well-concealed**, highlighting the need for continual law reform and innovative investigative techniques.

2. **Legal Gaps and Outdated Provisions:** There are a few areas where legislation hasn't kept up, potentially hampering ICAC. One notable issue long pointed out is that **certain POBO provisions (Sections 3 and 8)** do not apply to Hong Kong's Chief Executive due to constitutional nuances[42][43]. This is a loophole – for instance, lower-ranking officials cannot accept advantages, but the Chief Executive is technically not covered by that particular provision (though the CE is still subject to other laws and common law bribery). This gap has been identified since 2012 by an independent review committee, but amending the law has been slow (see Q4). The lack of a comprehensive **whistleblower protection law** is another gap (Hong Kong relies on ICAC's confidentiality rather than any broad whistleblower statute)[44]. Also, Hong Kong's laws do not explicitly cover bribery of foreign public officials committed entirely abroad – ICAC can only act if part of the act took place in Hong Kong[45][46]. These gaps mean **ICAC's reach has some limits** and certain modern corruption scenarios may not be fully addressed. The ICAC Commissioner has to work around these limitations, for example by leveraging other offences like misconduct in public office[30] when POBO doesn't apply, or by

cooperating with overseas authorities for foreign bribery cases (since Hong Kong cannot prosecute a bribe given wholly overseas under current law).

3. **Perceived Conflicts in Oversight Structure:** By design, the ICAC Commissioner is appointed by the Chief Executive (and in fact is considered a principal official of the government – see Q5). This has raised questions: what if the ICAC has to investigate the Chief Executive or other top officials who effectively are its "boss"? Would that create a conflict of interest? In theory, it could be seen as *"a subordinate investigating his superior."* A former ICAC deputy commissioner even suggested the appointment of the Commissioner be moved to an independent body to avoid that perception[47]. In practice, the ICAC has established internal safeguards: the law explicitly **obliges the Commissioner to investigate even the Chief Executive without fear or favour**[32], and any such sensitive investigations are known to oversight committees (but not to the suspect). Moreover, POBO Section 30 makes it illegal for anyone – including the ICAC Commissioner – to tip off a suspect about an investigation[26]. This means if the Chief Executive were under probe, ICAC couldn't inform them or seek permission; they must treat it like any other case. These checks have so far prevented interference. However, the *perception* issue remains a point of debate (though the government has stated the current appointment mechanism has worked well and will not be changed[48]). Overall, while ICAC has maintained its integrity, **this structural tension is a weakness often highlighted by observers**, even if mostly hypothetical.

4. **Operational Challenges (Cross-Border and New Crimes):** In recent years, corruption has taken on cross-border dimensions (e.g. Hong Kong officials or businesspeople engaging in bribery in Mainland China or vice versa). ICAC's jurisdiction is local, so it must rely on cooperation with mainland or overseas law enforcement for evidence or extradition. Differences in legal systems can slow things down. Additionally, new forms of corruption involving complex financial vehicles, cryptocurrencies, or shell companies require continual training and resources. The ICAC has had to boost its financial investigation and IT forensics capabilities[37][38] to keep up. These are **ongoing challenges** – ICAC's powers work well for traditional cases but are continually tested by more sophisticated schemes.

In summary, **ICAC's model has proven to work extremely well**, as evidenced by Hong Kong's transformation into a clean society and the public's strong trust in the agency. The combination of independence, strong legal powers, and community backing are key strengths. The aspects that work "not so well" are largely those beyond ICAC's immediate control: the inherent difficulty of corruption cases, certain legal loopholes or outdated provisions, and structural perceptions. The ICAC and the government are aware of these and have been considering reforms (as discussed next). Importantly, despite any challenges, **no one suggests that ICAC's core operations are failing** – rather, the focus is on fine-tuning and ensuring it remains effective in a changing environment.

4. Needed Legislative Changes (if any) to Improve ICAC's Operations

The ICAC's enabling laws to have been updated periodically, and generally they provide a comprehensive toolkit. The current legal framework is robust, but there are a few **areas where legislative changes have been proposed to further strengthen ICAC's work**:

1. **Extending POBO Sections 3 and 8 to cover the Chief Executive:** This has been the most prominent suggested reform. As mentioned, the Prevention of Bribery Ordinance's Section 3 (which forbids prescribed officers from accepting advantages without permission) and Section 8 (which forbids anyone from offering advantages to public servants) **do not currently apply to Hong Kong's Chief Executive** due to constitutional concerns[42][43]. This exclusion was an oversight from the colonial era (when the Governor was not subject to local bribery law) and has persisted post-handover. In 2012, the *Independent Review Committee on Conflicts of Interest* recommended enacting legislation so that the Chief Executive would be subject to the same strict rules as other officials[42]. The idea was to require the CE to seek approval from

an independent body before accepting any advantage, thereby bringing the CE under Section 3's regime[49]. Successive Chief Executives have publicly agreed in principle that this gap should be closed[50][51]. However, the government has pointed out complexities: the Chief Executive's unique constitutional status (both head of the Hong Kong SAR and its Government, as per the Basic Law) makes designing an oversight mechanism tricky[52][53]. For instance, creating an independent committee to approve the CE's acceptance of gifts could conflict with the CE's position in the governance structure[54]. There's also the issue that if Section 8 were extended, offering any advantage to the CE might technically criminalise trivial gifts unless broad exemptions are crafted[55]. Despite these challenges, this legislative change is **widely seen as important for public perception**. The current Chief Executive had promised to "resolve as soon as possible" the legal issues to amend POBO for this purpose[56]. As of the latest update (early 2025), the Government has been studying how to implement this, but no bill has been passed yet[57][52]. From ICAC's perspective, this change would eliminate any suggestion that the top leader is above the law, thus bolstering ICAC's credibility. Practically, even without it, the ICAC can investigate a Chief Executive for bribery under other sections (or common law), but closing the loophole would be a welcome improvement.

2. **Addressing "Advantage" in intangible forms and Conflicts of Interest:** Another area noted by experts is that Hong Kong's laws could better tackle certain **indirect or deferred benefits** that corrupt officials might seek. For example, an official might unofficially promise favourable treatment to a business and in return expect a lucrative job offer after retirement, or benefits given to his/her family members. Such scenarios might not involve a direct bribe *during* the official's tenure, so they can be hard to prosecute. The 2012 review committee chaired by a former Chief Justice recommended tightening definitions to capture these "deferred advantages" or policy favours for friends[41]. One idea was to update the Prevention of Bribery Ordinance or related codes to explicitly cover public officers "misusing their position to benefit their family or associates" even if the payoff comes later. So far, the Government's approach has been to strengthen internal codes of conduct (e.g. revising the Code for Officials under the Political Appointment System to deal with conflicts of interest)[58] rather than immediate legislative amendments. The Government indicated it must carefully study any POBO amendments in a holistic manner[59]. **No specific new offence has been enacted yet** for these grey-area corruption issues, but this remains a topic of discussion to improve Hong Kong's anti-corruption regime. ICAC would support any law that gives clearer tools to handle "soft corruption" or abuse of power that currently must be dealt with under the broad misconduct in public office charge.

3. **Comprehensive Whistleblower Protection Law:** Currently, Hong Kong lacks a dedicated whistleblower protection statute[44]. Whistleblowers are partially protected by ICAC's strict confidentiality (ICAC will not reveal an informer's identity, and courts cannot force disclosure of an informant's name under Section 30A of POBO)[44]. However, there is no general law shielding whistleblowers (e.g. employees who report corruption in their company or government department) from retaliation by their employer. Many jurisdictions have specific whistleblower protection acts. In Hong Kong, aside from a few sector-specific provisions (like in securities law)[60], a person who exposes corruption has no statutory guarantee of immunity from civil liability or job-related retaliation. The investigator said that while ICAC keeps informants' information confidential and can protect them under witness protection if needed, a broader whistleblower law is a policy matter for the government. There have been calls by civil society and some legislators for a whistleblower protection ordinance to encourage more people to come forward without fear[61]. Such legislation could improve ICAC's operations by generating more leads and earlier reporting of corruption. As of now, the government has not introduced such a law, so this remains a potential reform area.

4. **Extraterritorial Reach and Foreign Bribery:** Another legislative consideration is whether to explicitly criminalise bribery of foreign public officials and acts of corruption committed by Hong Kong entities entirely outside Hong Kong. Currently, POBO Section 4 (public sector bribery) applies even to acts done abroad (it explicitly covers behaviour "whether in Hong Kong or elsewhere" for Hong Kong public servants)[46]. But Section 9 (private sector bribery) does *not* have extraterritorial wording, so if a Hong Kong company bribes a foreign official entirely outside Hong Kong, it's not clearly covered unless part of the act took place in Hong Kong[45][46]. Hong Kong relies on a workaround where a foreign official can be deemed an "agent" of their government so that a bribe to them is prosecutable under Section 9 if substantial acts occurred in Hong Kong[46]. However, Hong Kong (unlike, say, the US FCPA or UK Bribery Act jurisdictions) does not have a standalone offence for foreign bribery committed overseas by its residents. As international anti-corruption norms evolve, Hong Kong may consider bolstering its laws to explicitly cover this, which would enhance ICAC's ability to pursue such cases. The ICAC already cooperates with overseas agencies on cross-border bribery, but a law change could give it more direct jurisdiction. This change hasn't been a high political priority yet, but it's noted in comparative law discussions.

5. **Modernising Other Powers:** By and large, ICAC's powers under the ICAC Ordinance and POBO are strong. The investigator has not signalled any major deficiencies in operational powers. However, the continual **upgrade of investigative tools** sometimes requires legal backing – for instance, use of advanced surveillance or interception might intersect with privacy laws. Hong Kong has the Interception of Communications and Surveillance Ordinance which applies to all law enforcement (including ICAC) for covert surveillance approvals. ICAC seems satisfied with this regime currently. If any legislative tweak were needed, it might be to ensure ICAC can keep pace with technology (for example, explicit powers to access encrypted digital evidence or cooperation with overseas data requests). At this time, no specific amendments along these lines have been publicly requested, but it's an area to watch.

In summary, **the primary legislative improvement on ICAC's agenda is closing the Chief Executive loophole in the POBO**, which would likely happen via a carefully crafted amendment (the administration is studying how to do this consistent with the Basic Law)[52][53]. Other changes, like enhancing whistleblower protections and possibly extending Hong Kong's anti-bribery reach, are more in the realm of policy discussion. The investigator indicated that existing laws have served Hong Kong well for decades, but he welcomes reforms that can *"enhance the robustness of the system to effectively prevent and deal with conflicts of interest"*[62]. Any such changes would ultimately strengthen ICAC's hand in keeping Hong Kong corruption-free.

5. Selection and Appointment of the ICAC Commissioner

The **ICAC Commissioner** is the head of the agency, and the process for selecting and appointing this individual is laid out in law and the Basic Law. In Hong Kong, the appointment is essentially a **government decision, made by the Chief Executive and formalised by Beijing's central government**:

1. **Appointment by Chief Executive and Central Government:** Under Article 48(5) of the Basic Law, the Chief Executive of Hong Kong has the power to nominate principal officials for appointment by the Central People's Government (State Council)[63]. The ICAC Commissioner is classified as a *"principal official"* of the HKSAR Government[4]. Therefore, the process is: **the Chief Executive selects a candidate and submits that nomination to the Central People's Government (State Council) in Beijing, which formally appoints the person as ICAC Commissioner**[47][63]. In practice, the Chief Executive usually consults his top advisors (and possibly Beijing's liaison office informally) in choosing a candidate, but there is no public open recruitment. It is an executive decision rather than a legislative one – LegCo does not vote on the ICAC Commissioner appointment.

2. **Qualifications and Background:** By law (Basic Law Article 61), all principal officials (including the ICAC Commissioner) must be Chinese citizens who are Hong Kong permanent residents with no foreign right of abode and at least 15 years of residence in Hong Kong[64]. Typically, ICAC Commissioners have been individuals with significant law enforcement or public service experience. For example, recent Commissioners have included former senior police officers or disciplined services heads (the current Commissioner, Mr. Woo Ying-ming, was previously Commissioner of the Correctional Services) and long-time ICAC insiders. The government emphasises **personal integrity, capability, and experience** in anti-corruption or law enforcement when selecting a Commissioner[48]. The goal is to pick someone who can uphold ICAC's credibility and effectiveness.

3. **Term and Removal:** The law does not specify a fixed term for the Commissioner. In practice, ICAC Commissioners serve at the **Chief Executive's pleasure** (typically around 3-5 years, often renewable once). Since the ICAC is directly accountable to the Chief Executive, the CE can replace the Commissioner if needed, though this is rare and would likely only happen for cause or upon retirement. (During colonial times, there was an executive provision for removal of public officers at the Governor's pleasure, and now the Public Service Orders/Basic Law would cover removal if ever necessary, but such powers are used sparingly.)

4. **Deputy Commissioner:** It's worth noting that the **Deputy Commissioner of ICAC** is appointed differently: under the ICAC Ordinance (Section 6), the Chief Executive appoints the Deputy Commissioner *directly* (no need for central government approval)[47][65]. So, the Deputy is a local appointment, whereas the Commissioner is a state appointment via the CE's nomination.

There is no independent commission or external body that selects the ICAC head. This has raised questions (as mentioned in Q3) about potential conflicts, since the government chooses the person who might later investigate government officials. In 2014, a Legislator asked if an independent authority should appoint the ICAC Commissioner to enhance perceived independence[66][67]. The Government's response was that the current arrangement is rooted in the Basic Law and has proven effective, with sufficient checks and balances to ensure the ICAC's impartiality[48]. They noted that even though the CE nominates the Commissioner, the Commissioner's *duty by law is to investigate corruption impartially – even if it involves the CE or other officials*[32]. Also, since the Commissioner is a principal official, his appointment requires Beijing's confirmation, which adds a layer of accountability at the central level.

Appointment Process in practice: When a Commissioner's post becomes vacant or a term ends, the Chief Executive will identify a suitable candidate (often from within ICAC senior ranks or a relevant law enforcement agency). After discreet consultations, the CE will send the nomination to the State Council. Once Beijing approves and formally appoints, an announcement is made in Hong Kong. For example, when Mr. Simon Peh was appointed Commissioner in 2012, it was by State Council appointment on the CE's recommendation, and similarly for successors. There is usually a press release noting the appointment was made pursuant to Basic Law Article 48(5) and ICAC Ordinance provisions[63].

In summary, **the ICAC Commissioner is appointed by the Central People's Government upon nomination by the Chief Executive**[47]. The **process is top-down** and within the executive branch. The selection criteria emphasise integrity, ability, and experience, to ensure the appointee can command public confidence. This method has given Hong Kong a series of Commissioners generally respected for their professionalism. While some argue an independent panel could choose the Commissioner, the government currently has *"no plan for changes"* to this mechanism, believing it has sufficient safeguards and has worked well[48].

6. ICAC's Jurisdiction: Whom Can It Investigate, and Any Restrictions?

Scope of ICAC's investigatory jurisdiction: The ICAC has a broad mandate to investigate **any suspected corruption offence** under the laws it enforces, without regard to the position or status of the individuals involved. In Hong Kong, **no person is immune from ICAC investigation by virtue of their office.** The ICAC Ordinance explicitly states it is the Commissioner's duty to investigate suspected offences under the Prevention of Bribery Ordinance (and related laws) committed by *"any person (including the Chief Executive)"*[32]. This means:

1. ICAC can investigate **government officials at all levels** – from frontline public servants and civil service clerks to senior directors of bureaus, up to *Ministers (Secretaries)* and the Chief Executive herself. Even members of the Executive Council or Legislative Council, if involved in corruption, fall within ICAC's jurisdiction. For example, ICAC has in the past investigated *Executive Council members and even a former Chief Executive* (Donald Tsang, who was eventually prosecuted for misconduct in public office after an ICAC inquiry). The law makes no distinction: a **Minister or a high-ranking official can be investigated and interviewed under caution just like any other suspect**. They do not have special privilege to refuse an ICAC inquiry. Indeed, Hong Kong's system prides itself on this principle of equality before the law in corruption cases.

2. ICAC can investigate **rank-and-file public employees and law enforcement officers** (including the entire Hong Kong Police Force). Police officers are frequent subjects of ICAC actions when suspected of bribery or corruption. Historically, cracking down on police graft was ICAC's first mission in the 1970s[1], and that remains part of its core work (see Q16/Q17). "Prescribed officers" under POBO include all police officers, customs officers, etc., so any corruption in those services is squarely within ICAC's purview[68].

3. ICAC can investigate **employees and members of public bodies** (like public corporations, quasi-government agencies, housing authorities, etc.), since those are covered by the definition of "public servant" in POBO[68]. It also covers *district councillors or other holders of public office* who may not be salaried government staff but are part of public administration.

4. Importantly, ICAC's jurisdiction extends to the **private sector as well** for certain offences. Under Section 9 of POBO, bribery among agents and employees in the private sector is illegal. So ICAC can (and does) investigate **businesspeople, company executives, or any private individual** involved in offering or receiving bribes. In fact, in recent years the majority of complaints ICAC receives involve the private sector (about 72% of complaints in 2023 were related to the private sector)[69]. ICAC has jurisdiction to pursue these cases too, which might involve, say, a company procurement manager accepting kickbacks, or contractors bribing a private project manager. The only limitation is that purely private-sector corruption still needs some nexus to Hong Kong jurisdiction (e.g. if it happened in Hong Kong or involved Hong Kong persons – ICAC wouldn't pursue two foreigners bribing each other overseas, as that's outside its remit).

Are there any individuals or entities ICAC cannot investigate by law? Generally, no, within Hong Kong. Unlike some countries where sitting politicians or judges have immunity, Hong Kong provides **no immunity for anyone in corruption cases**. Even the Chief Executive, while not covered by certain sections of POBO, can still be investigated and prosecuted under other sections or the common law **(with the Department of Justice handling any prosecution)**. There is also no need for the legislature to waive immunity or anything – ICAC does not require special permission to investigate a Minister or legislator for corruption. (Legislative Council members do have immunity for words spoken in chamber, but if they were involved in a bribery scheme, ICAC can investigate the circumstances; any prosecutorial decision might consider that immunity only in terms of evidence from LegCo debates, not as a bar to investigation.)

Example: In a Legislative Council Q&A in 2014, it was confirmed that ICAC must investigate any person, including the Chief Executive, if there's sufficient information of corruption – and that such investigations are done independently and reported to oversight committees, with no one (not even the Commissioner) allowed to terminate an investigation arbitrarily[11][70]. This underscores that **ministers and even the Chief Executive are legally subject to ICAC's investigatory powers**.

One practical consideration: if the person is a *Mainland Chinese official or a foreign official*, ICAC's jurisdiction is limited. For instance, if a mainland official were suspected of corruption in Hong Kong, ICAC could investigate acts committed in Hong Kong, but *ICAC cannot compel a mainland official in China to comply* – that would be handled via cross-border cooperation. Similarly, ICAC doesn't have authority in the mainland or overseas (it's not like FBI with global reach). But within Hong Kong's territory, ICAC's jurisdiction over persons is comprehensive.

Compelling ministers to give evidence: If the question implies whether ICAC can force a minister or official to cooperate **as suspects, yes – they can be arrested, searched, and interrogated under caution like anyone else** if evidence justifies it. If a government minister is under investigation, ICAC will typically proceed by gathering evidence covertly, and if needed, approach them for an interview (often under caution, meaning they are suspected of an offence). They can *invite* the official to explain, but like any suspect, that person has the right to silence (see Q7 for detail on compulsion). However, ICAC has legal tools such as Section 14 of POBO that can require a person to provide certain information (like a statement of assets) under pain of prosecution if they refuse[23]. These apply equally to a minister or any individual. So, while a minister could try not to cooperate, they might then face legal consequences for non-compliance with a lawful ICAC notice. **In short, ICAC can "go after" ministers directly.** There is precedent: ICAC has investigated and arrested very senior officials (for example, a former Chief Secretary – the No.2 official – was arrested by ICAC in a past case of alleged bribery). They do not need anyone's approval to do so, and the official cannot claim exemption.

Thus, **ICAC's jurisdictional scope covers virtually "everyone" in Hong Kong – government leaders, public officers, police, businesspeople, and ordinary citizens – with no special exceptions.** This broad mandate is a deliberate design to ensure that corruption can be tackled wherever it occurs.

7. ICAC's Powers to Compel Witnesses and Limits on Compelling Evidence

Powers to compel evidence/witnesses: The ICAC, being a law enforcement agency, generally operates under similar principles as the police when interviewing witnesses or suspects – voluntary cooperation is sought, and suspects have the right to silence. However, the ICAC does have **special statutory powers to compel certain evidence** in corruption inquiries, recognising that witnesses or suspects might otherwise be uncooperative. Key points include:

1. **Section 14 Orders (Prevention of Bribery Ordinance):** This is a powerful tool unique to corruption investigations. Under Section 14 of POBO, the ICAC (with approval from a magistrate or court) can require *"any person"* to furnish information relevant to a corruption investigation[23]. This can include requiring the person to answer questions in writing or provide a statement of their financial affairs to an ICAC investigator[23]. In other words, ICAC can compel a person (whether a suspect or just someone with information) to disclose what they know about the matter under investigation. Section 14(2) specifically allows the ICAC to demand answers to questions – effectively overriding the usual right to refuse to answer. If the person fails to comply with such a Section 14 notice, or knowingly gives false answers, they commit an offence. This mechanism is like a subpoena or interrogatory power and is **a major exception to the normal right to remain silent in criminal investigations**[71]. It's used, for example, to force a suspect to declare all his assets and explain sources of wealth (critical in corruption cases)[22]. Importantly, Section 14 requires judicial oversight (application to court), so it's not used arbitrarily – there must be reasonable grounds and court consent.

2. **Search Warrants and Production Orders:** The ICAC can apply to a magistrate for search warrants to seize documents, records, and other evidence from premises (just as police do). Under POBO and the ICAC Ordinance, ICAC can search private premises (including offices, residences) for relevant evidence, usually with a warrant. In urgent circumstances, there are provisions that might allow warrantless entry, but generally a warrant is obtained. Additionally, ICAC can issue notices (with legal basis in POBO) to banks or institutions to produce documents (for example, bank account statements, transaction records) relevant to an investigation[22]. Banks in Hong Kong are accustomed to such ICAC orders and must comply. These powers to compel *documentary evidence* are crucial: corruption often leaves a paper or money trail, and ICAC can compel organisations to hand over such records. Failure to comply by the recipient of an order can be punished by the court.

3. **Arrest and interrogation:** If a witness is a suspect, ICAC can arrest them and then is allowed to question them under caution. While under arrest, a person cannot walk away and can be held (ICAC has detention facilities) for questioning for a reasonable period (usually up to 48 hours before charge or release, similar to police procedures). During that time, ICAC can attempt to interview them. However, the suspect maintains the right not to answer questions (except for the Section 14 scenario above). So, in practice, ICAC cannot "force" a suspect to confess or speak – they must inform them of their right to silence and right to legal counsel (which ICAC scrupulously does).

4. **Witness interviews:** For individuals who are not suspects but have information (witnesses), ICAC typically requests them to give statements voluntarily. Many witnesses cooperate freely, especially since ICAC can assure them confidentiality. If a witness is hesitant, ICAC might use persuasion (highlighting civic duty or the fact that refusing to assist a corruption probe could itself be problematic if they are concealing something). There isn't a straightforward way to *force* a neutral witness to talk prior to court. However, if a vital witness refuses to cooperate, ICAC might consider whether that witness is actually complicit (thus a suspect) or if other means like immunity or rewards could encourage cooperation. In some cases, the **Secretary for Justice can offer an accomplice witness immunity in exchange for full testimony** (under Section 23 of POBO)[72], effectively compelling them to testify truthfully by removing the risk of self-incrimination. This is more about court proceedings, but it's a tool to turn reluctant insiders into witnesses.

Restrictions on what can be compelled: There are legal limits to ensure fairness and protect certain rights:

1. **Privilege against self-incrimination:** Although Section 14 POBO abrogates the right to silence to a degree, Hong Kong law still ensures a person gets a fair trial. If a suspect provides information under compulsion (via a Section 14 order), that information generally **cannot be directly used to prosecute them for a new offence**. There is a protection: statements obtained under Section 14 are not admissible as evidence of guilt in a prosecution of that person (except perhaps to challenge the person's credibility if they testify inconsistently). In fact, Section 20 of POBO allows such compelled statements to be used as previous statements to impeach a witness, but not as direct proof of the offence[73]. The courts have held that any use of compelled answers must not undermine the right to a fair trial[73]. In short, ICAC can force you to spill the beans about your assets or transactions, but if you later face trial, the prosecution usually cannot introduce your compelled statement as evidence to convict you – they have to find independent evidence. (They can, however, use the leads from your disclosure to find independent evidence.)

2. **Legal professional privilege:** ICAC cannot compel disclosure of communications protected by legal professional privilege (attorney-client communications). If ICAC raids a law firm or finds documents that are correspondence between a suspect and their lawyer, those are sequestered and reviewed under independent counsel or court supervision. Witnesses can refuse to answer questions if the answer would reveal privileged advice they received. This is a general legal restriction that ICAC adheres to.

3. **Spousal privilege and others:** Under Hong Kong law, a spouse of an accused can in some cases decline to give evidence against their partner (except in specific situations), though this area has been reformed and is case-dependent. ICAC would typically not compel a spouse to testify against the other in the investigation stage. However, if it goes to trial, the spouse could be compelled by court unless privilege applies. These are courtroom issues rather than ICAC's investigative power per se.

4. **No torture or coercion:** Obviously, ICAC cannot use force or threats to compel testimony – that would be a serious criminal offence itself. All interviews are recorded, and the ICAC follows rules similar to the police rules under the Police and Criminal Evidence Ordinance guidelines to ensure voluntariness of statements. If a witness says, "I don't want to answer," except for serving a Section 14 notice, ICAC cannot beat it out of them (and does not do so – ICAC has a reputation for integrity in its interview process). Any evidence obtained by oppression would be thrown out in court.

5. **Scope of questions:** If ICAC issues a Section 14 order, it must pertain to the corruption investigation at hand. They can't compel random information unrelated to the case. The court overseeing such orders ensures they aren't a fishing expedition beyond what the investigation justifies.

In practice, **ICAC rarely uses formal compulsion on ordinary witnesses**. Most witnesses (such as colleagues, government officers who observed something, etc.) cooperate voluntarily, especially given ICAC's confidentiality assurances. The formal powers – Section 14 notices – are more often used on suspects or key figures to get financial disclosures.

It's worth noting too: **once a case goes to court, normal judicial processes take over**. Then witnesses can be subpoenaed to testify in open court. If a witness refuses to testify or to answer a legitimate question in court, the judge can deal with that (even hold them in contempt). But that's beyond ICAC's role – at trial it's the court compelling evidence.

Summary: ICAC has strong powers to *compel production of evidence* (documents, bank records, etc.) and even to *compel answers* in specific circumstances via court-backed orders[23]. These powers are balanced by legal protections – the compelled answers can't generally be used directly to incriminate the person giving them, and fundamental privileges remain intact. ICAC cannot simply force any person to speak freely without conditions – except through the structured legal mechanisms described. Nonetheless, these mechanisms (like Section 14) have proven very useful in breaking the wall of silence that often surrounds corrupt deals.

8. Are ICAC Hearings Public, Private, or Both?

In Hong Kong, the ICAC **does not conduct public hearings** in the way some anti-corruption commissions in other jurisdictions (like Australia) do. All ICAC investigative processes are conducted in **private (in camera)**. There are no open-to-media or public "hearings" of evidence by ICAC. The aim is to protect the integrity of investigations, and the reputations of persons not yet formally charged.

What the ICAC does instead: The ICAC investigates behind closed doors. Its officers gather evidence confidentially, interview suspects and witnesses in private at ICAC offices, and compile case reports for the Department of Justice. **No aspect of an ICAC inquiry is held in a public forum.** There is no equivalent to a court hearing or tribunal proceeding during the investigative phase. If the ICAC finds sufficient evidence, the case is

handed to prosecutors and then the matter may go to a public trial in the courts. But that trial is a normal criminal proceeding in a court (which is public by default). The ICAC itself doesn't have public tribunals.

This approach is often called the "Hong Kong model" of anti-corruption: **investigate in private, prosecute in court**. It contrasts with some anti-corruption agencies elsewhere that have the mandate to hold public inquisitorial hearings (for example, the New South Wales ICAC in Australia famously holds public hearings for major inquiries and Victoria holds both public and private hearings). Hong Kong deliberately chose not to give ICAC that quasi-judicial hearing function. One reason is to safeguard the investigation's confidentiality and avoid trial by media. In fact, Hong Kong law (Section 30 of POBO) makes it a criminal offence to disclose details of an ongoing ICAC investigation to the public[74]. This means if someone knows they're being investigated or has been interviewed by ICAC, they are **not allowed to publicise it** without lawful authority, or they could be prosecuted for "misconduct disclosure". This strict secrecy law underscores that ICAC matters are to be kept private until charges are laid.

Therefore, **virtually all ICAC "hearings" are in private**. ICAC interviews (sometimes colloquially called being "invited for coffee" at ICAC headquarters) happen one-on-one or with investigators only[75]. Documents and evidence gathered are kept confidential within ICAC and perhaps shared with the Operations Review Committee in summary form, but not with the public.

When an investigation concludes, one of a few things happens: - If no sufficient evidence is found, the case is closed quietly. (Often the target might not even know they were investigated, unless they were interviewed.) - If there is evidence and the Department of Justice decides to prosecute, **charges are laid and the case goes to court**. At that point, the proceedings become public in the standard judicial system (magistrates court, district court, or high court) – the defendant is charged and appears in an open court, evidence is presented in a trial, etc. The identity of the accused and details of the alleged corruption become public through the court process. But that is **after ICAC's investigative phase**.

ICAC may occasionally hold press conferences or issue press releases when major cases break (e.g., announcing the arrest of a prominent figure or the results of an operation), but these are not evidentiary hearings – they are carefully managed communications, often only after arrests are made or charges filed.

No public hearings: Even ICAC's internal examination of witnesses is not open. For example, if ICAC wants testimony from a person, they will take a statement in private. There is no scenario where the ICAC invites media or public attendees to watch a witness being questioned – that simply does not happen.

So, the answer: **ICAC hearings are held in private, not in public.** In fact, one could say ICAC doesn't hold "hearings" at all in the formal sense; it conducts **investigative interviews and evidence-gathering privately**. The only "hearings" related to ICAC's work occur when the case goes to **court (which are public)** or if there's a judicial inquiry beyond ICAC's scope.

9. Criteria for Determining Public vs Private Hearings

Given the answer to Q8, this question is largely moot in Hong Kong's context, because **ICAC does not have a dual system of public and private hearings** – they are effectively all private. Therefore, there isn't an internal set of criteria that ICAC uses to decide "shall we have this hearing in public or behind closed doors?" as might exist in some jurisdictions.

10. Ensuring the Safety of Protected Witnesses

Protecting witnesses – especially those who testify in corruption cases or who assist ICAC in dangerous situations – is a paramount concern for the ICAC. Hong Kong has a formal witness protection regime that the ICAC can utilise:

1. **Witness Protection Ordinance (Cap. 564):** Hong Kong enacted the Witness Protection Ordinance in 2000 to create a unified, legal framework for protecting witnesses at risk[79][80]. Under this ordinance, both the Hong Kong Police and the ICAC run witness protection programs. In fact, the ICAC established its own witness protection program in 1998 (modelled after the police's program) and then the law in 2000 integrated these efforts[81][79]. If a witness (or whistleblower or any person assisting ICAC) has reason to believe their personal safety or that of their family is endangered due to their cooperation, they can be admitted into the Witness Protection Program.

2. **Measures under the Program:** The witness protection program can provide a range of protective measures tailored to the threat level. These include:

3. **Security detail and relocation:** At the basic level, a threatened witness can be given police/ICAC protection, such as escorts to and from court, temporary housing in a safe location, and 24/7 bodyguards if necessary.

4. **Identity change:** In more severe cases, the program can arrange for a witness to assume a new identity, complete with new identification documents, and be relocated (even overseas) to an undisclosed place where those who might harm them cannot find them[79][82]. This is done in extreme cases where the threat is likely long-term (for example, testifying against organised crime figures).

5. **Financial and logistical support:** Witnesses in the program may receive help to secure employment in a new location, financial assistance while they are unable to work, and counselling or other support services to adapt to their new life.

6. All these are done pursuant to the ordinance, which sets out criteria and procedures for admission, obligations of the witness (like not contacting old associates), and so on[82][83]. There's even an appeals procedure if someone is denied protection or removed from the program[84].

7. **ICAC's specialised unit:** The ICAC has a dedicated team for witness protection. As noted earlier, the ICAC's **Witness Protection and Firearms Section (R4)** handles high-risk operations and witness protection assignments[85]. This small, specialised unit consists of ICAC officers trained in personal security, defensive tactics, and firearms, capable of protecting witnesses under threat. They can, for instance, secure safe houses and escort protected witnesses to court or other safe locations. Having an in-house unit means ICAC does not have to rely entirely on the police for witness security, which is important especially if the case involves corrupt police officers (ICAC can ensure confidentiality by using its own people).

8. **Confidentiality of Witness Identities:** Even outside the formal witness protection program, the ICAC places great emphasis on keeping the identities of cooperating witnesses or informants secret (see Q11 for whistleblower identity protection). During an investigation, the identity of anyone helping ICAC is tightly held. If a witness is to testify in court and fears reprisals, Hong Kong courts can also implement measures like *anonymity orders* or *screened testimony* (where the witness may testify behind a screen or via video link so that the public cannot see them) in special cases, though these are less common and require judicial approval, balancing the defendant's right to cross-examine. For example, in cases involving triads or organised crime, courts have allowed protected witnesses not to have their address or current identity disclosed.

9. **Legal penalties for harming or threatening witnesses:** Hong Kong law (and ICAC's enforcement) strongly deters any tampering with witnesses. Any attempt to harass, bribe, or harm a witness can led to charges of perverting the course of justice, criminal intimidation, or related offences. ICAC would swiftly

investigate any such threats if related to a corruption case. Knowing this, potential retaliators are dissuaded.

10. **International relocation:** In extreme scenarios, ICAC can coordinate with overseas law enforcement to relocate a witness abroad for safety. While details are understandably confidential, there have been instances historically where key witnesses were given new identities abroad. The Witness Protection Ordinance allows for such overseas moves as needed.

The **safety of protected witnesses is thus ensured by a combination of a robust legal framework and on-the-ground protective operations**. The witness must also abide by security guidelines (for example, not venturing out without notifying protectors, not contacting people who might compromise security, etc.).

In summary, **ICAC ensures protected witnesses' safety through Hong Kong's Witness Protection Programme (jointly run by ICAC and Police under law)[81][79], and through its own specialised protection unit**. Measures range from physical protection and secure housing to identity changes, depending on the threat. The success of these measures is reflected in the fact that, over ICAC's history, there have been very few (if any) known instances of harm coming to someone under ICAC witness protection. It's a system taken very seriously to uphold the integrity of the justice process – witnesses can testify without fear.

11. Protection of Whistleblower Informants' Identities and Safety

Protecting whistleblowers' identities is crucial for encouraging people to report corruption. The ICAC and Hong Kong law implement several safeguards to ensure informants (people who provide tips or reports of corruption) are kept anonymous if they wish and safe from reprisals:

1. **Confidential Reporting Channels:** The ICAC provides multiple secure ways to report corruption – a 24-hour telephone hotline, online report forms, mail, or in-person at ICAC offices[36]. Reports can be made anonymously. In fact, many people choose to identify themselves (around 71% of complainants in 2023 gave their name)[86], but those who prefer not to can report without giving personal details. Even for those who do identify themselves, ICAC treats the identity of the informant as highly confidential. ICAC officers will not disclose an informant's name or personal information to anyone unnecessary. Investigations are often launched without revealing who provided the initial tip, even within government.

2. **Legal Protection of Informant Identity (Section 30A POBO):** Hong Kong law explicitly protects whistleblower anonymity in legal proceedings. Under Section 30A of the Prevention of Bribery Ordinance, **no evidence in any civil or criminal proceeding is admissible that discloses the identity of a person who has made a report to the ICAC** – nor can any witness be forced to reveal the name of an informer[44]. This means if a corruption case goes to trial, the defence cannot demand, "Who tipped off the ICAC?" That question is off-limits by law. The court will not allow the informer's identity to be exposed. This provision was created to reassure informants that coming forward will not eventually land them in the spotlight or subject them to retaliation via a court process. Essentially, the informant enjoys a near-absolute anonymity privilege.

3. **ICAC Internal Secrecy:** Within ICAC, the identity of informants is usually known only to the officers handling the complaint on a need-to-know basis. Files are often coded so that an informant might be referred to by a number or alias internally. ICAC officers are bound by strict rules (and Official Secrets Ordinance) not to leak any information about cases, including sources. Breach of confidentiality by an ICAC staff member would be a serious disciplinary and legal offence. This internal culture ensures informants' identities are safeguarded.

4. **Whistleblower safety:** In cases where a whistleblower's information makes them a potential target (for instance, an employee reports his boss for corruption – if the boss finds out, he might retaliate), ICAC can take measures to protect them. Often, secrecy suffices (the boss won't know who complained). But if the identity becomes suspected or obvious (maybe only a few people knew the corrupt secret, so the guilty party might narrow it down), ICAC can advise the informant on personal safety or involve the witness protection program if needed. For example, if a whistleblower needs to eventually testify as a key witness, they may become a "protected witness" (see Q10) and receive security arrangements.

5. **No direct whistleblower law**: It's important to note, as mentioned earlier, Hong Kong has no broad whistleblower protection act (like protection from being fired by your employer). However, some protections exist in specific contexts: e.g., under employment laws, if someone were fired in retaliation for reporting a crime, they might have grounds for a wrongful dismissal claim. Also, publicly funded bodies often have internal policies protecting staff who report misconduct. And the Securities and Futures Ordinance gives some immunity to those who report financial misconduct[87]. But generally, ICAC compensates for this by absolute confidentiality. In practice, **retaliation is difficult if the whistleblower's identity is unknown**. If the person does reveal themselves or is guessed, ICAC can still step in – if someone tries to punish a whistleblower, that could become a criminal case (e.g., intimidation or obstruction of justice).

6. **Encouragement of anonymous reporting:** ICAC's public education emphasises that even anonymous reports are welcome ("Report corruption by phone, mail, in person, etc. All information will be treated in strict confidence" – this is a common ICAC message). So, an informant need not put themselves at risk at all. They can be a "silent hero" and let ICAC handle it.

7. **Handling of whistleblower complaints about identity leaks:** If a whistleblower ever feels their identity was compromised or not well protected, they can complain to the ICAC Complaints Committee. However, such instances are extremely rare. ICAC's reputation and success depend on trust that it will protect those who come forward. They have decades of practice doing so effectively.

In sum, **the ICAC protects whistleblower informants primarily through strict confidentiality and legal rules that prevent disclosure of their identity**[44]. If an informant's safety were in jeopardy, they would be treated as a protected witness and accorded safety measures (from surveillance against threats to relocation under the Witness Protection Ordinance). The investigator assured that *"all informants' identities are kept strictly confidential, and the Commission will do everything possible to ensure their safety."* Indeed, Hong Kong's system is such that people feel secure tipping off ICAC – many do so even use real names, reflecting confidence that **ICAC will shield them from harm and from publicity**.

12. How ICAC Attracts and Recruits Investigators and Staff

The ICAC is a highly regarded employer in Hong Kong, often attracting candidates who are motivated by a sense of mission to fight corruption as well as the promise of a stable and respected career. Here's how ICAC attracts and recruits its staff:

1. **Competitive Salary and Benefits:** From its inception, ICAC was given resources to offer attractive compensation, to ensure its officers are not easily tempted by bribes. ICAC staff are not part of the standard civil service pay scale; they have their own pay grades which have historically been competitive with (or even slightly above) equivalent ranks in the police. This was a deliberate strategy to lure talent (especially in the 1970s, to poach honest police officers over to ICAC) and to maintain internal integrity (well-paid officers are less likely to risk their jobs for bribes). ICAC also provides benefits like housing allowances, medical coverage, and pensions comparable to government standards, making it a sought-after employer.

2. **Prestige and Mission:** Working for the ICAC carries prestige – it's viewed as an elite agency with an important mission. Many Hong Kong people respect the ICAC, so a job there is seen as honourable. The **sense of purpose** ("serve Hong Kong by keeping it corruption-free") is a strong selling point. In recruitment materials, ICAC emphasises the challenging and meaningful nature of the work. This appeals to idealistic university graduates and experienced professionals who want to contribute to society.

3. **Targeted Recruitment Campaigns:** The ICAC regularly advertises vacancies on its website[88], in newspapers, and civil service channels. It holds career talks at universities and participates in job fairs to attract new graduates for the rank of *Assistant Investigator*. For specialised roles (like accountants, lawyers in its legal department, IT forensics experts, etc.), it will advertise in professional circles. The branding of ICAC in these campaigns highlights integrity, courage, and the rule of law – attracting those who share those values.

4. **Diverse Backgrounds:** ICAC recruits from a broad talent pool. Some investigators are former police or ex-military with investigatory experience; others are fresh graduates in disciplines like law, finance, criminology, or social sciences. ICAC also values accountants (for financial investigation), computer science graduates (for computer forensics), and lawyers or legal experts (to work as in-house counsel or in prevention education roles). This diversity is advertised: you don't have to be a former cop to join – ICAC looks for any candidate with aptitude and integrity.

5. **Comprehensive Training and Career Development:** A draw for recruits is that ICAC provides excellent training. New investigators undergo intensive training in laws, investigatory techniques, surveillance, self-defence, etc. (including a stint learning basic firearms skills)[85]. There's ongoing professional development – e.g., courses in financial investigation, forensic accounting, interrogation skills, etc. Career progression is clear: one can move up from Assistant Investigator to Investigator, Senior Investigator, Principal Investigator, etc., and even into management. Many of ICAC's top leadership started as front-line investigators. The prospect of a rewarding career path helps attract ambitious young people.

6. **Integrity of Organisation:** People know ICAC itself holds high standards of integrity internally, so it's an appealing workplace for those who value ethics. There's pride in being part of an organisation that practices what it preaches (strict codes of conduct, discipline, etc.).

7. **Public Outreach and Image:** ICAC's publicity through dramas ("ICAC Investigators" TV series, etc.), public events, and even their Visitor Centre showcase the exciting work they do, which can inspire people to join. They sometimes feature real investigator stories (anonymised) to let prospective candidates know the job is challenging but rewarding.

In practical terms, when ICAC has openings, it often receives a flood of applications – indicating its attractiveness. The selection process is rigorous (see Q13), but those who make it through are drawn by the factors above. ICAC's staff numbers have grown to about 1,500 posts by end of 2023[89], with strong demand for positions, enabling ICAC to select the best and brightest.

To summarise, **ICAC attracts talent by offering competitive compensation, a prestigious and purpose-driven career, robust training, and a culture of integrity.** Its recruitment messaging and the esteem it holds in the community make it an employer of choice for many who want to make a difference while having good career prospects.

13. Integrity and Background Checks for Prospective ICAC Staff

Given the nature of ICAC's work, **ensuring the integrity of its own personnel is absolutely critical**. The agency thoroughly vets all candidates during recruitment to filter out anyone who might be untrustworthy or susceptible to corruption. Here are the key integrity and background check measures ICAC undertakes:

1. **Detailed Background Investigation:** All shortlisted applicants go through an extensive background check. This includes verification of identity and personal history, such as:

2. **Criminal record check:** Obviously, no one with a criminal conviction for dishonesty or serious crime would be hired. ICAC checks police records for any criminal history or even arrest records of the candidate.

3. **Financial history:** ICAC may examine an applicant's financial situation (with consent as part of the hiring process) to see if they have signs of financial distress or irregular wealth. High debt or unexplained affluence could be a red flag, as it might make one more tempt able or indicate undisclosed activities.

4. **Employment references:** Previous employers are contacted to confirm the candidate's work history, performance, and any issues of integrity at prior jobs. If a candidate was in law enforcement or another sensitive field before, ICAC will especially probe their record for any complaints or suspicious incidents.

5. **Education and credentials:** Academic degrees and qualifications are verified to prevent fraud. Even a lie on a resume would usually disqualify an applicant for an integrity agency like ICAC.

6. **Security Vetting:** ICAC applicants undergo **security vetting similar to (and arguably more stringent than) other disciplined services**. This could involve background officers interviewing the candidate's acquaintances, neighbours, or teachers to gather a picture of their character and lifestyle. The vetting looks for links to triads or organised crime (for example, whether the candidate has close relatives or friends involved in crime), habitual gambling problems, drug use, or any behaviour that might indicate unreliability or susceptibility to coercion. In some cases, for higher security clearances, candidates might be asked to take a **polygraph test** – while not officially confirmed, it's rumoured that ICAC has used polygraphs in vetting some officers, as certain law enforcement agencies do, to ensure truthfulness about their past.

7. **Integrity Questionnaire / Interviews:** Candidates often have to fill out questionnaires about any past misconduct, drug use, etc. During recruitment interviews, ICAC panels will pose ethics-related questions and hypotheticals to gauge the candidate's moral reasoning. They want to see that a prospective investigator will adhere to the highest ethical standards and can resist pressure. Sometimes psychological assessments or integrity tests are administered. For example, scenario questions like "If you found out your teammate was acting improperly, what would you do?" measure if a candidate will stand firm on integrity.

8. **Psychometric and Physical Testing:** While these tests mostly evaluate aptitude and fitness (e.g., logical reasoning, stress tolerance), they also serve to filter out personalities that might not fit ICAC's ethos. The specialised R4 (firearms and witness protection) selection, for instance, involves psychometric tests to assess decision-making and integrity under pressure[90]. For general investigators, similar tests ensure they are mentally stable and honest.

9. **Probation and Monitoring:** Even after hiring, new ICAC officers typically serve a probationary period during which their performance and conduct are closely watched. They receive training about ICAC's strict code of conduct. Any minor lapse can be cause for termination during this period. Additionally, all officers are subject to ongoing integrity monitoring – for instance, they must declare any conflicts of interest, outside employment, or large financial transactions. There is an internal investigation unit within ICAC that

checks on staff if there's any suspicion of misconduct. Essentially, vetting doesn't stop at hiring; it's continuous.

10. **Lifestyle Checks:** Throughout their career (starting from entry), ICAC officers may be required periodically to submit declarations of assets and liabilities. This is to ensure no unexplained wealth accumulates (much like they investigate others for unexplained wealth under Section 10 of POBO, ICAC wants to guarantee its own staff don't have such issues). Surprise audits or checks can occur if any anomaly is detected.

All these measures are in place because **ICAC officers hold significant power and handle sensitive information; one compromised officer could damage operations or the agency's reputation.** The investigator emphasised that only individuals of the highest probity are selected. In fact, ICAC's stringent vetting is part of its organisational culture – *"we must ourselves be clean to catch the corrupt."*

In summary, **ICAC's recruitment process involves rigorous integrity screening: criminal and financial background checks, reference verifications, security vetting for any risk factors, honesty testing through interviews and possibly polygraphs, and strict probationary observation[91].** These ensure that those who join the Commission are persons of integrity and remain so.

14. Ensuring Personal Safety of ICAC Investigators and Staff

ICAC investigators sometimes face risks in the line of duty, especially when dealing with organised crime or busting syndicates that might retaliate. The Commission takes several steps to ensure the personal safety of its officers:

1. **Training in Self-Defence and Firearms:** All ICAC investigators receive training to protect themselves. Since 1998, ICAC's recruits have been trained in basic firearms skills[85] (previously not all were armed, but now they ensure the capability is there). Investigators are also trained in defensive tactics, situational awareness, and how to handle confrontations safely. ICAC has a small armoury – officers can be issued firearms (typically a Glock pistol or revolver) when needed for operations that might be dangerous[92][93]. Firearms are not carried daily by all investigators, but teams like the **R4 Witness Protection and Firearms Section** are armed and handle high-risk arrests or raids[85]. The fact that no shots have ever been fired by ICAC in operations (as of present)[94] indicates that they emphasise planning and restraint, but the training is there as a precaution.

2. **Operational Planning and Backup:** ICAC is careful in planning its operations to minimise risk. When arresting suspects, especially potentially dangerous ones, ICAC often conducts surprise operations with sufficient manpower. They may coordinate with the Police Tactical Unit if expecting armed resistance (ICAC can request police assistance for firepower or crowd control if needed). Typically, ICAC will arrest subjects at times and places that reduce chances of violent resistance (e.g., intercepting someone in a calm setting rather than during a chaotic moment). They also equip officers with protective gear (ballistic vests, etc.) during raids.

3. **Anonymous and Discreet Lifestyle:** Investigators are advised to keep a low profile about their ICAC employment. They often do not tell people outside their close family where they work, to avoid being targeted or pressured. The identity of ICAC officers is not public; unlike uniformed police, ICAC officers don't wear name badges in operations. This anonymity is a safety measure. If an officer is involved in undercover work (occasionally ICAC does undercover stings), their identity is protected rigidly.

4. **Legal Protection:** Assaulting or obstructing an ICAC officer in the execution of their duty is a criminal offence (analogous to assaulting a police officer). This legal fact is publicised, so people know there are

severe consequences for attacking an investigator. The knowledge that ICAC has the backing of the law and government deters most would-be attackers.

5. **Secure Facilities:** The ICAC Building in North Point is a secure facility with controlled access and security systems, so staff are safe at the workplace. For field work, investigators often move in teams (rarely alone to dangerous locations). They maintain communication via secure radios/phones with a control centre, so if an agent encounters a threat, backup can be dispatched.

6. **Support and Counselling:** Ensuring safety isn't just physical – ICAC provides support for the mental well-being of staff who might be threatened or stressed by dangerous cases. There are systems for officers to report if they feel they're being followed or harassed; ICAC will investigate those situations. If an officer faces intimidation outside of work, that becomes a case for the ICAC (or police) to pursue against the intimidator.

7. **Inter-agency Cooperation:** If a case involves known violent criminals (e.g., triad-related corruption), ICAC will liaise with the Police organised crime bureau for intel and support, effectively pooling resources to mitigate risk.

Fortunately, Hong Kong generally is a law-abiding city, and direct attacks on ICAC officers are extremely rare. The investigator noted that **ICAC has an excellent safety record for its staff**. This is due to a combination of training, caution, and the strong rule-of-law environment. Still, ICAC does not take safety for granted – it continuously evaluates threat levels. For example, during the ICAC's early years, there was potential danger from disgruntled (even armed) corrupt cops; ICAC handled that by initially having expatriate investigators and strong security measures, and by eventually reconciling with the police force after the 1977 "clean-up" pardon. In modern times, threats could come from corrupt syndicates, but ICAC's proactive stance keeps risks low.

In essence, **ICAC ensures investigator safety by arming and training its officers for self-protection[85], carefully planning operations with adequate support, maintaining confidentiality of officers' identities, and leveraging legal and inter-agency support to deter and respond to any threats.** The result is a secure working environment even while tackling corruption in potentially dangerous sectors.

15. Investigators Based Overseas in ICAC's Structure

The ICAC is fundamentally a Hong Kong-focused agency; it does **not station investigators permanently overseas** as part of its organisational structure. All ICAC departments and officers are based in Hong Kong. There are a few points to elaborate on this:

1. **Jurisdictional Limit:** ICAC's jurisdiction is Hong Kong. It has no authority to operate independently in other countries or in Mainland China. Therefore, unlike some large national agencies that post liaison officers abroad (for example, some police forces have attachés in foreign embassies), the ICAC does not maintain overseas offices. Its roughly 1,500 staff are all headquartered in Hong Kong[89] (main office in North Point and regional offices in HK for receiving reports).

2. **International Cooperation Department:** ICAC does have an International Cooperation and Corporate Services Department[89]. The International Cooperation branch handles liaison with foreign anti-corruption agencies, participation in international conferences, and joint efforts on transnational cases. However, this is managed from Hong Kong. The department may send officers abroad on short missions – for instance, to attend an Interpol Anti-Corruption Working Group meeting, or to follow up on evidence with an overseas enforcement body – but those are temporary assignments, not a stationed presence.

3. **Mainland and Interpol Liaisons:** With China, ICAC maintains contact with mainland anti-graft bodies (like the National Supervisory Commission/CCDI) through formal channels. Again, ICAC doesn't have mainland offices; instead, meetings or joint task forces happen case-by-case. The Commissioner or delegates might travel to Beijing or Guangdong occasionally for liaison. Similarly, ICAC is a member of bodies like the International Association of Anti-Corruption Authorities (IAACA) and works with Interpol on fugitive cases, but these are cooperative efforts rather than having people posted abroad.

4. **Extraditions and Overseas Investigations:** When ICAC needs to chase a corruption suspect or assets overseas, it uses Hong Kong's Mutual Legal Assistance treaties. ICAC investigators might travel overseas to conduct interviews or gather evidence *with the host country's permission and assistance*, but these are specific operations, not a permanent base. For example, if a suspect fled to Canada, ICAC could send a couple of investigators to work with local authorities to locate and extradite the person, but those ICAC officers return after the mission.

5. **The new HK International Anti-Corruption Academy (HKIACA):** Recently, Hong Kong launched the HKIACA in 2023/2024[6] as a training hub for international anti-corruption practitioners. This Academy (backed by ICAC) hosts foreign officers in Hong Kong for training courses. That means rather than ICAC having people abroad, it invites people to Hong Kong to share experience. This elevates ICAC's international profile without needing overseas outposts.

ICAC does not have investigators posted overseas but emphasised that ICAC collaborates closely with counterparts worldwide when cases have international elements. Hong Kong's small size means most investigations are local. Should a case require overseas action, ICAC either travels on temporary duty or requests the relevant country's agency to act on its behalf.

In summary, **ICAC's operational structure is entirely Hong Kong-based**, with no permanent overseas offices or stationed investigators abroad. Nonetheless, ICAC leverages international cooperation networks to handle cross-border corruption issues effectively, sending officers abroad on a need basis and strengthening ties (especially with mainland China's agencies as cross-boundary corruption issues arise)[5].

16. ICAC's Oversight of Corruption Allegations Against Hong Kong Police

Yes, the ICAC does have jurisdiction and oversight over corruption allegations involving the Hong Kong Police Force. In fact, **investigating police corruption was the very reason the ICAC was created** in 1974. Prior to ICAC's formation, the Police had an internal Anti-Corruption Branch, but it failed to curb systemic graft (culminating in the notorious **Peter Godber case** where a corrupt Police superintendent fled Hong Kong)[1][95]. The public outrage led to ICAC's establishment specifically to root out police corruption and regain public trust in law enforcement[96].

Key points regarding ICAC and police corruption:

1. **Exclusive Mandate:** Since 1974, the ICAC has taken over the role of investigating corruption within the police. The Police Force no longer investigates its own corruption cases (to avoid conflicts of interest). Any complaint or intelligence about a **police officer accepting bribes, abusing power for favours, extortion, "tea money," etc., is handled by the ICAC**. This is by convention and also by the ICAC Ordinance which empowers ICAC to investigate any public servant, including police officers, under the Prevention of Bribery Ordinance[32].

2. **Complaints Channels:** If a member of the public suspects a police officer of corruption, they can report it directly to ICAC. Often, if such a complaint is mistakenly lodged with the police or another body, it will be referred immediately to ICAC. The Hong Kong Police's own complaints mechanism (CAPO and the

Independent Police Complaints Council) deals with complaints of **misconduct or abuse of force**, but *explicitly not corruption*. Those are passed to ICAC. For instance, if someone complains that an officer demanded a bribe to not issue a ticket, the police will call in ICAC.

3. **ICAC Operations Department – Police Group:** Within ICAC's Operations Department, there is typically a dedicated section focusing on **"internal" corruption cases, including police and other disciplined services**. These investigators often have expertise in police procedures, to better catch police misconduct. The Operations Review Committee (the oversight body) also specifically looks at sensitive cases like police ones closely[11], due to public interest.

4. **Working Relationship with Police:** Over the decades, ICAC and the Police Force have developed a cooperative yet appropriately distanced relationship. There's a protocol for arrests of police officers – usually, ICAC informs the Police Commissioner or a designated senior liaison once a police officer is arrested (often just before or shortly after, as courtesy and to handle administrative matters like suspension). The police have to allow ICAC to execute search warrants on police premises if needed (e.g., searching an officer's locker or office for evidence). This is done professionally; police comply with ICAC as they would with any lawful warrant.

5. **No sacred cows:** ICAC can investigate any rank – from constables up to the Commissioner of Police if ever warranted. And indeed, they have prosecuted high-ranking officers in the past (for example, a Deputy Commissioner of Police was convicted of corruption in the 1970s during ICAC's purge; more recently, a few Superintendents and Chief Inspectors have been caught for bribery or misconduct facilitated by bribes). There is **no part of the Police that is off-limits to ICAC** in terms of corruption inquiry.

6. **Police perception:** In the early years, there was tension – some police officers resented ICAC's aggressive approach, culminating in a brief police protest in 1977. That was resolved, and an amnesty was given for pre-1977 minor corruption (to wipe the slate). Since then, most honest police support ICAC's role, as it cleans their ranks and bolsters public confidence. The Police Force now has a ethos of anti-corruption and works in tandem with ICAC's corruption prevention programs to reduce opportunities for officers to engage in bribery. For example, ICAC's Corruption Prevention Department might review police procedures (like how evidence is handled, or how licenses are issued) to recommend changes that close loopholes.

To phrase it clearly: **Yes, ICAC has full authority to investigate corruption allegations against Hong Kong Police officers.** In fact, that is a core part of its function as defined in law[32]. Hong Kong does not have a separate "Police corruption commission" – ICAC is the sole agency for all corruption cases, including those involving police.

So, if there's a complaint or evidence of a cop on the take, ICAC steps in. The oversight of these cases is also external via the Operations Review Committee, ensuring impartiality. The result is that the police know someone is watching – which significantly curtails corruption within the force compared to the bad old days. This separation of powers is often lauded as a model: *an independent body (ICAC) oversees police integrity on corruption matters, instead of police policing themselves.*

17. ICAC's Legislative Powers for Investigating Police Corruption

The ICAC uses the same legislative powers to investigate police corruption as it does for any other public-sector corruption, with a few provisions particularly relevant:

1. **Prevention of Bribery Ordinance (Cap. 201) – Key Sections for Police:** Under POBO, **police officers are "prescribed officers"**, meaning they are subject to stringent anti-bribery rules. Two sections are especially noteworthy:

2. **Section 3:** Prohibits any prescribed officer (which includes all police officers) from soliciting or accepting any advantage in connection with their official duties, without the Chief Executive's general or special permission[21][68]. For police, this means they cannot take bribes, gifts, free meals, etc., for doing or not doing something in their job. The Chief Executive's "general permission" covers some token gifts of appreciation under certain guidelines, but basically any payoff is illegal. ICAC can investigate breaches of Section 3, which are straightforward "police took an unauthorised advantage" cases.

3. **Section 4:** Makes it an offence for any person to offer an advantage to a public servant (including police) as an inducement to or reward for that public servant's doing something in their official capacity[21]. And it catches the public servant as well for accepting. This is the classic bribery scenario – e.g., a drug dealer bribes a cop to ignore an illegal activity. ICAC can target both the bribe-giver and bribe-taking officer under Section 4.

4. **Section 10:** This is a powerful section often used against police: it criminalises a *public servant (or prescribed officer) having unexplained wealth disproportionate to his official income*[97]. If a police officer is living lavishly – say he owns luxury flats and expensive cars far beyond what his police salary can afford – ICAC can investigate and charge under Section 10 if the officer cannot provide a satisfactory explanation for the assets[98]. The burden shifts to the officer to show the wealth came from legitimate sources. Many historically corrupt police were nailed by this "unexplained assets" law. It was famously enacted after the Peter Godber case, and Godber became one of the first to be charged under it (he had HK$4.3 million unaccounted for, a huge sum in the 1970s)[95][99]. ICAC still uses Section 10 when they catch an officer with secret bank accounts or properties that can't be justified.

5. **Section 13 & 14 (Investigation powers):** These allow ICAC to get warrants to search bank accounts and require officers to declare assets, etc. For example, ICAC can serve a Notice under Section 14 on a police officer under investigation to compel them to detail all their assets and sources[22]. If the officer lies or omits, that's separate trouble. These powers are crucial in police cases because often the evidence is following the money.

6. **ICAC Ordinance powers:** The ICAC Ordinance (Cap. 204) gives ICAC police-like powers as mentioned: to arrest without warrant (if an ICAC officer reasonably suspects someone – including a police officer – of a POBO offence, they can arrest on the spot), to detain and search persons, etc.[16]. ICAC can and does arrest police officers suspected of corruption using these powers. Upon arrest, the police officer is like any suspect – they get cautioned, and ICAC may search their person, home, police locker, or office with the necessary warrants. The ordinance also empowers ICAC to seize any evidence relevant to the corruption offence (e.g., seize the officer's work files, devices, etc.).

7. **Search and Surveillance Powers:** Under the legal framework, ICAC can apply for phone tap or surveillance authorisations through the courts (Hong Kong's Interception of Communications regime) if a police corruption investigation warrants it. For example, if ICAC suspects a group of officers taking bribes, they might covertly monitor their communications – but only with judicial authorisation, which they can seek as a law enforcement agency. They also employ undercover operations if needed; the law allows use of undercover agents and "controlled operations" with proper oversight.

8. **Arresting Senior Police:** There is no special legal procedure to arrest a senior police officer versus anyone else. However, by convention, if ICAC were to arrest, say, an Assistant Commissioner of Police, the ICAC Commissioner would likely inform the Secretary for Security or Chief Executive given the sensitivity. Legally though, ICAC could do so under the same statutes. Article 57 of the Basic Law and the ICAC law empower them to pursue *any* person, and Section 12 of the ICAC Ordinance explicitly includes investigating

the Chief Executive or officials[32], which logically covers senior police too (they are lower in hierarchy than the CE).

9. **Operations Review and Checks:** While not a "power," it's worth noting that all investigations of police by ICAC are reported to the Operations Review Committee, which includes independent members[100]. This acts as a safeguard to ensure ICAC itself handles police cases impartially and effectively.

10. **Coordination with Police (legislative aspect):** There exists a standing instruction (not a law, but an administrative arrangement endorsed by law) that the Police must not interfere in any ICAC investigation and must cooperate if ICAC needs info on a police officer. Also, the ICAC Complaints Committee (for complaints *against* ICAC) is independent, so if a police officer under investigation claims ICAC mistreated him, that's handled separately to avoid any conflict.

In practice, many **landmark cases** of ICAC involve police: from the early crackdown on syndicated police bribe-collection (like "foreign" payments from vice establishments in the 70s) to more recent stings on individual rogue officers. ICAC's legislative powers have proven sufficient to tackle these. For example, ICAC can raid a police station office with a warrant at 5am if needed and seize evidence – all perfectly within their powers of search and seizure under Cap. 204[17].

Specific legislative power example: If a modern case arises like a police officer living way beyond means, ICAC will likely use Section 10 (unexplained assets) to charge them – a powerful tool not available in many jurisdictions. It effectively forces the officer to account for their wealth, putting the onus on them (which is a bit of a reversal from normal criminal law, but justified for anti-corruption). That legislative power has been critical in cleaning up police corruption[98].

To sum up, **ICAC leverages the full suite of its legal powers – arrest, search, seizure, compelled financial disclosure, and bribery offences under POBO – to investigate and prosecute corrupt police officers.** There are no gaps: a corrupt act by a police officer, whether it's accepting a small "tea money" tip or colluding with criminals for huge payoffs, is covered by Hong Kong's anti-corruption laws and is within ICAC's enforcement reach[32][21]. The combination of these legislative provisions ensures that ICAC can effectively police the police when it comes to corruption.

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Colleen Black

From: Kerry Soropoulos <ksoropoulos@manhattan.institute>
Sent: Saturday, 6 September 2025 5:38 AM
To: Daniel Weil
Cc: Kim Wells; Sam Groth
Subject: Re: Australian political visit

Hi Daniel:

Thanks to you both for coming in! I really appreciated the chance to hear your perspective on Australia, which was very informative for me. I hope I was able to offer some color as to the similarities of what NY is going through.

Attaching some links for your reading pleasure. Let me know if anything else in particular interests you, and if I can point you in any other directions.

Best,
Kerry

2481_BrokenWindows The original broken windows essay

A Policing Playbook for Gotham's Next Mayor

How to Reform Correctional Mental Health Care | Manhattan Institute

Ban Masking Now | Manhattan Institute

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From: Daniel Weil <dweil@summitglobal.co>
Sent: Wednesday, September 3, 2025 12:38 PM
To: Kerry Soropoulos <ksoropoulos@manhattan.institute>
Cc: Kim Wells <kim.wells@parliament.vic.gov.au>; Sam Groth <sam.groth@parliament.vic.gov.au>
Subject: Re: Australian political visit

Hi Kerry,

Thanks so much for taking the time to meet with Kim and I yesterday. It was a really valuable meeting and we liked the insights you shared. There's definitely some good ideas for the Opposition team to work with back in Melbourne in the leadup to the election next year.

Just following on, were you able to please send through those policy papers you referenced, particularly around the Broken Windows theory? I think there was another one too you mentioned but can't recall (@Kim might have noted it down).

Also, as mentioned, Sam is definitely eager to make it to NYC once he's recovered and I'd love for Reihan to meet him when that occurs.

Many thanks,
Daniel

On Tue, 24 Jun 2025 at 16:01, Daniel Weil <dweil@summitglobal.co> wrote:

> Hi Reihan,
>
> Please allow me to introduce Sam Groth MP, Deputy Leader of the Opposition in Victoria.
>
> As mentioned, Sam will be in NYC around Labor Day weekend. Are you back on deck and available for a meeting on either 2 or 3 September?
>
> Kind regards
>
> On Mon, 23 Jun 2025 at 15:55, Daniel Weil <dweil@summitglobal.co> wrote:
>
> > Thanks Reihan - I'll send an intro in the next day or two.
> >
> > Kind regards
> >
> > On Mon, 23 Jun 2025 at 15:51, Reihan Salam <rsalam@manhattan.institute> wrote:
> >
> > > Hi Daniel:
> > >
> > > I'd be delighted to meet with the Deputy Leader. Copying my colleague Kerry to help find a time.
> > >
> > > Get Outlook for iOS
> > >
> > > ---
> > >
> > > **From:** Daniel Weil <dweil@summitglobal.co>
> > > **Sent:** Monday, June 23, 2025 2:45:16 PM
> > > **To:** Reihan Salam <rsalam@manhattan-institute.org>
> > > **Subject:** Australian political visit
> > >
> > > Hi Reihan,
> > >
> > > We met briefly last night after your talk at West Village Chabad. I thoroughly enjoyed your insights and love your broader work at the MI!
> > >
> > > As mentioned, I am helping coordinate a visit for the Deputy Leader of the conservative opposition in Victoria state, Australia, to NYC in early September. Coincidentally, the next state election is in November 2026 (same as New York) and both states are very similar in terms of demographics, political landscape and issues. As such, I'd love to organize a catch-up with him and you as I think it would be a great opportunity to swap notes and perhaps share some ideas on good governance and policy etc.
> > >
> > > Please let me know if you're open to this and I'll be happy to do an email intro to Sam.
> > >
> > > Kind regards

--

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The police and neighborhood safety

BROKEN WINDOWS

by JAMES Q. WILSON AND GEORGE L. KELLING

James Q. Wilson is Shattuck Professor of Government at Harvard and author of Thinking About Crime. *George L. Kelling, formerly director of the evaluation field staff of the Police foundation, is currently a research fellow at the John F Kennedy School of Government Harvard.*

In the mid-1970s, the state of New Jersey announced a "Safe and Clean Neighborhoods Program," designed to improve the quality of community life in twenty-eight cities. As part of that program, the state provided money to help cities take police officers out of their patrol cars and assign them to walking beats. The governor and other state officials were enthusiastic about using foot patrol as a way of cutting crime, but many police chiefs were skeptical. Foot patrol, in their eyes, had been pretty much discredited. It reduced the mobility of the police, who thus had difficulty responding to citizen calls for service, and it weakened headquarters control over patrol
Officers.

Many police officers also disliked foot patrol, but for different reasons: it was hard work, it kept them outside on cold, rainy nights, and it reduced their chances for making a "good pinch." In some departments, assigning officers to foot patrol had been used as a form of punishment. And academic experts on policing doubted that foot patrol would have any impact on crime rates; it was, in the opinion of most, little more than a sop to public opinion. But since the state was paying for it, the local authorities were willing to go along.

Five years after the program started, the Police Foundation, in Washington, D. C., published an evaluation of the foot-patrol project. Based on its analysis of a carefully controlled experiment carried out chiefly in Newark, the foundation concluded, to the surprise of hardly anyone, that foot patrol had not reduced crime rates. But residents of the foot-patrolled neighborhoods seemed to feel more secure than persons in other areas, tended to believe that crime had been reduced, and seemed to take fewer steps to protect themselves from crime (staying at home with the doors locked, for example). Moreover, citizens in the foot patrol areas had a more favorable opinion of the police than did those living elsewhere. And officers walking beats had higher morale, greater job satisfaction, and a more favorable attitude toward citizens in their neighborhoods than did officers assigned to patrol cars.

These findings may be taken as evidence that the skeptics were right -- foot patrol has no effect on crime; it merely fools the citizens into thinking that they are safer. But in our view, and in the view of the authors of the Police Foundation study (of whom Kelling was one), the citizens of Newark were not fooled at all. They knew what the foot patrol officers were doing, they knew it was different from what motorized officers do, and they knew that having officers walk beats did in fact make their neighborhoods safer.

But how can a neighborhood be "safer" when the crime rate has not gone down -- in fact, may have gone up? Finding the answer requires first that we understand what most often frightens people in public places. Many citizens, of course, are primarily frightened by crime, especially crime involving a sudden, violent attack by a stranger. This risk is very real, in Newark as in many large cities. But we tend to overlook or forget another source of fear -- the fear of being bothered by disorderly people. Not violent

people, nor, necessarily, criminals, but disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed.

What foot-patrol officers did was to elevate, to the extent they could, the level of public order in these neighborhoods. Though the neighborhoods were predominantly black and the foot patrolmen were mostly white, this "order-maintenance" function of the police was performed to the general satisfaction of both parties.

One of us (Kelling) spent many hours walking with Newark foot-patrol officers to see how they defined "order" and what they did to maintain it. One beat was typical: a busy but dilapidated area in the heart of Newark, with many abandoned buildings, marginal shops (several of which prominently displayed knives and straight-edged razors in their windows), one large department store, and, most important, a train station and several major bus stops. Though the area was run-down, its streets were filled with people, because it was a major transportation center. The good order of this area was important not only to those who lived and worked there but also to many others, who had to move through it on their way home, to supermarkets, or to factories,

The people on the street were primarily black; the officer who walked the street was white. The people were made up of "regulars" and "strangers." Regulars included both "decent folk" and some drunks and derelicts who were always there but who "knew their place." Strangers were, well, strangers, and viewed suspiciously, sometimes apprehensively. The officer -- call him Kelly -- knew who the regulars were, and they knew him. As he saw his job, he was to keep an eye on strangers, and make certain that the disreputable regulars observed some informal but widely understood rules. Drunks and addicts could sit on the stoops, but could not lie down. People could drink on side streets, but not at the main intersection. Bottles had to be in paper bags. Talking to, bothering, or begging from people waiting at the bus stop was strictly forbidden. If a dispute erupted between a businessman and a customer, the businessman was assumed to be right, especially if the customer was a stranger. If a stranger loitered, Kelly would ask him if he had any means of support and what his business was; if he gave unsatisfactory answers, he was sent on his way. Persons who broke the informal rules, especially those who bothered people waiting at bus stops, were arrested for vagrancy. Noisy teenagers were told to keep quiet.

These rules were defined and enforced in collaboration with the "regulars" on the street. Another neighborhood might have different rules, but these, everybody understood, were the rules for *this* neighborhood. If someone violated them the regulars not only turned to Kelly for help but also ridiculed the violator. Sometimes what Kelly did could be described as "enforcing the law," but just as often it involved taking informal or extralegal steps to help protect what the neighborhood had decided was the appropriate level of public order. Some of the things he did probably would not withstand a legal challenge.

A determined skeptic might acknowledge that a skilled foot-patrol officer can maintain order but still insist that this sort of "order" has little to do with the real sources of community fear -- that is, with violent crime. To a degree, that is true. But two things must be borne in mind. First, outside observers should not assume that they know how much of the anxiety now endemic in many big-city neighborhoods stems from a fear of "real" crime and how much from a sense that the street *is* disorderly, a source of distasteful worrisome encounters. The people of Newark, to judge from their behavior and their remarks to interviewers, apparently assign a high value to public order, and feel relieved and reassured when the police help them maintain that order.

Second, at the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence. Social psychologists and police officers tend to agree that if a window in a

building is broken *and is left unrepaired,* all the rest of the windows will soon be broken. This is as true in nice neighborhoods as in run-down ones. Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing. (It has always been fun.)

Philip Zimbardo, a Stanford psychologist, reported in 1969 on some experiments testing the broken-window theory. He arranged to have an automobile without license plates parked with its hood up on a street in the Bronx and a comparable automobile on a street in Palo Alto, California. The car in the Bronx was attacked by "vandals" within ten minutes of its "abandonment." The first to arrive were a family – father, mother, and young son – who removed the radiator and battery. Within twenty-four hours, virtually everything of value had been removed. Then random destruction began -- windows were smashed, parts torn off, upholstery ripped. Children began to use the car as a playground. Most of the adult "vandals" were well dressed, apparently clean-cut whites. The car in Palo Alto sat untouched for more than a week. Then Zimbardo smashed part of it with a sledgehammer. Soon, passersby were joining in. Within a few hours, the car had been turned upside down and utterly destroyed. Again, the 'vandals" appeared to be primarily respectable whites.

Untended property becomes fair game for people out for fun or plunder, and even for people who ordinarily would not dream of doing such things and who probably consider themselves law-abiding. Because of the nature of community life in the Bronx -- its anonymity, the frequency with which cars are abandoned and things are stolen or broken, the past experience of "no one caring" -- vandalism begins much more quickly than it does in staid Palo Alto, where people have come to believe that private possessions are cared for, and that mischievous behavior is costly. But vandalism can occur anywhere once communal barriers -- the sense of mutual regard and the obligations of civility -- are lowered by actions that seem to signal that "no one cares."

We suggest that "untended" behavior also leads to the breakdown of community controls. A stable neighborhood of families who care for their homes, mind each other's children, and confidently frown on unwanted intruders can change, in a few years or even a few months, to an inhospitable and frightening jungle. A piece of property is abandoned, weeds grow up, a window is smashed. Adults stop scolding rowdy children; the children, emboldened, become more rowdy. Families move out, unattached adults move in. Teenagers gather in front of the corner store. The merchant asks them to move; they refuse. Fights occur. Litter accumulates. People start drinking in front of the grocery; in time, an inebriate slumps to the sidewalk and is allowed to sleep it off. Pedestrians are approached by panhandlers.

At this point it is not inevitable that serious crime will flourish or violent attacks on strangers will occur. But many residents will think that crime, especially violent crime, is on the rise, and they will modify their behavior accordingly. They will use the streets less often, and when on the streets will stay apart from their fellows, moving with averted eyes, silent lips, and hurried steps. "Don't get involved." For some residents, this growing atomization will matter little, because the neighborhood is not their "home" but "the place where they live." Their interests are elsewhere; they are cosmopolitans. But it will matter greatly to other people, whose lives derive meaning and satisfaction from local attachments rather than worldly involvement; for them, the neighborhood will cease to exist except for a few reliable friends whom they arrange to meet.

Such an area is vulnerable to criminal invasion. Though it is not inevitable, it is more likely that here, rather than in places where people are confident they can regulate public behavior by informal controls, drugs will change hands, prostitutes will solicit, and cars will be stripped. That the drunks will be robbed by boys who do it as a lark and the prostitutes' customers will be robbed by men who do it purposefully and perhaps violently. That muggings will occur.

Among those who often find it difficult to move away from this are the elderly. Surveys of citizens suggest that the elderly are much less likely to be the victims of crime than younger persons, and some have inferred from this that the well-known fear of crime voiced by the elderly' an exaggeration: perhaps we ought not to design special programs to protect older persons; perhaps we should even try to talk them out of their mistaken fears. This argument misses the point. The prospect of a confrontation with an obstreperous teenager or a drunken panhandler can be as fear-inducing for defenseless persons as the prospect of meeting an actual robber; indeed, to a defenseless person, the two kinds of confrontation are often indistinguishable. Moreover, the lower rate at which the elderly are victimized is a measure of the steps they have already taken -- chiefly, staying behind locked doors -- to minimize the risks they face. Young men are more frequently attacked than older women, not because they are easier or more lucrative targets but because they are on the streets more.

Nor is the connection between disorderliness and fear made only by the elderly. Susan Estrich, of the Harvard Law School, has recently gathered together a number of surveys on the sources of public fear. One, done in Portland, Oregon, indicated that three fourths of the adults interviewed cross to the other side of a street when they see a gang of teenagers; another survey, in Baltimore, discovered that nearly half would cross the street to avoid even a single strange youth. When an interviewer asked people in a housing project where the most dangerous spot was, they mentioned a place where young persons gathered to drink and play music, despite the fact that not a single crime had occurred there. In Boston public housing projects, the greatest fear was expressed by persons living in the buildings where disorderliness and incivility, not crime, were the greatest, Knowing this helps one understand the significance of such otherwise harmless displays, as subway graffiti. As Nathan Glazer has written, the proliferation of graffiti, even when not obscene, confronts the subway rider with the "inescapable knowledge that the environment he must endure for an hour or more a day is uncontrolled and uncontrollable, and that anyone can invade it to do whatever damage and mischief the mind suggests."

In response to fear, people avoid one another, weakening controls. Sometimes they call the police. Patrol cars arrive, an occasional arrest occurs, but crime continues and disorder is not abated. Citizens complain to the police chief, but he explains that his department is low on personnel and that the courts do not punish petty or first-time offenders. To the residents, the police who arrive in squad cars are either ineffective or uncaring; to the police, the residents are animals who deserve each other. The citizens may soon stop calling the police, because "they can't do anything."

The process we call urban decay has occurred for centuries in every city. But what is happening today is different in at least two important respects. First, in the period before, say, World War II, city dwellers -- because of money costs, transportation difficulties, familial and church connections -- could rarely move away from neighborhood problems. When movement did occur, it tended to be along public-transit routes. Now mobility has become exceptionally easy for all but the poorest or those who are blocked by racial prejudice. Earlier crime waves had a kind of built-in self-correcting mechanism: the determination of a neighborhood or community to reassert control over its turf. Areas in Chicago, New York, and Boston would experience crime and gang wars, and then normalcy would return, as the families for whom no alternative residences were possible reclaimed their authority over the streets.

Second, the police in this earlier period assisted in that reassertion of authority by acting, sometimes violently, on behalf of the community. Young toughs were roughed up, people were arrested "on suspicion" or for vagrancy, and prostitutes and petty thieves were routed. "Rights" were something enjoyed by decent folk, and perhaps also by the serious professional criminal, who avoided violence and could afford a lawyer.

This pattern of policing was not an aberration or the result of occasional excess. From the earliest days of the nation, the police function was seen primarily as that of a night watchman: to maintain order against the chief threats to order -- fire, wild animals, and disreputable behavior. Solving crimes was viewed not as a police responsibility but as a private one. In the March, 1969, Atlantic, one of us (Wilson) wrote a brief account of how the police role had slowly changed from maintaining order to fighting crimes. The change began with the creation of private detectives (often ex-criminals), who worked on a contingency-fee basis for individuals who had suffered losses. In time, the detectives were absorbed into municipal police agencies and paid a regular salary; simultaneously, the responsibility for prosecuting thieves was shifted from the aggrieved private citizen to the professional prosecutor. This process was not complete in most places until the twentieth century

In the 1960s, when urban riots were a major problem, social scientists began to explore carefully the order-maintenance function of the police, and to suggest ways of improving it -- not to make streets safer (its original function) but to reduce the incidence of mass violence. Order-maintenance became, to a degree, coterminous with "community relations." But, as the crime wave that began in the early 1960s continued without abatement throughout the decade and into the 1970s, attention shifted to the role of the police as crime-fighters. Studies of police behavior ceased, by and large, to be accounts of the order-maintenance function and became, instead, efforts to propose and test ways whereby the police could solve more crimes, make more arrests, and gather better evidence. If these things could be done, social scientists assumed, citizens would be less fearful.

A great deal was accomplished during this transition, as both police chiefs and outside experts emphasized the crime-fighting function in their plans, in the allocation of resources, and in deployment of personnel. The police may well have become better crime-fighters as a result. And doubtless they remained aware of their responsibility for order. But the link between order-maintenance and crime-prevention, so obvious to earlier generations, was forgotten.

That link is similar to the process whereby one broken window becomes many. The citizen who fears the ill-smelling drunk, the rowdy teenager, or the importuning beggar is not merely expressing his distaste for unseemly behavior; he is also giving voice to a bit of folk wisdom that happens to be a correct generalization -- namely, that serious street crime flourishes in areas in which disorderly behavior goes unchecked. The unchecked panhandler is, in effect, the first broken window. Muggers and robbers, whether opportunistic or professional, believe they reduce their chances of being caught or even identified if they operate on streets where potential victims are already intimidated by prevailing conditions. If the neighborhood cannot keep a bothersome panhandler from annoying passersby, the thief may reason, it is even less likely to call the police to identify a potential mugger or to interfere if the mugging actually takes place.

Some police administrators concede that this process occurs, but argue that motorized-patrol officers can deal with it as effectively as foot-patrol officers. We are not so sure. In theory, an officer in a squad car can observe as much as an officer on foot; in theory, the former can talk to as many people as the latter. But the reality of police-citizen encounters is powerfully altered by the automobile. An officer on foot cannot separate himself from the street people; if he is approached, only his uniform and his personality can help him manage whatever is about to happen. And he can never be certain what that will be -- a request for directions, a plea for help, an angry denunciation, a teasing remark, a confused babble, a threatening gesture.

In a car, an officer is more likely to deal with street people by rolling down the window and looking at them. The door and the window exclude the approaching citizen; they are a barrier. Some officers take advantage of this barrier, perhaps unconsciously, by acting differently if in the car than they would on

foot. We have seen this countless times. The police car pulls up to a corner where teenagers are gathered. The window is rolled down. The officer stares at the youths. They stare back. The officer says to one, "C'mere." He saunters over, conveying to his friends by his elaborately casual style the idea that he is not intimidated by authority. "What's your name?" "Chuck." "Chuck who?" "Chuck Jones." "What'ya doing, Chuck?" "Nothin'." "Got a P.O. [parole officer?" "Nah." "Sure?" "Yeah." "Stay out of' trouble, Chuckie." Meanwhile, the other boys laugh and exchange comments among themselves, probably at the officers expense. The officer stares harder. He cannot be certain what is being said, nor can he join in and, by displaying his own skill at street banter prove that he cannot be "put down." In the process, the officer has learned almost nothing, and the boys have decided the officer is an alien force who can safely be disregarded even mocked.

Our experience is that most citizens like to talk to a police officer. Such exchanges give them a sense of importance, provide them with the basis for gossip, and allow them to explain to the authorities what is worrying them (whereby they gain a modest but significant sense of having "done something" about the problem). You approach a person on foot more easily, and talk to him more readily than you do a person in a car. Moreover, you can more easily retain some anonymity if you draw an officer aside for a private chat. Suppose you want to pass on a tip about who is stealing handbags, or who offered to sell you a stolen TV. In the inner city, the culprit, in all likelihood, lives nearby. To walk up to a marked patrol car and lean in the window is to convey a visible signal that you are a "fink."

The essence of the police role in maintaining order is to reinforce the informal control mechanisms of the community itself. The police cannot, without committing extraordinary resources, provide a substitute for that informal control. On the other hand, to reinforce those natural forces the police must accommodate them. And therein lies the problem.

Should police activity on the street be shaped in important ways, by the standards of the neighborhood rather than by the rules of the state? Over the past two decades, the shift of police from order-maintenance to law-enforcement has brought them increasingly under the influence of legal restrictions, provoked by media complaints and enforced by court decisions and departmental orders. As a consequence, the order-maintenance functions of the police are now governed by rules developed to control police relations with suspected criminals This is, we think, an entirely new development. For centuries, the role of the police as watchmen was judged primarily not in terms of its compliance with appropriate procedures but rather in terms of its attaining a desired objective. The objective was order, an inherently ambiguous term but a condition that people in a given community recognized when they saw it. The means were the same as those the community itself would employ, if its members were sufficiently determined, courageous, and authoritative. Detecting and apprehending criminals, by contrast, was a means to an end, not an end in itself; a judicial determination of guilt or innocence was the hoped-for result of the law-enforcement mode. From the first, the police were expected to follow rules defining that process, though states differed in how stringent the rules should be. The criminal-apprehension process was always understood to involve individual rights, the violation of which was unacceptable because it meant that the violating officer would be acting as a judge and jury -- and that was not his job. Guilt or innocence was to be determined by universal standards under special procedures.

Ordinarily, no judge or jury ever sees the persons caught up in a dispute over the appropriate level of neighborhood order. That is true not only because most cases are handled informally on the street but also because no universal standards are available to settle arguments over disorder, and thus a judge may not be any wiser or more effective than a police officer. Until quite recently in many states, and even today in some places, the police make arrests on such charges as "suspicious person" or "vagrancy" or "public drunkenness" -- charges with scarcely any legal meaning. These charges exist not because society wants judges to punish vagrants or drunks but because it wants an officer to have the legal tools to remove

undesirable persons from a neighborhood when informal efforts to preserve order in the streets have failed.

Once we begin to think of all aspects of police work as involving the application of universal rules under special procedures, we inevitably ask what constitutes an "undesirable person" and why we should "criminalize" vagrancy or drunkenness. A strong and commendable desire to see that people are treated fairly makes us worry about allowing the police to rout persons who are undesirable by some vague or parochial standard. A growing and not-so-commendable utilitarianism leads us to doubt that any behavior that does not "hurt" another person should be made illegal. And thus many of us who watch over the police are reluctant to allow them to perform, in the only way they can, a function that every neighborhood desperately wants them to perform.

This wish to "decriminalize" disreputable behavior that "harms no one" -- and thus remove the ultimate sanction the police can employ to maintain neighborhood order -- is, we think, a mistake. Arresting a single drunk or a single vagrant who has harmed no identifiable person seems unjust, and in a sense it is. But failing to do anything about a score of drunks or a hundred vagrants may destroy an entire community. A particular rule that seems to make sense in the individual case makes no sense when it is made a universal rule and applied to all cases. It makes no sense because it fails to take into account the connection between one broken window left untended and a thousand broken windows. Of course, agencies other than the police could attend to the problems posed by drunks or the mentally ill, but in most communities -- especially where the 'deinstitutionalization" movement has been strong -- they do not.

The concern about equity is more serious. We might agree that certain behavior makes one person more undesirable than another, but how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry?

We can offer no wholly satisfactory answer to this important question. We are not confident that there is a satisfactory answer, except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority That limit, roughly, is this -- the police exist to help regulate behavior, not to maintain the racial or ethnic purity of a neighborhood.

Consider the case of the Robert Taylor Homes in Chicago, one of the largest public-housing projects in the country. It is home for nearly 20,000 people, all black, and extends over ninety-two acres along South State Street. It was named after a distinguished black who had been, during the 1940s, chairman of the Chicago Housing Authority. Not long after it opened, in 1962, relations between project residents and the police deteriorated badly The citizens felt that the police were insensitive or brutal; the police, in turn, complained of unprovoked attacks on them. Some Chicago officers tell of times when they were afraid to enter the Homes. Crime rates soared.

Today, the atmosphere has changed. Police-citizen relations have improved -- apparently, both sides learned something from the earlier experience. Recently, a boy stole a purse and ran off. Several young persons who saw the theft voluntarily passed along to the police information on the identity and residence of the thief, and they did this publicly, with friends and neighbors looking on. But problems persist, chief among them the presence of youth gangs that terrorize residents and recruit members in the project. The people expect the police to "do something" about this, and the police are determined to do just that.

But do what? Though the police can obviously make arrests whenever a gang member breaks the law, a gang can form, recruit, and congregate without breaking the law. And only a tiny fraction of gang-related crimes can be solved by an arrest; thus, if an arrest is the only recourse for the police, the residents' fears

will go unassuaged. The police will soon feel helpless, and the residents will again believe that the police "do nothing." What the police in fact do is to chase known gang members out of the project. In the words of one officer, "We kick ass." Project residents both know and approve of this. The tacit police-citizen alliance in the project is reinforced by the police view that the cops and the gangs are the two rival sources of power in the area, and that the gangs are not going to win.

None of this is easily reconciled with any conception of due process or fair treatment. Since both residents and gang members are black, race is not a factor. But it could be. Suppose a white project confronted a black gang, or vice versa. We would be apprehensive about the police taking sides. But the substantive problem remains the same: how can the police strengthen the informal social-control mechanisms of natural communities in order to minimize fear in public places? Law enforcement, per se, is no answer. A gang can weaken or destroy a community by standing about in a menacing fashion and speaking rudely to passersby without breaking the law.

We have difficulty thinking about such matters, not simply because the ethical and legal issues are so complex but because we have become accustomed to thinking of the law in essentially individualistic terms. The law defines *my* rights, punishes *his* behavior, and is applied by *that* officer because of *this* harm. We assume, in thinking this way, that what is good for the individual will be good for the community, and what doesn't matter when it happens to one person won't matter if it happens to many. Ordinarily, those are plausible assumptions. But in cases where behavior that is tolerable to one person is intolerable to many others, the reactions of the others -- fear, withdrawal, flight -- may ultimately make matters worse for everyone, including the individual who first professed his indifference.

It may be their greater sensitivity to communal as opposed to individual needs that helps explain why the residents of small communities are more satisfied with their police than are the residents of similar neighborhoods in big cities. Elinor Ostrom and her co-workers at Indiana University compared the perception of police services in two poor, all-black Illinois towns -- Phoenix and East Chicago Heights -- with those of three comparable all-black neighborhoods in Chicago. The level of criminal victimization and the quality of police-community relations appeared to be about the same in the towns and the Chicago neighborhoods. But the citizens living in their own villages were much more likely than those living in the Chicago neighborhoods to say that they do not stay at home for fear of crime, to agree that the local police have "the right to take any action necessary" to deal with problems, and to agree that the police "look out for the needs of the average citizen." It is possible that the residents and the police of the small towns saw themselves as engaged in a collaborative effort to maintain a certain standard of communal life, whereas those of the big city felt themselves to be simply requesting and supplying particular services on an individual basis.

If this is true, how should a wise police chief deploy his meager forces? The first answer is that nobody knows for certain, and the most prudent course of action would be to try further variations on the Newark experiment, to see more precisely what works in what kinds of neighborhoods. The second answer is also a hedge -- many aspects of order-maintenance in neighborhoods can probably best be handled in ways that involve the police minimally, if at all. A busy, bustling shopping center and a quiet, well-tended suburb may need almost no visible police presence. In both cases, the ratio of respectable to disreputable people is ordinarily so high as to make informal social control effective.

Even in areas that are in jeopardy from disorderly elements, citizen action without substantial police involvement may be sufficient. Meetings between teenagers who like to hang out on a particular corner and adults who want to use that corner might well lead to an amicable agreement on a set of rules about how many people can be allowed to congregate, where, and when.

Where no understanding is possible -- or if possible, not observed – citizen patrols may be a sufficient response. There are two traditions of communal involvement in maintaining order. One, that of the "community watchmen," is as old as the first settlement of the New World. Until well into the nineteenth century, volunteer watchmen, not policemen, patrolled their communities to keep order. They did so, by and large, without taking the law into their own hands -- without, that is, punishing persons or using force. Their presence deterred disorder or alerted the community to disorder that could not be deterred. There are hundreds of such efforts today in communities all across the nation. Perhaps the best known is that of the Guardian Angels, a group of unarmed young persons in distinctive berets and T-shirts, who first came to public attention when they began patrolling the New York City subways but who claim now to have chapters in more than thirty American cities. Unfortunately, we have little information about the effect of these groups on crime. It is possible however, that whatever their effect on crime, citizens find their presence reassuring, and that they thus contribute to maintaining a sense of order and civility

The second tradition is that of the "vigilante." Rarely a feature of the settled communities of the East, it was primarily to be found in those frontier towns that grew up in advance of the reach of government. More than 350 vigilante groups are known to have existed; their distinctive feature was that their members did take the law into their own hands, by acting as judge, jury, and often executioner as well as policeman. Today, the vigilante movement is conspicuous by its rarity, despite the great fear expressed by citizens that the older cities are becoming "urban frontiers." But some community-watchmen groups have skirted the line, and others may cross it in the future. An ambiguous case, reported in *The Wall Street Journal,* involved a citizens' patrol in the Silver Lake area of Belleville, New Jersey. A leader told the reporter, "We look for outsiders." If a few teenagers from outside the neighbors hood enter it, "we ask them their business," he said. "If they say they're going clown the street to see Mrs. Jones, fine, we let them pass. But then we follow them down the block to make sure they're really going to see Mrs. Jones."

Though citizens can do a great deal, the police are plainly the key to order-maintenance. For one thing, many communities, such as the Robert Taylor Homes, cannot do the job by themselves For another, no citizen in a neighborhood, even an organized one, is likely to feel the sense of responsibility that wearing a badge confers. Psychologists have done many studies on why people fail to go to the aid of persons being attacked or seeking help, and they have learned that the cause is not "apathy" or "selfishness" but the absence of some plausible grounds for feeling that one must personally accept responsibility. Ironically, avoiding responsibility is easier when a lot of people are standing about. On streets and in public places, where order is so important, many people are likely to be "around," a fact that reduces the chance of any one person acting as the agent of the community. The police officer's uniform singles him out as a person who must accept responsibility if asked. In addition, officers, more easily than their fellow citizens, can be expected to distinguish between what is necessary to protect the safety of the street and what merely protects its ethnic purity.

But the police forces of America are losing, not gaining, members. Some cities have suffered substantial cuts in the number of officers available for duty. These cuts are not likely to be reversed in the near future. Therefore, each department must assign its existing officers with great care. Some neighborhoods are so demoralized and crime-ridden as to make foot patrol useless; the best the police can do with limited resources is respond to the enormous number of calls for service. Other neighborhoods are so stable and serene as to make foot patrol unnecessary. The key is to identify neighborhoods at the tipping point -- where the public order is deteriorating but not unreclaimable, where the streets are used frequently but by apprehensive people, where a window is likely to be broken at any time, and must quickly be fixed if all are not to be shattered.

Most police departments do not have ways of systematically identifying such areas and assigning officers to them. Officers are assigned on the basis of crime rates (meaning that marginally threatened areas are often stripped so that police can investigate crimes in areas where the situation is hopeless) or on the basis

of calls for service (despite the fact that most citizens do not call the police when they are merely frightened or annoyed). To allocate patrol wisely, the department must look at the neighborhoods and decide, from first-hand evidence, where an additional officer will make the greatest difference in promoting a sense of safety.

One way to stretch limited police resources is being tried in some public-housing projects. Tenant organizations hire off-duty police officers for patrol work in their buildings. The costs are not high (at least not per resident), the officer likes the additional income, and the residents feel safer. Such arrangements are probably more success than hiring private watchmen, and the Newark experiment helps us understand why. A private security guard may deter crime or misconduct by his presence, and he may go to the aid of persons needing help, but he may well not intervene – that is, control or drive away – someone challenging community standards. Being a sworn office -- a "real cop" -- seems to give one the confidence, the sense of duty, and the aura of authority necessary to perform this difficult task.

Patrol officers might be encouraged to go to and from duty stations on public transportation and, while on the bus or subway car, enforce rules about smoking, drinking disorderly conduct, and the like. The enforcement need involve nothing more than ejecting the offender (the offense, after all, is not one with which a booking officer or a judge wishes to be bothered). Perhaps the random but relentless maintenance of standards on buses would lead to conditions on buses that approximate the level of civility we now take for granted on airplanes.

But the most important requirement is to think that to maintain order in precarious situations is a vital job. The police know this is one of their functions, and they also believe, correctly, that it cannot be done to the exclusion of criminal investigation and responding to calls. We may have encouraged them to suppose, however, on the basis of our oft-repeated concerns about serious, violent crime, that they will be judged exclusively on their capacity as crime-fighters. To the extent that this is the case, police administrators will continue to concentrate police personnel in the highest-crime areas (though not necessarily in the areas most vulnerable to criminal invasion), emphasize their training in the law and criminal apprehension (and not their training in managing street life), and join too quickly in campaigns to decriminalize "harmless" behavior (though public drunkenness, street prostitution, and pornographic displays can destroy a community more quickly than any team of professional burglars).

Above all, we must return to our long-abandoned view that the police ought to protect communities as well as individuals. Our crime statistics and victimization surveys measure individual losses, but they do not measure communal losses. Just as physicians now recognize the importance of fostering health rather than simply treating illness, so the police -- and the rest of us -- ought to recognize the importance of maintaining, intact, communities without broken windows.

William J. Bratton, Rafael A. Mangual

A Policing Playbook for Gotham's Next Mayor

The city's next leader must support the NYPD and preside over crime reductions.

/ Eye on the News / Politics and Law, Public Safety, States and Cities Aug 27 2025

As the mayoral election approaches, New York City finds itself at an odd juncture. After several years of rising crime, New Yorkers have recently seen meaningful progress on public safety, especially with respect to homicides and shootings. Despite these real gains, many city residents see the new peace as fragile.

One reason why is that the city's crime wave ended only recently, after 2023. Another is that New Yorkers still see signs of persistent disorder—public drug use, flagrant prostitution, and seriously mentally ill vagrants—throughout the city. Then you have the cases of sporadic violence, like the mass shooting at 345 Park Avenue, which remind the city of the stakes of its public-safety debate.

If the next mayor wants to enhance public safety, he will need to manage wisely the city's most important agency: the NYPD. To do that, he must handle three challenges: ensure that the department is adequately staffed; boost the rank-and-file's morale by showing he is a partner to officers; and deliver measurable wins on serious crime, while remaining responsive to New Yorkers' concerns about disorder and quality-of-life issues.

Start with recruitment and retention. The NYPD, with about 33,000 uniformed personnel, is significantly understaffed. While that may not sound right to some, given that it is still the nation's largest police department, consider that the NYPD at the turn of the century had more than 40,000 uniformed officers. Today, it's handling more work with fewer officers, stretching the department thin. In 2015, for example, the NYPD fielded approximately 4.5 million service calls with over 35,000 cops. In 2023, the department fielded approximately 6.8 million calls with fewer than 34,000 uniformed members.

The next mayor needs to hire more cops. He also needs to ensure the department attracts quality candidates by implementing stringent educational and physical fitness standards. One way to do this is to offer certain highly qualified, well-educated, and psychologically stable recruits a clearer and more-streamlined career path.

Some mayoral candidates might be tempted to address the NYPD's staffing problem by shrinking the department's footprint and restricting the scope of its work. In other words, instead of hiring more police officers to meet New Yorkers' demand for their services, these candidates might propose reducing demand by removing certain responsibilities from the NYPD's purview, moving them to civilian agencies instead.

This is the wrong approach for several reasons. One is that it communicates hostility to the NYPD and its mission. Another is that there are no viable alternatives to having the police handle things like traffic enforcement and emotionally disturbed persons (EDP) calls. The city can, of course, keep using automated camera enforcement of speed limits and traffic lights, but those cameras won't discover the illegal firearms and other contraband that cops consistently find during interactions that begin as traffic stops.

While the city can also experiment with mental-health responder models like Eugene, Oregon's oft-touted CAHOOTS program, New York does not have nearly enough qualified mental-health professionals willing to accept government salaries to be on-call 24 hours a day, seven days a week—one reason why CAHOOTS responders handle only a small share of Eugene's EDP calls. Another reason the mental-health-responder model isn't scalable is the inherent difficulty that dispatchers face in identifying which calls require a police response. According to a 2021 study, "About 20% of activity in this area does not appear predictable from the initial call type as handled by police dispatch," in part because "events eventually determined to be police/crime activity can initially appear to be public health related."

Hiring officers to keep up with the demand for police services is only part of the next mayor's public-safety challenge. For the NYPD to reach its full potential, the mayor needs to cultivate high officer morale.

The first step in achieving that will be retaining Police Commissioner Jessica Tisch. After three tumultuous years with three different commissioners—one leaving under the cloud of a corruption investigation—the NYPD seems finally to have a leader with the acumen to run a large organization and a data-driven crime-fighting vision. Tisch's most important achievement, other than presiding over meaningful declines in serious violence, has been to support rank-and-file officers by pushing back on misguided criminal-justice reforms.

Photo by NDZ/Star Max/GC Images

Surveys of cops consistently show that officers want to serve their communities by fighting crime, and that having the mayor on their side enhances morale. The next mayor should think long and hard about how to signal support for the kind of aggressive crime-fighting posture that restored New York after the darkest days of the early 1990s.

Finally, the next mayor's public-safety legacy will hinge on whether he can preside over reductions in crime and address voters' concerns about quality-of-life issues, such as public drug use, aggressive panhandling, and mopeds and e-bikes speeding down sidewalks. Politicians for too long have abandoned the idea of Broken Windows policing, missing the theory's most profound insights: that the perception of safety in public spaces is driven by the orderliness of those spaces; and that enforcing public order offenses gives officers the probable cause they need to initiate interactions that often reveal more significant criminal conduct.

New Yorkers should be able to enjoy every inch of their city. That means the city's leadership must not surrender public spaces to anti-social forces. Suppressing major crime is obviously crucial, but city residents want and deserve the kind of order that the NYPD—if adequately staffed and properly motivated—can deliver. The question for the city's next mayor is: Can you deliver for the NYPD?

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Report by Stephen Eide

How to Reform Correctional Mental Health Care

Executive Summary

"Trans-institutionalization" refers to the shift of seriously mentally ill adults from the care of psychiatric institutions to correctional institutions. Beginning in the 1950s, public mental health agencies have pursued the deinstitutionalization of the seriously mentally ill. These government agencies intended to meet that goal through creating a system of community-based care to replace the asylum-based systems. Deinstitutionalization did not succeed as planned. Consequently, jails and prisons became the custodians of hundreds of thousands of seriously mentally ill adults who in previous eras would have been committed to an asylum.

Some dispute the magnitude of trans-institutionalization. But no one denies the high rate of serious mental illness among the incarcerated, or that jails and prisons are poor settings in which to treat serious mental illness. Correctional mental health care now stands as one of the most important mental health care systems in the nation. Jails and prisons are legally obligated to serve the seriously mentally ill, whereas community-based systems are not. More effective community-based mental health remains an important goal to pursue. But equally important is the reform of corrections-based systems. Better correctional mental health care systems will benefit both community systems and the seriously mentally ill themselves.

This report will explain how corrections-based systems function. It will place those systems in the context of debates around "jail abolition," explain their workforce and financial challenges, and recommend the following reforms:

1. State governments should assume more responsibility for funding jail-based mental health care.
2. Correctional mental health systems have special responsibility to the *seriously* mentally ill and are justified in targeting resources accordingly.
3. Collect, keep, and report better data.
4. Repeal Medicaid's Institution for Mental Diseases (IMD) exclusion.
5. Correctional institutions should make more use of long-acting injectables during discharge.
6. Eliminate overuse of administrative segregation (solitary confinement); do not abolish it.
7. Do not use telehealth when reliance on onsite clinical staff is feasible.

The Problem

Magnitude

Seriously mentally ill Americans are incarcerated at a rate disproportionate to their share of the general population. The federal government estimates that 6% of American adults are seriously mentally ill.[1] The rate of serious mental illness in jails and prisons, though uncertain (**Appendix 1**), is likely three to four times that rate. **Table 1** applies conventional estimates of that rate to current jail and prison inmate counts, projecting about 300,000 seriously mentally ill incarcerated Americans.

Table 1

Estimated Number of Seriously Mentally Ill (SMI) Adults in U.S. Jails and Prisons, 2022

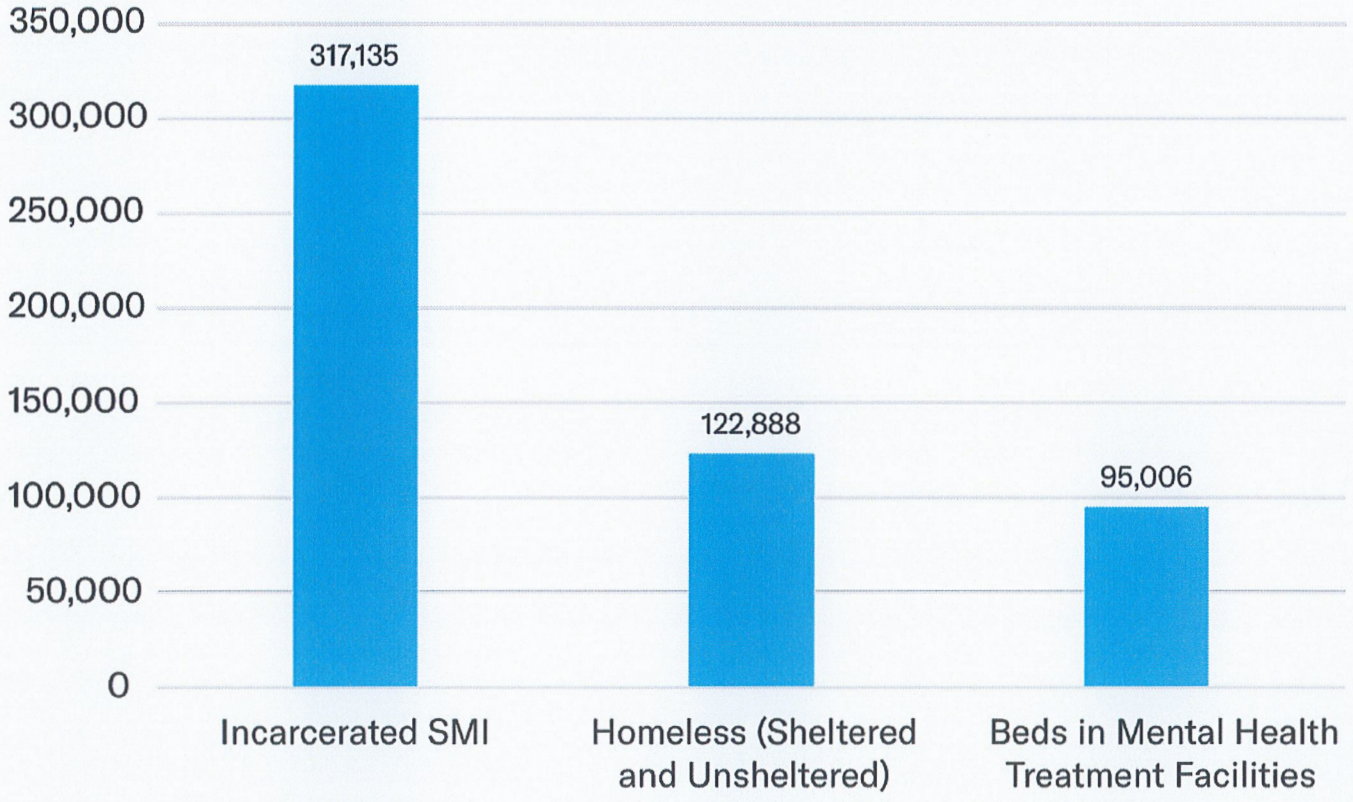
	Rate of SMI	Total Pop.	Est. # SMI
Jails	20%	663,100	132,620
Prisons	15%	1,230,100	184,515
	Total		**317,135**

Source: "Serious Mental Illness (SMI) Prevalence in Jails and Prisons," Treatment Advocacy Center, September 2016; E. Ann Carson and Rich Kluckow, "Prisoners in 2022—Statistical Tables," U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, November 2023; Zhen Zeng, "Jail Inmates in 2022—Statistical Tables," U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, December 2023. See also Jennifer Bronson and Marcus Berzofsky, "Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011–12," U.S. Dept. of Justice, Bureau of Justice Statistics, June 2017. For a discussion of why the rate may be higher in jails than prisons, see Emily D. Gottfried and Sheresa C. Christopher, "Mental Disorders Among Criminal Offenders: A Review of the Literature," *Journal of Correctional Health Care* 23, no. 3 (2017): 336–46.

Seriously mentally adults in correctional settings outnumber the homeless and those in mental health treatment facilities (**Figure 1**).

Figure 1

SMI in Jails and Prisons vs. Homeless and in Treatment Facilities, 2022



Source: "Serious Mental Illness (SMI) Prevalence in Jails and Prisons,"; Carson and Kluckow, "Prisoners in 2022—Statistical Tables"; Zeng, "Jail Inmates in 2022—Statistical Tables"; "HUD 2022 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations," U.S. Dept. of Housing and Urban Development, Dec. 6, 2022; "National Substance Use and Mental Health Services Survey (N-SUMHSS) 2022: Data on Substance Use and Mental Health Treatment Facilities," Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration, 2023, fig. 2.4

Of the two-thirds of seriously mentally ill adults who received treatment in the past year, about 4%, or 390,000, received treatment in a correctional setting, according to federal data.[2]

The high rate of serious mental illness in correctional settings poses two policy challenges. First, virtually every incarcerated-related adverse outcome for inmates in general is worse for the seriously mentally ill: victimization,[3] rape,[4] suicide,[5] administrative segregation,[6] recidivism.[7] They are more likely to fail in community supervision (probation and parole).[8] Upon discharge, mentally ill inmates have less money in their prison canteen accounts because they participate in work programs at lower rates and are more isolated from their families.[9] They are thrown "welcome home" parties less frequently than ex-offenders who are not mentally ill and are more likely to be unemployed after release.[10]

Second, seriously mentally ill offenders stand at the intersection of policies with conflicting priorities. The goal of mental health policy is to reduce the rate of untreated serious mental illness. Because of the priority that jails and prisons place on security, and the character of the inmate population, seriously mentally ill offenders lack meaningful daily activities, are in fear-inducing environments, lack access to positive relationships, and lack privacy. Their lives have an artificial structure utterly dissimilar to life in the community. All those factors diminish the likelihood of successful treatment. Federal agencies estimate that

the rate of nontreatment for mental health among jail and prison inmates is about two-thirds, whereas that rate is only one-third for the population as a whole.[11]

Causes

Trans-institutionalization is the most common explanation for the concentration of seriously mentally ill people in jails and prisons. The supposition is that many of the seriously mentally ill in U.S. jails and prisons are people who would have been committed to state asylums decades ago; and that—had deinstitutionalization not happened, or been executed more competently—the rate of serious mental illness would now be lower in jails and prisons.[12] This thesis has its origins in an old theory that, in any given society, a certain portion of individuals are so troubled that they must be confined either to a correctional or psychiatric institution.[13] The standard criterion for involuntary psychiatric commitment is dangerousness caused by a psychiatric disorder. The hundreds of thousands of seriously mentally ill adults in jails and prisons are, often enough, dangerous and also have psychiatric disorders. Their confinement to jails and prisons instead of psychiatric hospitals thus seems to represent a "category error" caused by the failings of deinstitutionalization.

The trans-institutionalization thesis is difficult to prove because of uncertainty over prevalence rates of serious mental illness in jails and prisons, both now and in the past (**Appendix 1**). Progressive critics of trans-institutionalization prefer to see the high numbers of seriously mentally ill in jails and prisons as a side effect of "mass incarceration." Deinstitutionalization and "mass incarceration" are two large-scale social changes that took place simultaneously. Therefore, the effects of each movement are hard to disentangle. Between 1970 and the present, the number of public psychiatric hospital beds declined by about 340,000, and the number of people in jails and prisons rose by about 420,000 and 1.1 million, respectively.[14] Progressive critics believe that there are more seriously mentally ill people in jails and prisons because there are more people in jails and prisons; they doubt that the rate of serious mental illness among the incarcerated has changed over the decades.[15]

This dispute has policy consequences because if hundreds of thousands of seriously mentally ill became incarcerated because government cut too many psychiatric hospital beds, investing more in beds is the logical solution. If it happened because of "mass incarceration," the logical solution would be to scale back the use of jails and prisons.

Certainly, the notion that the institutionalized population circa the 1950s was transferred, en masse, to jails and prisons, merits qualification. As shown in Table 1, the number of seriously mentally ill adults in jails and prisons is more than 300,000. The institutionalized population in the 1950s, adjusted for population, would be more than a million. Some groups who left psychiatric hospitals during deinstitutionalization were not transferred to jails and prisons—for example, seniors with dementia.[16] Many asylum patients were not dangerous but simply considered "in need of treatment," the legal standard for civil commitment (*parens patriae*) that the "dangerousness" standard replaced via civil rights reforms in the 1970s.[17] Other settings in which seriously mentally ill adults are now found in greater numbers than they were in the asylum era include: (1) living with their families; (2) in homeless shelters; and (3) living on the streets.[18] Many live highly unstable lives, but, even then, they might not have been "trans-institutionalized" so much as they are riding an "institutional circuit."[19] Trans-institutionalization seems to imply that one form of long-term

confinement, in an asylum, was historically exchanged for another long-term confinement, in a correctional facility.

Even if the seriously mentally ill have not been transferred from asylums to correctional facilities on a one-to-one basis, trans-institutionalization likely accounts for a significant portion of the problem,[20] for five reasons:

- Historical evidence attests that not only were jails[21] used to confine the mentally ill before state asylums were built; mentally ill inmates were directly transferred from jails to newly built asylums in the mid-nineteenth century.[22] By the post–Civil War period, the rate of serious mental illness in correctional settings was very low.[23]
- While the rate of serious mental illness in jails and prisons before deinstitutionalization was never zero,[24] the "criminalization of mental illness" has not been a consistent subject of public concern throughout U.S. history. Concerns over too many mentally ill in jails ran high in the early nineteenth century and have run high since the 1980s. They did not run nearly as high throughout the asylums' long expansion period.[25] Certainly, jails and prisons in previous eras gave far less consideration to seriously mentally ill inmates than do contemporary correctional architects and design consultants. The prevalence rate was likely lower then than now.[26]
- Many employees of criminal justice and mental health agencies whose careers overlapped with the decline in state hospital beds and rise in incarcerated mentally ill offenders strongly believed that they witnessed trans-institutionalization in real time.[27]
- Even if prison sentences for crack cocaine, for instance, weren't common in the 1950s, short jail stays for public drunkenness were. That's a problem for those who suggest that "increased criminalization of disturbed and disturbing behavior"[28] explains the phenomenon. True, many seriously mentally ill are incarcerated on low-level charges, especially for drugs.[29] But it's also true that police departments have always been involved in addressing public disorder.[30]
- The community-based system that deinstitutionalization proposed was supposed not only to differ from the asylum-based system but to be superior to it. "Community integration," still the goal of public mental health authorities, should mean that the seriously mentally ill offend at rates close to the rates at which ordinary Americans offend. That hundreds of thousands of seriously mentally ill Americans are incarcerated is therefore, on its face, evidence of the failings of the community system that deinstitutionalization created.

Trans-institutionalization is especially clear in the case of rural communities. In counties where there is practically no community mental health system and where psychiatric hospital-based care is less accessible than was the case in the 1950s, the seriously mentally ill sometimes have better access to care in a county jail than through any other program.[31] In large urban areas, community health systems are more robust, but so are urban correctional health systems. Thus, there is still the possibility that, in big cities, access to certain health services will be superior on the inside than the outside for mentally ill offenders.[32] Big-city police departments sometimes report using "mercy bookings" or "compassionate arrests" for the difficult cases for which community mental health programs cannot or will not take responsibility.[33]

The System

Operations

Seriously mentally ill adults can become "criminal justice–involved" in multiple ways. In recent years, special interventions—such as crisis response training for police, as well as mental health courts—have been designed with the mentally ill in mind. The goal of these programs is to divert the seriously mentally ill from deeper involvement in the criminal justice system. Those for whom diversion fails wind up in jails and prisons.

Correctional mental health services are delivered at the beginning, middle, and end of the incarceration process (**Table 2**).[34]

Table 2

Correctional Mental Health Care, by Phase

Booking/Intake	Evaluation of whether charged inmates are competent to face their charges
	Diagnosis, including for substance abuse
	Classification for dangerousness and eligibility for special housing
Confinement	Dispensing medication and evaluating the need for changes in medication
	Providing psychosocial interventions such as dialectical behavioral therapy
	Remediating behavior-related problems with correctional staff
	Advocacy on behalf of inmates
Discharge	Establishing connections with community-based programs

Many correctional systems have recently expanded mental health services.[35] They have sometimes been legally required to do so. At the same time—much as the expansion of school-based mental health services has been justified as a way to better meet schools' educational goals—there has been a growing belief that mental health programming can contribute to better-functioning jails and prisons. Mental health professionals specialize in treatment, and if treatment can make inmate populations less dangerous and more compliant with rules, corrections staff often welcome more spending on mental health in jails and prisons. Correctional professionals, though typically seen as political conservatives, sometimes take positions with the medical community and against fiscally conservative politicians, such as on expanding Medicaid both inside and outside jails and prisons.[36] Mental health staff can help determine whether malingering (feigning an illness to seek advantage) is real or not and whether a psychiatric symptom stems from substance abuse or from an underlying mental illness. They can also provide assistance in regulating the use of administrative segregation (when a prisoner is housed separately, or solitary confinement) and assess whether rules infractions stem from lack of treatment, and therefore might be better addressed through treatment than with punishment.

Jails v. Prisons

Most prisons are run by state governments and hold sentenced inmates for terms of confinement that exceed one year. Jails are generally run by counties and mostly hold inmates on a pretrial basis and for short-term

sentences. Both are host to large numbers of seriously mentally ill inmates (as displayed in Table 1). Jail-based mental health differs from prison-based mental health. Because lengths of stay in jails are shorter and more unpredictable, that makes it more difficult for mental health staff to design and implement an effective treatment regimen and plan for discharge. Inmates, when sent to prison, are, on average, stabler than when entering jails, as they have already been assessed and likely have received at least some treatment. Inmates arrive in jail directly from the streets and at all hours.[37] By contrast, prison inmates arrive on a more regular schedule. These factors, among others, make intake assessments a more complicated proposition for jails than for prisons.

Reforming jail-based mental health services is more urgent than reforming prison-based mental health services because the magnitude of the problem is greater (far more people experience incarceration in jail than prison),[38] and the rate of serious mental illness runs higher and outcomes are worse. The suicide rate in jails is about twice that of the rate in prisons.[39] But reforming jail-based programs is harder because short stays are less conducive to proper treatment and medical economies of scale are much easier to realize in prisons, which run much larger than in jails.[40]

Jails are to prisons as emergency rooms are to hospitals.[41] The"churn" among the inmate population creates poor conditions for any kind of mental health intervention, from deep-dive talk-therapy examinations of past traumas to extended trial-and-error efforts to settle on the right medication regimen. The receipt of therapy is estimated to be twice as high in prisons (26%) than jails (13%).[42] The prison environment is more conducive to effective but complicated-to-administer medication interventions such as clozapine.[43] (In general, it's easier for clinicians to discern whether people are taking their medications in a correctional setting than in the community.)[44]

Jail- and prison-based mental health services are provided by clinical personnel employed directly by state or local government, or a private contractor.[45] Governments invoke various rationales to justify why a private or government-run system of correctional health is superior. One advantage of using a private vendor may be superior cost management. Advantages of using government health employees may include better data-sharing and other modes of coordination between corrections systems and other public agencies.[46] However, either arrangement can be run competently or poorly.

Funding

Funding comes directly out of government budgets. Because of the federal Inmate Exclusion Policy, Medicaid cannot be used to pay for correctional health care, nor will Medicare (relevant, in this context, to inmates with disabilities, including psychiatric disabilities) pay.

Trans-institutionalization has caused a significant fiscal shift from states to localities. State governments funded the old asylum programs. Unburdening themselves of those programs' often-considerable costs was one major motivation for why states pursued deinstitutionalization. Much of the cost of mental health care for non-incarcerated seriously mentally ill individuals who, in a previous era, would have been confined to a state asylum is now borne by Medicaid (a joint state-federal program). For the incarcerated, that cost is borne by whatever government manages the correctional institution that they are confined to, meaning counties, in the case of jails. Fiscally, state governments were a major "winner" in trans-institutionalization and county governments were major losers.

Administration

Trans-institutionalization has resulted in a much more fragmented and inefficient system of care. Most jails in America are very small,[47] though all are required to provide both mental and mainstream health care. The old asylum programs were massive, confining hundreds, and often thousands, of seriously mentally ill adults on one campus. Many jails are too small to provide truly dedicated "corrections-based" mental health programming.

Recruitment is a chronic and pervasive problem in correctional medicine.[48] Aside from, obviously, fears associated with working in a locked environment inhabited by criminals,[49] clinical staff might also avoid working in corrections because of the risk of lawsuits,[50] having to work with patients who, aside from the acuity of their psychiatric problems, have committed violent and sexual offenses against women and children[51] and who exhibit extraordinarily disturbing and predatory behavior less often encountered in community programs.[52] Rural communities have a shortage, often even a total absence, of mental health professionals.[53] Jails in such communities may provide mental health services by a part-time nurse with minimal background in mental health and certainly no specialized training in working with the seriously mentally ill. Urban systems face competition from community programs with more attractive pay and working conditions. In coming years, the mental health field is expected to experience a shortage of psychiatrists, the occupation most closely associated with serving the seriously mentally ill, and demand from individuals with nonserious mental disorders is expected to increase.[54] Two results of ongoing personnel shortages in correctional mental health care are that the use of telehealth is certain to continue to grow, and the fiscal strains of correctional mental health should be expected to grow as well.

The work is not without attractions, though. Seriously mentally ill inmates lack easy access to illegal drugs, which are a major barrier to successful treatment. Prisons, at least, offer the ability to work long-term with patients, in contrast to the more erratic modes of caring for the seriously mentally ill frequently found in community-based and even hospital-based settings. And, because third-party reimbursement is not a factor, clinicians are spared the administrative hassles associated with dealing with insurance companies and are thus able to focus more exclusively on delivering care.

Legal Considerations

In the community, seriously mentally ill adults have no right to mental health care and the system has no obligation to provide them with treatment. In correctional settings, however, incarcerated Americans may be said to have a "right" to mental health care in two respects. The first is through competency restoration. Americans cannot face criminal charges if they are so mentally unfit as not to understand the adjudication process. The process of making offenders mentally fit to stand trial, so that they may "aid and assist" in their own defense, is known as competency restoration. This process often involves basic instruction about courts and law and psychiatric treatment.

Second, even for inmates who are competent to stand trial but still seriously mentally ill, courts have located a right to mental health care in the Eighth Amendment's prohibition of "cruel and unusual punishments."[55] Courts reasoned that placing an obligation on correctional systems to provide health care is only fair, given that inmates can't realistically operate as free health-care consumers.[56] *Estelle v. Gamble* speaks of a right to health care when systems, as a result of "deliberate indifference," neglect inmates' "serious medical needs."[57]

Legal experts therefore advise correctional systems that they are not formally obligated to provide care for milder mental disorders or substance abuse disorders,[58] though many systems do provide those services.

There is no special obligation for anyone incarcerated to accept treatment. Involuntary psychiatric treatment is sometimes pursued for jail and prison inmates,[59] but the legal standards are no different from those for seriously mentally ill individuals not involved with the criminal justice system. The 1980 Supreme Court ruling in *Vitek v. Jones*[60] prohibited governments from transferring seriously mentally ill inmates from correctional facilities to psychiatric hospitals on simply a need-for-treatment basis.[61]

The legal system has been highly involved in the expansion of correctional mental health care in recent decades. One 2023 analysis found about 50 examples of consent decrees having to do with mental health conditions in prisons since 1972.[62] The federal Department of Justice has made mental health conditions a focus of many of its "pattern or practice" lawsuits, in which the department attempts to establish that discriminatory actions were the defendant's regular practice, rather than isolated instances. Correctional professionals' conferences and trade publications devote extensive attention to preparing for and responding to lawsuits. The threat of litigation has motivated the push to develop and implement accreditation standards for health care in jails and prisons. Many embrace the view that litigation has had a positive development for seriously mentally ill inmates.[63] The Cook County jail, led by Sheriff Tom Dart, would be an example where dutiful compliance with a court order led to the eventual lifting of that court order and a general improvement in that correctional system's reputation.[64]

Judges and lawyers can sometimes empower stakeholders within correctional systems who support increased spending and better services but lack sufficient political support to effect those reforms on their own.

But litigation is not always successful. The Fulton County Jail in Georgia, in contrast to that of Cook County, would be an example where successful compliance with a court order is not seen as having led to a permanent and complete improvement in the jail's conditions.[65] In New York City, a 2003 settlement established comprehensive discharge planning services for all mentally disordered inmates leaving the city jails.[66] But untreated serious mental illness is still considered a crisis in NYC, and the connection with homelessness particularly close. Also, Los Angeles County has not complied with the terms of a 2015 court order, partly because that would require building a new jail, an idea that local progressives, who supported the original settlement, currently oppose. The threat of litigation makes some correctional leadership and staff feel that they are considered guilty until proven innocent and thus makes them defensive and wary of transparency.

Some systems have developed well-regarded programs unprompted by outside legal pressure. Examples include Lane County, Oregon, and Franklin County, Ohio.[67] Lane County operates a wellness program for seriously mentally ill inmates that was developed at the initiative of correctional staff. Franklin County recently built a new jail, the plans for which gave extensive design consideration to the needs of seriously mentally ill inmates.

Jail Abolition

That large numbers of seriously mentally ill adults are incarcerated is a problem that has been recognized for decades.[68] However, discussion of solutions has taken on a new character, in how it intersects with the broader decarceration debate. Years ago, mentally ill offenders were thought of as having a "double stigma" that made them uniquely suitable for confinement and uniquely poorly suited for community-based

alternatives to incarceration.[69] More recently, criminal justice reformers, especially those associated with the "abolition" movement, have argued the opposite: mentally ill offenders are less appropriate for confinement, and more suitable for community alternatives, than offenders without mental illnesses. Decarceration strategists often frame the high rate of serious mental illness among the incarcerated as creating an opportunity for large-scale jail and prison reductions.[70] This "new insanity defense," which holds that special leniency is owed to incarcerated Americans with a mental disorder, helps the modern criminal justice reform movement establish itself on practical and scientific principles. It is progressives' version of the category error: mentally ill offenders are "mad, not bad."

The degree to which correctional programs can rehabilitate any offenders has long been a disputed issue. Conservatives were once closely associated with the idea that "nothing works";[71] but more recently, that attitude has been more closely associated with progressives involved in the abolitionist movement. In Los Angeles County and Massachusetts,[72] abolitionists have prevented governments from replacing old facilities (Men's Central Jail and MCI-Framingham); and in New York City, they persuaded policymakers to adopt the "Close Rikers" jail reduction plan that proposes unreasonably low bed-capacity targets.[73]

Advocates decry arrests of seriously mentally ill individuals for "nonviolent, minor offenses" such as "shoplifting and petty theft."[74] But not only do the "violent" and "nonviolent" offender categories parse more cleanly in theory than in practice;[75] offenders facing less serious charges who have serious behavioral programs are some of the hardest to serve effectively through diversion and community-based programs.[76] And, viewed outside the mental health context, policymakers and the broader public do not view theft as a "minor" problem.

One city in which that is so is Portland, Oregon. Multnomah County (of which Portland is the county seat) has scaled back its use of incarceration as a result of progressive prosecution policies and increased interest in "innovative pre-trial diversion services."[77] In the year before Covid, the monthly average daily population in Multnomah County jail hovered at about 1,110, compared with about 860 over the most recent 12 months.[78] But during the same span, average monthly reported property crimes rose from 4,000 to 4,500. It is not obvious that the local retail-theft wave can be checked without increased use of jail.

Government diversion efforts are eventually fated to reach a point of diminishing returns, and the need to rehabilitate offenders must be balanced against risks to the community. Community programs—the favored solution of abolitionists—benefit from well-run correctional programs. These programs take responsibility for cases too dangerous to be handled by community programs; and they stabilize seriously mentally ill individuals between intake and discharge. Investing in community and correctional mental health programs is thus not an either/or.

Many jails and prisons are decades old and in need of replacement because of public infrastructure management and because they were not designed to accommodate the care and treatment of the seriously mentally ill. They were designed for a smaller incarcerated population and for shorter-term stays (especially in the case of jails)[79] and at a time when the public mental health care system, then comprising largely state-run psychiatric institutions, took more responsibility for the seriously mentally ill than is the case now. Replacing aging jails and prisons creates an opportunity to improve correctional mental health. Better design can reduce the risk of suicide and serious injury in correctional facilities[80] and address the lack of sight and sound privacy that often makes appropriate clinical conversation simply impossible.[81] Better jail design helps understaffed facilities respond to programming demands and allocate staff more efficiently. Jail and prison design, as well as capital investments in brick-and-mortar structures, matters because programming matters.

Reducing recidivism at scale will be a challenge for mentally ill and non–mentally ill offenders alike. Even in cities with well-funded, robustly staffed programs in urban correctional systems, many neighborhoods have very serious crime and substance abuse problems that can easily undermine, upon release, even the most professionally run correctional mental health care program. But when it comes to correctional programs for treating serious mental illness, "nothing works" is not true. Well-run corrections-based programs have shown the ability to increase treatment adherence, reduce adverse outcomes such as violence, and reduce recidivism among mentally ill offenders.[82]

Conclusion and Recommendations

Overall strategy in correctional mental health policy should proceed along two tracks. First, governments should work to shift more responsibility for the most difficult, seriously mentally ill individuals from jails and prisons to the public mental health system. The goal is to fix the "category error" caused by trans-institutionalization. The model is NYC mayor Eric Adams's effort to expand involuntary psychiatric treatment for unsheltered homeless individuals. That effort is premised on the idea that the public mental health system, not homeless services or the transit system, should be responsible for seriously mentally ill individuals, who are deteriorating because they are not in treatment.[83] Because of *Vitek v. Jones*, governments cannot directly transfer the victims of trans-institutionalization from jails to psychiatric hospitals. Governments must work more indirectly to fix trans-institutionalization and benefit seriously mentally ill individuals found behind bars instead of in the care of public mental health agencies.

Second, as those plans develop, government should provide humane effective care for seriously mentally ill individuals currently entrusted to correctional systems' supervision. Outcome measures should focus on reduced recidivism, as well as increased treatment compliance and reduced symptoms relative to seriously mentally ill inmates' condition at intake. Correctional mental health care is a crucial component of the continuum of care because, without it, people would be sent back into the community system far worse off than in the often-deteriorated condition in which they enter.

Next, we list specific recommendations for reform that operate along these tracks.

1. State governments should assume more responsibility for funding jail-based mental health care. The increased federal burden associated with deinstitutionalization (via enrollment in federal entitlement programs such as Medicaid, Social Security Disability Insurance, and Supplemental Security Income) has been much better understood than the increased burden on localities via correctional mental health care costs. States should provide more funding to local jails for mental health services.[84] States, no doubt, have many claims already on their budgets. But they have shown a willingness to prioritize mental health, such as in the many recent expansions in school-based mental health services and other programs for children. Those expansions represent a prioritization of other populations over the seriously mentally ill.

States can also help with workforce challenges. Long-term correctional mental health professionals who like their jobs often report having entered the field by accident. They learned the satisfactions of the field from experience. One way to increase experience of correctional mental health would be to make serving in a jail or prison a requirement of psychiatric and clinical psychological training programs. That could be done via informal arrangements between communities and local educational institutions. But state governments, because they have control over large state medical schools, would be better positioned to implement such

requirements in a systematic fashion.[85] Training programs for psychiatrists and other clinical professionals could require or encourage internships and residencies in jails and prisons.[86]

2. Correctional mental health systems have a special responsibility to the *seriously* mentally ill and are justified in targeting resources accordingly. The trans-institutionalization thesis holds that government owes a special responsibility to the segment of the incarcerated population who were failed by deinstitutionalization. That logic does not apply to inmates with milder mental disorders that do not qualify as "serious." In their expansion of correctional mental health programs, some systems have adopted the view that it is a more enlightened approach to focus on "the mental health of all," and not just "mental illness."[87] But the idea that "jails are the new asylums" applies only to the seriously mentally ill. All inmates with suboptimal mental health cannot be considered harmed by deinstitutionalization because they would not have been considered for long-term commitment in a previous era. The inmate population with milder mental disorders, who may outnumber those with serious mental illness,[88] may deserve services, as well, but justified as part of correctional institutions' more general interest in rehabilitating everyone in their custody. When resources—financial, staffing, time spent planning discharge—are scarce, systems are justified in focusing on the seriously mentally ill. State governments' special responsibility to fund services in local jails should be considered limited to seriously mentally ill jail inmates.

3. Collect, keep, and report better data. Reliable data regarding seriously mentally ill offenders is sorely lacking. In addition to fundamental uncertainty over the prevalence rate, and whether that has changed over time, presumably crucial facts—such as how much jails and prisons spend on correctional mental health care, how many mental health professionals are employed by jails and prisons, and the rate of access to treatment "on the inside"—are also uncertain. The magnitude of deinstitutionalization's cost shift from state asylum programs to local jails is unknown. In the case of several important data points, old estimates are circulated endlessly in media coverage, amid highly politically charged debates, and can vary significantly.[89] The most commonly cited Bureau of Justice Statistics estimate of the rate of psychiatric disorders in jails and prisons is based on 2011–12 data.[90] It is hard to evaluate different systems and outcomes in different communities. Some programs cultivate a high profile in the media; others, which may be no less effective, are completely obscure, partly because they report little data or outcomes.

4. Repeal Medicaid's IMD exclusion. Any solution to the so-called criminalization of mental illness in the U.S. will require addressing our nation's dire shortage of inpatient psychiatric beds.[91] That will require authorizing Medicaid reimbursement for that mode of care through repealing Medicaid's IMD exclusion. A similar prohibition exists that prevents Medicaid reimbursement in correctional institutions, the Medicaid Inmate Exclusion Policy. Correctional officials have placed more priority on repealing or modifying that prohibition,[92] but, from the perspective of the seriously mentally ill, IMD repeal is more urgent. Since both would increase the cost of an already fiscally burdensome program, IMD repeal should be prioritized.

Progressive reformers argue that correctional health personnel within jails and prisons should enjoy maximal independence from security personnel.[93] This argument raises questions about how security personnel, and correctional agencies more generally, can be held accountable for their obligations if subordinated to another authority. In a psychiatric hospital, security professionals are subordinate to health authorities, not vice versa. Outside that context, it is hard to see how the independence of services for the seriously mentally ill can be appropriately and legally assured. More psychiatric beds, funded by Medicaid, is the most direct route to take to fixing the "category error" of too many people in jails and prisons who would be better served in psychiatric hospitals.

5. Correctional institutions should make more use of long-acting injectables during discharge. Long-acting injectables, in which antipsychotic medications are administrated once a month or so, instead of daily, relieve mental health providers and their seriously mentally ill patients of argument and hassle. Academic studies have established their ability to reduce arrests and rehospitalizations after discharge from psychiatric facilities.[94] They are grossly underused generally[95] and should be made standard practice for high-risk populations such as seriously mentally ill offenders when leaving jail or prison. Long-acting injectables are preferable to the common practice of discharging an inmate with a 30-day supply of medications.[96]

6. Eliminate overuse of administrative segregation; do not abolish it. Correctional institutions have long been criticized for overuse of administrative segregation. In more recent years, that criticism has developed into a movement to abolish it entirely. This movement is a good example of how mental health concerns shape corrections policy more generally. Seriously mentally ill inmates are placed in segregation at disproportionately high rates and are at acute risk of deterioration. Were there fewer seriously mentally ill inmates in custody in jails and prisons, there likely would be less urgency to abolish administrative segregation.

Administrative segregation is not "torture," as critics sometimes claim, but rather a jail within a jail. Correctional agencies sometimes need to isolate some inmates from others, during both nighttime and daytime hours, because of the need to structure incentives and reduce the potential for violence. Those in the community with a propensity for violence must be isolated, and the same goes for those who are already incarcerated. Agencies can reduce reliance on administrative segregation by investing in programming (which provides "carrots" to take away, for behavioral incentives, rather than using the "stick" of isolation), staff (both medical staff and corrections staff suited by their disposition and training to work with unusually troubled inmates), and infrastructure. Infrastructure investments in spaces featuring natural light and "biophilic" design[97] will address the sensory deprivation associated with traditional administrative segregation. Investing in special mental health housing, and placing inmates in them on a preventive basis, will reduce the need to use extreme forms of isolation. Any system that is reducing the use of administrative segregation should be expanding special housing.

7. Do not use telehealth when reliance on onsite clinical staff is feasible. Much as with remote work, telehealth, though it had been in use before the Covid-19 pandemic, received a large and permanent expansion from that event.[98] Correctional mental health is seen as particularly opportune for telehealth,[99] given the field's workforce challenges and because of clinical mental health work's reliance on reported and observed symptoms (e.g., no blood tests). Expanded use of telehealth is a fait accompli and an utter necessity in the many communities where there is no alternative. Telehealth is better than *nothing*, which is the alternative in some correctional systems. It is not better than *anything*. The risk is that systems will use telehealth when they do not have to for motivations rooted more in presumed cost savings and convenience than patient health. This could reinforce long traditions of low quality in mental health care, particularly for the seriously mentally ill, and reinforce defeatism in the face of the workforce challenge. If correctional mental health care can be broadly divided into the assessment vs. service provision services functions, the former are more promising for telehealth. Examples include competency and initial classification work during intake. It is less promising for ongoing supervision work and therapeutic work with seriously mentally ill inmates.

Use of telemedicine technology is more common among groups who already have the most access to mental health professionals: the wealthy and educated and households that reside in big metros.[100] The federal Substance Abuse and Mental Health Services Administration hails telemedicine for its potential to overcome

barriers in mental health care.[101] The most crucial barriers, when it comes to serious mental illness, have to do with lack of insight or motivation to pursue treatment. Though studies have documented telemedicine's ability to offset a long-term decline in in-person mental health usage, it is unclear whether part of that effect might simply be a "crowding-out effect": telemedicine is substituting for, not supplementing, in-person care.[102] Telemedicine can increase the quantity of mental health care, but its effect on the quality of care, for the seriously mentally ill, is more uncertain.[103]

In the corrections context, quality care for seriously mentally ill inmates requires strong relationships between clinical and correctional staff. Those professions differ by gender breakdown,[104] education, and training. Corrections staff value obedience to rules and commands, and their chief priority is security. Mental health professionals value the therapeutic rapport between patients and providers. Mental health professionals experience a "dual loyalty"[105] to their patients, on the one hand; and, on the other hand, to the correctional agency that employs them—and thus, by extension, society. On the inside, medically ethical imperatives such as confidentiality must be balanced against correctional imperatives such as the need to manage assaultive inmates and reduce suicide risk, as well as the practical reality that strict privacy is difficult to maintain in correctional settings. Working relationships between clinical and correctional personnel require mutual respect for their respective professional standards and also informal personal-level habits of trust. That all will be more easily developed through in-person contact.

Appendix 1: Estimating the Rate of Serious Mental Illness in Jails and Prisons

Assessing the seriousness of someone's mental disorder and his underlying diagnosis can be uncertain in any context because it must be based on symptoms alone, whereas most other health problems' diagnoses rely on pathologic features (there is no blood test or brain scan for schizophrenia) and/ or etiology (how someone develops schizophrenia is not known with anything like the certainty of how someone develops an infection from a virus).[106] Diagnostic challenges are exacerbated in the corrections context.[107]

Correctional systems are decentralized. The state and localities that run them vary in how they track and report rates of mental disorders. Estimates of serious mental illness can vary even within jail systems in the same state.[108] Commonly, correctional systems categorize inmates based not their underlying disorder but on what kind of services or accommodations they need.[109] This can entail a certain circularity: someone is considered seriously mentally ill because he qualifies for specialized housing programs that are reserved only for those with a serious mental illness. A jail might categorize one schizophrenic inmate in its most acute category if his behavior requires specialized housing while other inmates with that same diagnosis whose behavior is more stable may be placed in the general population. Another administrative designation might be those who receive antipsychotic medication. Jails and prisons have long been criticized for overreliance on medications to sedate inmates.[110] To the degree that that is true, it could inflate estimates of serious mental illness in jails and prisons.

Many correctional systems have, in recent years, expanded their mental health staff and instituted new training programs for all staff, such as de-escalation, that emphasize heightened attentiveness to mental health concerns.[111] That could lead to more identification of mental disorders than in the past. Heightened adoption of accreditation standards, in order to anticipate or respond to lawsuits, may have led to more cases getting picked up. Abolitionists' belief that many inmates are sick, not criminals, could create pressure to keep rates high or blur the line between serious mental illness and the more common, functional illnesses. Systems

have faced lawsuits over suicides and other adverse outcomes and are therefore highly concerned about not overlooking anyone potentially at risk.

Press reports regularly conflate functional mental disorders (which afflict 25% of the general population and over 50% of the incarcerated) with serious mental illnesses (which afflict less than 10% of the general population and 15%–20% of the incarcerated [Table 1]).

Appendix 2: Mental Illness and Violence

The most straightforward explanation for why the seriously mentally ill are incarcerated at a disproportionately high rate is that seriously mentally ill people, especially when not in treatment, are disproportionately violent. A substantial body of research supports the notion of a link between untreated serious mental illness and violence.[112] The federal government estimates that 15 million American adults are seriously mentally ill and that one-third, or 5.2 million, received no treatment in the past year.[113] Other estimates peg the nontreatment rate at as high as 50%.[114] Because the public mental health care system is incapable of pushing the rate of treatment higher, it is unsurprising that the criminal justice system should bear so much responsibility for the care and treatment of serious mental illness.

Still, many object to the idea of a connection between mental illness and violence.[115] **Table 3** presents six common arguments that attempt to de-link violence and mental illness, with responses to each.

Table 3

Responses to Common Arguments Attempting to De-Link SMI and Violence

Critics' Argument	Response
1. Mental disorders are common. One-quarter of the adult population has them,[116] a population far too large to be violent.	The core claim concerns the link between serious mental illness, especially when untreated, and violence. The seriously mentally ill are a subset of the larger universe of adults with mental disorders.
2. The problem is substance abuse, not mental illness.	Substance abuse is indeed a major risk factor for crime and violence.[117] According to Homer Venters, former chief medical officer for the NYC jails system, " Substance use disorder is the most common diagnosis in correctional health."[118] Substance abuse can lead to criminal offending by increasing aggression or making people unresponsive to social norms and the informal mechanisms by which civil society regulates behavior. But seriously mentally ill people use illicit drugs at disproportionately high rates (**Figure 2**),[119] which therefore places them at an elevated risk of crime and violence. Though their share of the adult population is only about 6%, they constitute 20%–30% of adults with drug abuse disorders (**Figure 3**).
3. Violence caused by serious mental illness is real but rare.	The seriously mentally ill are associated with certain kinds of violence. For example, interfamily violent acts and mass shooting are disproportionately committed by people with serious mental illness.[120] But they are also, generally, more violent than the rest of the population. According to the Bureau of Labor Statistics, "Psychiatric technicians and aides have some of the highest rates of injuries and illnesses of all occupations."[121]
4. Violence committed by seriously mentally ill individuals is a small percentage of total violent crime.	The core claim of those concerned with the link between serious mental illness and violence does not concern whether seriously mentally ill people commit all, or even most, crime, but whether they commit a disproportionate share of it.
5. The seriously mentally ill are more likely to be victims than perpetrators of violence.[122]	This is not a response to the core claim. The core claim is that people with untreated serious mental illness wind up incarcerated at a disproportionately high rate partly because people with untreated serious mental illness are disproportionately violent. A group can be, relative to the general population, both more likely to be victimized and more

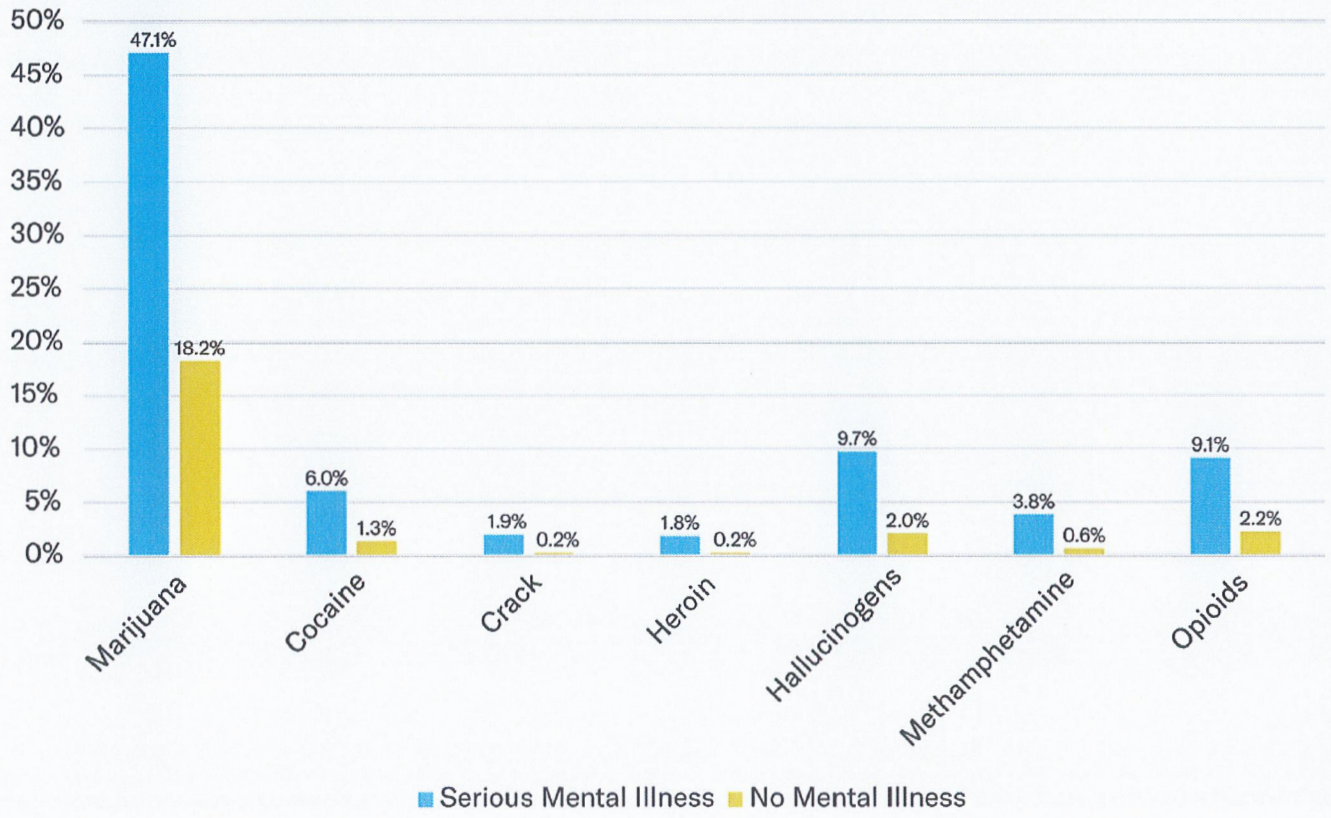
likely to be perpetrators of violence. That is the case with the seriously mentally ill. Some studies have even cast doubt on whether they are more at risk of being victims of violence.[123]

6. The seriously mentally ill are incarcerated at a high rate because they fail to comply with correctional facilities' rules, which leads to infractions and longer detentions than their (often low-level) charges would ordinarily justify.[124]

This "vortex" effect happens,[125] but it is unclear how big of a problem it is. The rate of serious mental illness in jails has remained high, and even risen, in systems such as NYC, which have drastically reduced incarceration for low-level offenses.[126]

Figure 2

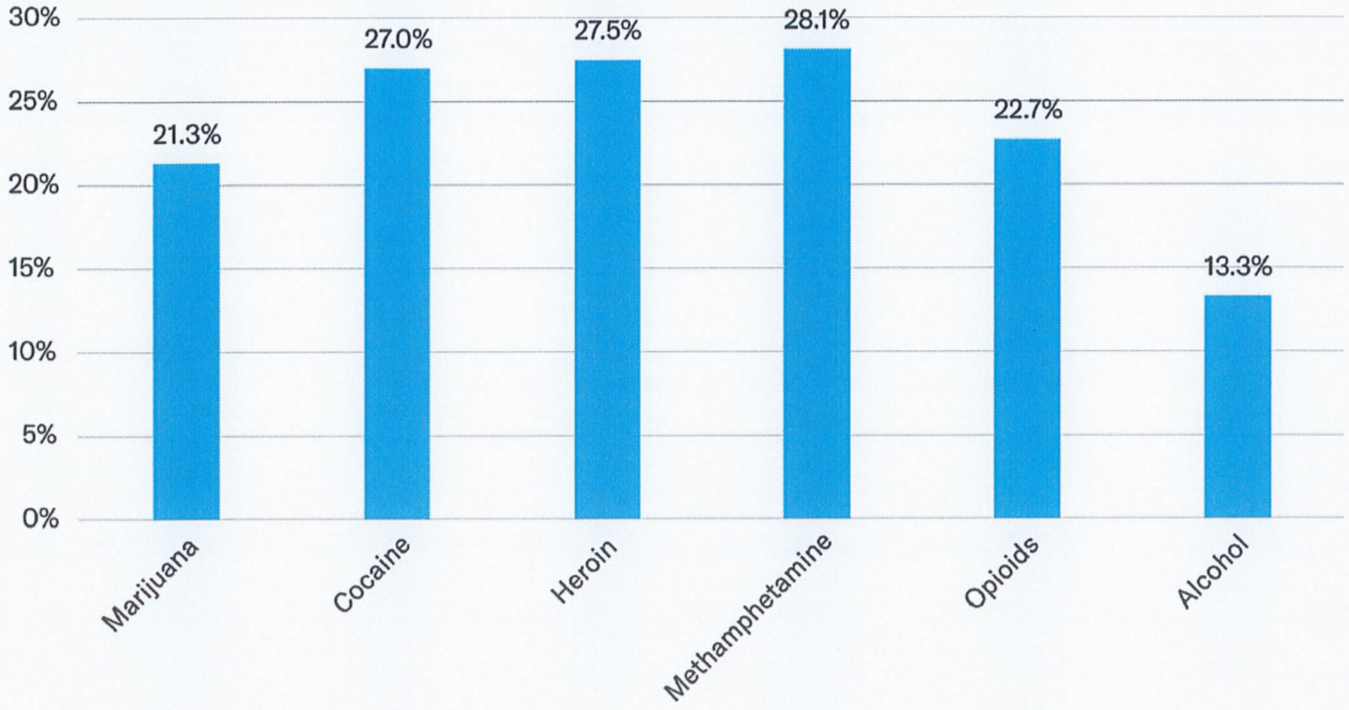
Illicit Drug Use in Past Year Among SMI Adults and Adults Without Mental Illness, 2022



Source: "2022 NSDUH Detailed Tables," Substance Abuse and Mental Health Services Administration, tables 6.48B and 6.46B

Figure 3

SMI Adults as Share of Total American Adults with Substance Abuse Disorders, by Drug-Specific Disorder



Source: "2022 NSDUH Detailed Tables," tables 6.48B and 6.46B

About the Author

Stephen Eide is a senior fellow at the Manhattan Institute and contributing editor of *City Journal*. He researches social policy questions such as homelessness and mental illness. Eide has written for many publications, including *National Review*, *New York Daily News*, *New York Post*, and *Wall Street Journal*. His first book, *Homelessness in America: The History and Tragedy of an Intractable Social Problem*, was published in 2022. He was previously a senior research associate at the Worcester Regional Research Bureau. Eide holds a B.A. from St. John's College in Santa Fe, New Mexico, and a Ph.D. in political philosophy from Boston College.

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Endnotes

Please see Endnotes in PDF

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Commentary By Ilya Shapiro

Ban Masking Now

PUBLIC SAFETY, CITIES Crime Control, Policing

The Free Press
January 6th, 2025

Anti-masking laws worked against the KKK. They'll work against today's criminals and bigots, too.

Early in the afternoon on New Year's Eve, a man was violently thrown in front of an oncoming subway train in Manhattan. According to Ritchie Torres, a Democratic congressman from the Bronx with his eyes on higher office, the alleged perpetrator was—unsurprisingly—wearing a mask.

"Wearing a mask for the purpose of committing crimes against innocent New Yorkers or for the purpose of intimidating and harassing Jewish students on college campuses should be strictly prohibited by state law," Torres posted Thursday on X.

As it happens, New York State had the oldest anti-masking law in the nation but repealed it during the pandemic. Torres is correct in calling for its reinstatement. He's also right to connect the state legislature's failure to do so to the abuse of Jewish college students by pro-Hamas fanatics. The State Assembly considered two bills to bring the ban back last year, but didn't act amid pushback from left-wing groups.

Despite the state's dithering, it has become obvious that the repeal of anti-masking laws has had disastrous consequences for cities like New York. Last month, health insurance executive Brian Thompson was brutally executed by a masked man who quickly fled the city. That murder took place in the city's busiest neighborhood—Midtown Manhattan—in front of witnesses on a Wednesday morning. But had the suspect in the shooting not lowered his mask to briefly flirt with a hostel clerk, he might still be on the lam.

Continue reading the entire piece here at The Free Press (paywall)

Ilya Shapiro is a senior fellow and director of Constitutional Studies at the Manhattan Institute. Follow him on Twitter here.

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