

# Who is Protected and Who is Served?

The Gap Between Massachusetts Campus Police Authority and Action

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Northeastern University School of Law's Criminal Law Project  
National Lawyers Guild, NUSL Chapter

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## I. Introduction

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Police violence has shaped racial and community relations across the country dating back to the history of slave patrols and anti-union brutality more than 100 years ago.<sup>1</sup> Police forces, institutions uniquely authorized by our democratic government to inflict violence on members of its own society, have grown in numbers, resources, and power in recent decades. Though support for increased enforcement has been extensively shown to have little to do with the actual crime rate<sup>2</sup>, police are often cited as the first option to solve problems related to public safety, and there are now over 17,000 distinct police departments across the country.<sup>3</sup> Amidst longstanding complaints of racial profiling, discriminatory enforcement and prosecution, and brutality, federal and state legislatures and judiciaries have enacted measures to oversee and control the conduct of police officers entrusted with such extreme power and discretion. Whether these controls are successful or not, few people would suggest that police should be entirely free from rules and oversight. One area, however, where the proliferation of accountability seems to have fallen off the radar is in private police forces that are primarily accountable not to the people or government, but to a private corporation or entity.

As the nation continues to grapple with the systemic violence of our criminal justice system, frequently absent in national discussions of police misconduct and accountability are private police forces—organized, militarized, and armed police employed by colleges, universities, and other private institutions. As entities accountable only to private corporations or university administrations, these police departments frequently resemble their municipal and state counterparts in enforcement activities, but are uniquely unchecked by even the basic notion of voter accountability. On college and university campuses across the country, private police forces operate largely outside the public eye.

This paper outlines a discrepancy between the broad exercise of authority wielded by campus police departments and the oversight of their conduct as required by law. We first examine the national and historical context of campus policing, including

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<sup>1</sup> See generally Radley Balko, "Rise of the Warrior Cop: The Militarization of America's Police Forces," PublicAffairs (2014).

<sup>2</sup> Cf. Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics*. (New York: Oxford UP, 1997); John Hagan, *Who Are the Criminals? The Politics of Crime Policy from the Age of Roosevelt to the Age of Reagan*. (Princeton, NJ: Princeton University Press, 2010); William Chambliss, *Power, Politics and Crime*. (Boulder, CO: Westview Press, 2001).

<sup>3</sup> Brian A. Reeves, *Census of State and Local Law Enforcement Agencies, 2008*, U.S. Department of Justice, Bureau of Justice Statistics (July 2011), available at <https://bjs.gov/content/pub/pdf/cslla08.pdf>.

an overview of the origins of campus policing, acts of violence committed by campus police, and the way that racism and campus policing are intertwined. We then analyze the statutory and case law governing private campus police in Massachusetts. Next, we turn to the Northeastern University Police Department (NUPD) and review the limited publicly available data about the department. We compare the data with that available for the Boston Police Department, highlighting the disparity in reporting requirements between public and private police forces. Finally, we conclude with policy recommendations, including the total abolition of campus police forces, and the achievement of effective campus safety measures through alternate means. In the absence of abolition, improvements might be gained through increased transparency from school administrations, reduced authority for campus police, and a shift of resources from campus police to restorative justice<sup>4</sup> and social services.

## II. A Brief Overview of the Rise of Campus Policing

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Minimal research exists on campus police departments, largely because the public has had little interest in their activities until recently. Examination of available narratives of the modern campus police force suggests that campus police have flown under the radar academically and publicly because of campus policing's humble origins and the fact that the modern campus police force did not originate until the late 1960s and early 1970s.<sup>5</sup>

### The Origins of Modern Campus Policing

The duties of early campus police officers bore little resemblance to the militarized campus police activity we see today. Campus policing duties in the early twentieth century were primarily custodial and service-oriented, and most officers were hired out of retirement from another occupation.<sup>6</sup> Typically, they had no formal law enforcement training and, for the most part, acted as "glorified custodians," charged with protecting

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<sup>4</sup> For a basic definition of restorative justice and how it is practiced, see "The Restorative Justice Approach," Communities for Restorative Justice, available at <https://www.c4rj.org/what-is-restorative-justice/the-rj-approach> (last visited Oct. 17, 2019).

<sup>5</sup> John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 Am. J. Police 85, 85 (1992) (describing the evolution of campus police from glorified custodians acting in loco parentis to officers quite similar in training, function and appearance to municipal police forces).

<sup>6</sup> John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 Am. J. Police 85, 85- 88 (1992); Jamie P. Hopkins and Kristina Neff, *Jurisdictional Confusion that Rivals Erie: The jurisdictional limits of campus police*, 75(1) Mont. L. Rev. 123, 126 (2014).

university property.<sup>7</sup> In interactions with largely homogenous, white, upper-middle class student populations, the legal doctrine of *in loco parentis* (“in place of the parents”) guided campus security protocols, and campus police officers tended to de-emphasize the enforcement-oriented aspects of their jobs.<sup>8</sup> Indeed, there was simply little enforcement activity (such as conducting investigations and making arrests) at all beyond securing campus property. Campus police officers had no more power to control the behavior of people than did ordinary citizens, and their duties were limited to detection and reporting; they had no arrest powers.<sup>9</sup> This all changed—and changed rapidly—midway through the twentieth century, as college campus enrollment skyrocketed, civil unrest developed in response to the Vietnam War and the Civil Rights Movement, and white residents fled urban areas.<sup>10</sup>

Following unprecedented growth in student enrollment and physical campus size, along with the mass arrival of Black people to northern cities during the Great Migration, many college and university administrators determined a need for police presence on campus.<sup>11</sup> Former police officers, hired by the administration as “directors of campus security,” promptly reshaped campus police in the mold of municipal police forces. This brought to private police departments the hallmarks of modern municipal policing such as the centralization of authority and the militarization of patrol practices.<sup>12</sup> Importantly during this period, campus police officers’ duties expanded significantly, and their roles on campuses resembling “small cities” became very similar to that of municipal police departments.<sup>13</sup> But unlike municipal police departments, which are at least nominally subject to basic voter accountability through local government elections, the campus chief of police was held accountable only to top university officials.<sup>14</sup>

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<sup>7</sup> John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 Am. J. Police 85, 85- 88 (1992); Nathalie Baptiste, “Campus Cops: Authority Without Accountability,” *The American Prospect*, Nov. 2, 2015, <https://prospect.org/article/campus-cops-authority-without-accountability> (last visited May 19, 2019).

<sup>8</sup> John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 Am. J. Police 85, 87, 91 (1992); Andrea N. Allen, *Campus Police-Citizen Encounters: Influences on Sanctioning Outcomes*, 40 Am Journal of Crim Justice 722, 725 (2015).

<sup>9</sup> John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 Am. J. Police 85, 87 (1992).

<sup>10</sup> *Id.*; Jamie P. Hopkins and Kristina Neff, *Jurisdictional Confusion that Rivals Erie: The jurisdictional limits of campus police*, 75(1) Mont. L. Rev. at 127.

<sup>11</sup> John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 Am. J. Police at 87; Nathalie Baptiste, “Campus Cops: Authority Without Accountability,” *The American Prospect*, Nov. 2, 2015, <https://prospect.org/article/campus-cops-authority-without-accountability> (last visited May 19, 2019).

<sup>12</sup> *Id.* at 86.

<sup>13</sup> *Id.* at 87-88.

<sup>14</sup> Melinda D. Anderson, “The Rise of Law Enforcement on College Campuses,” *The Atlantic*, Sep. 28, 2015, <https://www.theatlantic.com/education/archive/2015/09/college-campus-policing/407659/> (last visited May 19, 2019).

Public relations and capital also played a role in the decision to militarize campus police. As campuses were confronted by protests against the Vietnam War, uprisings in Watts and Detroit, and eventually the War on Drugs, university administrations and reactionary attitudes among the broader public sparked concern about local police's ability to "control" unrest on campuses.<sup>15</sup> Campus university administrations may have felt that militarized police presence efficiently solved two problems in one move. On one hand, a private police force could respond in a manner more attuned to their student body, ideally avoiding the brutalization of students and the media circus in the wake of the Kent State massacre. On the other, through heavy-handed displays of force—by infusing campus police with all the symbology and accoutrement of a military branch—college administrators could reassert authority over their campuses and keep federal law enforcement out of their schools.<sup>16</sup> University administrators needed their police forces to walk a tightrope: officers needed to restore order and safety at their schools but could not be seen as dangerous to general student populations, lest enrollment and revenue drop.

In the late 1960s, with the government-sponsored assassinations and arrests of many prominent leaders of the Civil Rights Movement and the end of the Vietnam War, on-campus political activity declined. In the early 1970s, the War on Drugs began in earnest, and the modern era dawned in the history of campus policing. The doctrine of *in loco parentis* returned, though in a new guise. Officers acted "in place of the parents" for a still largely homogenous student body. Campus officers saw themselves as protecting young white students from "outsiders" (people unaffiliated with the university) who were, and continue to be, perceived as the biggest threat to student and campus safety.<sup>17</sup> These past attitudes were heavily, and at times explicitly, rooted in racism, classism, and other forms of marginalization, and they continue to fuel the machinery of mass incarceration in our present.

### Private Police on Contemporary College and University Campuses

Presently, despite significant decreases in reported violent and property crimes on campuses and significant changes over the years in the kinds of problems universities

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<sup>15</sup> Jamie P. Hopkins and Kristina Neff, *Jurisdictional Confusion that Rivals Erie: The jurisdictional limits of campus police*, 75(1) *Mont. L. Rev.* 123, 147 (2014); John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 *Am. J. Police* at 87-88.

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

<sup>17</sup> Andrea N. Allen, *Campus Police-Citizen Encounters: Influences on Sanctioning Outcomes*, 40 *Am Journal of Crim Justice* at 725.

face, campus police authority has continued to expand throughout the nation, in many ways paralleling that of municipal police.<sup>18</sup> Though research suggests that campus police officers are less likely than municipal police officers to encounter serious violations of the law, they nonetheless have acquired many of the same duties and capabilities as their municipal counterparts. They can arrest or ticket individuals unaffiliated with the university for violations on or near campus grounds, they frequently have prior municipal police training and experience, and they can generally carry firearms, Tasers, and even military-grade equipment.<sup>19</sup> All this, despite the fact that the most commonly reported criminal activity on campus involves underaged drinking or burglary.<sup>20</sup> Such authority, training and weaponry is disproportionate to the actual situations encountered campus police officers.

The role of campus police departments expanded beyond securing campus buildings and began to include the policing of communities surrounding college campuses. This administrative decision was informed by the view that those unaffiliated with the university were potentially threats to the (predominantly white) student body.<sup>21</sup> Though this is not universally the case, due to historic and systemic racism, many urban colleges and universities have disproportionately white, class-privileged enrollment; in the eyes of the campus police, People of Color who live nearby and may travel in or through campus are often seen as potentially dangerous outsiders.<sup>22</sup> In fact, it is more frequently the university itself that invades local neighborhoods, as is the case with Northeastern University and the surrounding Roxbury neighborhood of Boston.<sup>23</sup>

But this situation is not unique to Northeastern or to the state of Massachusetts. Campus police encroachment into surrounding neighborhoods has consistently creates risk for community members unaffiliated with universities at risk, and campus police

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<sup>18</sup> Melinda D. Anderson, "The Rise of Law Enforcement on College Campuses," *The Atlantic*, Sep. 28, 2015, <https://www.theatlantic.com/education/archive/2015/09/college-campus-policing/407659/> (last visited May 19, 2019).

<sup>19</sup> *Id.*

<sup>20</sup> Andrea N. Allen, *Campus Police-Citizen Encounters: Influences on Sanctioning Outcomes*, 40 *Am Journal of Crim Justice* at 725; Jamie P. Hopkins and Kristina Neff, *Jurisdictional Confusion that Rivals Erie: The jurisdictional limits of campus police* at 131.

<sup>21</sup> Andrea N. Allen, *Campus Police-Citizen Encounters: Influences on Sanctioning Outcomes*, 40 *Am Journal of Crim Justice* at 725-26. See also Bonnie Fisher, *The Dark Side of the Ivory Tower: Campus Crime as a Social Problem*. Cambridge: Cambridge UP, 2011.

<sup>22</sup> *Id.*

<sup>23</sup> Cf. Martin Desmarais, "Northeastern Expansion Plans Trigger Widespread Concerns," *The Bay State Banner*, Oct. 8, 2013, <https://www.baystatebanner.com/2013/10/09/northeastern-expansion-plans-trigger-widespread-concerns/> (last visited Aug. 28, 2019); The Editorial Board, "New Housing is Not Enough to Stop Gentrification," *The Huntington News*, Oct. 10, 2018, <https://huntnewsnu.com/55198/editorial/editorial-new-housing-is-not-enough-to-stop-gentrification/> (last visited Aug. 28, 2019).

officers' ability to carry deadly weapons endangers students across the country. Just as many of the same practices developed in city police forces during the War on Drugs resulted in over-policing of Black neighborhoods and police brutality and harassment, these same approaches to campus policing have raised similar concerns among marginalized students and community members. However, these have largely gone unheard and underreported, with few exceptions.<sup>24</sup> Notably, students at Johns Hopkins University continue to protest efforts to establish a private police department for its urban campus, surrounded primarily by Black neighborhoods who are already over-policed by the Baltimore Police Department. During the first week of May 2019, the Baltimore municipal police department arrested Hopkins students who were peacefully protesting the proposed campus police department as campus administration stood by.<sup>25</sup>

There have been several instances in recent memory of campus police using violent force against students or unaffiliated people who happened to be near a campus. Here, we name just a few to illustrate the harm caused and how university administrations, police departments, and courts have responded.

In 2011 at the University of California, Davis, a campus police officer sparked national outrage when he used pepper spray against unarmed, peaceful students who refused to disperse during a protest associated with the Occupy movement.<sup>26</sup> The officer was placed on paid administrative leave and subsequently fired in 2012.<sup>27</sup>

In 2012, a Drexel University police officer drove his SUV into a man, pinning him against a wall and crushing his legs. The officer believed the man to be a suspect in an attempted burglary.<sup>28</sup> In the civil suit that followed, the Superior Court of

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<sup>24</sup> Ryan Briggs, "Secretive Campus Cops Patrol Already Overpoliced Neighborhoods," *The Appeal*, Oct. 15, 2018, <https://theappeal.org/secretive-campus-cops-patrol-already-over-policed-neighborhoods/> (last visited May 19, 2019).

<sup>25</sup> Nick Anderson, "Arrests at Hopkins in Protest Over Creation of Campus Police Force," *The Washington Post*, May 8, 2019, <https://www.washingtonpost.com/education/2019/05/08/arrests-hopkins-protest-over-creation-campus-police-force/?noredirect=on> (last visited Aug. 28, 2019).

<sup>26</sup> Katti Gray and Dean Schabner, "UC Davis Pepper Spraying: Cops Suspended," *ABC News*, Nov. 20, 2011, <https://abcnews.go.com/US/occupy-uc-davis-pepper-spraying-cops-suspended/story?id=14992787> (last visited Aug. 29, 2019); Andy Campbell, "UC Davis Wants You To Forget About Its Pepper Spray Incident. So Here's the Video," *Huffington Post*, April 14, 2018, [https://www.huffpost.com/entry/uc-davis-pepper-spray-video\\_n\\_570fc93fe4b03d8b7b9fb62b](https://www.huffpost.com/entry/uc-davis-pepper-spray-video_n_570fc93fe4b03d8b7b9fb62b) (last visited Aug. 29, 2019).

<sup>27</sup> Sam Stanton, "Bee Wins Legal Battle for Names of UC Davis Officers in Pepper Spray Incident," *The Sacramento Bee*, Aug. 21, 2014, <https://www.sacbee.com/news/local/crime/article2607394.html> (last visited Aug. 29, 2019).

<sup>28</sup> *Demby v. Drexel Univ.*, 2016 WL 5515853, at \*3 (Pa. Super. Ct. Aug. 16, 2016).

Pennsylvania found that the man had valid claims for a number of torts, including false arrest, false imprisonment, and malicious prosecution.<sup>29</sup>

In 2012 at the University of South Alabama, a campus officer killed a student who had taken LSD and was running unarmed toward the officer.<sup>30</sup> As of 2015, the officer was still employed with the school, had been cleared of criminal charges, and was found not liable in a civil suit brought by the victim's family.<sup>31</sup>

In 2015, three Tuscaloosa Police Department officers used Tasers and batons on University of Alabama students in response to a noise complaint at an off-campus apartment. UA campus police were called in by TPD, and three UA officers were also present. Three TPD officers were placed on paid leave following the incident, but there may have been up to ten officers from both TPD and UA involved.<sup>32</sup>

In 2016, one Temple University police officer and one former Temple officer brutally beat and murdered Joyce Quawey. Quawey was the mother of one of the officers' children, and she was unaffiliated with the university. The current officer was fired following the murder charge. The former officer had been forced to resign in 2012 unrelated to this charge. Both men were convicted of third-degree murder, conspiracy, and other offenses related to Quawey's death.<sup>33</sup>

In 2018, University of Chicago student Charles Thomas was shot by UChicago campus police while he was experiencing a mental health crisis.<sup>34</sup> Thomas survived the incident and the officer was placed on mandatory leave pending a

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<sup>29</sup> *Demby v. Drexel Univ.*, 2016 WL 5515853, at \*10 (Pa. Super. Ct. Aug. 16, 2016).

<sup>30</sup> Valerie Richardson, "White Teen Killed by Black Cop in Alabama Mirrors Ferguson," *The Washington Times*, Nov. 27, 2014, <https://www.washingtontimes.com/news/2014/nov/27/white-teen-gilbert-collar-killed-by-black-cop-trev/> (last visited Aug. 29, 2019); Cassie Fambro, "Two Years Later, the Death of Gil Collar Still Haunts the University of South Alabama in Mobile," Oct. 6, 2014, [https://www.al.com/news/mobile/2014/10/collar\\_story.html](https://www.al.com/news/mobile/2014/10/collar_story.html) (last visited Aug. 29, 2019).

<sup>31</sup> Cassie Fambro, "Two Years Later, the Death of Gil Collar Still Haunts the University of South Alabama in Mobile," Oct. 6, 2014, [https://www.al.com/news/mobile/2014/10/collar\\_story.html](https://www.al.com/news/mobile/2014/10/collar_story.html) (last visited Aug. 29, 2019).

<sup>32</sup> Carol Robinson, "3 Tuscaloosa police officers on leave after student Tased, struck with nightstick," Nov. 9, 2015, [https://www.al.com/news/2015/11/taser\\_video\\_for\\_carol\\_in\\_tusca.html](https://www.al.com/news/2015/11/taser_video_for_carol_in_tusca.html) (last visited Sept. 8, 2019).

<sup>33</sup> Julie Shaw, "2 ex-Temple cops ordered to spend decades in prison for 2016 beating death of woman," *The Philadelphia Inquirer*, July 23, 2018, <http://www.philly.com/philly/news/crime/temple-cops-police-aaron-wright-marquis-robinson-sentencing-beating-death-joyce-quawey-20180723.html> (last visited Sept. 12, 2019).

<sup>34</sup> Michelle Gallardo and Rob Elgas, "Student shot by University of Chicago police was screaming, smashing windows, witnesses say," *ABC7 Chicago*, Apr. 4, 2018, <https://abc7chicago.com/u-of-c-releases-dash-cam-video-of-student-shot-by-university-police/3299777/> (last visited Sept. 8, 2019).

university investigation.<sup>35</sup> Thomas himself is facing criminal charges for assault and property damage, but it is unclear whether the officer himself is the subject of a civil complaint or criminal charge.<sup>36</sup> While Tasers are still dangerous and even lethal in their own right<sup>37</sup>, it is worth noting that UChicago police carry only firearms without a less lethal option. This is common practice for most campus police departments across the country.<sup>38</sup>

## Oversight of Private Policing: Too Little, Too Slowly

The proliferation of campus police forces, privately overseen by individual universities and colleges, has only expanded over time. As focus on campus "safety" has increased, the federal government noticed the increase in private police forces and developed some regulations in this area. To this end, Congress passed the Clery Act in 1990, today requiring the 75% of public and private colleges and universities that have armed police officers on campus to compile and disclose campus crime statistics and to provide timely warnings of safety threats.<sup>39</sup> The Clery Act, it was reasoned, would promote transparency for officers who were largely accountable only to university administration.<sup>40</sup> However, across many colleges and universities the promise of transparency has proven hollow. Even as campus crimes have decreased, college campuses show no sign of stopping a ballooning number of officers, the militarization of their weaponry and tactics, and the expansion of their jurisdictional bounds.<sup>41</sup> Our own

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<sup>35</sup> Elyssa Cherney and Tony Briscoe, "Video captures University of Chicago police officer shooting student near campus; charges filed against student," *The Chicago Tribune*, Apr. 5, 2018, <https://www.chicagotribune.com/news/breaking/ct-met-university-of-chicago-police-shooting-20180404-story.html> (last visited Sept. 8, 2019).

<sup>36</sup> Jade Yan, "Charles Thomas Out of Hospital, Appears at Court Hearing," *Chicago Maroon*, Apr. 19, 2018, <https://www.chicagomaroon.com/article/2018/4/20/ucpd-shooting-thomas-hospital-new-indictment-riverside/> (last visited Sept. 8, 2019).

<sup>37</sup> See Reuters Investigates, "Shock Tactics," Aug. 22, 2017, <https://www.reuters.com/investigates/special-report/usa-taser-911/> (last visited Dec. 8, 2019); Emma Anderson and Rebecca McCray, Tasers are No Longer a Non-Lethal Alternative for Law Enforcement, May 3, 2012, ACLU, <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/tasers-no-longer-non-lethal-alternative-law> (last visited Dec. 8, 2019).

<sup>38</sup> Elyssa Cherney, "Shooting of University of Chicago student raises questions over use of force by campus police," *The Chicago Tribune*, Apr. 16, 2018, <https://www.chicagotribune.com/news/breaking/ct-met-college-police-departments-tasers-20180407-story.html> (last visited Sept. 8, 2019).

<sup>39</sup> Melinda D. Anderson, "The Rise of Law Enforcement on College Campuses," *The Atlantic*, Sep. 28, 2015, <https://www.theatlantic.com/education/archive/2015/09/college-campus-policing/407659/> (last visited May 19, 2019).

<sup>40</sup> *Id.*

<sup>41</sup> Melinda D. Anderson, "The Rise of Law Enforcement on College Campuses," *The Atlantic*, Sep. 28, 2015, <https://www.theatlantic.com/education/archive/2015/09/college-campus-policing/407659/> (last visited May 19, 2019); Ryan Briggs, "Secretive Campus Cops Patrol Already Overpoliced Neighborhoods," *The Appeal*, Oct. 15,

experience in writing this report, as well as anecdotes from the Northeastern University student body, have led us to become deeply concerned by both the authority wielded by campus police, and their utter lack of transparency and forthrightness in addressing student and public concerns. For example, in 2016, NUPD drew widespread criticism for its new gun policy allowing police officers to carry assault rifles.<sup>42</sup> And when a student we interviewed questioned NUPD on Twitter regarding a promotional video depicting black people as criminals and white women as victims, the NU Police Department Twitter account, @northeasternpd, responded that they “spend no time calculating the optics of what [they] post” and that the video is “simply a lighthearted means of relaying a tip to avoid property crime victimization.”<sup>43</sup>

As students concerned about the authority and jurisdiction of police forces across the nation, and especially about the police force on our campus, we are concerned about optics, and we are concerned about the apparent reality: NUPD and campus police forces across the nation are taking advantage of a power vacuum created by the gap between judicial interpretation of the powers conferred on campus police and the administrative protection conferred on private police forces. This imbalance, like virtually every aspect of criminal legal systems across the country, almost always unfolds at the detriment of already over-policed communities and students. In considering the authority that Massachusetts gives to campus police, it seems clear that the state never intended private police forces to mirror the militarized public police that they are now practically indistinguishable from.

### III. Massachusetts Statutory and Case Law Defining the Bounds of Private Policing

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In Massachusetts, there are approximately 360 state and local law enforcement agencies, employing over 25,000 people.<sup>44</sup> These are 360 public police forces, and among all 50 states, Massachusetts has the 6<sup>th</sup> highest rate of government-employed,

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2018, <https://theappeal.org/secretive-campus-cops-patrol-already-over-policed-neighborhoods/> (last visited May 19, 2019).

<sup>42</sup> Cassandra Hebert, “My University’s Campus Police Make Me Feel Less Safe,” *Teen Vogue*, Jan. 7, 2016, <https://www.teenvogue.com/story/student-response-northeastern-university-campus-police-guns> (last visited Aug. 28, 2019); Matt Juul, “Trevor Noah Rips Northeastern Over New Gun Policy on the Daily Show,” *Boston Magazine*, Dec. 11, 2015, <https://www.bostonmagazine.com/arts-entertainment/2015/12/11/daily-show-trevor-noah-northeastern/> (last visited Aug. 28, 2019).

<sup>43</sup> NU Police Department (@northeasternpd), Twitter (Jan. 17, 2018 at 7:02PM), <https://twitter.com/northeasternpd/status/953779539301359616> (last visited Aug. 29, 2019).

<sup>44</sup> Brian A. Reaves, *Census of State and Local Law Enforcement Agencies*, 2008, p. 15, U.S. Department of Justice: Bureau of Justice Statistics, <https://www.bjs.gov/content/pub/pdf/cslllea08.pdf>.

local, sworn police officers by population.<sup>45</sup> Despite being one of the most heavily policed states in the nation, Massachusetts is also home to nearly 30 colleges and universities that additionally employ their own private police forces.<sup>46</sup> Over a hundred thousand students, faculty, and employees across the Commonwealth are subject to private police jurisdiction on a daily basis. As is explored in this section, each of these private police forces has overlapping jurisdiction with at least one public police force, whether that is the Massachusetts State Police (MSP) or a local, public police department, such as the Boston Police Department (BPD) or the Suffolk County sheriff. While police, public or private, are given certain authority under Massachusetts state law, they are also required to follow the dictates of state law and the Constitution. Public police departments are required to report certain data and be subject to certain controls, enabling the public, or at least the government, to identify and advocate for changes and responses when they break the law or violate the Constitution. Private police forces, however, are often not held to these same standards, despite their powers being virtually the same in practice.

Part of what makes private police forces difficult to understand and assess is the complicated nature of the laws that create them and give them authority. In Massachusetts, private police forces are authorized under Mass. Gen. Laws 22C § 63, which allows the head of the Massachusetts State Police to “appoint employees of [colleges, universities, and hospitals] as special state police officers.” Section 63 specifies that each special appointment lasts for three years and provides appointed officers with the authority to “make arrests as regular police officers for any criminal offense committed in or upon lands or structures owned, used or occupied by” the institution. This authority parallels that in §§ 56-68 of the same chapter, which provide the opportunity to grant special police authority to employees of several other entities, including the Public Health Department, the Port of Boston Authority, and the State Lottery Commission.

While certain college or university employees are provided with some authority, they are not given authority equivalent to public police forces. The Massachusetts Supreme Judicial Court has made clear that state law provides for a “broad class of law enforcement officers, [...] but not all law enforcement officers are police officers.”<sup>47</sup> In comparison to campus police, public police officers are authorized by an entirely different section of the law, Mass. Gen. Laws 41 § 98, which “incorporates and expands

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<sup>45</sup> Brian A. Reaves, *Census of State and Local Law Enforcement Agencies*, 2008, p. 16, U.S. Department of Justice: Bureau of Justice Statistics, <https://www.bjs.gov/content/pub/pdf/csllea08.pdf>.

<sup>46</sup> Massachusetts Police Accreditation Program, Participating Agencies FY2019, <http://masspoliceaccred.net/wp-content/uploads/sites/95/2018/10/Participating-Agencies-102418-link.pdf>.

<sup>47</sup> *Commonwealth v. Gernrich*, 476 Mass. 249, 252 (2017).

upon the common-law definition of a police officer<sup>48</sup> while providing a much broader range of authority, including the authority to carry weapons, investigate crimes, stop people to question them, and make warrantless arrests. Campus police authorized under 22C § 63 do not have these powers, as § 63 “does not confer upon campus security staff all the powers of a State police officer,” but on its face confers only the power to make arrests.<sup>49</sup>

Many officers in private police forces across Massachusetts are also authorized as deputy sheriffs, which creates another overlapping jurisdiction and set of powers. Deputy sheriffs have authority under numerous statutes and are “authorized both to serve criminal process and to make arrests in certain circumstances.”<sup>50</sup> Notably, “a deputy sheriff’s warrantless arrest power is limited to offenses involving a breach of the peace that occur in the deputy sheriff’s view or presence.” While deputy sheriffs are law enforcement officers in a broad sense, their “duties center mainly in non-police functions, including the service of process and the transport of prisoners.”<sup>51</sup> Being additionally deputized may add powers to private police officers, such as providing authority to “issue a citation for a civil motor vehicle infraction,”<sup>52</sup> which campus police are specifically prohibited from doing.<sup>53</sup> However, in some contexts campus police may have broader powers than deputy sheriffs, such as the ability to arrest someone for an offense that is not considered a “breach of the peace.”

Whether authorized under § 63 as a campus police officer or as a deputy sheriff, it is clear that private police on college and university campuses do not have the same authority as public police and are treated very differently under the law. In practice, however, the distinction is far less clear. The blurred line between authority of public versus private police raises particular concern given the legal framework allowing private campus police to operate with far less transparency and accountability than even the largely secretive public police.

## Public Accountability for Private Police

The struggle to hold private police accountable to the law has been a long, if relatively fruitless one. More than a decade ago, the Harvard Crimson student newspaper

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<sup>48</sup> Id.

<sup>49</sup> Commonwealth v. Mullen, 40 Mass. App. Ct. 404 at 407 (1996).

<sup>50</sup> Commonwealth v. Baez, 42 Mass. App. Ct. 565, 567 (1997).

<sup>51</sup> Gernrich, 476 Mass. at 254.

<sup>52</sup> Baez, 42 Mass. App. Ct. at 567.

<sup>53</sup> Mullen, 40 Mass. App. Ct. at 407.

at Harvard University attempted to obtain records from the Cambridge Police Department, BPD, and the Harvard University Police Department (HUPD) concerning granular crime and activity data.<sup>54</sup> HUPD denied the records; the Crimson sued. The Massachusetts Supreme Judicial Court (SJC) ruled that, while the Cambridge and Boston police departments were required to disclose data to the Crimson under M.G.L. ch. 66, § 10 (Massachusetts' public records request statute) the newspaper had no right to HUPD's records because "[s]imply put, Harvard University is a private institution."<sup>55</sup> The SJC specifically clarified that HUPD officers were not public police officers "simply because some of the HUPD officers have been appointed 'special' State police officers under G.L. c. 22C, § 63." The SJC effectively shielded these "special State police officers" from the very type of information requests that newspapers, non-profit organizations, and residents of Massachusetts might use to identify malfeasance and advocate for change. The reasoning that the SJC employed in Harvard Crimson, however, is critical to understanding the relationship between private police and members of the public.

The court concluded that HUPD was exempt from public records requests because "the powers conferred on [HUPD officers...] are, by statute, far less extensive than the powers of regular police officers."<sup>56</sup> The court even felt the need to clarify that M.G.L. ch. 22C § 63 "does not confer upon campus security staff all the powers of a State police officer."<sup>57</sup> The powers vested by ch. 22C, § 63 were distinctly contrasted with those vested on "regular police officers" by M.G.L. ch. 41, § 98. Explicitly, "[t]he law enforcement authority conferred by [§ 63...] is statutorily limited to making arrests for criminal offenses committed on 'lands or structures owned, used or occupied' by the educational institution."<sup>58</sup> While § 98 lists a plethora of powers conferred on local officers, the SJC was clear that § 63 conferred only this single power. Whether the powers of campus police in practice are "far less extensive than the powers of regular police officers" is a separate question. In practice, if not by law, private police are largely free to conduct themselves as if they were public officers, and can perpetrate the same surveillance, profiling, and violence as public police.

When private police do exercise powers, it is not uncommon for people harmed by the police to challenge the private officers' conduct in court. Thus, Massachusetts courts have developed an interpretation of what private police can, cannot, and must do. Just as Harvard Crimson established that private police do not have to provide arrest

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<sup>54</sup> Harvard Crimson, Inc. v. President And Fellows Of Harvard College, 445 Mass. 745, 746 (2006).

<sup>55</sup> Id. at 751.

<sup>56</sup> Id. at 752

<sup>57</sup> Id.

<sup>58</sup> Id. at 753.

data commensurate with public police forces, other cases illustrate some additional privileges and limits to private police's powers. The analysis of private police powers is concentrated on two major issues: (1) where private police are permitted to exercise jurisdiction, and (2) how private police are permitted to act where they have jurisdiction.

### **Jurisdiction: Where Private Police Can Police**

Section 63 gives private police officers jurisdiction "in or upon lands or structures owned or used or occupied" by the overseeing private institution.<sup>59</sup> Whether a particular place is "owned" by an institution may be readily ascertained, but whether a location is "used or occupied" is open for more interpretation. Whether a particular place is subject to the jurisdiction of private police forces is largely a case-by-case determination. Massachusetts courts have provided some clarification of the jurisdictional issue, noting that "lands or structures" per § 63 do not include places "near [...] a facility associated with" the institution,<sup>60</sup> but seems to be restricted to "the perimeter of the [...] campus."<sup>61</sup> In *Commonwealth v. Hernandez*, 456 Mass. 528 (2010), Boston University officers pulled over a car on a public road near the campus, but not on campus. Because they arrested the driver without jurisdiction, evidence discovered at a subsequent inventory search was suppressed.

Whether a particular place or street falls under the "used" category of § 63 is also subject to a case-by-case analysis. One test that courts have provided is that there must "be a nexus between the relevant events and the educational institution" in order for private police to have jurisdiction.<sup>62</sup>

Private police jurisdiction, while typically confined to the perimeter of the campus, can be extended under certain circumstances. Considering the case of a man arrested across a public street from a Boston University building, the Massachusetts Appeals court concluded that a campus police officer's "authority extends to the environs surrounding the campus when the special vigilance of an officer might be required to keep the peace and preserve order amongst those frequenting the university and those carrying persons to and from it."<sup>63</sup> The court noted that applying this test can be driven by whether the "offense originated on [campus] property" and is "related to the protection" of a person

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<sup>59</sup> M.G.L. ch. 22C, § 63.

<sup>60</sup> *Commonwealth v. Hernandez*, 456 Mass. 528, 529 (2010).

<sup>61</sup> *Id.*

<sup>62</sup> *Commonwealth v. Smeaton*, 465 Mass. 752, fn. 9 (2013), quoting *Commonwealth v. Hernandez*, 456 Mass. 528 (2010).

<sup>63</sup> *Young v. Boston University*, 64 Mass. App. Ct. 586, 588 (2005) (internal quotations and brackets omitted).

that the institution serves.<sup>64</sup> It is unclear how far the “environs” of a campus extend and when “special vigilance” is required, but it seems that “a special police officer, entrusted to protect a certain area, may exercise his authority to make an arrest just outside the area which he is entrusted to protect, in order to keep the peace and preserve order within that area.”<sup>65</sup> The fact that the court conducts this type of analysis makes clear that the purpose of private campus police forces is to be centered around the campus itself, but also implies that private police regularly interact with members of the public who are in no way affiliated with the university or college.

### Scope: How Private Police Can Police

Private police are explicitly empowered by a different statute than public police, and the enumerated powers that they have are heavily abridged compared to government-run police forces. Private police officers are conferred power only “to make arrests as regular police officers for any criminal offense” where they have jurisdiction.<sup>66</sup> Indeed, the powers conferred to private police officers are “similar” to those conferred to certain employees of, among other agencies, “the Massachusetts Society for the Prevention of Cruelty to Children, various humane societies and associations, [...] the Department of Public Health, [...] and] the State Lottery Commission.”<sup>67</sup> Notably absent from the list are public police officers. Because § 63 is clear that private police are restricted in what they are allowed to do, campus police officers are not even permitted “to stop motorists for automobile law violations on public ways within their jurisdiction.”<sup>68</sup> Where a campus police officer does not have information that a person has “committed an arrestable offense,” they may not even stop that person.<sup>69</sup> This has further been interpreted to construe that campus police only have authority to arrest someone for a criminal offense, and do not have the authority to stop someone for a civil infraction.<sup>70</sup>

However, many campus police officers are also authorized as deputy sheriffs per Mass. Gen. Laws ch. 37, § 3. Deputy sheriffs have greater authority to stop people than do campus police, and unlike campus police “a deputy sheriff is a police officer

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<sup>64</sup> *Id.* (comparing campus policing to Massachusetts Bay Transportation Authority officers who had authority to question and arrest a person at a High School when “the offense originated on MBTA property and related to the protection of an MBTA passenger.”)

<sup>65</sup> *Smeaton*, 465 Mass. at fn. 10, quoting *Commonwealth v. Hastings*, 50 Mass. 259, 9 Metcalf 259, 262 (1845).

<sup>66</sup> M.G.L. ch. 22, § 63.

<sup>67</sup> *Mullen*, 40 Mass. App. Ct. at 408.

<sup>68</sup> *Id.* at 409.

<sup>69</sup> *Id.* at 410.

<sup>70</sup> See *Commonwealth v. Walker*, 69 Mass. App. Ct. 1114 (2007).

authorized to issue a citation for a civil motor vehicle infraction.”<sup>71</sup> Just as campus police are permitted to arrest someone only for certain conduct, a deputy sheriff is similarly restricted. A deputy sheriff “cannot arrest without a warrant [...] if there is no concomitant breach of the peace,” which is an act that “threaten[s] to have some disturbing effect on the public.”<sup>72</sup> Rather than arresting someone, deputy sheriffs are thus encouraged to note that “an application for a criminal complaint shall be filed.”<sup>73</sup>

## Militarization and Possession of Firearms

A major risk associated with the militarization of police is the proliferation of firearms that officers carry.<sup>74</sup> Firearms, ostensibly carried to protect against mass shootings or terrorist attacks, can equally be used as tools of oppression and threat of force. Many private police forces around Massachusetts now carry assault-type weapons, authorized by law.<sup>75</sup>

Campus police, if authorized as “special state police officer[s]” under § 63, are empowered by Massachusetts State Police to carry firearms by Massachusetts State Police regulations. In order to carry firearms, a private police officer must simply be otherwise authorized to carry a firearm under Mass. Gen. Laws ch. 140 § 131,<sup>76</sup> and complete a firearms training instruction program.<sup>77</sup> To maintain the certification, private police officers must complete an annual recertification process.<sup>78</sup> Moreover, entities that employ “special state police officers” must, each year, submit a list of “all authorized firearms” carried by their employees.<sup>79</sup> Regulations such as these facilitate the militarization of the employees of private organizations. The only limitation placed on the use of these military weapons and tactics is the requirement that private police officers self-report to Massachusetts State Police when they discharge their firearm, submitting a written report within five days of the discharge.<sup>80</sup> Giving private officers the privilege of self-reporting their own uses of force, and providing a five-day grace period

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<sup>71</sup> *Baez*, 42 Mass. App. Ct. at 567.

<sup>72</sup> *Id.* at 569-70.

<sup>73</sup> *Id.* at 571.

<sup>74</sup> See Radley Balko, “Rise of the Warrior Cop: The Militarization of America’s Police Forces,” *PublicAffairs* (2014).

<sup>75</sup> Aneri Pattani, “Northeastern to Equip Officers with Semiautomatic Rifles,” *The Boston Globe*, Dec. 9, 2015, <https://www.bostonglobe.com/metro/2015/12/09/northeastern-equip-police-with-semiautomatic-rifles/b9t2id4zQ9intwoV6nqszJ/story.html> (last visited Sept. 9, 2019).

<sup>76</sup> 515 MA ADC 5.04 (6)(c).

<sup>77</sup> 515 MA ADC 5.04 (6)(b).

<sup>78</sup> 515 MA ADC 5.04 (6)(d).

<sup>79</sup> 515 MA ADC 5.04 (10)(a).

<sup>80</sup> 515 MA ADC 5.04 (6)(e).

to do so, enables employees shielded from the public to control their own use of military force, potentially against the very communities in which private employers embed themselves.

Statute and case law limits what campus police officers can legally do. It is clear that the powers bestowed on private police are meant to be far less than those on public police, and that campus police are intended to operate similarly to government employees who work for the Department of Public Health and the State Lottery Commission. However, in practice private police officers are often indistinguishable from public ones.

#### **IV. Northeastern University Police Department: A Case Study in Private Policing**

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Police officers and departments, whether private or public, exert immense power over the people in their jurisdiction. Many of the actions that police officers take would be considered violent felonies if taken by anybody else.<sup>81</sup> Because the law gives police the authority to search, seize, and in many cases brutalize people, it is critical that the law is also able to provide adequate oversight of police. The more information is available, the more legitimate the oversight can be, but some recent events suggest that police officers and departments, as well as government agencies and elected officials often cover up police misconduct and illegal practices and policies.<sup>82</sup> Thus, the availability of data to the general public can often be a powerful tool in ensuring that police are obeying the law. Recognizing this, the legislature has required police departments to report data about certain activities to the public. The requirements of data-reporting, however, are reduced for private police forces, although in practice such forces wield effectively similar power to public police departments.

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<sup>81</sup> Police behavior, even when lawfully and properly performed, is explicitly akin to such “crimes” as kidnapping, armed robbery, battery, and unlawful restraint.

<sup>82</sup> See, e.g. Jeremy Gomer, “4 Chicago cops fired for alleged cover-up of fatal police shooting of Laquan McDonald,” *Chicago Tribune* (Jul. 19, 2019); Summer Ballentine, “Ex-St. Louis prosecutors disciplined over police cover-up,” *AP* (Aug. 13, 2019), available at <https://www.apnews.com/2dd0c57b8b5f435c8e2ba3c2923d2061>; Jerry Iannelli, “Miami Cops Covered Up Fatal Motorcycle Chase, Panel Suggests,” *Miami New Times* (Jul. 17, 2019), available at <https://www.miaminewtimes.com/news/miami-police-covered-up-crash-death-investigative-panel-suggests-11220778>.

## Massachusetts Public Reporting Requirements

In Massachusetts, the public reporting requirements for private police are governed by M.G.L. ch. 41, section 98F, which provides that campus police must “keep and maintain a daily log” that tracks certain information, including “all responses to valid complaints received, crimes reported, the names, addresses of persons arrested and the charges against such persons arrested.” Of course, these reporting laws rely on police themselves to track their own statistics, so oversight is already one step removed from objective, but there can still be valid uses of such public data to monitor campus police practices.

## Northeastern University Police Case Study Results

While Northeastern University Police Department (NUPD) has yet to cause the type of harm that warranted the national attention of other campus policing violence, such a tragedy is not outside the realm of possibility. NUPD is heavily militarized and capable of extreme violence. In 2015, Northeastern University Police under the direction of current NUPD Chief Michael A. Davis began carrying AR-15 assault rifles, in supposed response to the series of mass shootings that occurred across the country that year.<sup>83</sup> To assess whether this level of military technology was necessitated by any actual threats or actions, we sought to obtain publicly available data that NUPD is required to keep per Massachusetts statutory obligations. Our experience seeking this information indicates that NUPD is a clear example of how accountability and oversight procedures have failed, and are not commensurate with the authority that NUPD wields. In response to our request, NUPD provided records that from 2017 and 2018, they arrested 148 people. NUPD did not provide the addresses of any of these people, as required to do so by statute. Tracking someone’s address can be an approximation of whether or not the person is affiliated with Northeastern University, and because of intense racial segregation in Boston, is also probably the best approximation of an arrested person’s race that would be accessible. Because NUPD staff did not provide the addresses of the people they arrested, they are already in violation of the law.

The information that they did provide, however, illustrates how important public accountability is in monitoring police officers who have the potential to wield extreme and deadly force on anybody who they come in contact with. NUPD, like many police

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<sup>83</sup> Aneri Pattani, “Northeastern to Equip Officers with Semiautomatic Rifles,” *The Boston Globe*, Dec. 9, 2015, <https://www.bostonglobe.com/metro/2015/12/09/northeastern-equip-police-with-semiautomatic-rifles/b9t2id4zQ9intwoV6nqszJ/story.html> (last visited Sept. 9, 2019).

forces, is funded and trained as if they were constantly preventing or responding to vicious and destructive harms. However, the reality for many police departments, including NUPD, is that the massive resources and risks associated with police are not borne out by the reality of what officers actually do. Of the 147 people that NUPD officers arrested for whom they provided birth dates, 107 (72%) are over the age of 25. While there are certainly some students at Northeastern who are over 25 years old, this indicates that NUPD is likely disproportionately arresting people who are not affiliated with Northeastern. More than half of the people arrested were over the age of 30, and NUPD officers arrested 23 people over the age of 50, with the oldest person being 70 years old. Because the people who work for NUPD as officers under § 63 are authorized with the same right to arrest as public police officers, but seem to be disproportionately using that authority to arrest members of the public, rather than members of the Northeastern community, the public should have more access to the availability of NUPD officers' arrest policies and patterns.

The criminalization of race and poverty also means that people are subject to arrest for many reasons, but M.G.L. ch. 22 § 63 provides only that campus police may "make arrests [...] for any criminal offense committed in their jurisdiction." However, by far the most frequent reason that NUPD officers arrested someone, nearly 40% of the time, was for no reason other than the person having a pre-existing warrant for their arrest. In these cases, the person was stopped by an NUPD officer, charged with no additional offense, but still arrested on the warrant. Had there been "any criminal offense committed," presumably NUPD officers would have noted that in their publicly available report, but nearly 60 people were arrested having not committed any offense.

NUPD is also not responding to or preventing much violence at all, despite their purported need for militarized training and weapons. NUPD officers arrested only 23 people (16%) for violent offenses during 2017 and 2018. While violence is a terrible reality in society, criminalization and generations of the highest incarceration rates in the world<sup>84</sup> have not effectively limited violence in the United States.<sup>85</sup> Considering that every arrest and every day spent incarcerated is itself an act of violence, the disproportionately non-violent behavior that NUPD officers are policing indicates the need for strict control over what harm private police are authorized to create. NUPD officers arrested 15 people for nothing more than trespassing or disorderly conduct.

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<sup>84</sup> Peter Wagner and Wendy Sawyer, "States of Incarceration: The Global Context 2018," Prison Policy Initiative, available at <https://www.prisonpolicy.org/global/2018.html> (last visited Oct. 17, 2019); Michelle Ye Hee Lee, "Yes, U.S. locks people up at a higher rate than any other country," *The Washington Post*, available at <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/> (last visited Oct. 17, 2019).

<sup>85</sup> See, e.g. Angela Davis, *Are Prisons Obsolete?*, Seven Stories Press (2003).

There is no justifiable need for a wholly privately supervised police force to arrest people for such "quality of life" crimes and furthering mass incarceration.

NUPD's publicly available arrest data only told part of the story of their activities. More comprehensive than the arrest data, interestingly, was information from the "Crime Log" section of the school newspaper, The Huntington News. The information from the News was far more detailed than incident-by-incident information NUPD staff provided to us, and might arguably satisfy NUPD's obligation to provide data on "valid complaints received" per § 98F.

The News data, which we reviewed and compiled for analysis, is consistent with NUPD's role as effectively performing the role of a public police force. Using newspapers from August 28, 2017 to October 7, 2018, we identified 480 discrete incidents of NUPD officers' interactions with people. We know with certainty, however, that this dataset is incomplete, because these 480 total incidents include the mention of only 29 arrests. There were at least 59 arrests in 2018 alone during the time period we examined, so whatever is being reported to the newspaper for public distribution is not providing the whole story of NUPD officers' activities. Whether an incident led to an investigation that resulted in an arrest is not clear based on any publicly available documents, so it is impossible to track how NUPD officers decide to follow up on reports and how they investigate when they do follow up.

Examining the information reported in the News provides insight into the type of activity that private police officers at Northeastern are involved in. We examined the 480 incidents and, using the description of the event, coded each incident based on who initiated the call, who the alleged perpetrator was, what the nature of the crime was, whether NUPD officers filed a report, and whether an arrest was made. Our results are summarized in the table below:

Initiator of Encounter	Accused Person		Nature of Crime		Report Filed?		Arrest Made?		
NU Student	171	Unknown	233	Property	213	Yes	467	Yes	29
NU Staff	98	NU Student	166	Quality of Life	149	No	5	No	417
Unknown/Unspecified	78	Unaffiliated with NU	75	Violent	50	Unk.	8	Unk.	34
NUPD	68	NU Staff	3	Drug	29				
Unaffiliated with NU	57	Other or Missing	3	Other	39				
Boston PD	7								
Other or Missing	1								
Total	480		480		480		480		480

This data indicates that NUPD officers are responding to approximately 1.2 calls per day, the vast majority of which are related to either property crimes (generally thefts of bicycles, backpacks, or electronic devices), or quality of life issues, the most common of which was intoxication. Intoxication of Northeastern students, with no additional potentially criminal behavior, accounted for 81 (17%) of all incidents. Almost all incidents resulted in a report being filed, but only 7% of reports resulted in an arrest being made on-scene.

Private police forces authorized under § 63 are afforded the privilege of self-oversight and are largely shielded from the public eye. However, NUPD officers interact with the public on a daily basis. Only one-quarter of the incidents we examined (121) resulted from a person affiliated with Northeastern (either a student, staff member, or NUPD itself) reporting an incident related to another person affiliated with Northeastern. It was far more frequent that an unaffiliated or unknown person was involved with the incident. Thus, in the 14-month time period we studied, officers working for NUPD pursued incidents that involved either unknown people or people unaffiliated with

Northeastern 359 times, three times as frequently as they responded to an internal Northeastern matter.

We all want to be safe in our communities, and public safety is as important for college campuses as anywhere else. The reality at Northeastern's campus, however, is that it is highly unlikely that NUPD will respond to an act of violence, either because the violence goes unreported, as is the case in many instances of sexual or domestic violence,<sup>86</sup> or because the rate of other types of violence is miniscule. However, the heavily militarized NUPD officers carry assault weapons and spend hundreds of hours each year training to respond to violence.<sup>87</sup> These officers then bring that mentality to their job every day, although they are almost never responding to even allegations of violence. The chart below shows the relative frequency at which NUPD responds to certain types of allegations. It shows that the vast majority of the time, NUPD officers are dealing with allegations of property crimes, like a stolen bicycle or backpack, or a quality of life crime, most frequently an intoxicated student. These types of allegations do not require privately-hired, combat-trained officers to respond, and support the claim made by many activists that the purpose of police in general is to protect property, not people.<sup>88</sup> In the time period we examined, NUPD was involved in 53 instances of violence. Of these 53 violent incidents, 35 (66%) of them were related to sexual or dating violence, a major problem at colleges and universities across the country, but one that cannot be solved through policing.<sup>89</sup> In all, when NUPD interacted with people, it did so in response to an immediate act of violence less than 4% of the time.

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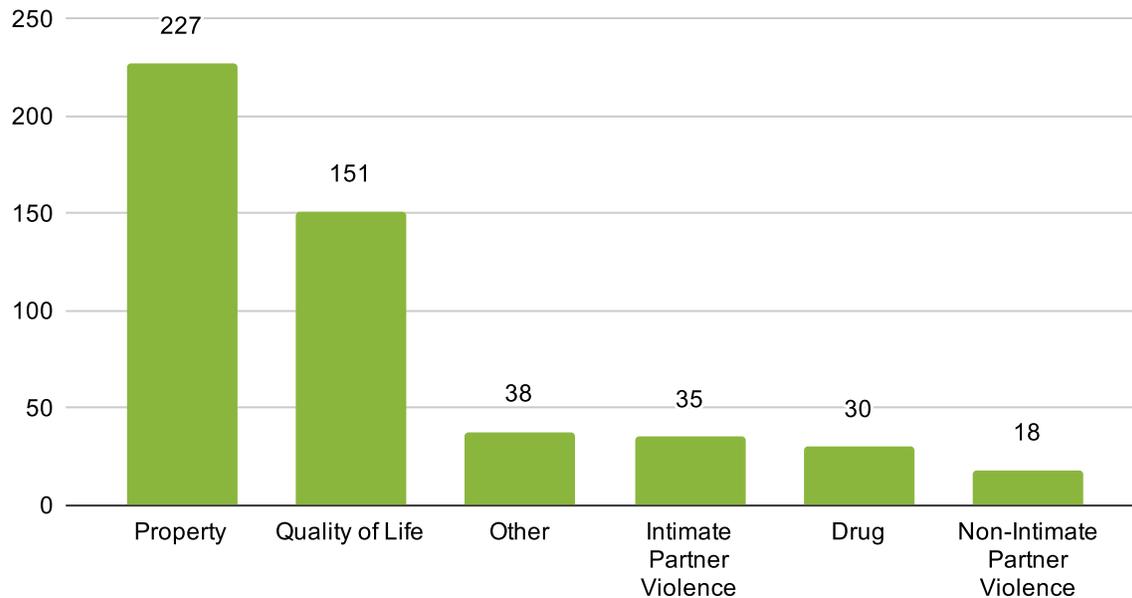
<sup>86</sup> See "Report: Nearly Half of Domestic Violence Goes Unreported," *The Crime Report* (May 3, 2017), available at <https://thecrimereport.org/2017/05/03/report-nearly-half-of-domestic-violence-goes-unreported/>; Kimberly Hefling, "Justice Department: Majority of campus sexual assault goes unreported to police," *PBS* (Dec. 11, 2014), available at <https://www.pbs.org/newshour/education/four-five-acts-campus-sexual-assault-go-unreported-police>.

<sup>87</sup> Aneri Pattani, "Northeastern to equip officers with semiautomatic rifles," *The Boston Globe* (December 9, 2015), available at <https://www.bostonglobe.com/metro/2015/12/09/northeastern-equip-police-with-semiautomatic-rifles/b9t2id4zQ9intwoV6nqszJ/story.html>.

<sup>88</sup> See generally "Who Do You Serve, Who Do You Protect?: Police Violence and Resistance in the United States," *Truthout*, edited by Maya Schenwar.

<sup>89</sup> Victoria Law, "How Can We Reconcile Prison Abolition With #MeToo?," *Truthout* (Oct. 13, 2018), available at <https://truthout.org/articles/how-can-we-reconcile-prison-abolition-with-metoo/> (last visited Oct. 17, 2019).

## NUPD Responses to Incident By Incident Type



### Comparison to Boston Police Department

The lack of information available about private police becomes all the more significant when compared to the information that, while still extremely limited, is available about public police, whether through regular reporting or through public records requests. In *Harvard Crimson*, the Massachusetts Supreme Court supported its holding that Harvard University police officers were not subject to public records requests by underscoring that private campus police officers simply do not possess the same powers as State police officers.<sup>90</sup> While public police officers have wide discretion and general law enforcement powers, deputy sheriffs and “special” state police officers possess significantly fewer powers.<sup>91</sup> However, campus police generally, including NUPD, function in ways that are practically indistinguishable from their State counterparts, receiving the same training and engaging extensively with individuals unaffiliated with the university.

Because of its status as a private police force, NUPD is not held to the same standards of data and policy disclosure. Though NUPD records and produces daily incident reports upon request, its status as a private police force effectively and unfairly shifts the burden of demonstrating why records are needed to those interested in

<sup>90</sup> *Harvard Crimson*, 445 Mass. 745, 753 (2006).

<sup>91</sup> *Harvard Crimson*, 445 Mass. 745, 753 (2006).

obtaining reports. Whereas BPD, as a public entity subject to public records requests, bears the burden of showing in a specific case that a record requested falls within a specific statutory exemption, NUPD as a private police force must only conform to specifically enumerated requirements, such as the publication of incident reports; responses to all other requests—such as those to see complaint records—are entirely left to the discretion of NUPD and Northeastern administrators.<sup>92</sup> This fact makes NUPD and other private police forces generally less transparent and less likely even than BPD to effectively deal with and resolve complaints brought against it.

Numerous reports published by the ACLU of Massachusetts, local news stations and newspapers, as well as studies authored by or conducted with the advice of Northeastern’s own faculty, have repeatedly found that BPD engages in widespread racially-motivated police interactions, targeting black and brown Boston residents at rates vastly disproportionate to their population demographic, even when controlling for factors such as arrest records and alleged gang involvement.<sup>93</sup>

But even with such widespread condemnation from academics and the public alike, Boston Police Department remains recalcitrant and unwilling to make meaningful changes to address the problem. Even with the heightened disclosure requirements and oversight of the Boston Police Department, dissatisfaction with BPD’s response to complaints spans decades, with BPD’s methods of dealing with community complaints described as “shoddy, halfhearted investigations [with] lengthy delays, and inadequate documentation and record-keeping.”<sup>94</sup> When Boston police at last are pressured into responding to these concerns, BPD maintains its records in such a way that the department itself cannot evaluate whether its stop-and-frisk practices are achieving worthwhile goals.<sup>95</sup> Because NUPD receives much of the same training as BPD, receives even less oversight than BPD and remains accountable only to university administration,

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<sup>92</sup> *Bougas v. Chief of Police of Lexington*, 371 Mass. 59, 65–66 (1976).

<sup>93</sup> See ACLU of Massachusetts, *Black, Brown and Targeted 1* (2014) (analyzing four years of BPD’s extensive interactions with young black men, particularly through repeated Terry stops); Jeffrey Fagan et. al., *Final Report: An Analysis of Race and Ethnicity Patterns in Boston Police Department Field Interrogation, Observation, Frisk, and/or Search Reports i*, 8-10 (2015) (showing such Field Interrogation, Observation, Frisk and/or Search reports to be concentrated on repeated interactions with relatively small numbers of people and carried out by a small number of very active BPD officers); Kate Antonovics and Brian G. Knight, *A New Look at Racial Profiling: Evidence from the Boston Police Department*, 91 *The Review of Economics and Statistics* 163, 177 (2009) (concluding that such activities are difficult to explain by reference to crime statistics alone).

<sup>94</sup> Edward Mason and Tom Mashberg, “The Complaint Jar Runneth Over,” *BostonMagazine.com* (March 25, 2014), available at <https://www.bostonmagazine.com/news/2014/03/25/boston-police-department-internal-affairs-complaints/2/>.

<sup>95</sup> The Associated Press and Philip Marcelo, “AP finds Boston police inflate progress on searches, frisks,” *The Reporter* (updated Sept. 7, 2018), available at <https://www.thereporter.com/2016/03/07/ap-finds-boston-police-inflate-progress-on-searches-frisks/> (last visited Oct. 17, 2019).

it is reasonable to assume—and what anecdotal information we have been able to gather corroborates—that NUPD engages in the same if not worse policing procedure and methods of dealing with community and student complaints. Again, these problems almost always disproportionately harm People of Color, particularly Black people.

In a university setting, this kind of treatment of student and community concerns, combined with faulty recordkeeping, structurally dooms many complaints from the outset. During delays, students can graduate or lose stamina to pursue their cases in the face of miniscule bargaining power and administrative disinterest or hostility towards their concerns. Should the aggrieved party be a member of the community and not a student, these barriers are heightened because access to the complaint procedure may be even more difficult to those unaffiliated with the university, even though incident report data shows that NUPD regularly comes into contact with members of the community unaffiliated with the school.

## **V. Recommendations**

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Our research provides several key takeaways regarding private campus police forces in Massachusetts when compared to their public counterparts. These findings indicate the need for systemic changes in the way society examines public safety, particularly regarding private police forces and college and university campuses.

Campus police appear to be operating in a gap between the judicial interpretation of their authority and the much broader license they are given by the institutions that employ them. There is a stark difference between the authority granted by Mass. Gen. Laws 22C § 63 for private police and Mass. Gen. Laws 41 § 98 for public police—namely, that private police have the power to make arrests in certain circumstances, and nothing more. Even when additionally empowered as deputy sheriffs, campus police officers and departments commonly act outside the bounds of their statutory authority.

As the need for increased oversight of police has become more and more apparent, private police enjoy an imbalanced privacy compared to their level of authority. Despite behavior that strongly imitates public police, campus police forces are shielded by private institutions, protecting behavior that is often racist, classist, and in furtherance of displacement with little public accountability.

Police officers and policing itself, which is by design inherently violent, can cause substantial harm. When we overlook private police forces and the systemic violence they perpetuate, we are complicit in the harm inflicted on communities most vulnerable to police violence: people already marginalized on the basis of their race, class, gender identity, disability, religion, or immigration status. Using NUPD as a case study, campus police appear to almost exclusively respond to reports of quality of life violations or minor thefts, such as that of a bicycle or backpack. The vast majority of NUPD's activity involves the general public, with only about one quarter of incident responses being reported by a Northeastern-affiliated person about another Northeastern-affiliated person. Private police are anything but isolated to their campus, and the harm they cause through violence and threats of violence does not seem to be balanced by reciprocally responding to violence committed by non-police.

With these findings in mind, we recommend the following to Massachusetts' colleges and universities:

### 1. Abolish the modern campus police force.

There is no question that public and campus safety are critically important. That is why colleges and universities across the country must replace reactionary and violent police forces with restorative and transformative justice solutions that promote public safety without perpetuating and advancing historic and systematic violence, racism, and dehumanization. Police have one primary solution to any situation: militarized control through force. In exercising this power, police forces, whether intentionally or subconsciously, target people who are already marginalized.

Data obtained about public police forces shows that racism and other forms of discrimination are inseparable from policing all across the country. While private police forces are shielded from many reporting requirements and oversight, anecdotes and journalism suggest that private police forces also perpetuate discrimination. Beyond the racism, classism, ableism, and transphobia that police officers perpetuate, police frequently do not actually keep people safe. Criminalization, incarceration, and their collateral consequences have the guaranteed result of destabilizing families, subjecting people to extreme violence, and restricting the distribution of critical resources, all while providing no restoration or consideration to the vast majority of victims and survivors of crime. The severity of the individual and systemic harms caused by violence and crime demand an effective response. Policing and incarceration have proven to be ineffective, and they must be replaced with an alternative. Private police on college and university campuses are part of the prison industrial complex, and must be abolished.

## 2. Prioritize opportunities to ensure campus safety and health without police presence or intervention.

There are alternatives to policing that have brought more benefit to those harmed by crime while also reducing the risk of further harm. These alternatives to the surveillance and violent control of police are those that strengthen communities, rather than isolating them and breaking them down. Policies that actually promote public safety reallocate the money spent on campus police to restoring those harmed by violence and systemic divestment. Beginning to transform a campus justice system may include the following:

- Increased access to counseling, therapy, and other mental health services for students, staff, and faculty associated with a university, plus medical treatment if needed,
- Creation of unarmed, demilitarized campus employees trained to respond to potentially dangerous situations related to disability and addiction, with the goal of de-escalation and harm minimization, rather than criminalization,
- Fostering of a campus culture built on restorative justice, where harm is addressed with a community response centering the needs of the people affected, and
- Preventing mass shootings before they happen by stemming the rise of extremist white supremacy and indoctrination of hatred against historically oppressed people.

## 3. Build a relationship with surrounding neighborhoods that does not punish people for being subjected to gentrification.

Campus police officers spend many resources "protecting" students and staff from people unaffiliated with the school that employs them. Ejecting people from school property, profiling People of Color to stop on the street, and checking people for outstanding warrants are all specific practices that schools should end. Instead of policing residents of their neighboring communities, schools should bring resources to enrich their neighborhoods, such as "good neighbor" grants or other funding to support towns' access to food, shelter, medical care, or other needs. Gentrification itself creates the risk of food and housing instability. Schools, rather than using economic and legal privileges to cement their power in neighborhoods, should use that privilege to protect and strengthen those they come in contact with. Northeastern University, for example, could allocate more funding toward and better advertise its Community Grants to better support local nonprofits, schools, and community organizations.

#### 4. At a minimum, provide more detailed publicly accessible data and create transparency around campus police policies.

Students and staff of a university and members of the general public should be able to access information on stops, arrests, complaints and demographics of those who are subjected to interactions with private police officers. The fact that militarized police officers are employees of a private organization should not affect the public's ability to monitor them. Campus policing affects those who live and work near a campus as much as members of the school community, and information on campus police operations should be accessible to anybody.

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This report was prepared by members of the Criminal Law Project, a student group at Northeastern University School of Law, and the Northeastern student chapter of the National Lawyers Guild. We can be reached at [nuslcriminallawproject@gmail.com](mailto:nuslcriminallawproject@gmail.com).

Thank you to the National Lawyers Guild for hosting this report online and supporting lawyers, legal workers, jailhouse lawyers, and law students in opposition to forces of racism and oppression for over 80 years.