

SHERIFF DISCRETION AND EVICTIONS

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EXECUTIVE SUMMARY

At 5 A.M. on January 14, 2020, armed deputies from the Alameda County Sheriff's Office arrived at 2928 Magnolia Street in Oakland to evict a group of women and their children who called themselves Moms 4 Housing. The house was owned by Wedgewood LLC, a corporate speculator who bought up properties for profit and who had let the property sit vacant for years. The mothers and their families had taken over the abandoned property in part to protest the unavailability of housing caused by speculators and in part out of necessity; they needed a place to live in a county that notoriously lacks affordable housing.

That morning, around a dozen deputies, armed with machine guns and dressed in military-type fatigues and helmets, arrived in vans and an armored vehicle to carry out the eviction. They used a battering ram to force their way through the front door and arrested the occupants. The deputies threw personal belongings into the street, even though Wedgewood had previously promised the tenants they would be allowed to remove furniture and possessions themselves.

Emails to and from the Alameda Sheriff's Office, provided to a journalist after she filed a public information request, showed just how much law enforcement was involved with the evictions. The sheriff's office had deployed over 40 officers and a BearCat armored vehicle at a cost of \$40,000 for the evictions and had previous communications with Wedgewood, the owner, but not the residents.

Sheriffs are the so-called "tip of the spear" in eviction proceedings. While they do not instigate eviction proceedings or participate in court processes, sheriffs and their deputies in most states participate in the physical eviction process, which includes serving the writ that notifies

tenants of their evictions, forcibly removing tenants from the property, and disposing of tenants' possessions, which can include either putting them on the curb or placing items in storage (generally for a fee).

As states and municipalities lift eviction moratoriums imposed in the immediate wake of COVID-19, sheriffs and their deputies will be the ones charged with physically evicting occupants who are unable to pay rent or their mortgage. But most voters think sheriffs should refuse to do so, at least during the current public health crisis. New polling from Data for Progress and The Justice Collaborative Institute shows that most voters oppose physically ejecting people from their homes, sometimes violently, during a pandemic:

- ▶ **66% of respondents agreed** that sheriffs should maintain the same "no eviction" policies from April and May, which is when most places put a halt on evictions.
- ▶ **57% of respondents opposed** the use of SWAT teams and forceful entry to eviction residents.

BACKGROUND

Many scholars and advocates have noted that the eviction process greatly favors the landlord. For example, landlords can bring eviction proceedings and receive a default judgment if the tenant fails to respond; if a landlord fails to respond to a tenant's motion, on the other hand, the court dismisses the case without prejudice, meaning the landlord can simply bring eviction proceedings another day. Amid a pandemic, tenants have much

more to lose than landlords in terms of safety and health, yet tenants lack the legal rights and full force of the law that landlords enjoy. The result is homelessness. [A study of evictions in Kansas City](#) found that from 2006 to 2016, 99% of eviction cases were resolved in favor of the landlord.

Studies from the [Eviction Lab](#) at Princeton University indicate that the net of eviction and eviction filings is cast far beyond official evictions that reach the end of the process. Sheriff and local law enforcement are only involved when the court has ruled and the landlord has asked for a writ (a legal document authorizing the sheriff to enforce the eviction order) to enforce the eviction. Many people are forced or feel compelled to leave before that happens.

The role of sheriffs in the eviction process was intended to be a measure of restraint. Prior to the involvement of law enforcement, landlords simply evicted tenants themselves, which sometimes led to violent confrontations. Indeed, as coronavirus has stopped eviction proceedings, some landlords appear to be using [their own measures](#) to evict people, like changing locks, cutting off utilities, and removing doors.

Involving law enforcement was supposed to add neutrality to the eviction process, to prevent ad hoc self-help measures and ensure that only valid eviction notices are enforced. In reality, though, the process is far from neutral. Sheriffs can use force when evicting people, including battering rams, SWAT teams and armored vehicles. In some places, landlords pay local law enforcement to cooperate and assist in evictions. Even when this conflict of interest is not financial, there are instances where, as with Wedgewood LLC, sheriff deputies have discussed evictions with landlords or otherwise collaborated without extending the same consideration for tenants.

Evictions and Coronavirus

During March and April, local and state governments responded to stay-at-home orders and the consequent economic crisis by [stopping all evictions](#) related to non-payment of rent. In early April the federal CARES Act froze evictions for people living in federal subsidized housing or property backed by federal loans. Many county sheriff departments ceased forcible evictions in response to moratoriums. For example, in [Tucson, Arizona](#), county law enforcement is not enforcing certain eviction orders even though the court is continuing to process them; yet, there remains confusion over when and whether eviction orders are enforceable or stayed.

In other places, sheriffs imposed their own moratoriums, which may or may not stop court proceedings depending on the jurisdiction. Many of these moratoriums are related to the closure of administrative offices and the need to protect the deputies themselves from needlessly interacting with people at close quarters. In 18 states, according to data collected by [Columbia Law School](#), sheriffs had some role in initiating and enacting eviction moratoriums, including stopping the sale of foreclosed properties. In [Denver, Colorado](#), for example, the sheriff's office stopped enforcing evictions due to "current public health and safety circumstances."

But now, despite surging COVID-19 infections across the country, courts are reopening, landlords are clamoring to resume evictions, and sheriffs and their deputies are resuming physical evictions. [Forty percent of states](#) no longer have any restrictions on evictions, according to the BBC. Renters covered by the [CARES Act](#) are still experiencing evictions despite protective laws. (Tenants are still being evicted for reasons other than non-payment of rent throughout the pandemic.) Some sheriff departments, like those

in Fresno and Riverside, are now back to enforcing orders from before the pandemic. In St. Louis, Sheriff Vernon Betts told a reporter that his office was receiving “several hundred calls from landlords” for assistance in evictions despite a moratorium.

Yet for most renters, the dire economic circumstances wrought by the pandemic have not improved. The Urban Institute estimates that about 20% of all renters have had at least one member of their household lose a job in the past two months. According to surveys, at least 1/3 of renters did not pay their May rent on time.

As moratoriums expire, experts say that we’re approaching an “eviction cliff” that could quickly send millions into homelessness. It’s not hard to see why. First, the pandemic’s economic fallout has worsened an existing housing crisis in America, with a large number of renters barely able to afford their rent under the best of conditions. Forty-seven percent of renters before the pandemic were “cost-burdened,” meaning they spent 30% or more of their monthly income on rent.

Second, renters have few options for assistance; there are no national or state-wide rental assistance programs for people who fall temporarily on hard times. When Chicago’s Department of Housing offered \$1,000 for rental assistance in May, over 83,000 people applied for 2,000 spots. Most places are offering no rental assistance, and, even with eviction moratoriums in place, renters are expected to pay back their rent eventually; only Connecticut has a grace period to pay back rent accrued during the pandemic.

Finally, evictions in this economic climate mean that families will become homeless and are unlikely to find another place to live soon. Homeless shelters, always an undesirable option, are now especially dangerous and many aren’t accepting new residents to prevent the spread of

the virus. Many of those evicted are at high risk either because they are families with children or the elderly. Evictions are also disproportionately filed against Black families, especially in the southern U.S.

The Role of Sheriff Discretion

The role of sheriffs in evictions has been little examined because, under the law, sheriffs do not control the eviction process. After a landlord receives a judgment in their favor, they must obtain what in most jurisdictions is called a “writ”—essentially an order to enforce the court’s judgment. Because the sheriff’s role occurs when the eviction has already been court-ordered, sheriff offices can say they are simply enforcing valid court orders. “We’re not the deciders,” as one sheriff said. In Oklahoma, county sheriffs were apologetic when announcing that they must resume evictions. Others, though, are beefing up their eviction units in anticipation of a cascade of evictions.

It is also true that sheriff departments are not always involved in evictions, and that in some cases sheriffs arrive to evict tenants who have already moved out. (There is no centralized way to keep track of how many people are forcibly evicted in a year although many expect the number to increase.)

But forcible evictions and sheriffs’ role in them play a significant part in pushing people out of their homes, and, when conducted like a warzone military raid, present a threat to tenants’ safety and their property. In one Alabama county, where the eviction moratorium was lifted on June 1, the sheriff reports evicting 8 to 10 people a day for unpaid rent. Even without overt force, the repeated presence of law enforcement during an eviction encourages residents to move out rather than face harassment.

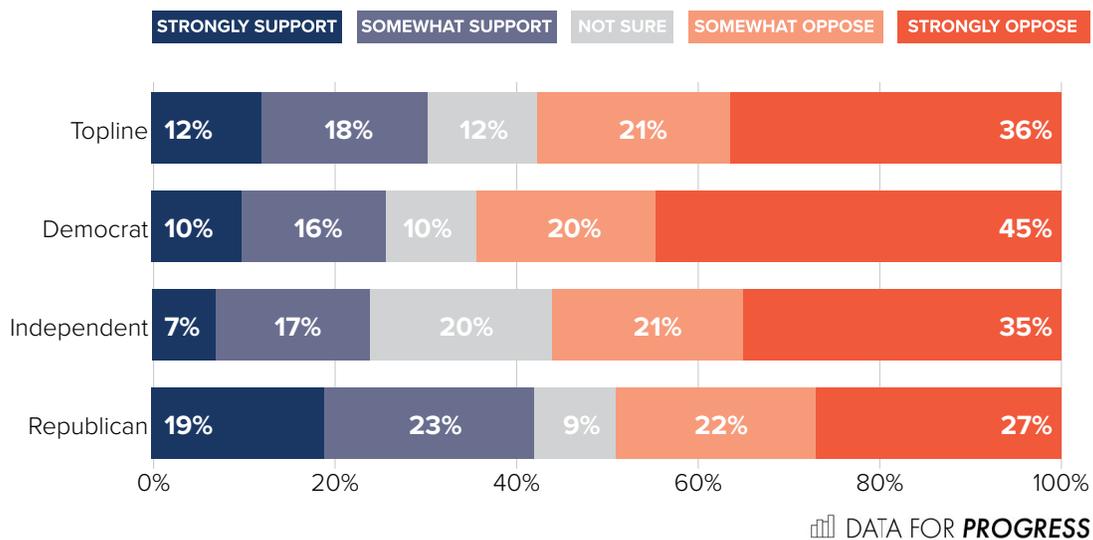
Those subject to evictions by law enforcement face a traumatic departure from their home as well as the loss of their belongings. Further, the presence of increasingly militarized law enforcement can increase chances of injuries, violence, or related arrests for resisting. Finally, during a pandemic, person-to-person interactions are dangerous and encourage the spread of disease, on top of the problem of putting people out of their homes.

While some sheriffs may hide behind court orders, the reality is that they retain more leeway than they might readily admit. There are sheriffs' officers around the county who have chosen to place a moratorium on evictions, largely as a safety measure. This is not unprecedented. For example, during the 2008 financial crisis, [Sheriff Tom Dart in Cook County, Illinois](#), refused to enforce foreclosure-related evictions by removing people from their homes. In his press release, Sheriff Dart [said](#), "These mortgage companies

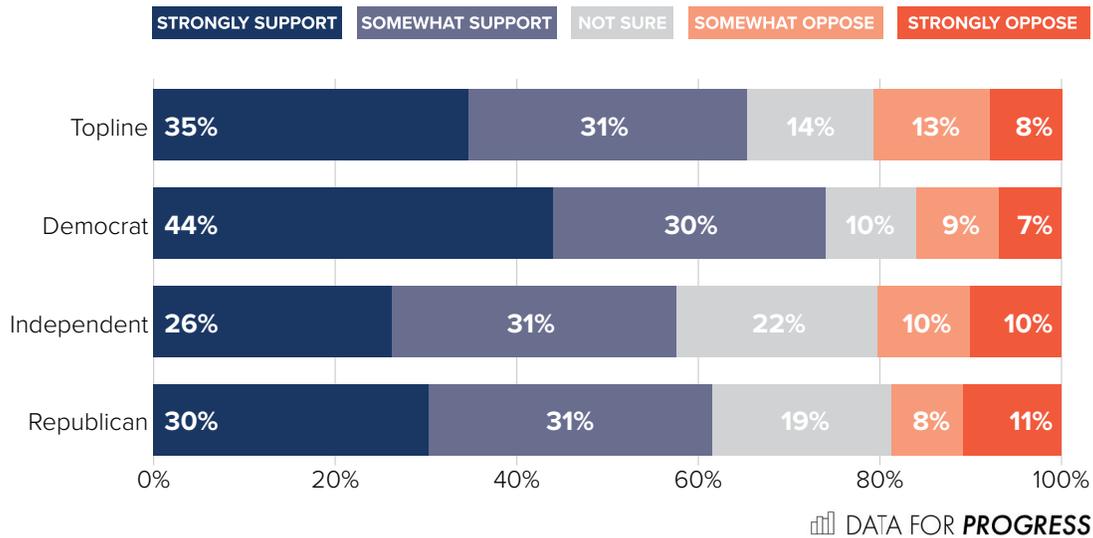
only see pieces of paper, not people, and don't care who's in the building...We're just not going to evict innocent tenants. It stops today." Dart faced lawsuits from the mortgage-holding banks for his actions. Amid the current crisis, local sheriffs could take a similar approach to renters facing eviction because of the coronavirus.

It's plain that big policy solutions are needed to stop the impending avalanche of evictions experts predict once moratoriums are lifted. There needs to be protections in place for renters as well as government assistance in the form of cash payments for small landlords who face foreclosure. One small piece of the needed change—and one that will save money and decrease police intrusion into people's lives—is for counties to stop using the sheriff's office to forcibly evict people from their homes, particularly in a time of crisis.

Do you support or oppose sheriffs' use of dynamic entry methods to enforce evictions?



Do you support or oppose a pause in evictions until the coronavirus pandemic has subsided?



Polling from Data for Progress shows that most people simply don't want to see forcible evictions from law enforcement.

- ▶ 66% of respondents agreed that sheriffs should maintain the same “no eviction” policies from April and May, which is when most places put a halt on evictions.
- ▶ 57% of respondents opposed the use of SWAT teams and forceful entry to eviction residents.

CONCLUSION

As a practical matter, evicting families, especially the elderly and children, is especially cruel in the middle of a health and financial crisis. Authorities know that putting people out of their homes—particularly in a moment when few other shelter options are available or safe—is creating a high risk of viral spread and will hamper the economy even longer. It is hard for people to stay healthy and get back on their feet when they have lost the roof over their heads.

COVER PHOTO
iStockPhoto

In this moment where both urban and rural communities are demanding less law enforcement in their lives, removing sheriffs and deputies from eviction proceedings is one way to decrease the ever-broadening mandate of law enforcement into the civil realm. Failure to pay rent is not a crime, and people who cannot afford housing—through no fault of their own—should not suffer the indignity of being ousted by armed forces.

POLLING METHODOLOGY

From 6/21/2020 to 6/22/2020 Data for Progress conducted a survey of 1,353 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is $\hat{\pm}$ 2.7 percent.