

DEPARTMENT OF JUSTICE
POLICE MISCONDUCT
PATTERN OR PRACTICE PROGRAM

1. What are the primary sources of DOJ's authority to address a pattern or practice of police misconduct?

- **The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14141 ("Section 14141")**, authorizes the Attorney General to conduct investigations and, if warranted, file civil litigation to eliminate a "pattern or practice of conduct by law enforcement officers ... that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." The Attorney General has delegated the authority to enforce this statute to the Civil Rights Division.
- **The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d(c)(3) ("Safe Streets Act")**, authorizes the Attorney General to conduct investigations and, if warranted, file civil litigation to eliminate a pattern or practice of discrimination on the ground of race, color, religion, national origin or sex, in connection with any law enforcement agency that receives financial assistance from DOJ's Office of Justice Programs and the Office of Community Oriented Policing Services (COPS). The Attorney General has delegated the authority to enforce this provision of the Safe Streets Act to the Civil Rights Division.

2. What conduct do the pattern or practice laws make illegal?

- Section 14141 makes unlawful a pattern or practice of violating the United States Constitution or federal law. In doing so, it prohibits law enforcement agencies from regularly violating existing constitutional protections against police misconduct, such as excessive force, false arrests, unreasonable searches or seizures, and intentional racial or ethnic discrimination. It also prohibits agencies from regularly violating existing protections against police misconduct under federal statutes, such as Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (discrimination on the basis of race, color or national origin by recipients of federal financial assistance), the Safe Streets Act (described above), and §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (discrimination on the basis of disability) .
- Section 14141 makes a governmental authority directly responsible for a pattern or practice of unlawful conduct by its law enforcement officers. As a result, a court can order a governmental authority to take actions to eliminate the unlawful pattern or practice.

- The Safe Streets Act prohibits discrimination on the grounds of race, color, religion, national origin, or sex by law enforcement agencies that receive federal financial assistance under the Act from DOJ's Office of Justice Programs and COPS office. Simply stated, all persons must be treated equally without regard to their race, color, religion, national origin or sex. No person may be excluded from participating in, denied the benefits of, or discriminated against in the programs or activities of a law enforcement agency receiving such DOJ financial assistance. In addition, a law enforcement agency must make sure its policies and practices do not have the effect of discriminating on the basis of race, color, religion, national origin or sex.

If a court finds a systemic violation of the Safe Streets Act, the court may order a governmental authority to take actions necessary to "insure the full enjoyment or the rights described in [the Safe Streets Act]." A court also may require the "suspension, termination, or repayment" of Office of Justice Programs or COPS financial assistance or place further assistance in "escrow pending the outcome of the litigation."

3. How does DOJ obtain information about police misconduct?

The Department has received thousands of complaints and referrals asking us to investigate alleged police misconduct. This information comes from a wide variety of sources: individuals; organizations and advocacy groups working on police and civil rights issues; attorneys and parties in civil litigation involving police departments; individual officers or their representatives; prosecutors and criminal defense attorneys; judges; investigative reports regarding police departments by academics, review panels, and journalists; referrals from the FBI or other parts of the Civil Rights Division; inquiries from members of Congress and other federal officials; and requests for a civil rights review from police departments or jurisdictions themselves.

The Special Litigation Section of the Civil Rights Division is charged with reviewing and investigating allegations of a pattern or practice of police misconduct, in coordination with the U.S. Attorneys' offices.

4. Does DOJ investigate every complaint to see if there is a pattern or practice violation?

In our initial review of an allegation of police misconduct, we assess whether the allegation, if proven, would establish a violation of a federal law the Department has authority to enforce. We also assess whether the allegation potentially could constitute a pattern or practice violation.

We are aware that sporadic bad incidents or the actions of the occasional bad officer do not constitute a pattern or practice of misconduct. In fact, most of the complaints we receive involve such individual claims of misconduct by a specific officer or officers. Unless there is information indicating a pattern of misconduct or systemic practices underlying the misconduct, these individual incidents do not fall within our pattern or practice investigation authority. We take no further action and either close the matter or, if appropriate, refer the complaint to the DOJ offices with responsibility for handling these claims. (Individual claims may be investigated to determine if there is a criminal civil rights violation by an individual officer or if there is prohibited discrimination by a recipient of federal financial assistance.)

With regard to allegations that could potentially constitute a pattern or practice, we look to a variety of sources to determine if there is any information that tends to support the allegations. At this stage of an inquiry, we often consult with any complainants or persons who have contacted us and with other Department of Justice components (including the United States Attorney and the FBI), review published reports about lawsuits or other actions involving the police agency, and consult with other persons who may have information about the complaint. This includes organizations and advocacy groups working on police and civil rights issues; attorneys and parties in civil litigation involving police departments; and prosecutors and criminal defense attorneys. If our initial review does not produce evidence tending to support the existence of a pattern or practice violation, we close the matter. In the last several years, the Department has conducted and closed this kind of initial inquiry in approximately twenty jurisdictions.

5. How does DOJ decide which law enforcement agencies to investigate?

If the initial review uncovers information tending to support the existence of a pattern or practice violation, authorization may be sought from the Assistant Attorney General for the Civil Rights Division to conduct a pattern or practice investigation.

Our jurisdiction in this area is still very new, and, up to this point, we have had more credible allegations of a pattern or practice that warrant investigations than we have been able to pursue. We exercise our discretion to prioritize certain investigations or certain types of allegations. In general, we consider a variety of factors, including the seriousness of the alleged misconduct, the type of misconduct alleged, the size and type of law enforcement agency, the amount of detailed, credible information available and the potential precedential impact. So far, our investigations have focused on allegations of excessive force, including associated search and seizure issues, and racial or ethnic discrimination in traffic or pedestrian stops. All types of law enforcement agencies have been investigated: state, urban, suburban and rural. We have investigated both large and small agencies.

6. *Who conducts pattern or practice investigations?*

Attorneys in the Special Litigation Section of the Civil Rights Division, sometimes working together with attorneys in the relevant United States Attorney's office, are responsible for conducting pattern or practice investigations. They are supported by appropriate professional and clerical staff. In addition, we often retain consultants in areas such as police practices, police training, police management and statistical analysis. Our consultants are selected for a specific investigation or case based upon the needs of the particular matter. We seek consultants who have expertise based upon their experience, education, and research or writings, as well as a reputation for fair analysis. On occasion, we also ask the FBI to assist with an investigation.

7. *What does DOJ look at in pattern or practice investigations?*

Our pattern or practice investigations involve a comprehensive evaluation of the agency's policies, procedures and actual practices impacting on the areas in which there are allegations of misconduct. Our investigations include examination of specific incidents that may be pieces of an alleged pattern of misconduct and civil rights violations. In general, we review the following kinds of information:

- ▶ We conduct in-depth interviews with the police command staff, representatives of police labor organizations, persons who believe that they have been subject to police misconduct, lawyers and community leaders who have dealings with the police department, and individual officers.
- ▶ We evaluate the agency's education and training programs and curricula regarding areas involving alleged misconduct. We may attend relevant education and training sessions.
 - ▶ We review the agency's written policies and practices, as well as any systems for reporting or otherwise memorializing specific officer actions in the areas of alleged misconduct. We review implementation of these systems.
- ▶ We review the agency's systems for monitoring and supervising officers, including any procedures and systems to inform supervisors of officer actions in areas of alleged misconduct. We also review any procedures and systems providing for supervisory feedback to officers on the propriety of such actions. We review implementation of these procedures and systems.
- ▶ We analyze the agency's formal procedures and actual practices for receiving, investigating, and adjudicating citizen complaints. We also assess the agency's records regarding how complaints are adjudicated and whether and to what extent discipline is imposed or non-disciplinary corrective action is taken in

appropriate cases.

8. Does DOJ consider the views of rank and file officers and their collective bargaining representatives during pattern or practice investigations?

In our pattern or practice investigations we try to consult with and take into account the views of all affected parties. We have learned from experience that it is important to establish lines of communication with representatives of rank and file officers early on in our investigations. Our current policy and practice is to contact and attempt to meet with union or collective bargaining representatives at the beginning of a pattern or practice investigation. We offer to explain the general purpose and structure of the planned investigation and answer questions about our pattern or practice program. At the initial meeting, and throughout the investigation, we seek out the views and input of both the representatives and the officers they represent regarding the subject matter of our investigation. We welcome the opportunity to hear the perspective of rank and file officers at any time, and in one investigation, the union published our office phone number in its newsletter. Throughout our investigations, we maintain an open door policy and periodically contact union representatives to update them on the status of the investigation.

At the end of our investigation, if we find a pattern or practice violation, we notify the jurisdiction and then work with jurisdiction officials to ensure that rank and file representatives are informed about our findings. As the matter progresses into settlement negotiations or contested litigation, we continue to maintain contact and encourage discussions with representatives of the rank and file, to the extent possible in light of state and local law, collective bargaining agreements, the sometimes delicate or tense state of labor relations, litigation rule constraints and other external factors.

9. How long does a pattern or practice investigation last?

We aim to complete our pattern or practice investigations within one and one-half years from the time they are begun. However, a variety of factors influence our ability to meet this goal.

- ▶ First, the type and complexity of allegations involved in the investigation has a significant influence on how long it takes. Our pattern or practice investigations usually involve claims in one or more the following categories: 1) officers regularly use excessive force (including deadly force such as shootings) against citizens; 2) officers have a pattern of falsely arresting or bringing false charges against citizens; 3) officers regularly engage in illegal searches or seizures; and 4) officers illegally use race or national origin as a basis for stopping or searching motorists or pedestrians. When more than one type of misconduct is alleged, it can extend the period of time needed to complete a thorough investigation. In addition, we have found that allegations of systemic misconduct in very large police departments may require more resources and

more time to investigate than concerns about small and medium size departments.

- ▶ Second, the degree of cooperation that we receive from the jurisdiction, police agency, and, in some cases, police union, is a significant factor. Where jurisdictions provide us with prompt responses to requests for information and access, that is a significant factor in allowing us to expedite our investigation; on the other hand, where jurisdictions delay in providing information, that can extend considerably the length of the investigation.
- ▶ Third, during the course of a pattern or practice investigation, agencies sometimes begin implementation of significant reform efforts aimed at addressing the civil rights concerns that prompted our investigation. This may lead us to explore with the agency the option of extending our investigation while we monitor the reform efforts, rather than proceeding to complete our investigation based upon the agency's past practices.
- ▶ Fourth, the nature and quality of an agency's records may impact on the length of an investigation. For example, if an agency does not have a record-keeping system that allows the agency or us to identify and review only those files and documents that are pertinent to the issues we are investigating, we may be forced to broaden the scope of our review to ensure that we include those records that are directly relevant. This broader scope, in turn, may extend the time needed to complete our investigation.
- ▶ Fifth, if there are criminal investigations ongoing into any incidents that are also a part of our civil investigation, we generally defer to the criminal investigation and allow that to be completed before we begin our review of the particular incidents.
- ▶ Finally, the resources within the Special Litigation Section can impact on the length of an investigation. For example, when the lawyers assigned to an investigation need to handle an emergency or other significant matter on one of their other assignments, this can hamper our ability to swiftly conclude the investigation. This is becoming less of a factor, given the additional staff our police integrity program has gained in the FY 2000 budget.

10. If DOJ opens a pattern or practice investigation and concludes that there isn't a violation or that litigation isn't warranted, do you notify the police department?

If we have notified a police department that we have opened a pattern or practice investigation, we notify the department of the outcome of the investigation.

11. How many pattern or practice investigations does DOJ have right now?

As of October 31, 2001, pattern or practice investigations of 13 agencies are ongoing. In general we do not announce the initiation of a pattern or practice investigation; however, the jurisdictions we are investigating often make that information public, particularly where the jurisdiction has requested the investigation. Our investigations in the following jurisdictions are public: Buffalo, NY; Charleston, WV; Cincinnati, OH; Cleveland, OH; Detroit, MI; Eastpointe, MI; New Orleans, LA; New York City, NY (two investigations: one regarding use of force, one regarding the street crimes unit and stop and frisk practices); Prince George's County, MD; Riverside, CA; and Tulsa, OK.

12. How does DOJ decide whether to file a pattern or practice lawsuit?

In determining whether a civil action is warranted, we evaluate whether the available information demonstrates patterns of illegal conduct by agency officers or illegal policies and practices by the agency. As the Supreme Court has said in the employment discrimination context, a pattern or practice violation exists when police misconduct is the agency's "standard operating procedure — the regular, rather than the unusual practice." International Brotherhood of Teamsters v. United States, 431 U.S. 324, 336 (1977). A lawsuit must be authorized by the Assistant Attorney General for the Civil Rights Division. If a lawsuit is authorized, we notify the governmental authority of our determination and findings, and offer the governmental authority the opportunity to resolve our concerns without contested litigation. In determining whether a court-ordered remedy is necessary, we assess the nature and scope of the violation; the time it will take to correct the violation; and the willingness and capacity for the agency to make the necessary changes. We will litigate a pattern or practice claim only if we are unable to negotiate a consensual resolution of the problems we identify.

13. How many pattern or practice investigations have resulted in settlements or cases?

As of October 31, 2001, we have negotiated settlements of six pattern or practice investigations: four have been resolved through consent decrees (court orders) and two

have been resolved through settlement agreements (contracts that are court enforceable). (Copies are available on www.usdoj.gov/crt/split.) These settlements provide models of the kind of practices that law enforcement agencies can adopt to guard against a pattern or practice of misconduct. We have filed only one case without a settlement.

The settlements cover the following agencies: Pittsburgh Bureau of Police, PA (consent decree, 1997); Steubenville Police Department, OH (consent decree, 1997); New Jersey State Police (consent decree, 1999); Los Angeles Police Department, CA (consent decree, 2001); District of Columbia Metropolitan Police Department (settlement agreement, 2001); Highland Park Police Department, IL (settlement agreement, 2001). In addition, we reached a settlement of an administrative investigation under Title VI and the Safe Streets Act with the Montgomery County Police Department, MD (settlement agreement, 2000).

After we were unable to resolve our claims against Columbus, Ohio, we filed our complaint involving claims of excessive force, false arrest and improper searches and seizures in 1999. The litigation is ongoing.

14. How does a law enforcement agency avoid a pattern or practice investigation — or at least avoid a lawsuit?

The Civil Rights Division has found that law enforcement agencies that have designed, implemented and enforced an effective program to prevent, detect, and ensure accountability for incidents of misconduct and other civil rights violations are unlikely to violate the pattern or practice statutes. The Department of Justice has helped focus attention on these issues through the publication in January 2001 of a guide to “Principles for Promoting Police Integrity” with examples of promising police practices and policies (www.ojp.usdoj.gov/lawenforcement/policeintegrity). We recognize that law enforcement agencies differ in responsibilities, size and structure, as well as in the communities they serve. We encourage thoughtful creativity in the design and implementation of accountability systems addressed to the needs of a particular agency. Still, we have found some common denominators, which are reflected in our settlements with the District of Columbia, Los Angeles, New Jersey, Pittsburgh and Steubenville. The interlocking steps to ensure accountability for civil rights violations may include the following:

- The agency has a widely known and understood philosophy that fighting crime and protecting civilians’ rights are compatible and equally important aspects of the agency’s mission.
- The agency has easily understood policies and procedures governing the various kinds of interactions with civilians and all uses of force (broadly defined).

- ▶ These policies include clear prohibitions on discrimination on the basis of race, gender, religion, ethnicity or national origin.
- The agency mandates that all law enforcement personnel receive clear and thorough education initially and periodically thereafter:
 - ▶ to explain non-discrimination, use of force and other citizen interaction policies;
 - ▶ to assess whether the content of these policies has been absorbed; and
 - ▶ to re-assess from time to time to ensure that the policies continue to be understood by all who implement them.
- The agency provides well-designed and well-taught initial and follow-up training in the skills, techniques, tactics, and strategy necessary to implement these policies.
- The agency provides appropriate levels and types of supervision and support for personnel in the field.
- The agency collects and retains detailed data on its performance. Specifically, the agency has an effective means of analyzing, through written reports or otherwise, police activity that can give rise to civil rights abuses, such as uses of force, traffic and pedestrian stops, post-stop searches, and arrests. These data are subject to meaningful, periodic auditing, assessment, and appraisal.
- The agency has effective systems of accountability for identification and control of police misconduct and civil rights violations built upon:
 - ▶ appropriate requirements that officers must report any illegal actions by other officers, including use of excessive force or discriminatory police practices, and protections against retaliation for officers who do so;
 - ▶ appropriate systems for regular, independent auditing of police activity, such as use of force, warrantless searches and other interactions with citizens possibly giving rise to civil rights abuses;
 - ▶ a data management system, sometimes called an “early warning” system, which contains an array of information about officer or unit performance including uses of force and citizen interactions by all officers. The system is used on a regular basis by supervisors and managers to

identify and remedy potential problem practices, officers or units;

- ▶ an array of timely non-disciplinary, corrective steps to remedy any incipient problems or deficiencies in performance, policy, strategy, or tactics;
- ▶ systems, including regular, meaningful performance evaluations, for holding accountable all relevant personnel throughout the command structure for compliance with use of force and other civil rights-related policies; and
- ▶ timely and effective imposition of discipline, when warranted.

· The agency has well-publicized complaint reporting systems that allow civilians and officers to report claims of inappropriate law enforcement conduct. Such systems should be easily accessible to all civilians and officers, including officers who fear reprisal and civilians who are fearful of going into the police station to make a complaint.

· The agency or jurisdiction has an office or unit with established procedures and sufficient authority to ensure thorough investigation and unbiased adjudication of both citizen and internal complaints.

▶ The investigation process should avoid reliance on chain of command investigations for complaints regarding excessive use of force, discrimination, or other civil rights violations.

▶ The investigation process should ensure that the individual supervising the complaint investigation process is sufficiently high-level to ensure both the integrity of the process and that appropriate action is taken on meritorious complaints.

▶ The agency should cooperate fully with investigations by authorized non-agency, civilian entities, as well as criminal investigations by local or federal prosecutors.

· The agency has in place a system that ensures appropriate discipline for officers who use excessive force or discriminatory police practices, officers who observe such illegal actions but fail to report them, and supervisors who fail in their duty to detect and report such misconduct.

· The agency has in place a program to ensure wide public dissemination of the agency's policies and procedures governing non-discrimination, interactions with citizens, intake, investigation and resolution of citizen complaints and commendations. Such a program should ensure significant and effective

outreach to the entire community served by the agency, including segments of the community comprised primarily of members of racial or ethnic minority groups.

15. *What other authority does DOJ have to address police misconduct ?*

· Criminal Enforcement

We enforce laws that make it a crime for one or more persons acting under color of law willfully to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States. 18 U.S.C. §§ 241, 242. “Color of law” simply means that the person doing the act is using power given to him or her by a governmental agency (local, state or federal). A law enforcement officer acts “under color of law” even if he or she is exceeding his or her rightful power. The types of law enforcement misconduct covered include excessive force, sexual assault, willful deprivation of property, or the intentional fabrication of evidence resulting in a loss of liberty to another. Violations of these laws are punishable by fine and/or imprisonment.

These criminal laws are enforced by the Criminal Section of the Civil Rights Division and the United States Attorneys’ offices.

· Administrative Enforcement of Title VI and Safe Streets Act

Under Title VI of the Civil Rights Act of 1964, the Safe Streets Act, we have the authority to conduct administrative investigations of complaints of discrimination by a law enforcement agency that receives federal financial assistance from the Department of Justice. Together these laws prohibit discrimination on the basis of race, color, religion, national origin or sex. These laws prohibit both individual instances and patterns or practices of discriminatory misconduct. They do not cover complaints of excessive force or police misconduct based on something other than race, color, national origin, sex, or religion. In addition, we can only investigate complaints under these laws against law enforcement agencies that receive federal financial assistance.

For those complaints that fall within our administrative jurisdiction, we send a written request for documents and data to the recipient agency regarding aspects of the agency’s policies, procedures and practices related to the discrimination claim. We may also request information regarding training, monitoring and supervision, and citizen complaint procedures and practices related to the claims of discrimination. We then assess the information we receive in response to this request.

Our administrative investigations also often involve a site visit to the recipient agency. During site visits we interview agency personnel, the complainant and possibly others with relevant information, as well as reviewing additional agency documents and data. As in all of our pattern or practice investigations, we often

provide informal feedback to the recipient agency during the investigation process. In several cases, we have been able to obtain constructive change by providing suggestions for reform to an agency even though the issues presented did not rise to the level of a violation.

If appropriate, information obtained in an administrative investigation revealing a pattern or practice of misconduct may be considered in determining whether litigation is warranted under the pattern or practice provisions of §14141 or the Safe Streets Act.

When we complete an administrative investigation and reach findings that support the claims of discrimination, we try to reach a settlement agreement with the recipient agency to remedy the violations. We seek to change the policies and procedures of the agency and may seek individual relief for the victims in appropriate cases. If we are unable to reach an agreement, we can make administrative findings that ultimately may lead to suspension, termination or repayment of federal financial assistance.

Recently, an administrative investigation has resulted in a written settlement agreement changing the policies and practices of the police department. Our January 2000 agreement with the Montgomery County, Maryland, resolves claims of racially discriminatory traffic enforcement, instances of racial harassment, and problematic civilian complaint procedures. That agreement requires implementation of a system of traffic stop data collection and analysis, and improved complaint procedures and training. In another administrative investigation, we issued a letter outlining our concerns and recommendations to the Tacoma, Washington, Police Department. As a result, that agency has implemented significant policy, procedural, and management improvements.

Administrative investigations under Title VI and the Safe Streets Act are generally conducted by the Civil Rights Division's Coordination and Review Section and the Office of Justice Programs' Office for Civil Rights.

Disability Rights Enforcement

The Americans with Disabilities Act (ADA), which applies to all State and local governments, prohibits discrimination against people with disabilities because of their disabilities; requires that buildings for which construction or alterations were begun after January 26, 1992, be constructed or altered so that they are accessible to persons with mobility disabilities; requires effective communication with persons with hearing, vision, or speech disabilities; and requires that each program, service, or activity of a public entity, when viewed in its entirety, be readily accessible to and usable by persons with disabilities. Section 504 of the Rehabilitation Act applies essentially these same requirements to any program or activity that receives Federal financial assistance.

Law enforcement misconduct that is covered by these acts includes various types of discrimination against people with physical or mental disabilities because of their disabilities. Some examples would be unnecessary restraint or segregation of persons with mental disabilities; failure to provide sign language interpreters when interrogating persons who are deaf; refusal to allow the use of medically prescribed wheelchairs, prosthetic devices, braces, canes, or crutches where they do not pose a security risk; and refusal to allow prescribed medication or medical treatment.

These laws are enforced by the Disability Rights Section of the Civil Rights Division.

16. How does DOJ coordinate its police misconduct enforcement activities?

Under the Civil Rights Division's Police Misconduct Initiative, launched in 1995, the various DOJ offices responsible for enforcing laws that prohibit police misconduct coordinate their investigation and enforcement efforts, where appropriate. For example, a complaint received by one office will be referred to another if necessary to address the allegations. In addition, more than one office may investigate the same complaint if the allegations raise issues covered by more than one statute. (The Police Misconduct Initiative is Co-Chaired by the Chiefs of the Criminal Section (Albert N. Moskowitz) and the Special Litigation Section (Steven H. Rosenbaum)).