



The Research Bureau

## Bureau Brief—Department of Justice Pattern-or-Practice Investigations

On November 15, 2022, the Civil Rights Division of the Department of Justice and the Office of U.S. Attorney for Massachusetts Rachel S. Rollins announced the start of a “Pattern-or-Practice” investigation of the Worcester Police Department.

This brief serves as a primer for:

- 1) The history of the 78 pattern-or-practice investigations under 34 U.S.C. § 12601, including information about when, where, and whether those investigations have been resolved.
- 2) The process of those investigations, including what the Department of Justice examines during its investigation, as well as the procedure for concluding them.
- 3) The outcomes that have come from previous investigations, including 22 memoranda of understanding, 21 consent decrees, 16 resolutions through technical assistance letters or private litigation, and 10 cases closed without any findings or agreements.

This brief does not make any conjectures about what prompted the Department of Justice investigation, but rather aims to educate the public about what we know about the process, its potential length, and the types of outcomes that may come from it.

On November 15, 2022 the U.S. Department of Justice (DOJ) and the office of U.S. Attorney for Massachusetts Rachael S. Rollins announced a “pattern-or-practice” investigation into the Worcester Police Department. This investigation, begun under the authority of the Violent Crime Control and Law Enforcement Act of 1994 (34 U.S.C. § 12601), is, according to the Department of Justice, aimed at determining whether the Worcester Police Department “engages in a pattern or practice of excessive force or engages in discriminatory policing based on race or sex.” The investigation itself will “include a comprehensive review of policies, procedures, trainings, investigatory files and data. The investigation will also include a review of WPD’s systems of accountability, including its systems to address misconduct complaints and discipline. The department will also evaluate how WPD officers interact with the public, collect evidence, and complete investigations.” The particular reasons that sparked the investigation are not known at this time. It should be noted that this investigation, and other investigations under the authority granted by 34 U.S.C. § 12601 (formerly 42 U.S.C. § 14141), is civil in nature, not criminal, the goal of which is institutional reform of the Department, not any individual Police Officer.

This brief explains several topics: the nature, history, and process of “pattern-or-practice”

investigations, based on past investigations conducted by the Department of Justice.

### “Pattern-Or-Practice” - A Primer

“Pattern-or-practice” investigations stem from the 1994 Violent Crime and Law Enforcement Act. There are two relevant subsections of the larger law: 34 U.S.C. § 12601(a) states simply that “it shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States” (34 U.S.C. § 12601(a)). The second clause empowers the Attorney General to, in a civil action, “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice” (34 U.S.C. § 12601(b)). These subsections allow for civil investigations into law enforcement agencies. The DOJ emphasizes in its own 2017 history of pattern-or-practice investigations that “the focus of a pattern-or-practice case is on systemic reform of widespread police practices and institutional change within police departments, not addressing isolated or sporadic

instances of police misconduct" (DOJ 2017, 8). Preliminary investigations (i.e., gathering data) are conducted before opening an official Section 12601 case; in some cases, the DOJ has said that it will refer the law enforcement agency to other government programs meant to remedy potential unconstitutional conduct rather than open an official 12601 case.

Beginning a Section 12601 investigation indicates that the DOJ suspects, but is uncertain, that a pattern or practice of unconstitutional conduct may exist in a law enforcement agency. Historically, investigations have focused on violations of the Fourth, Fifth, and Fourteenth Amendments, but any evidence of unconstitutional conduct may be cause for the DOJ to begin an investigation (Anderson 2020, 2). The Civil Rights Division of the Department of Justice, Special Litigation Section, under the Assistant Attorney General for Civil Rights, begins and carries out these investigations. Pattern-or-practice investigations are conducted out of the DOJ's D.C. office, with assistance if necessary from the local U.S. Attorney for the jurisdiction in question; however, the D.C. office initiates and conducts the bulk of the

investigation. In the case of Worcester, U.S. Attorney Rollins has indicated that the preliminary investigation into WPD began before her own confirmation as U.S. Attorney.

In the nearly 30 years since the DOJ was empowered to pursue these investigations, it has performed 78 investigations of 74 law enforcement agencies, out of more than 18,000 across the United States. The Worcester Police Department is the second Massachusetts police department to face such an investigation; the DOJ previously investigated the Narcotics Division of the Springfield Police Department beginning in 2018, and announced a resolution to that investigation in April 2022. See page four for an explanation of events in Springfield.

#### *How Do Investigations Proceed?*

Pattern-or-Practice investigations have historically proceeded over an extended period, focused on data collection and analysis. Table 2 shows, in months, the average and median times of different stages of the investigations. The amount, accessibility, and availability of data to be collected affects the speed of the investigation.

**Table 1: Presidential Administrations and Investigations**

	Investigation Started	Findings Announced	Reforms Begun
Bill Clinton	24	6	4
George W. Bush	21	21	11
Barack Obama	24	30	24
Donald J. Trump	1	1	3
Joseph Biden	8	1	1
<b>Total</b>	<b>78</b>	<b>59</b>	<b>43</b>

Source: Department of Justice, Civil Rights Division; Civil Rights Litigation Clearinghouse; PBS Frontline. "Investigation Started" refers to the Administration which began the investigation. "Findings Announced" refers to which Administration any findings were announced, including results other than consent decrees or MOAs/MOUs. "Reforms begun" refers to the date in which a consent decree or MOA/MOU was agreed upon or went into effect, but does not include technical assistance letters or other non-DOJ linked results. These reforms may start under different Administrations than the investigations began under.

**Table 2: Time (in Months) of Investigation Periods**

	From Start to Announcement of Findings	From Announcement of Findings to Consent Decree, Settlement Agreement, or other Results Reached	From Results to Case Officially Closed	From Investigation Start to Case Officially Closed
Average	26	15	62	82
Median	20	11	59	74

Source: Department of Justice, Civil Rights Division; Civil Rights Litigation Clearinghouse; PBS Frontline. "Case Officially Closed" columns do not include reform agreements that are currently ongoing.

The amount of data to be collected is enormous. In addition to collecting all the data available on everyday law enforcement activities—including case files and incident reports—and overall organizational policies, the DOJ notes in its 2017 report that it needs to conduct a wide variety of on-the-ground interviews: with public officials; with officers, supervisors, and command staff; with associated organizations like Police Unions; and with other community groups. These interviews may themselves take a substantial amount of time, based on the number of stakeholders involved and interest in the case.

Investigations may also run into issues of accessibility and availability of data. The Congressional Research Service noted in a 2020 report that a number of legal, administrative, and institutional barriers may exist while gathering data. For example, the data that exists, whether at the law enforcement agency itself or with the Federal Bureau of Justice Statistics, may sometimes be unreliable for any number of reasons, including poor data management, outdated collection systems, or local rules about what can and cannot be reported. For example, some law enforcement agencies have not kept complete electronic records for every incident, relying instead on paper—impeding the DOJ’s ability to collect that information in a timely manner. State laws or other local regulations, including civil service laws and collective

bargaining agreements related to police conduct, may also slow down DOJ investigations (Anderson 2020, 3).

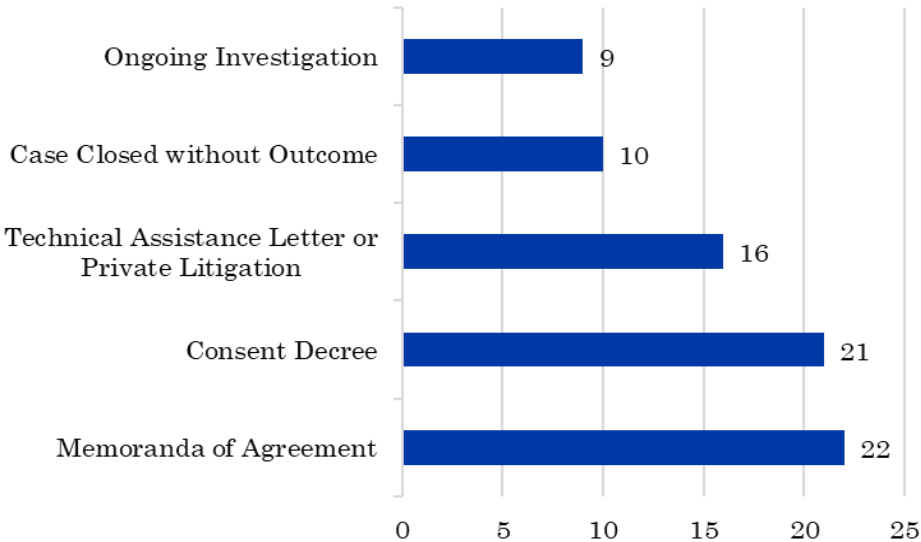
In any case, in communities in which there are investigations one thing is certain: they will take time. The sheer number of interviews to be done, the data to be collected and sifted through, and the analysis that comes after the fact will not be finished quickly, in Worcester or anywhere else.

### What Happens After an Investigation?

At the end of its investigation, the DOJ will either report that there is no evidence of a pattern-or-practice of unconstitutional conduct, or it will send its findings to the law enforcement agency and why it believes that agency has exhibited a pattern-or-practice of unconstitutional conduct. At that point, the DOJ solicits input from community stakeholders, including from within the law enforcement agency itself, and policing experts, to determine how best to craft a reform agreement.

Reform agreements generally take one of two forms: a Memorandum of Agreement (or Understanding), or a Court-enforced Consent Decree. The path taken here depends on the investigation’s process, the reforms determined to

Chart 1: Investigation Outcomes Since 1996



Source: Department of Justice, Civil Rights Division; Civil Rights Litigation Clearinghouse; PBS Frontline

be necessary, and the likelihood of compliance—but of course there are plenty of factors that determine how reform agreements are shaped. Memoranda of Agreement require law enforcement agencies to make changes to institutional conduct within a certain period of time, but do not *generally* require an independent monitor to track their progress. Consent Decrees, on the other hand, are created with the oversight of a third party—the local Federal Court—and require an independent monitor outside of the law enforcement agency empowered to track and report on the agency’s progress. According to the DOJ’s own 2017 report, both types of reform increasingly include data-based metrics for the law enforcement agency to meet.

Consent Decrees and MOAs are not the only possible results to these investigations. When the investigation finds that there may be some evidence of unconstitutional conduct, but not enough to establish a pattern-or-practice of it, the DOJ has issued “technical assistance letters” to help law enforcement agencies avoid establishing a pattern-or-practice of misconduct. There have been other instances where concurrent, though unrelated, private litigation has led to broad reform agreements (whether MOAs or Consent Decrees); in some of these cases, the DOJ either ended its own investigation or joined with those agreements.

Reform agreements can cover wide ground. For example, they may require rewriting use-of-force policies. Reform agreements may require community outreach plans from the agency. Agencies may need to implement so-called “Early Intervention Systems” or new video technology into their data collection programs. Some law enforcement agencies have been ordered to provide health and wellness support to police officers as well. The DOJ describes all of these elements, and more, at length in its own report on these investigations (DOJ 2017, 20-34).

Finally, like the investigations themselves, institutional reform may take time. Law enforcement agencies may have to work towards implementing these agreements for years. As shown on Table 2, the average amount of time spent implementing any reforms was 62 months, or 5.2 years, and the median amount of time was 59 months, or 4.9 years.

## Conclusions

The specific details of the investigation announced on November 15, 2022 remain unclear. How the Special Litigation Section of the DOJ decides to investigate any particular police department is unknown; the details regarding the opening and process of this 34 U.S.C. § 12601 investigation of the Worcester Police Department similarly remain unknown. It should be stressed,

## What Happened in Springfield?

On April 13, 2018, the Civil Rights Division of the DOJ announced an investigation into the Springfield Police Department’s Narcotics Bureau. Subsequently, on July 8, 2020, the DOJ released its findings that the Narcotics Bureau exhibited a “pattern-or-practice of excessive force in violation of the Fourth Amendment” (DOJ 2020, 2).

The investigatory process was apparently thorough. The DOJ claims that it:

- Interviewed and spoke with hundreds of people across the Department and the community at large (DOJ 2020, 3).
- Reviewed more than 114,000 pages of report files, policies, internal investigations, and arrest and use-of-force reports (DOJ 2020, 8-9).

On April 13, 2022 the DOJ, the Springfield Police Department, and the U.S. District Court for the District of Massachusetts announced a “Settlement Agreement” that would apply to the entire Department (though there was no finding that any Division outside of Narcotics had exhibited a pattern-or-practice of unconstitutional conduct). The agreement focused on policies and training related to use-of-force, the focus of the investigation. On August 30, 2022, O’Toole Associates LLC was announced as the independent compliance evaluator hired to monitor the Settlement Agreement’s implementation, which will be done over the course of four years.

however, that we know that the DOJ did not open this civil investigation on any particular police officer or division within the Worcester Police Department, but, rather the Department as a whole—and as a civil, not criminal, matter.

Past history tells us that these investigations will take a significant amount of time. The Worcester community cannot expect this investigation to end within a few months. The Special Litigation Section must conduct a wide variety of interviews of members of the law enforcement agency, organizations connected to the agency, local public officials, individual community members and community groups, on top of sifting through incident reports, news coverage, and any other data that it may find relevant to the investigation.

Once the investigation is over, if the DOJ determines that there has been a pattern-or-practice of unconstitutional conduct, implementation of any agreements may last years. No matter the ultimate outcome, the Department of Justice's announcement on November 15 is just the beginning of a very long investigatory process in Worcester.

### Sources

- Anderson, April J. 2020. "Reforming Patterns of Unconstitutional Policing: Enforcement of 34 U.S.C. § 12601," 5. Washington, D.C.: Congressional Research Service.
- Civil Rights Litigation Clearinghouse. 2022. Civil Rights Litigation Clearinghouse. <https://clearinghouse.net/>.
- Department of Justice. 2020. "Investigation of the Springfield, Massachusetts Police Department's Narcotics Bureau," 28. Washington, D.C.: Department of Justice, Civil Rights Division.
- Department of Justice. 2017. "The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present," 55. Washington, D.C.: Department of Justice.
- Frontline. 2020. "Fixing the Force." PBS Frontline. June 1, 2020. <https://www.pbs.org/wgbh/frontline/interactive/fixingtheforce/>.