



Oversight Model: Pattern-or-Practice Investigations

Pattern-or-practice investigations are an important but infrequently used tool for law enforcement accountability. Although originating at the federal level, state pattern-or-practice investigations are a viable and valuable use of state attorney general authority. States interested in pursuing pattern-or-practice investigations (and the accompanying state attorney general authority) can benefit from the statutory and implementation groundwork laid by other states that were early adopters of this approach.

Pattern-or-practice authority is beneficial for several reasons. First, more civil rights enforcement is better. State pattern-or-practice investigations allow states to add their resources to the pool of civil rights responders monitoring the thousands of law enforcement agencies across the country, rather than relying solely on necessarily limited federal intervention. Second, state residents gain more direct accountability and control when their duly elected state leaders, as opposed to unelected federal agency appointees, wield this powerful investigative and accountability tool. And third, state pattern-or-practice authority affords a more reliable way to remedy civil rights violations as compared to federal use of this tool, which has varied markedly in seemingly politically dependent ways.

Federal Origins and State Statutory Models for Pattern-or-Practice Authority

Pattern-or-practice investigation authority originated at the federal level when Congress passed the Violent Crime Control and Law Enforcement Act of 1994.¹ It remains primarily a federal tool utilized by the federal Department of Justice, but several states have authorized state level pattern-or-practice authority, which provides the statutory framework for others interested in following suit. Federal pattern-or-practice language can be found in 34 U.S.C. 12601 and provides the foundation for most state statutory authority. Section 12601(a) states:

“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

¹ H.R.3355 - 103rd Cong. (1994): Violent Crime Control and Law Enforcement Act of 1994. <https://www.congress.gov/bill/103rd-congress/house-bill/3355/text>.

the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”

In 2000, California became the first state to authorize state pattern-or-practice authority and vested the authority to investigate allegations of pattern-or-practice discrimination with the state attorney general.² Since then, Illinois, Nevada, Colorado, Massachusetts, and Virginia have followed suit, with the language of Section 12601 offering a guideline for elements to include.³

State pattern-or-practice laws share the same core purpose as the federal law—to uncover systemic rights violations and provide remedies for redress—and thus typically share the same core statutory elements: 1) language prohibiting an agency, agent, or authority of the state from engaging in Constitutional violations; 2) language requiring the alleged violations to occur more than once, i.e. a pattern or practice of behavior;⁴ and 3) language asserting authority to investigate allegations of violations of the state or federal Constitution.

These three elements are the bedrock of pattern-or-practice statutory language, on which states have embellished. For example, Virginia added a novel accountability mechanism that allows the state attorney general to seek court-enforced removal of funding from any locality that fails to comply with a settlement agreement entered after the investigation’s findings. Virginia’s language is an example of the ways in which the federal template serves as a statutory floor, not a ceiling, indicating ways states can surpass federal attempts to remedy systemic Constitutional violations.

In Nevada, where state pattern-or-practice authority was enacted in 2022, the statute not only grants the state attorney general the authority to investigate pattern-or-practice allegations against state law enforcement agencies but also obligates the attorney general’s office to open itself to federal investigation, imposing an affirmative duty on the office to cooperate in any federal investigations alleging systemic misconduct by the Nevada Office of Attorney General. This “what’s good for the goose is good for the gander” approach was helpful in overcoming political objections to the proposed legislation from those who feared overreach and misuse of the authority.

² Chandler Hall, *The Facts on Pattern-or-Practice Investigations*. Center for American Progress, (July 8, 2021), <https://www.americanprogress.org/article/facts-pattern-practice-investigations/>.

³ Notably, some states have used other mechanisms to initiate pattern-or-practice investigations, like anti-discrimination laws and *parens patriae* authority in New York by and plenary law enforcement oversight powers in New Jersey but lack express authority to bring pattern-or-practice causes of action. *New York v. Town of Wallkill*, No. 01-Civ-0364 (CM), 2001 U.S. Dist. LEXIS 13364, at*22 (S.D.N.Y. Mar. 16, 2001); “Law Enforcement Legislation - Significant Trends 2022.” *National Conference of State Legislatures*, (Aug. 22, 2022), <https://www.ncsl.org/civil-and-criminal-justice/law-enforcement-legislation-significant-trends-2022>.

⁴ April J Anderson, Cong. Rsch. Serv., LSB10494, Reforming Patterns of Unconstitutional Policing: Enforcement of 34. U.S.C. § 12601 (Jun. 15, 2020), <https://www.congress.gov/crs-product/LSB10494>.

Nevada's statute also grants the state attorney general subpoena power to compel the production of witnesses, documents, and other evidence related to the investigation. The ability to compel participation in investigations has long been a point of contention for reform advocates and its inclusion in the Nevada statute removes a major barrier to accountability. States seeking pattern-or-practice authority may consider Nevada's and Virginia's laws as examples of statutory addendums that expand and strengthen the federal law.

Federal Resources are Too Limited to be the Sole Initiator of Pattern-or-Practice Investigations

Though these state analogues may resemble federal law in language and function, the impact and importance of state pattern-or-practice statutes as powerful tools in their own right should not be understated.

First, state pattern-or-practice authority allows states to provide greater civil rights protection than the federal government can working alone. With approximately 18,000 law enforcement agencies nationwide, it is impossible for the federal Department of Justice (DOJ) to investigate each agency that merits closer scrutiny. The number of complaints against law enforcement officers and agencies is high. But since 1994, fewer than 100 pattern-or-practice investigations have been launched.⁵ In comparison, according to a 2006 DOJ report, there were over 26,000 complaints of use of force in 2002 alone.⁶ This suggests that, even before the rise of social media and public demands for accountability, the number of complaints greatly outpaced the ability of the federal government to investigate allegations.

State Pattern-or-Practice Investigations Allow States to Respond Directly to the Needs of Residents

Second, state pattern-or-practice authority also allows states to respond more directly to allegations of systemic deprivations of rights in a manner that is responsive to the needs of state residents and un beholden to the considerations that might restrict federal action. To balance the number of complaints with personnel, the Department of Justice created policies that ultimately limit the ability of the department to directly engage with or investigate each complaint received. And these

⁵ US Department of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, (2017), <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/crd-pattern.pdf> ; The White House, *FACT SHEET: The Biden-Harris Administration's Work to Make Our Communities Safer and Advance Effective, Accountable Policing*, (Feb. 7 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/07/fact-sheet-the-biden-harris-administrations-work-to-make-our-communities-safer-and-advance-effective-accountable-policing/>.

⁶ Samuel Walker and Matthew J. Hickman, Bureau of Justice Statistics, *Citizen Complaints about Police Use of Force*, (June 2006), <https://bjs.ojp.gov/content/pub/pdf/ccpuf.pdf>.

policies, while designed to yield findings that have a broader impact (thereby delivering more bang for the buck), limit the likelihood that a substantiated complaint will receive remedies that are directly responsive to the immediate concerns raised. For example, one consideration for initiating federal pattern-or-practice investigations is that the allegations must be emblematic of those facing agencies across the country.⁷ Although a reasonable factor to consider for sending a broadly applicable message on best practices and meting out scarce national resources, this consideration ignores regional variation and can limit local reform.

State pattern-or-practice authority, on the other hand, does not require that allegations be similar to those faced in other states. For instance, states with pattern-or-practice authority have responded directly to public requests for attorney general action and involvement, such as in Golden, Colorado, where a local district attorney filed a formal request for an investigation into the Edgewater Police Department for possible pattern-or-practice violations.⁸ And in Virginia, after the release of footage showing officers from the Windsor Police Department using force against a member of the U.S. Army during a traffic stop, there were swift and immediate demands for investigation.⁹ Then-Attorney General Mark Herring used his newly granted authority to launch the state's first state-led pattern-or-practice investigation to determine if the incident was demonstrative of systemic misconduct within the department, ultimately finding that the police department had systematically deprived individuals of their constitutional rights.¹⁰

State Investigation Counterbalances Inconsistent Federal Application

Finally, state pattern-or-practice investigations are necessary as federal police accountability is largely dependent on the priorities of the governing administration and can be highly politicized. During presidential administrations that have prioritized protecting civil rights, pattern-or-practice investigations are more common. For example, under President Obama, the Department of Justice opened approximately twenty-five pattern-or-practice investigations and entered into approximately

⁷ US Department of Justice, *supra* note 5, at 3.

⁸ Press release, Colorado First Judicial District Attorney's Office, *DA King calls on Colorado Attorney General for a pattern and practice review*. (June 29, 2023) <https://firstda.co/news-update/da-king-calls-on-colorado-attorney-general-for-a-pattern-and-practice-review/>.

⁹ Ali Weatherton, *NAACP goes to Richmond, demands justice for Lt. Caron Nazario following Windsor traffic stop*, (May 14, 2021), <https://www.13newsnow.com/article/news/politics/naACP-richmond-justice-caron-nazario-windsor-traffic-stop/291-3d701056-59cc-434f-bde5-2c2338e8862f>

¹⁰ Whitney Evans, *A New Law Gave Virginia's Attorney General the Authority to Investigate Windsor Police*, (Apr. 15, 2021), <https://www.vpm.org/news/2021-04-15/a-new-law-gave-virginias-attorney-general-the-authority-to-investigate-windsor>; Press Release, Commonwealth of Virginia Office of Attorney General, *Attorney General Miyares Announces Resolution of Lawsuit Against Town of Windsor*. (Sep. 7, 2023). <https://www.oag.state.va.us/media-center/news-releases/2603-september-7-2023-attorney-general-miyares-announces-resolution-of-lawsuit-against-town-of-windsor>

fifteen consent decrees.¹¹ In contrast, during President Trump's first administration, Attorney General Jeff Sessions imposed rigid guidelines that limited the number of pattern-or-practice investigations the Department conducted; consequently, in the four years Trump held office, the Department of Justice opened just one pattern-or-practice investigation and withdrew from at least one consent decree.¹² President Biden reaffirmed his commitment to police accountability by opening pattern-or-practice investigations into eleven law enforcement agencies and revoking previous restrictions on pattern-or-practice investigations.¹³ The second Trump administration is newly underway yet there are clear signs of a shift in Department of Justice priorities. Within one week of inauguration, the Department of Justice announced that previous reform and consent agreements have been halted.¹⁴ And the Department has also paused all active civil rights investigations.¹⁵

The on again off again nature of federal enforcement and oversight demonstrates that states with pattern-or-practice authority are needed to fill the gap.

Examples of State Intercession

State intercession has been instrumental in several instances. For example:

- **Aurora, Colorado:** After opening an investigation into the Aurora Police Department, Colorado Attorney General Phil Weiser stated: "We started this investigation under the prior (presidential) administration, and they had a categorical policy of not conducting these investigations. ... They were trying to dismantle existing consent decrees and not conducting new pattern and practice investigations. When we started this in the summer of 2020, (a federal investigation) wasn't an option. The only option was to use our authority."¹⁶ The Colorado Office of Attorney General ultimately announced its findings that the Aurora Police Department engaged in a "pattern and practice of violating state and federal law through

¹¹ Robert Faturechi, *The Obama Justice Department Had a Plan to Hold Police Accountable for Abuses. The Trump DOJ Has Undermined It*, ProPublica, (Sept. 29, 2020), <https://www.propublica.org/article/the-obama-justice-department-had-a-plan-to-hold-police-accountable-for-abuses-the-trump-doj-has-undermined-it>.

¹² Id.

¹³ Supra at 7.

¹⁴ Evan Perez and Devan Cole, *Trump's Justice Department halts police reform agreements*, CNN, (Jan. 23, 2025), <https://www.cnn.com/2025/01/22/politics/justice-department-trump-police-reform-agreements/index.html>.

¹⁵ Daphne Duret et al, *Trump is Backing Away From Police Reform. Here's What That Means for 12 Places*, The Marshall Project, (Mar. 12, 2025), <https://www.themarshallproject.org/2025/03/10/trump-new-york-police-phoenix-justice>.

¹⁶ Emma Tucker, *State AGs are 'stepping into the police reform business' to hold officers accountable*, CNN, (Sept. 25, 2021), <https://www.cnn.com/2021/09/25/us/state-attorneys-general-police-reform/index.html>.

racially biased policing, using excessive force, and failing to record legally required information when interacting with the community.”¹⁷

- **Chicago, Illinois:** Following numerous complaints and allegations of systemwide misconduct, the federal Department of Justice opened an investigation into the Chicago Police Department in 2015, under President Obama and Attorney General Loretta Lynch. In 2017, the investigation concluded, and it was determined that the Chicago Police Department engaged in a pattern or practice of use of force, in violation of the Fourth Amendment.¹⁸ However, following an administration change, the Department of Justice stalled work on the investigation so that the findings never materialized into reform recommendations. In the face of the federal delay, the Illinois Attorney General acted under its common law public interest authority and sued the Chicago Police Department based on the federal findings. The state attorney general began working with the city to negotiate a settlement, which the Sessions-led Department of Justice then sought to halt.¹⁹ Eventually, the City of Chicago entered a consent decree with the state that was recently expanded to allow more time for reform work.²⁰ Based in part on this experience, in 2020 Illinois Attorney General Kwame Raoul began advocating for his office to gain codified pattern-or-practice authority, which was ultimately granted by the state legislature.

While politicization of investigations is a risk at any level of government, state included, state pattern-or-practice authority counterbalances reliance on federal intervention and offers more opportunities to fill gaps left when federal investigations fall out of favor.

Conclusion

State pattern-or-practice investigations represent an under-implemented accountability measure for states seeking to strengthen law enforcement transparency and to hold agencies answerable to the community. States interested in state pattern-or-practice investigations have several strong statutory models to consider. Authorizing pattern-or-practice authority within the state Office

¹⁷ Press Release, Colorado Office of Attorney General. *Colorado Department of Law finds pattern and practice of racially biased policing, use of excessive force by Aurora Police.* (Sept. 15, 2021), <https://coag.gov/press-releases/9-15-21/>.

¹⁸ Press Release, U.S. Department of Justice. *Justice Department Announces Findings of Investigation into Chicago Police Department.* (Jan. 13, 2017) <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-chicago-police-department>

¹⁹ Debra C. Weiss., *Justice Department Will Oppose Consent Decree to Reform Chicago Police Department*, ABA Journal, (Oct. 10, 2018). https://www.abajournal.com/news/article/justice_department_will_oppose_consent_decree_to_reform_chicago_police_depa

²⁰ Heather Cherone, *Chicago Police Department Consent Decree Set to Expand to Include Traffic Stops After Fatal Shooting of Dexter Reed*, WTTW News, (May 21, 2024), <https://news.wttw.com/2024/05/21/chicago-police-department-consent-decree-set-expand-include-traffic-stops-after-fatal>

of Attorney General allows increased responsiveness to residents' complaints of constitutional rights violations and limits the impact of politicization and partisanship on accountability and remedies. Where possible, states should consider seeking legislative authority to bring state pattern-or-practice investigations to their communities.