

June 4, 2020

ATTORNEY GENERAL RAOUL URGES CONGRESS TO GIVE STATE ATTORNEYS GENERAL AUTHORITY TO INVESTIGATE UNCONSTITUTIONAL POLICING

Raoul's Letter Marks Part of a Multifaceted Effort to Reform Policing, Criminal Justice

Chicago — Attorney General Kwame Raoul and New York Attorney General Letitia James today led a coalition of 18 attorneys general urging Congress to expand federal law to give state attorneys general clear statutory authority to investigate patterns or practices of unconstitutional policing.

[In a letter issued to Congressional leadership](#), Raoul and the coalition are asking Congress to expand the law enforcement misconduct section of the Violent Crime Control and Law Enforcement Act of 1994, which was enacted following the severe beating of Rodney King by Los Angeles Police Department officers in 1991. Raoul and the coalition argue that attorneys general should have authority to investigate and resolve patterns or practices of unconstitutional policing, particularly in the event that the U.S. Department of Justice (DOJ) fails to use its authority to act.

"The violent death of George Floyd at the hands of police has rightfully shocked and outraged a nation. But the truth is that George Floyd and Breonna Taylor are two of the latest in a long line of African Americans who have lost their lives at the hands of police using excessive force," Raoul said. "Their tragic deaths should serve as a catalyst that causes each of us to ask ourselves whether we have done enough to fight racism and inequality in our criminal justice system. I am committed to using the tools and resources of my office to hold departments accountable and to push for policies that address unconstitutional policing."

Attorney General Raoul and the coalition are calling on Congress to take urgent action as thousands of Americans march in cities throughout the country to protest police brutality and the systemic failures that cause and allow misconduct to perpetuate. Raoul and the coalition are asking Congress to grant statutory authority to conduct "pattern-or-practice" investigations, to obtain data regarding excessive use of force by law enforcement officers, and to bring appropriate actions in federal court to ensure constitutional policing in states, in particular when the federal government is unwilling or unable to act.

According to the attorneys general, the DOJ initiated 69 pattern-or-practice investigations between 1994 and 2017, which resulted in 40 court-enforceable consent decrees. However since 2017, the DOJ has largely curtailed the ability of federal law enforcement to use court-enforced agreements to reform local police departments. In a March 31, 2017, memo, former Attorney General Jeff Sessions wrote, "Local control and local accountability are necessary for effective local policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies." Since January 2017, the DOJ has initiated zero pattern-or-practice investigations into police conduct and has not entered any consent decrees.

Raoul and the attorneys general state that the DOJ's refusal to address the pervasive problem of police misconduct has left communities without critical civil rights protections. As a remedy, the coalition is asking Congress to authorize state attorneys general, in addition to the DOJ, to investigate complaints of pattern-or-practice violations through the use of investigative subpoenas, which the DOJ has proposed in the past to help strengthen its oversight capacity.

In addition, the coalition is asking that attorneys general be granted authority to gather data about the use of excessive force by law enforcement officers. Such data would be especially important when identifying law enforcement agencies that have above-average rates of excessive force complaints, which can also help

identify at-risk law enforcement agencies before a devastating incident occurs. For example, the former Minneapolis police officer accused of killing 46-year-old George Floyd on May 25 had 18 prior complaints filed against him with the Minneapolis Police Department's Internal Affairs.

Today's letter is part of a multifaceted approach Attorney General Raoul's office is taking to address criminal justice and policing reform. The Attorney General's office continues to enforce the terms of a comprehensive consent decree entered to reform the Chicago Police Department (CPD), which was entered after Attorney General Sessions announced that the DOJ would no longer use its authority to hold officers and departments accountable for a pattern or practice of misconduct. Raoul's office negotiated the court-enforceable consent decree after former Chicago police officer Jason Van Dyke – who had received more than 20 complaints of official misconduct against him, including 10 related to excessive use of force – shot and killed 17-year-old Laquan McDonald.

In addition to enforcing the consent decree, Raoul's office is continuing to evaluate policies aimed at ensuring constitutional policing throughout Illinois. As a state senator, Raoul passed landmark reforms, including standards for officer-worn body cameras and the creation of a statewide database of officers under investigation.

Joining Raoul in filing the comment letter are the attorneys general of California, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Virginia.



**STATE OF ILLINOIS
OFFICE OF THE ATTORNEY
GENERAL
KWAME RAOUL
ATTORNEY GENERAL**



**STATE OF NEW YORK
OFFICE OF THE ATTORNEY
GENERAL
LETITIA JAMES
ATTORNEY GENERAL**

June 04, 2020

Via U.S. Mail and E-Mail

The Honorable Nancy Pelosi
Speaker of the House of Representatives
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Senate Majority Leader
U.S. Senate
S-230, The Capitol
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20510

**Re: Request to Expand the Violent Crime Control and Law Enforcement Act to
Give State Attorneys General "Pattern-or-Practice" Authority**

Dear Congressional Leaders:

We, the undersigned Attorneys General, urge Congress to expand the law enforcement misconduct section of the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601 (§ 12601) to give State Attorneys General clear statutory authority under federal law to investigate and resolve patterns or practices ("pattern-or-practice" investigations) of unconstitutional policing by local police departments in our respective states.¹ Congress originally enacted this measure in response to the severe beating of Rodney King in Los Angeles in 1991 and the findings of the

¹ This section was previously codified at 42 U.S.C. § 14141.

subsequent Congressional hearings on the broader pattern of police misconduct in Los Angeles.² Once again, our nation has been called to reckon with police brutality against black people in this country and the systemic failures that cause and allow this misconduct to perpetuate. Many members of the public have no trust in the police, with tensions visible in the streets across this nation. Urgent action is necessary at all levels of government to remedy the injustice of police misconduct. We therefore ask Congress to give us explicit authority under federal law to conduct pattern-or-practice investigations, to obtain data regarding excessive uses of force by law enforcement officers to support those investigations, and to bring appropriate enforcement actions in federal court to ensure constitutional policing in our states, particularly when the federal government is unwilling or unable to act.

We have recently learned the names George Floyd and Breonna Taylor, but the stories of their deaths are all too familiar:

- On May 25, 2020, Minneapolis police officers detained 46 year-old George Floyd. While Mr. Floyd laid face down and handcuffed on a city street during the arrest, Officer Derek Chauvin kept his knee on Mr. Floyd’s neck for 8 minutes and 46 seconds. In a video recording of the incident captured by a bystander, Mr. Floyd can be heard pleading repeatedly, “Please” and “I can’t breathe.” Three other officers participated in Mr. Floyd’s arrest, including two who restrained other parts of Mr. Floyd’s body and another that stood by looking on. Mr. Floyd died as a result of the Officer’s force.
- On March 13, 2020, while executing a “no knock” search warrant just before 1:00 am, police in Louisville, Kentucky fatally shot 26 year-old Breonna Taylor in her home. The officers conducting the search warrant were not wearing body cameras, which could have documented their activities that fateful night.

These incidents are not isolated. While people of color make up fewer than 38% of the United States’ population, they make up almost 63% of unarmed people killed by police.³ Research shows that law enforcement uses excessive force disproportionately on people of color, even after controlling for racial disparities in crime rates.⁴ Often, the use of force quickly escalates to deadly force even during routine police interactions.⁵

Moreover, many police departments struggle to hold officers accountable for using excessive force.⁶ In many instances, police officers who use excessive force are given reduced or no discipline or are rehired after being terminated for misconduct.⁷ Research has shown that a record

² See *Police Brutality: Hearing Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary*, 102d Cong. (1991).

³ U.S. Commission on Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices* 23–24 (Nov. 15, 2018).

⁴ *Id.*

⁵ *Id.* at 35.

⁶ Shaila Dewan and Serge F. Kovaleski, *Thousands of Complaints Do Little to Change Police Ways*, N.Y. TIMES (May 30, 2020).

⁷ Stephen Rushin, *Police Disciplinary Appeals*, 167 U. Pa. L. Rev. 545, 581 (2019) (“Just under a quarter (twenty-four percent) of all officers terminated for misconduct in large American police departments are eventually rehired because of the disciplinary appeals process. . . . [B]etween 2010 and 2017, the City of Chicago has reduced or reversed sanctions against eighty-five percent of all police officers during the grievance appeals process.”).

of prior civilian complaints is a significant factor in predicting serious misconduct.⁸ The former Minneapolis police officer who killed George Floyd had 18 prior complaints filed against him with the Minneapolis Police Department’s Internal Affairs, according to the police department.⁹ Similarly, former Chicago police officer, Jason Van Dyke, had received more than 20 complaints of official misconduct against him, including 10 complaints about excessive use of force—in the years before he shot and killed Laquan McDonald.¹⁰ In short, there is a long history of police abuse against people of color in our country. As instances of police misconduct continue to occur, State Attorneys General must have effective tools to conduct robust investigations into potential police misconduct to ensure accountability in our respective states.

The United States Department of Justice (US DOJ) has express authority under § 12601 to investigate and resolve “pattern[s] or practice[s]” of unconstitutional policing by local police departments. 34 U.S.C. § 12601. In years past, the Civil Rights Division of the US DOJ conducted comprehensive investigations into police misconduct throughout the country and utilized consent decrees to protect the civil and constitutional rights of the people in those communities. Between the enactment of § 12601 in 1994 and January 2017, US DOJ initiated 69 “pattern-or-practice” investigations—resulting in 40 court-enforceable consent decrees.¹¹ Since 2017, US DOJ has largely curtailed the ability of federal law enforcement to use court-enforced agreements to reform local police departments accused of abuses, taking the position that responsibility to oversee local law enforcement belonged to states and localities.¹² In a memorandum to US DOJ officials, former Attorney General Sessions wrote that “local control and local accountability are necessary for effective local policing. It is not the responsibility of the federal government to manage non-federal law enforcement agencies.”¹³ US DOJ also has abandoned collaborative police reform efforts overseen by the federal Office of Community Oriented Policing Services.¹⁴ This shift has led to a precipitous decline in US DOJ’s work to reform police misconduct. Since January 2017, US DOJ has initiated zero “pattern-or-practice” investigations into police conduct under § 12601 and has not entered any consent decrees.¹⁵

US DOJ’s refusal to confront the problem of police misconduct has left local communities without critical protections for their civil rights. It is imperative not only that US DOJ vigorously investigate police misconduct, but also that State Attorneys General have the important tool of authority under § 12601 to conduct “pattern-or-practice” investigations and bring actions in federal

⁸ Kyle Rozema & Max Schanzenbach, *Good Cop, Bad Cop: Using Civilian Allegations to Predict Police Misconduct*, 11 Am. Econ. J. 225, 227 (2019).

⁹ Dakin Andone, Hollie Silverman, and Melissa Alonso, *The Minneapolis police officer who knelt on George Floyd’s neck had 18 previous complaints against him, police department says*, CNN (May 29, 2020), <https://www.cnn.com/2020/05/28/us/minneapolis-officer-complaints-george-floyd/index.html>

¹⁰ Elliot C. McLaughlin, *Chicago Officer Had History of Complaints Before Laquan McDonald Shooting*, CNN (Nov. 26, 2015, 5:45 PM), <http://www.cnn.com/2015/11/25/us/jason-van-dyke-previous-complaints-lawsuits>.

¹¹ See U.S. Dep’t of Justice, Civil Rights Division, *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present* (Jan. 2017), <https://www.justice.gov/crt/file/922421/download>.

¹² See Memorandum from Jeff Sessions, Attorney Gen., U.S. Dep’t of Justice, *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities* (Nov. 7, 2018), <https://www.justice.gov/opa/press-release/file/1109681/download>.

¹³ *Id.*

¹⁴ Press Release, U.S. Dep’t of Justice, *Department of Justice Announces Changes to the Collaborative Reform Initiative* (Sept. 15, 2017), <https://www.justice.gov/opa/pr/department-justice-announces-changes-collaborative-reform-initiative>.

¹⁵ See U.S. Dep’t of Justice, Civil Rights Division, *Special Litigation Section Cases and Matters*, <https://www.justice.gov/crt/special-litigation-section-cases-and-matters/download#police>.

court, in addition to the authority they may already have under state law. Recognizing the important role that states can play, Congress has given authority to state officials to enforce many other federal laws.¹⁶ Congress should give similar authority to State Attorneys General to enforce our nation’s most fundamental law, the United States Constitution, by initiating investigations and enforcement actions against unconstitutional police practices. Congress should further amend § 12601 to authorize both US DOJ and State Attorneys General to investigate complaints of pattern-or-practice violations through the use of pre-suit investigative subpoenas, a legislative change that US DOJ has proposed in the past to strengthen its oversight capacity.

In addition, Congress should empower State Attorneys General with the same authority granted to the U.S. Attorney General by the Violent Crime Control and Law Enforcement Act of 1994 to “acquire data about the use of excessive force by law enforcement officers.” 34 U.S.C. § 12602. Congress should also clarify that data obtained under this provision may be used for pattern-or-practice investigations. This authority, which Congress enacted to accompany the pattern-or-practice enforcement authority in § 12601, would provide State Attorneys General with access under federal law to regular and uniform annual data on those local police departments and sheriff’s offices that have higher-than-typical rates of excessive force complaints, which can help identify at-risk law enforcement agencies *before*—rather than after—another devastating incident occurs.

The States have a profound interest in protecting the health, safety, and well-being of their residents. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Baretz*, 458 U.S. 592, 600 (1982). This includes an interest in ensuring that local law enforcement agencies do not engage in a pattern or practice of conduct that deprives their residents of the rights protected by federal and state constitutions. *See Pennsylvania v. Porter*, 659 F.2d 306, 314–17 (3d. Cir. 1981). State Attorneys General may be better suited than US DOJ to conduct “pattern-or-practice” investigations, in certain situations. State Attorneys General have the increased proximity to and familiarity with incidents of unconstitutional policing occurring within our states, knowledge about the particular historical context in which these incidents occur, and access to and relationships with the relevant stakeholders necessary to successfully implement reforms. Furthermore, State Attorneys General typically have experience recognizing and investigating civil rights violations, with more resources than private litigants and an ability to bring technical expertise. These considerations, coupled with US DOJ’s finite resources and limited staff to pursue “pattern-or-practice” investigations,¹⁷ make State Attorneys General uniquely situated to investigate and seek remedies to address systemic violations of our residents’ civil rights.

States have long done this important work, including by pursuing reform in state and federal courts, and in some cases, stepped into the void left by US DOJ:

¹⁶ *See, e.g.*, 42 U.S.C. § 1320d-5(d) (enforcement of the Health Insurance Portability and Accountability Act); 15 U.S.C. § 15c (a) (enforcement of antitrust laws); 15 U.S.C. § 2073 (enforcement of consumer product safety rules); 33 U.S.C. §§ 1362, 1365 (enforcement of the Clean Water Act); 18 U.S.C. § 248(c)(3) (enforcement of access to reproductive health services).

¹⁷ US DOJ generally has the resources to pursue only a few “pattern-or-practice” investigations at a time, even under administrations that played a strong enforcement role. *See Steven Rushin, Structural Reform Litigation in American Police Departments*, 99 Minn. L. Rev. 1343, 1408 (2015) (“[T]he federal government only has the resources to pursue [systemic reform litigation] in a small fraction of the municipalities where there appears to be a pattern or practice of misconduct.”)

- **Illinois:** After former Attorney General Jeff Sessions announced US DOJ would no longer exercise its authority under § 12601, the Illinois Attorney General’s Office filed suit against the City of Chicago in federal court, asserting claims under 42 U.S.C. § 1983, the U.S. Constitution, the Illinois Constitution, and state civil rights laws for engaging in a pattern of excessive force and other misconduct that disproportionately harmed black and Latinx residents. In response, the City agreed to a consent decree to implement comprehensive reforms of the Chicago Police Department and other City agencies. While negotiating the consent decree, the Illinois Attorney General’s Office consulted widely with community members, police officers, police unions, and advocates to ensure the decree reflected broad input from the diverse communities that make up Chicago. The Illinois Attorney General’s Office continues to enforce the terms of the consent decree.
- **New York:** In 1999 and 2013, the New York Attorney General’s Office (“NYAG”) investigated and issued reports regarding NYPD’s stop and frisk practices. A court later determined these practices were unconstitutional. In 2001, NYAG filed a federal lawsuit against the Town of Wallkill for discriminatory practices by its police department. The case was later resolved by a consent decree. This year, the Office has opened investigations into several policies and practices of the NYPD.
- **California (CA):** CA DOJ entered into an agreement with the City of San Francisco and the San Francisco Police Department to evaluate and publicly report on the police department’s implementation of reforms previously recommended by US DOJ. CA DOJ also obtained a stipulated judgment on disproportionate discipline and policing with the Stockton Unified School District and its Police Department. It conducted a criminal review of the shooting of Stephon Clark and a broader civil rights review of the Sacramento Police Department regarding its practices that led to that shooting. CA DOJ is currently conducting a review of the Los Angeles Police Department’s practices with regard to designating people as members of a gang under a California gang database and is conducting pattern or practice investigations of the Kern County Sheriff’s Office and the Bakersfield Police Department.
- **Maine:** The Maine Attorney General has exclusive statutory responsibility for the investigation of all uses of deadly force by law enforcement, has established a legislatively mandated deadly force review panel to review such incidents, and has been directed to implement procedures for receiving, investigating, and responding to complaints alleging profiling by law enforcement officers or law enforcement agencies. *See* 5 M.R.S. §§ 200-A, 200-K and 200-L.
- **New Jersey:** New Jersey Attorney General Grewal established a new Office of Public Integrity and Accountability charged with independently investigating police use-of-force incidents, in-custody deaths, alleged civil rights violations by law enforcement, and wrongful conviction claims. The office has successfully brought criminal charges for excessive use of force by police. Attorney General Grewal also has issued statewide policies, binding on all law enforcement in New Jersey, to promote excellence in policing through increased professionalism, accountability, and transparency. In addition, Attorney General Grewal has announced the launch of a statewide Use of Force Portal to gather and analyze uniform use-of-force data from all law enforcement agencies in New Jersey; a Crisis Intervention Team pilot program to help officers respond to situations involving

individuals with mental health issues; and an Incident Response Team to respond in the community following a major civil rights incident.

- **Rhode Island:** During the 2020 legislative session, Attorney General Neronha introduced legislation that would enhance the Office’s civil rights authority, including by providing the Office with pattern and practice authority. The Office has a model deadly force and custodial death protocol, pursuant to which the Office utilizes a multi-agency investigative team to review such incidents. Attorney General Neronha is committed to prosecuting police officers who have used excessive force and has charged two such cases in recent weeks.

However, much more could be done if Congress formally recognized and empowered all State Attorneys General to conduct federal “pattern-or-practice” investigations, in addition to authority they may already have under state statutes. One thing is certain: if US DOJ continues to abdicate its responsibility to pursue police reform, someone has to take action. We stand ready to do so.

As State Attorneys General entrusted with the public interest, we respect the officers who serve their communities lawfully, respectfully, and who respect the sanctity of human life. We recognize the tremendous risk that officers may face to ensure our safety. But, failure to hold law enforcement officers and agencies accountable when misconduct occurs further deepens mistrust and threatens the legitimacy of law enforcement. Indeed, the anger, disappointment, and frustration over systemic failures to prevent and respond to unconstitutional policing is already palpable. We write to you urgently and ask that you respond swiftly. Expanding the Violent Crime Control and Law Enforcement Act of 1994 to give State Attorneys General authority to conduct “pattern-or-practice” investigations is an important step toward regaining our communities’ confidence and bringing about the systemic change needed to ensure constitutional policing. Our country cannot move ahead—indeed our country will not heal—unless we ensure constitutional policing throughout our nation and accountability for police officers who fail to follow our most fundamental law.

Respectfully,



KWAME RAOUL
Illinois Attorney General



LETITIA A. JAMES
New York Attorney General



XAVIER BECERRA
California Attorney General



KATHLEEN JENNINGS
Delaware Attorney General



CLARE E. CONNORS
Hawai'i Attorney General



AARON M. FREY
Maine Attorney General



BRIAN E. FROSH
Maryland Attorney General



MAURA HEALEY
Massachusetts Attorney General



DANA NESSEL
Michigan Attorney General



KEITH ELLISON
Minnesota Attorney General



AARON D. FORD
Nevada Attorney General



GURBIR S. GREWAL
New Jersey Attorney General



HECTOR BALDERAS
New Mexico Attorney General



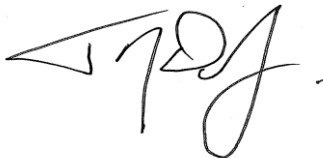
ELLEN F. ROSENBLUM
Oregon Attorney General



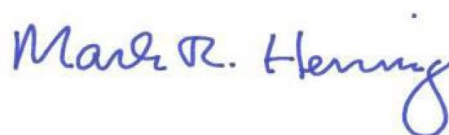
JOSH SHAPIRO
Pennsylvania Attorney General



PETER NERONHA
Rhode Island Attorney General



TJ DONOVAN
Vermont Attorney General



MARK R. HERRING
Virginia Attorney General