

# POLICE REFORM BY DECREE:

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HOW DOJ ENACTS ITS POLICING AGENDA  
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DEPARTMENT  
OF  
JUSTICE



INTRODUCTION

Consent decrees are a blunt instrument for enacting police reform. The approach has proven ill-suited at enacting effective change in law enforcement agencies. These coercive reforms face institutional resistance from departments and their personnel and fall victim to mission creep from the unaccountable lawyers, judges, and bureaucrats who oversee the design and later the implementation of the reforms. The situation worsened significantly as the Obama Administration increased the use of consent decrees, a policy resumed under the Biden Department of Justice.

Often built on limited and flimsy evidence, the Justice Department’s allegations against police agencies put local jurisdictions in a near impossible position to contest civil rights violations findings.

Additionally, the Justice Department frequently injects its policy preferences into the required remedies that do not reflect urgent or even necessary changes, but policy agenda of the Civil Rights Division and the White House. Subject jurisdictions are often compelled to accept settlements with unachievable compliance goals and required to spend vast sums to remedy problems outside the scope of the statutory requirements.

Consent decrees are not a quick, easy, or inexpensive fix. And this type of settlement can have consequences – higher crime, lower police morale, ballooning costs, drifting timelines, and dissatisfied residents. In many cases, consent decrees prove to be damaging boondoggles rather than bolstering effective and constitutional policing.

Federal intervention for some agencies may still be necessary but less onerous and more effective tools exist for enacting necessary reforms. Those alternatives should be preferred where possible. The Justice Department’s interventions in law enforcement agencies should be precise in their methods and practicable in their goals.

- This paper examines:
- the origins and process of police consent decrees;
  - the increasing use of consent decrees to enact police reform policies;
  - the consequences of police reform by consent decree; and
  - the alternative approaches to improving American policing.



**PART I.**

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**WHAT IS  
A CONSENT  
DECREE?**

## PART I. WHAT IS A CONSENT DECREE

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Under the 1994 Violent Crime Control and Law Enforcement Act, Congress authorized the Department of Justice (DOJ) to use civil action to secure an agreement or “consent decree” to compel local and state law enforcement agencies to remedy alleged civil rights violations when a “pattern or practice” of racial discrimination or excessive use of force (or both) is found.<sup>1</sup>

Without having to admit guilt or liability for the alleged wrongdoing, the decree requires that the targeted party (i.e., city or agency) demonstrate the reform’s outcomes satisfy the terms of agreement to the overseeing court, often with the approval of the plaintiff.

The Justice Department’s involvement is usually precipitated by a controversial high-profile incident (i.e., police involved death) or local activists’ complaints or litigation. If DOJ chooses to investigate the agency in question, neither the federal government nor the local agency is obligated to disclose the existence of the ongoing probe, but it usually becomes public before the inquiry is completed. The investigation, led by the DOJ Civil Rights Division, “assesses whether any systemic deficiencies contribute to misconduct or enable it to persist.”<sup>2</sup>

The Justice Department reviews police policies, procedures, incident reports, documents, data, and other internal and public materials. It also gathers information from and conducts interviews with members of law enforcement, local officials, and “community members” and “other criminal justice stakeholders.” Since the statute is silent on the matter, the Justice Department has wide latitude on who and how it engages in this process and what evidence it uses in its investigation.”<sup>3</sup>

At the conclusion of the investigative period, the Department of Justice issues a public report called a “Findings Letter” that details its evidence and concludes whether or not systemic rights violations can be substantiated.

If, in the opinion of the DOJ, the findings confirm a “pattern or practice” of civil rights violations, the Department proposes remedies “with input from community stakeholders” to address the identified unlawful practices.

At this point, the targeted agency can choose to either defend itself against the Justice Department’s findings and its proposed remedies or agree to them and negotiate the terms of a court-monitored settlement. Few jurisdictions opt for the former – often under public pressure or in hopes that a negotiated outcome will be more favorable as an agreement than terms dictated by a court order without local input.

**POLICE CONSENT DECREE AUTHORIZATION**  
**CONDUCT OF LAW ENFORCEMENT AGENCIES**  
**§ 14141. CAUSE OF ACTION (RE-CODIFIED AT 34 U.S.C. 12601)**

*(a) Unlawful conduct*

*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.*

*(b) Civil action by Attorney General*

*Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1)\* has occurred, the Attorney General, for or in the name of the United States, may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.*

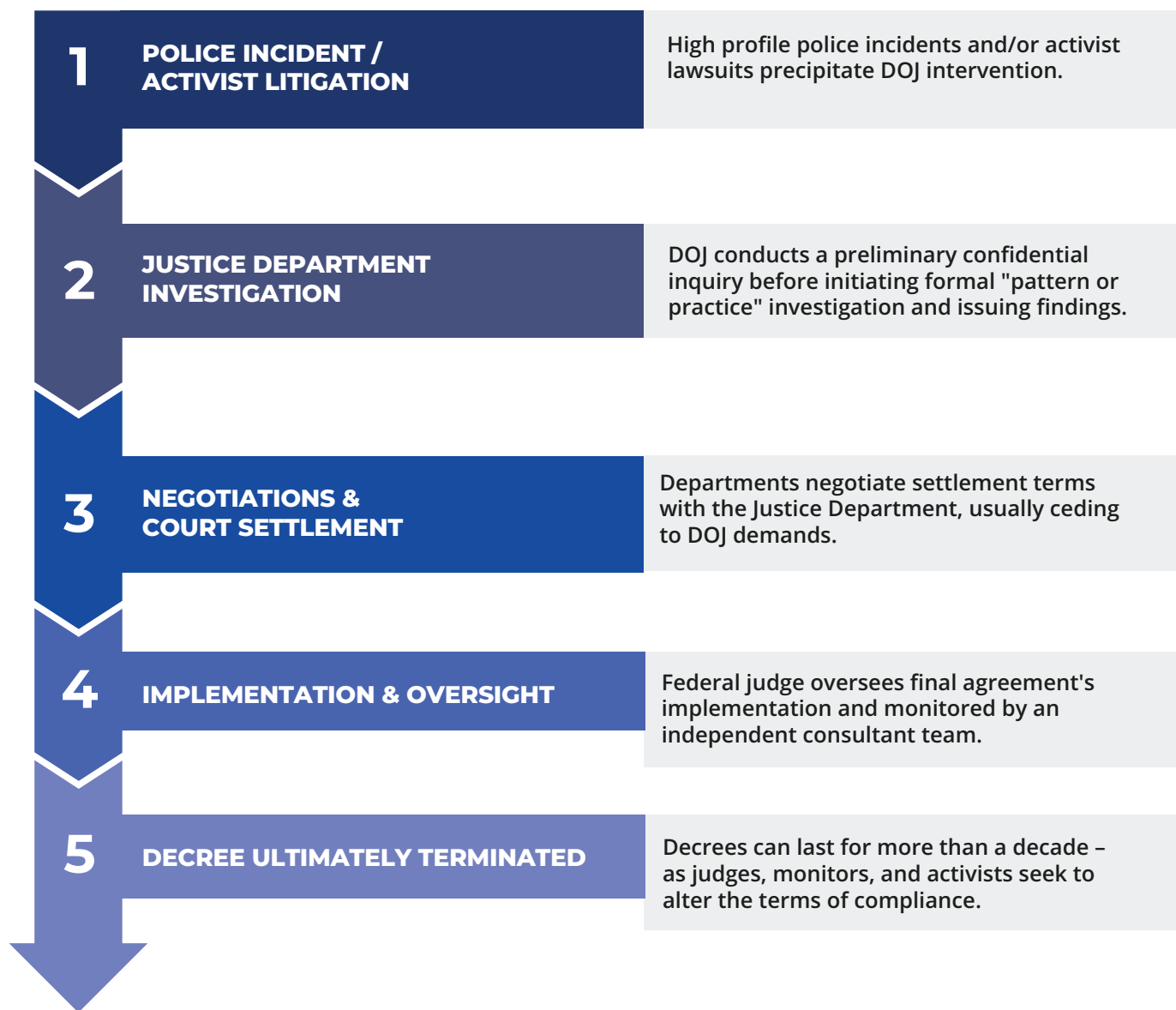
*\*Due to the code section's reclassification "paragraph (1)" is actually referring to subsection (a) Unlawful Conduct*

**Types of Federal Interventions  
into Police Agencies**

- 'Pattern-or-practice' interventions include:<sup>5</sup>
1. **Consent decrees** or civil agreements that are overseen and enforced by a federal court and monitored by independent teams for compliance. The judge must agree to terminate the agreement. [Most onerous]
  2. **Technical Assistance (TA) letters** or expert guidance to remedy problems that could constitute violations. [Least onerous]
  3. **Memorandums of Agreement (MOA)** or court-settlement whose terms are legally-binding settlements but mutually enforced under cooperative oversight and compliance. Although these agreements operate without federal court supervision, they sometimes involve independent monitors.

4. **Out-of-court Settlements** function like a consent decree in their terms and conditions but require the Justice Department to file suit if the local government is in non-compliance.
  5. **Third-party settlement agreements** are analogous to consent decrees where an outside group (e.g., the American Civil Liberties Union) sues the city or agency on behalf of a harmed party, alleging civil rights violations. While these agreements are entered in federal court, these settlements are monitored and enforced by mutual agreement of the parties.<sup>6</sup>
- Civil consent decrees and out-of-court settlements can and often do include Memorandums of Agreement or Technical Assistance letters, but those can be the exclusive remedy and are less onerous means to address the Justice Department's concerns.

## 5 STAGES OF FEDERAL POLICE CONSENT DECREES





# **PART II.**

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## **HEAVY-HANDS & SHAKY EVIDENCE: MAXIMALIST APPROACH UNDER OBAMA AND BIDEN**

## **PART II. HEAVY-HANDS & SHAKY EVIDENCE: MAXIMALIST APPROACH UNDER OBAMA AND BIDEN**

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Federal “pattern or practice” interventions shifted dramatically under the Obama Administration toward a maximalist approach – wider-ranging investigations, broader and more prescriptive remedies, and more onerous compliance standards.<sup>7</sup> After a pullback during the Trump Administration, the Biden Justice Department has resumed Obama’s aggressive use of consent decree authority to pursue policy changes outside of the statute’s scope and, well beyond ensuring constitutional police practices.

Of the twenty large local law enforcement agencies subject to pattern or practice investigations, the Obama Department of Justice launched ten with eight resulting in a consent decree. In contrast under both Clinton and Bush combined, only three of eight total investigations ended in consent decrees, preferring the use Memorandums of Agreement and technical assistance letters.<sup>8</sup>

In addition to opening more investigations and seeking consent decrees more often, from the Obama and Biden Administrations’ settlements deviate in character and substance from their predecessors. Earlier findings letters, legal complaints, and final consent decrees made narrow claims of wrongdoing tied directly to the department’s policies or collective actions and the governing civil rights statute. Reform prescriptions and associated compliance metrics directly correlated to remedying those violations.<sup>9</sup>

Under the Obama-Biden consent decree framework, the specific and systemic violations serve as a pretext to impose broader policy changes on a beleaguered agency beyond the scope of statute.<sup>10</sup> The Civil Rights Division’s modus operandi resembles a doctor doing exploratory surgery on a patient who presents with a broken arm. By seeking to cure the patient of ills other than

the most acute, the Justice Department’s lawyers administer ‘strong medicine’ in the form of heavy-handed commands and unachievable outcomes.

The federal government’s demands can bog down agencies who must implement reforms tangential to the claimed pattern or practice that prompted the intervention. Departmental morale declines as officers grow frustrated that excessive red tape prevents them from fighting crime. Officers may grow reticent to police proactively and risk repercussions from the excessive scrutiny these agreements entail. At the same time, crime-fighting resources are stretched thin, leaving public safety to suffer as a result.

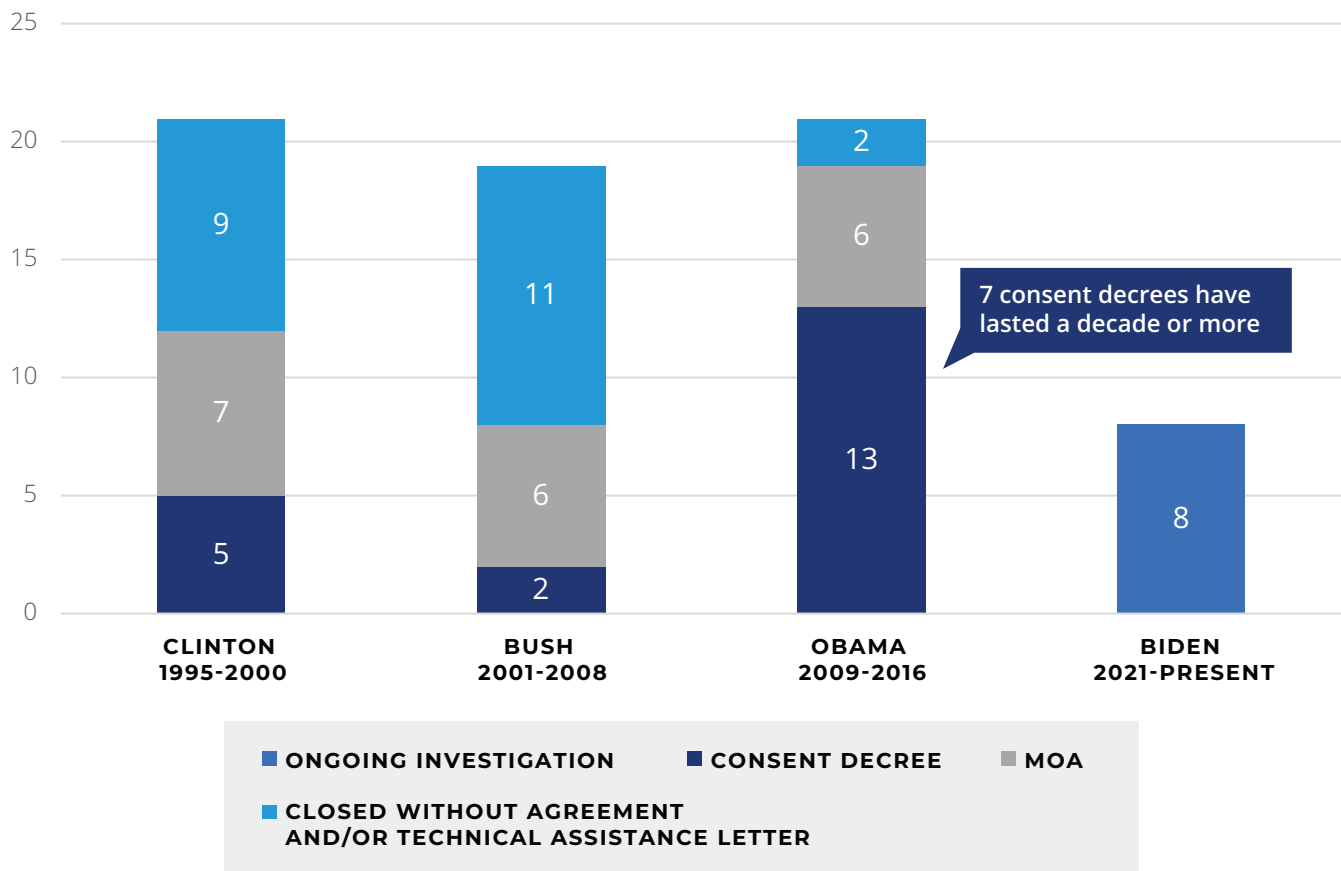
Further, since the metrics for full compliance are both unrealistic and mutable, the decrees can and do last for more than a decade – only exacerbating the morale and public safety challenges. Worse, the entire approach has not proven to be effective overall as public dissatisfaction with police performance worsens and departmental compliance slips after years under a consent decree.<sup>11</sup>

### **Quantifying the Consent Decree Burden Under Obama**

Recent studies have demonstrated the Obama Justice Department’s maximalist turn in pursuing police reform through the 1994 crime bill’s litigation authority.<sup>12</sup> In addition to pursuing more settlements than the two prior administrations combined, the DOJ under Obama sought the most stringent intervention-type (consent decrees) for most of the targeted agencies, especially large city police departments.



## JUSTICE DEPARTMENT INTERVENTIONS INTO LOCAL & STATE POLICE AGENCIES



Source: Law Enforcement Knowledge Lab, "Federal Interventions Dashboard."

Note: Excludes local jail interventions.

According to an analysis by University of Delaware's Ellen Donnelly and Nicole Salvatore, the 25 total settlement agreements (i.e., consent decrees and MOAs) between 2009 and 2016<sup>13</sup> included over 500 "reform measures" compared to fewer than 200 measures for the 15 Clinton and Bush settlements combined.<sup>14</sup> On average, Clinton-era agreements contained 14.5 measures, Bush-era ones included 12 while under Obama agreements entailed more than 20 measures.<sup>15</sup> For larger agencies under consent decrees, the number of reforms grew to an average of 35 per agency. By contrast, the previously more common MOAs usually include fewer than ten reforms.

And while the Obama Justice Department declared it does not craft "cookie cutter" agreements<sup>16</sup>, independent analyses show that these interventions followed a pattern as "second generation" consent decrees, growing "more complex and demanding."<sup>17</sup>

Notably, the Obama Justice Department's guidance acknowledged it was expanding "beyond the primary objective of eliminating constitutional violations in the specific law enforcement agency" to include areas "where federal action might help set a standard for reform" and are meant to reflect that "the Division is responsive to contemporary issues in policing and the law."<sup>18</sup>

Trump Administration Attorneys General Jeff Session and Bill Barr substantially narrowed the scope of these investigations, in addition to limiting the severity of the proposed remedies to alleged violations, but the Biden Administration has revived the broader approach.

The 1994 statute specifically authorizes the Attorney General to pursue investigations and civil actions to remedy violations of “rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”<sup>19</sup> These violations usually include unlawful use of force, unlawful stops, searches, and arrests and racial discrimination. Outcomes of these investigations under Obama and now the Biden Administration often appear predetermined with all but one confirming a pattern or practice finding.

The nature and scope of these findings reports (that form the basis of the remedies and later negotiations and settlements) changed during the Obama administration. They grew in breadth and detail beyond the narrow interpretation of what violations (and problems) are covered by the statute, what constitutes a systemic problem, and the role of the Justice Department in dictating reforms and for what purpose.

But the scope of violations (and required remedies) has expanded to include violations of the Americans with Disabilities Act, First Amendment rights, and bias against other legally protected classes. The litany of required changes necessary to achieve compliance grew beyond the bounds of DOJ’s statutory authority. In Baltimore’s agreement, the police department had to establish a community oversight taskforce, adopted specific “community-oriented policing principles,” and other terms that expressed the policy preferences of the Justice Department tangential to the underlying civil rights space.<sup>20</sup>

As the range of topics covered widened, so did the agreements’ length, compliance standards, and, critically, duration. While Pittsburgh’s consent decree was only 40 pages, the Obama era agreements in New Orleans (122) and Baltimore (227) are both lengthier and more expansive.<sup>21</sup>

### **Burdens without (Much) Proof**

Yet much of that substance is based on flimsy evidence and unproven strategies. The DOJ’s findings report’s claims of systemic bias in Baltimore were largely based on deeply contested “disparate impact theory” which the Supreme Court ruled could not be solely deduced from a demographic imbalance. Although, the basic tenets of social science observe correlation is not causality or proof of nefarious intent, the alleged violations are often premised on mildly disproportionate ratios to “prove” an institutional bias. Simply overlaying crime hotspots in Baltimore would explain the differences almost entirely.

Under the legal meaning of “pattern or practice,” the identified discrimination must be both harmful and systemic.<sup>22</sup> For police agencies, it must be widespread (pattern) and aided by departmental police or culture (practice) – and unconstitutional.

But the Department of Justice’s findings in Minneapolis and Louisville rest on anecdote and vagueness, and reflect policy aims. They include several egregious cases of police use-of-force but often omit whether or how those cases were addressed by the department internally, by the local prosecutor, or by any other agency. In one case, a Louisville officer’s misconduct led to an internal investigation which resulted in the officer being fired, but the Justice Department neglected to include those details in its findings.<sup>23</sup>

The Minneapolis report’s flaws extend to conflating “chokeholds” with “neck restraints,” alleging a

practice (i.e., shooting into a moving vehicle) is “dangerous” despite their writ being to determine if it was unconstitutional, and asserting claims about excessive force or disproportionate police stops without explaining their methodology.

Despite Minneapolis police responding to over one million calls in the six years it examined, the Justice Department offers fewer than twenty specific examples of supposed misconduct while often omitting the outcome of internal and independent investigations into those incidents. Meanwhile, it mentions Derek Chauvin, George Floyd’s killer, by name 21 times in an apparent attempt to both inflame and assign collective guilt.

### **Bargaining Power(less)**

After a findings letter is released, cities usually enter into direct negotiations with the federal government to accept a settlement (e.g., consent decree). These settlements are agreed to by the city under duress in most cases, with city leaders either eager to appease community demands or powerless to push back against the might of the federal government. By 2017, 36 of the 42 jurisdictions where the Justice Department found pattern or practice violations opted to settle instead of contesting the findings. All six jurisdictions who initially resisted a settlement lost at trial or later settled.<sup>24</sup>

Although settlement agreements have proven inevitable, resistance has yielded some benefits for uncooperative jurisdictions either in the type or terms of the final agreement. Alamance County, North Carolina’s sheriff’s department contested the Justice Department’s consent decree and prevailed in federal court. The judge threw out the DOJ’s case precisely because its methodology proving discrimination was questionable.<sup>25</sup> The attorney for Alamance County explained the lack of pushback elsewhere against the federal government, “Unfortunately,

most law enforcement agencies are afraid to challenge the civil rights division, even when its claims are completely bogus.”<sup>26</sup> When the Justice Department appealed, Alamance County settled but secured a less stringent agreement under a Memorandum of Agreement, which was closed in 2020.<sup>27</sup>

Once a jurisdiction decides to settle as Louisville and Minneapolis have announced they will, the Justice Department team meets with the jurisdiction’s negotiating team, usually limited to select public officials, police representatives, and attorneys. But DOJ also solicits input and information from “third-party” stakeholders including community and political activists. Although the police rank-and-file and their unions are supposed to be consulted, Justice lawyers have excluded them in several places including Seattle and Portland, where the unions sued but lost.

The substance of the agreements is intended to be responsive to the “institutional failures” of the department and reflect the proposed remedies in the findings letters. By accepting both the premise (systemic violations) and the prognosis (reform measures), these jurisdictions and their policing agencies are left to negotiate only the how (implementation and compliance) from a position of weakness. That perceived leverage has resulted in city after city acceding to nearly all the federal government’s demands – reasonable or not – often with poor results.

It also empowers the Justice Department to intervene in miscellaneous matters, distinct from the original intent of the statute. At least one third of Obama-era agreements touched on topics unrelated to use of force, discriminatory policing, and stop and search practices.<sup>28</sup> Half of those settlements mandated the adoption of “community-oriented policing” policies, 60%



required community outreach plans, and another third require public surveys – all policies imposed by DOJ that are beyond the scope of remedying the direct violations. These feel-good mandates are not directly related to any violation the Justice Department has authority to remedy.

### **Mission Impossible: Compliance**

These final settlements are then filed in federal court as agreements between the two parties. Consent decrees, unlike Memorandums of Agreement, are implemented and enforced through a two-tiered system. The agreement is enforced by a federal judge who accepts filings and progress reports and has the power to mediate and sanction the parties as well as alter and eventually terminate the agreement. Independent monitors, appointed by the court under mutual agreement of the parties in most cases, track and report to the court and public on an agency's compliance.

But this structure allows consent decrees to drag on for more than a decade. In contrast, MOAs – operating under mutual oversight and cooperative enforcement – rarely last longer than five years. Since departmental compliance is often ill-defined or arbitrary, federal monitors and judges keep moving the goalposts.<sup>29</sup>

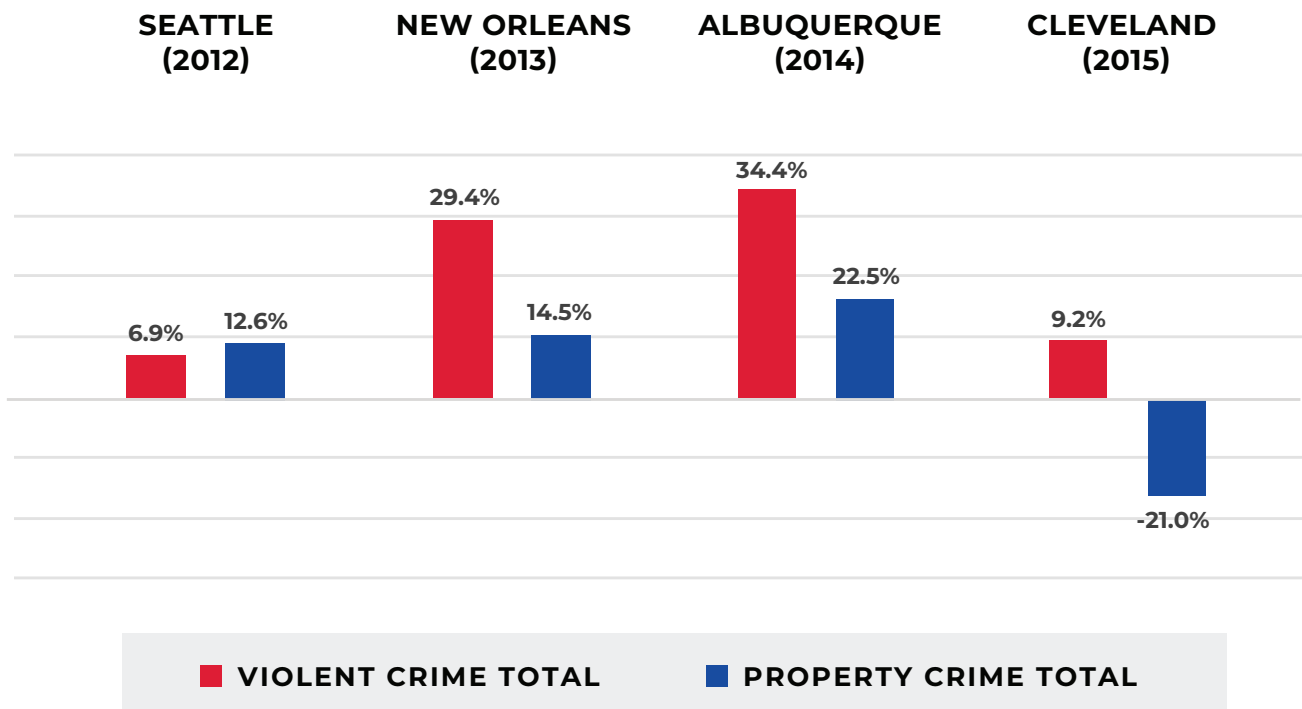
The consent decree cities of New Orleans (11 years), Albuquerque (9 years), and Seattle (11 years) remain under scrutiny despite long ago meeting the initial benchmarks of their agreements.<sup>30</sup> In

Albuquerque, the Q1 2023 monitors' report deemed the department to be 92% operationally compliant, conveniently just shy of the 95% threshold, which would make the monitors redundant.<sup>31</sup>

In 2022, New Orleans Mayor LaToya Cantrell went to court to lift her city's agreement, saying the judge and monitors' arbitrary decisions and delays prove "the objective goals of the Decree have all but vanished."<sup>32</sup> Monitors accused the Emerald City of "backsliding." The judge overseeing the agreement repeatedly delayed considering the city's petition for ten months before hearing arguments. With no decision date set, the consent decree continues.

For cities under consent decrees, the cost of implementation and monitoring is staggering.<sup>33</sup> Seattle's decade-long saga has cost taxpayers \$200 million. In Chicago, which had its original five-year agreement extended by three years in March 2023, officials anticipate it will cost more than \$100 million. Louisville has allocated \$8 to \$10 million (which will certainly balloon) a year for its pending agreement, which is equal to 5% of the city's police budget. With so much money flowing to the cottage industry of consent decree monitors, even Attorney General Merrick Garland recognized the monitors' profligacy in 2021 and limited their fees.<sup>34</sup>

## CRIME RISES POST-CONSENT DECREE



Source: FBI Crime Data Explorer

Note: Compares three year average prior to consent decree to three year average following, excluding imposition year.

### The Public Safety Penalty

In city after city under more onerous consent decrees, public safety has deteriorated.

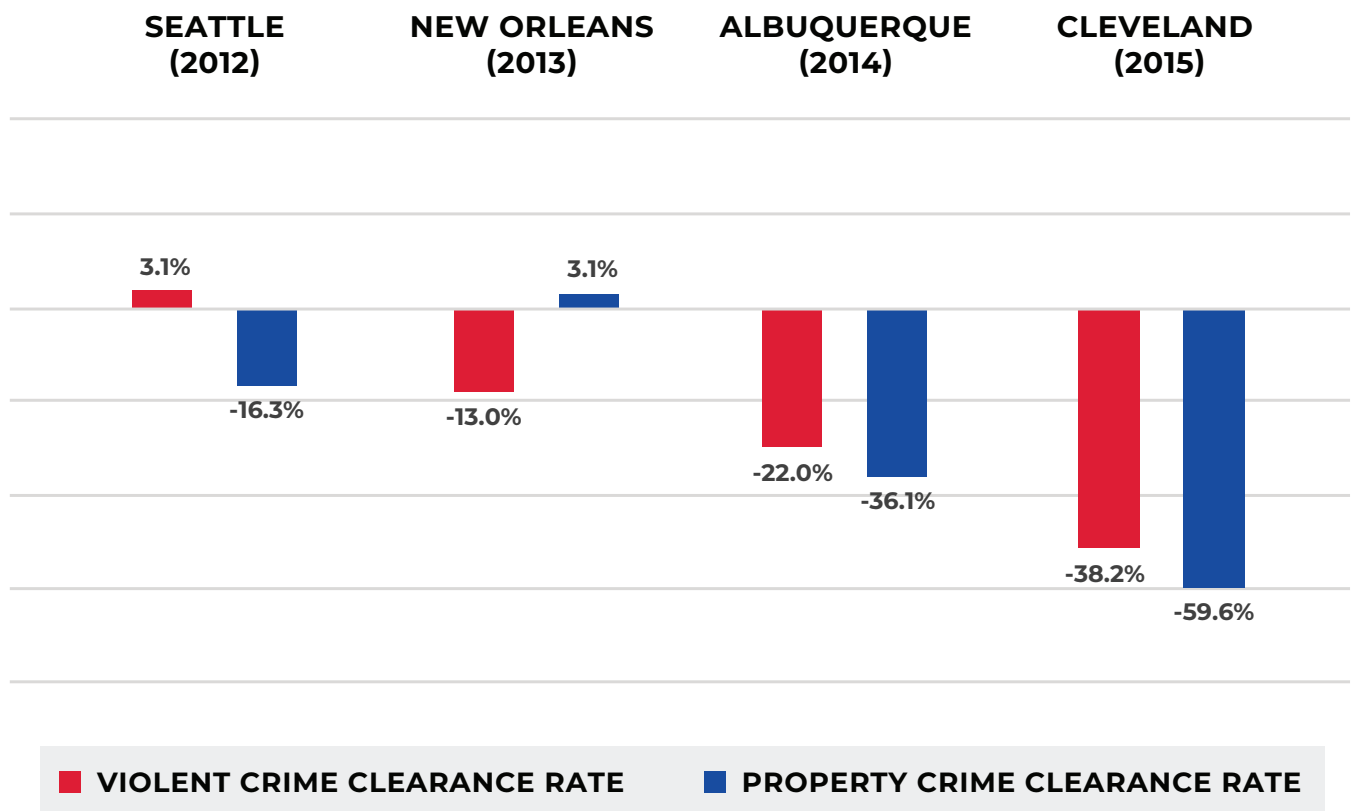
Large jurisdictions under “second generation” consent decrees experience more significant negative effects on public safety than smaller agencies and those subject to less onerous or earlier settlements.<sup>35</sup> Since the Obama Administration’s approach to federal policing interventions both de-emphasized the use of MOAs and enforced more demanding consent decrees, the recent experience of consent decree cities illustrates the public safety impact more clearly.

Academic research examining cities under any type of federal intervention has shown that both property and violent crime rose relative to comparable jurisdictions during the reform

period.<sup>36</sup> But by aggregating all jurisdiction sizes and intervention types across three presidential administrations, this analysis masks more pronounced public safety effects on larger city agencies more recently under consent decrees.

While overall violent and property crime rose across most jurisdictions under consent decrees relative to similar cities, it rose most dramatically in jurisdictions under Obama-era settlements. In fact, property crime experienced a relative decline in all three Clinton-Bush era consent decree jurisdictions (Detroit, Los Angeles, and Pittsburgh) while violent crime ticked up slightly in two and dropped dramatically in one (Los Angeles). But in the three consent decree cities under Obama, relative property crime was 25% higher on average compared to peer jurisdiction not subject to settlements. Violent crime, too, spiked dramatically.

## FEWER CRIMES SOLVED UNDER CONSENT DECREES



Source: FBI Crime Data Explorer

Note: Compares three year average prior to consent decree to three year average following, excluding imposition year.

Under less restrictive MOAs, large cities' relative violent crime rates actually fell slightly. While property crime decreased overall, consent decree cities saw a less dramatic drop.

**While overall violent and property crime largely declined across major cities during the Obama Administration, in most consent decree jurisdictions crime rose and more crimes went unsolved.<sup>37</sup>**

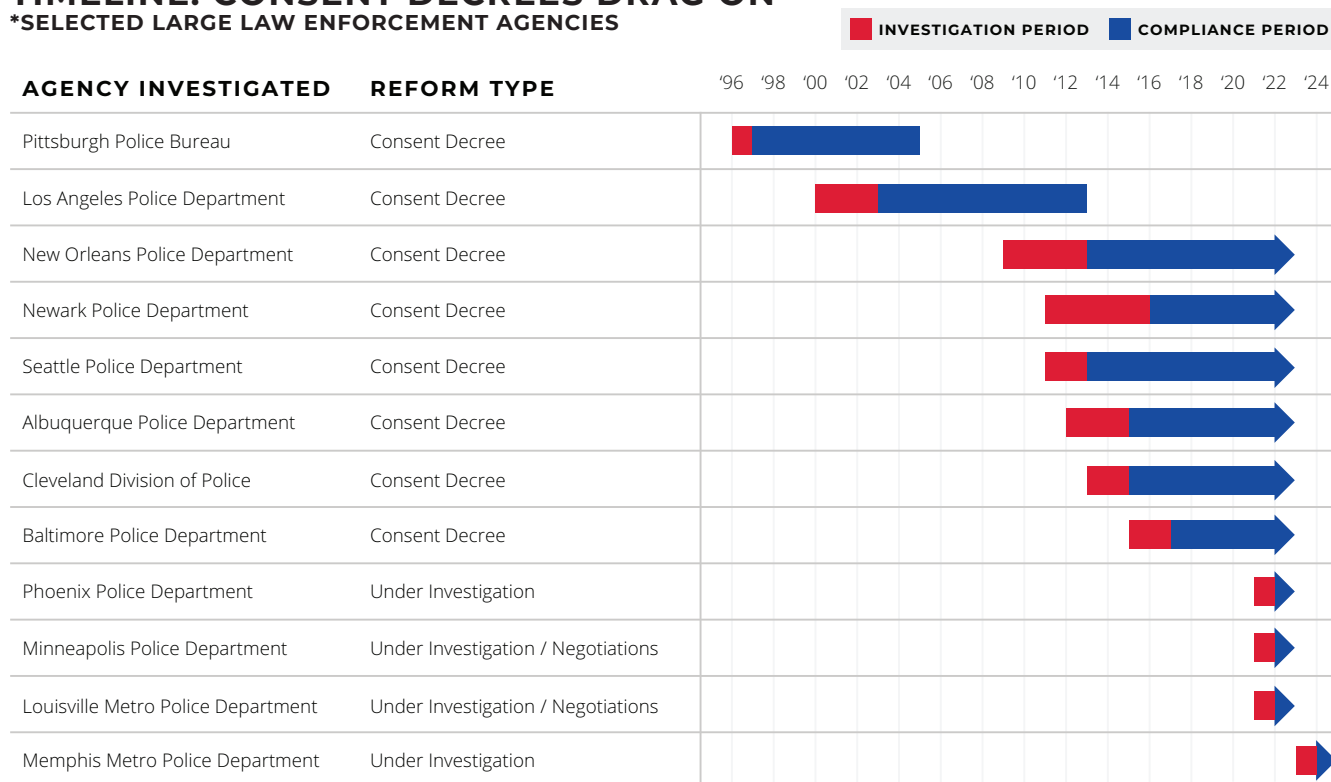
In the three years following the imposition of a consent decree, these cities saw significant increases in crime while police clearances fell precipitously compared to the three years prior.<sup>38</sup>

After New Orleans' 2013 agreement, total violent crime rose 29% but clearance rates fell 13% (comparing 2010-2012 to 2014-2016). For Cleveland, violent crime jumped 9.2% but clearance rates dropped 38% in the three years after its consent decrees began (2015). Albuquerque saw a 34% spike in violent crime after its 2014 consent decree came into effect and a 22% reduction in clearances. Similarly, property crime rose under consent decrees, but clearances fell even more steeply. In the year following Cleveland's agreement, property crime surged from 5,205 to 6,546 reported offenses but the police managed to clear only 9% (568 offenses) compared to clearing 17% (883 offenses) the year prior to the decree.



## TIMELINE: CONSENT DECREES DRAG ON

\*SELECTED LARGE LAW ENFORCEMENT AGENCIES



Source: Law Enforcement Knowledge Lab, "Federal Interventions Dashboard."

A separate analysis by the news outlet Axios confirms the impact of consent decrees on public safety, concluding, "Most police agencies in recent federally court-ordered reform agreements saw violent crime rates skyrocket immediately."<sup>39</sup>

### Morale Collapse

The reason for this consent decree – public safety effect is two-fold. First, the added compliance burdens on the department and individual officers make doing their jobs harder as paperwork and protocols hinder their performance. Second, the decrees' added (and often undue) scrutiny on officers makes them reticent to police proactively and aggressively pursue cases where the risk of criticism and misconduct allegations outweigh the benefits.

Officer surveys attest to this "de-policing" effect under consent decrees. While much of the evidence for the negative impact on police morale is anecdotal, the limited data from major agencies demonstrates it has an impact on morale and staffing. Chicago officials blame officer attrition for the department's inability to meet consent decree benchmarks, a staffing crisis brought on by low morale.<sup>40</sup> In Baltimore and Seattle, where expansive surveys have been conducted, officers report dissatisfaction with their job under the decree and lower motivation.<sup>41</sup> In their exit interviews, officers in Seattle, Albuquerque, and other large agencies repeatedly cite the Justice Department and its compliance regime as a reason for their early departures.<sup>42</sup>

In response to the exit interview form question “what factors had a negative impact on the morale in the department?,” one Seattle officer with twenty years on the job, wrote “DOJ and policy changes.” Another who retired before receiving his full pension wrote the best way to improve the department would be to “Get rid of DOJ already! ... Let the chief run the department, not DOJ.” The mayor of New Orleans and city leaders across these jurisdictions have cited lower police morale as a byproduct of ongoing decrees.

Justice Department rules can stymie police leaders as well. According to a 2015 Washington Post analysis of 16 departments under consent decrees, they have collectively had 52 police chiefs since their decrees started. Baltimore has had five police chiefs in its first six years under federal oversight. Albuquerque’s mayor forced the retirement of its police chief, Mike Geier, in 2020 expressly because reform efforts have “stalled” yet also praised him at the same time for “getting reform efforts on track.” Geier sued the city and released a memoir accusing the mayor and city officials of undermining his efforts at consent decree compliance. Violent crime in Albuquerque has risen nearly 80% over its ten years under the consent decree.<sup>45</sup>

## Reform without Results

A critical sign that these rarely work is that residents rarely believe the department has improved under the decree.<sup>46</sup>

Many consent decree settlements require public surveys on local policing, but the results are far from a ringing endorsement for the Justice Department’s program. Police legitimacy has dropped in Seattle while concern about social breakdown has risen dramatically.<sup>47</sup> Overwhelming majorities of Baltimoreans are less likely to engage the police, don’t believe the police department is doing a good job serving the community, and don’t feel safe.<sup>48</sup> In Chicago, surveys show that relations between young black and Latino men and the police have actually soured under reform.<sup>49</sup>

And residents in some cities like Cleveland suffer from “consent decree fatigue” – that the reforms aren’t happening fast enough or at all or they aren’t the right reforms in the first place.<sup>50</sup>

**PART III.**

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**A DIFFERENT  
APPROACH  
TO FEDERAL  
POLICE  
REFORM**





### PART III. A DIFFERENT APPROACH TO FEDERAL POLICE REFORM

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That consent decrees are coercive by nature and bureaucratic by process contribute to their inability to achieve meaningful and effective policing reforms. But the current approach to federal intervention and implementation ensures these agreements' failure. Under Obama and now Biden, the Justice Department (often at the behest of third-party groups who are hostile to policing in general) has preferred coercion to collaboration and cooperation. Investigations and findings identify myriad problems, supported by scant or suspect evidence instead of focusing their attention on the most critical needs. Those remedies frequently stray far from the statutory purpose of consent decrees and into areas far afield that reflect policy preferences in line with the political priorities of the Administration.

The Alternatives to coercive consent decrees already exist and have been used by previous administrations to greater effect without the resulting negative impacts on public safety, morale, city budgets, and wasted effort. Those preferable tools include Technical Assistance letters and Memorandums of Agreement.

Issuing a Technical Assistance letter, which acts as both a guidance document and a "warning" letter to a department, is the least intrusive mechanism available but can prove highly effective in achieving change. Law enforcement agencies of concern have their specific practices detailed and

suggested remedies outlined, based on Justice Department and outside expertise. These should be drawn from strong evidence, unearthed in thorough investigations, and fixes should be based on real-world best practices and rigorous research. Remedies should extend to partnerships between the subject department and an exemplar agency who can make reform implementation practicable.

Similarly, a Memorandum of Agreement offers the Justice Department the ability to intervene in a less heavy-handed way than imposing a consent decree. But these MOAs represent a more substantial intervention than TA letters since they are legally-binding and, if necessary, can be litigated and have penalties imposed for non-compliance. This sterner approach is justified when the agency's violations are so egregious that reforms are appropriately urgent and significant.

The greatest exception to consent decrees' poor outcomes is the Los Angeles Police Department, which after the tumult of the 1990s, entered into a consent decree in 2003. Although it was lifted a decade later, the department was significantly improved. Rising crime and officer attrition were halted, use of force and complaints dropped while arrests and stops and searches increased and, critically, public satisfaction with the police soared.<sup>51</sup>

Consent decree advocates tout the LAPD's success but often omit the fact that during that period the department had a single and singular leader in Chief William Bratton, who had turned around NYPD a decade before. The LAPD's success is partly owed to his leadership (and the support of his city bosses) and the culture of accountability he instituted independent of federal rules as well as the less onerous nature of that consent decree. Because its objectives were narrow and proved achievable, Los Angeles' experience is the exception that proves the rule of consent decrees.

For the foreseeable future, federal consent decrees are the law of the land and law enforcement agencies must accept that reality. But local officials, police leaders, and the Department of Justice must equally accept that consent decrees are no panacea – and often prove ineffective and imprudent.

When a consent decree is truly warranted, it must focus on the most urgent concerns. The violations should be clearly identified and fully supported

by rigorous evidence. Remedies should reflect effective real-world reforms and remain inside the statutory framework. That requires setting realistic benchmarks, allocating sufficient funding, and holding police (and city) leadership accountable for enacting them effectively, efficiently, and in a timely manner.

Like a surgeon wielding a scalpel, federal interventions should be precise and necessary. Less intrusive and onerous means should be considered carefully first before employing the decree chainsaw. In some cases, consent decrees may still be necessary, but they should be used responsibly and effectively, but that's not the norm right now.

## ABOUT LELDF

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The Law Enforcement Legal Defense Fund (LELDF) is a 501(c)(3) non-profit dedicated to supporting and defending the law enforcement profession and those law enforcement officers who have devoted their lives to upholding the Constitution and serving the United States and its citizens while enforcing its laws. We also seek to educate the public about the many risks and threats to law enforcement personnel in order to build a more informed, respectful, and appreciative society.

## ABOUT THE AUTHORS

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## NOTES

- <sup>1</sup> US Department of Justice (Civil Rights Division), "The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present," January 2017, pg. 1-5; <https://www.justice.gov/crt/file/922421/download>.
- <sup>2</sup> US Department of Justice (Civil Rights Division), "How Department of Justice Civil Rights Division Conducts Pattern-or-Practice Investigations," 2015; <https://www.justice.gov/file/how-pp-investigations-work/download>.
- <sup>3</sup> DOJ (2015)
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