

DRAFT

Forthcoming, *Cornell Law Review*
Volume 102 (2017)

DE-POLICING

Stephen Rushin and Griffin Edwards[†]

ABSTRACT

Critics have long claimed that when the law regulates police behavior it inadvertently reduces officer aggressiveness, thereby increasing crime. This hypothesis has taken on new significance in recent years as prominent politicians and law enforcement leaders have argued that increased oversight of police officers in the wake of the events in Ferguson, Missouri has led to an increase in national crime rates. Using a panel of American law enforcement agencies and difference-in-difference regression analyses, this Article tests whether the introduction of public scrutiny or external regulation is associated with changes in crime rates. To do this, this Article relies on an original dataset of all police departments that have been subject to federally mandated reform under 42 U.S.C. § 14141—the most invasive form of modern American police regulation. This Article finds that the introduction of § 14141 regulation was associated with a statistically significant uptick in crime rates in affected jurisdictions. This uptick in crime was concentrated in the years immediately after federal intervention and diminished over time. This finding suggests that police departments may experience growing pains when faced with external regulation.

TABLE OF CONTENTS

	INTRODUCTION	2
I.	EXISTING LITERATURE ON DE-POLICING HYPOTHESIS	10
	A. <i>The De-Policing Effects of Public Scrutiny</i>	15
	B. <i>The De-Policing Effects of External Regulation</i>	16
	C. <i>Gaps in Existing Literature</i>	18
II.	METHODOLOGY	21

[†] Stephen Rushin is an Assistant Professor of Law at the University of Alabama School of Law. Professor Rushin holds a Ph.D. in Jurisprudence and Social Policy and a J.D. from the University of California, Berkeley. Griffin Edwards is an Assistant Professor of Business at the University of Alabama, Birmingham, Collat School of Business. Professor Edwards holds a Ph.D. in Economics from Emory University.

A.	<i>Background on 42 U.S.C. § 14141</i>	21
B.	<i>The §14141 Reform Process</i>	24
C.	<i>DOJ Enforcement of § 14141 as a Case Study for De-Policing Hypothesis</i>	30
1.	Investigations as Proxies for Scrutiny.....	32
2.	Settlements as Proxies for External Regulation...	34
D.	<i>Model, Variables, and Controls</i>	34
III.	FINDINGS	38
A.	<i>Trends in Raw Data</i>	39
B.	<i>The Difference-in-Differences Estimation</i>	45
IV.	CONSTITUTIONAL POLICING AND COMPROMISE.....	48
A.	Possible Explanations for the Uptick in Crime	48
B.	Limiting the De-Policing Effects of Regulation	50
	CONCLUSION.....	53

INTRODUCTION

On August 12, 2013, U.S. District Judge Shira Scheindlin ruled that the New York City stop-and-frisk program violated the constitutional rights of minority residents, as it constituted a “policy of indirect racial profiling.”¹ As part of her decision, Judge Scheindlin ordered the New York Police Department (hereinafter “NYPD”) to change their stop-and-frisk policy.² She also ordered the appointment of an external monitor to oversee mandated changes to the NYPD

¹ Joseph Goldstein, *Judge Rejects New York’s Stop-and-Frisk Policy*, N.Y. TIMES (Aug. 12, 2013), <http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html> (providing details about Judge Scheindlin’s ruling); see also John Cassidy, *Judge Scheindlin Stops and Frisks N.Y.C. Mayoral Candidates*, THE NEW YORKER BLOGS (Aug. 12, 2013), <http://www.newyorker.com/online/blogs/johncassidy/2013/08/judge-scheindlin-stops-and-frisks-ny-mayoral-candidates.html> (mentioning Judge Scheindlin’s decision that stop-and-frisk constitutes a violation of the Constitution); *New York City’s “Stop and Frisk” Policy Does Violate the Constitution and Leads to “Indirect Racial Profiling”*, *Federal Judge Rules*, MAIL ONLINE (Aug. 12, 2013), <http://www.dailymail.co.uk/news/article-2390077/New-York-stop-frisk-federal-judge-Shira-Scheindlin-rules-policy-violates-constitution-orders-changes.html> (explaining Judge Scheindlin’s opinion).

² Daniel Beekman, *Ivy League Law Professors to Help Implement Stop-and-Frisk Reforms*, N.Y. DAILY NEWS (Sept. 19, 2013), <http://www.nydailynews.com/news/crime/ivy-league-law-professors-implement-stop-and-frisk-reforms-article-1.1459589> (explaining the dozen individuals that); J. David Goodman, *Bloomberg Calls Court Monitor for Police a “Terrible Idea,”* N.Y. TIMES (June 13, 2013), <http://www.nytimes.com/2013/06/14/nyregion/bloomberg-calls-court-monitor-for-police-a-terrible-idea.html>.

stop-and-frisk procedures.³ Mayor Michael Bloomberg strongly objected to the decision to appoint a monitor, calling it a “terrible idea” and arguing that it would be “disruptive.”⁴ According to Mayor Bloomberg, any court appointed monitor would not understand “the streets of New York City.”⁵ Citing Philadelphia’s experience with a police department monitor, Bloomberg also claimed that the decision could contribute to higher crime and put the safety of all New Yorkers at risk.⁶ Bloomberg and other critics of Judge Scheindlin’s decision have argued that judicial efforts to reform police departments negatively affect the department’s efficiency and effectiveness.⁷ No doubt, in the same period of time that the NYPD rapidly expanded the use of stop-and-frisks, crime rates plummeted.⁸ But these stop-and-

³ Goodman, *supra* note 2 (explaining the judge’s appointment of external monitor Peter L. Zimroth); *see also* Beekman, *supra* note 2 (describing the various academics appointed to the twelve person monitoring team tasked with reforming New York City’s stop-and-frisk program).

⁴ Yoav Gonen, *De Blasio calls NYPD’s Federal Monitor a “Temporary Reality,”* NEW YORK POST (SEP. 20, 2013), <http://nypost.com/2013/09/20/de-blasio-calls-nypds-federal-monitor-a-temporary-reality/> (referring to Bloomberg’s conclusion that the appointment of a monitor would be “terrible”); Colleen Long, *NYC Stop-and-Frisk Policy Wrongfully Targeted Minorities, Judge Rules; Outside Monitor Appointed*, MINNEAPOLIS STAR TRIBUNE (August 12, 2013), <http://www.startribune.com/nypd-wrongly-targeted-minorities-judge-rules/219252341/> (identifying Bloomberg as a strong critic of the decision, and citing Bloomberg’s concern that the law will hurt crime fighting efforts); Goodman, *supra* note 2.

⁵ Michael Howard Saul, *Bloomberg Calls Stop-and-Frisk Ruling “Dangerous,”* THE WALL STREET JOURNAL (Sep. 21), 2013 (also quoting Mayor Bloomberg criticizing the decision in part because of the court’s failure to understand the streets of the city).

⁶ *See, e.g.,* Goodman, *supra* note 2; Damien Gayle, *Shootings up 13% in New York City after federal judge rules police “stop and frisk” tactics unconstitutional and racist*, MAIL ONLINE (Sept. 19, 2013), <http://www.dailymail.co.uk/news/article-2425055/Shootings-10-New-York-City-federal-judge-rules-stop-search-unconstitutional-racist.html> (detailing how New York City officials are pointing to a 13% increase in shootings over the last 28 days as evidence that the Judge’s orders have contributed to higher crime).

⁷ *See e.g.,* Tom Howell Jr., *NYC Mayor Bloomberg Staunchly Defends Stop-and-Frisk Program*, THE WASHINGTON TIMES, (Aug. 12, 2013), <http://www.washingtontimes.com/news/2013/aug/12/judge-says-nyc-stop-and-frisk-policy-violated-right/> (summarizing Mayor Bloomberg’s objections to the Judge’s ruling); *New York Police Commissioner Ray Kelly Calls Stop-and-Frisk Decision “Disturbing and Offensive,”* N.Y. DAILY NEWS (Aug. 12, 2013), <http://www.nydailynews.com/news/politics/new-york-police-commissioner-ray-kelly-comments-stop-and-frisk-decision-article-1.1424689> (quoting Police Commissioner Ray Kelly, who calls the allegations made in the court case “recklessly untrue”).

⁸ During this time in New York City, violent crime rates fell by approximately 66 percent and property crime declined 62 percent. FEDERAL

frisks appeared to have come at a high and possibly unconstitutional cost.⁹

Mayor Bloomberg is not alone in this belief that external regulation of police departments can hurt police efficiency and effectiveness. Critics have levied similar claims after the implementation of nearly all major police reform in modern American history, including the exclusionary rule¹⁰ and the *Miranda v. Arizona*

BUREAU OF INVESTIGATIONS, UNIFORM CRIME REPORTING STATISTICS (1970-2011), available at <http://www.fbi.gov/about-us/cjis/ucr/ucr>.

⁹ The proliferation of stop-and-frisks started after the United States Supreme Court issued the *Terry v. Ohio* case. There, the Court permitted a law enforcement to execute a limited stop-and-frisk when the officer had reasonable suspicion that a group of individuals were engaged in criminal activity. *Terry v. Ohio*, 392 US 1 (1968) (holding that a police officer could perform a stop of a limited time and scope if he or she had reasonable suspicion that a person was engaged in a criminal act). Since the issuance of this decision, the use of these so-called *Terry* stops have raised accusations of racial profiling in cities across the country. And perhaps nowhere have those accusations of wrongdoing been greater than in New York City. See generally Goldstein, *supra* note 1; STOP AND FRISK DATA, NEW YORK CIVIL LIBERTIES UNION, available at <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Sep 23, 2013) (giving a detailed breakdown of the seemingly racially disparate pattern of stop-and-frisks in New York City). In 1990, New York Police Department (NYPD) officers only recorded 41,438 *Terry* stops. FRANKLIN E ZIMRING, *THE CITY THAT BECAME SAFE: NEW YORK'S LESSONS FOR URBAN CRIME AND ITS CONTROL* 128 (2012). By 2011, this number had risen to an astonishing 685,724—an increase of over 1,300 percent. Dylan Matthews, *Here's What You Need to Know About Stop and Frisk — And Why The Courts Shut It Down*, WASHINGTON POST (Aug. 13, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/08/13/heres-what-you-need-to-know-about-stop-and-frisk-and-why-the-courts-shut-it-down>. In 2011, an estimated 87 percent of those subject to stop-and-frisks were either Latino or African American. ZIMRING, *supra* at 129. And these stops rarely led to an arrest or yielded illegal contraband. Adam Serwer & Jaeah Lee, *Charts: Are the NYPD's Stop-and-Frisks Violating the Constitution?* MOTHER JONES (April 29, 2013), <http://www.motherjones.com/politics/2013/04/new-york-nypd-stop-frisk-lawsuit-trial-charts> (detailing the highly imprecise nature of stop-and-frisk in New York City). On average, the NYPD seizes illegal contraband once for every 143 stops of African Americans and 99 stops for Latinos. *Id.* By contrast, when police officers in New York City *Terry* stop against a white suspect, they find contraband about 1 in every 27 cases. This means that *Terry* stops against Latino suspects are around 3-4 times less accurate than stops of white suspects. And *Terry* stops of black suspects are around 5-6 times less accurate. This, according to many, is clear evidence that police officers in New York view minorities with more suspicion than their criminality warrants.

¹⁰ See, e.g., Raymond A. Atkins & Paul H. Rubin, *The Effects of Criminal Procedure on Crime Rates: mapping Out the Consequences of the Exclusionary Rule*, 46 J. L. & ECON. 157 (2003) (finding that the exclusionary rule's passage was associated with a uptick in national crime); National Institute of Justice, Criminal Justice Report—The Effects of the Exclusionary Rule: A Study in California (Washington, D.C.: Department of Justice, National Institute of Justice, 1982)

decision,¹¹ just to name a few. This de-policing hypothesis has received increased attention in the wake of the events in Ferguson, Missouri.¹² Since then, a number of prominent critics—including the Directors of the Federal Bureau of Investigations (FBI) and the Drug Enforcement Administration (DEA)—have worried that the increased public scrutiny of American police departments has caused an uptick in national crime rates.¹³ The media has dubbed this contemporary version of the de-policing hypothesis the “Ferguson Effect.”¹⁴

(finding that the use of the exclusionary rule led to prosecutors dropping complaints in 86,033 felony arrest cases).

¹¹ See, e.g., Paul G. Cassell & Richard Fowles, *Handcuffing The Cops? A Thirty-Year Perspective on Miranda's Harmful Effects on Law Enforcement*, 50 STANFORD LAW REV. 1055–1145, 1063–66 (1998) (linking Miranda to decreased clearance rates in the United States); see also *More Criminals to Go Free? Effect of High Court's Ruling*, U.S. NEWS & WORLD REP., June 27, 1966, at 32, 33 (quoting Los Angeles Mayor as saying the *Miranda* decision would handcuff police and contribute to more criminals going free); S. REP. NO. 90-101097, at 25 (1968), reprinted in 1968 U.S.C.C.A.N. 2112, 2123 (determining that “crime will not be effectively abated so long as criminals who have voluntarily confessed their crimes are released on mere technicalities”); LIVA BAKER, *MIRANDA: CRIME, LAW AND POLITICS* 248 (1983) (citing Nixon's campaign speeches criticizing *Miranda* as a decision that will increase crime).

¹² For more information on the events in Ferguson, Missouri, see Julie Bosman & Emma G. Fitzsimmons, *Grief and Protests Follow Shooting of a Teenager*, N.Y. TIMES (Aug. 10, 2014), <http://www.nytimes.com/2014/08/11/us/police-say-mike-brown-was-killed-after-struggle-for-gun.html> (providing details on the Michael Brown shooting); Devlin Barrett, *Justice Department to Investigate Police Force*, WALL STREET JOURNAL (Sep. 5, 2014), available at: <http://www.wsj.com/articles/ferguson-police-chief-welcomes-justice-department-probe-1409849928> (stating that the DOJ opened its investigation of Ferguson on September 5, 2014—less than a month after the Brown shooting).

¹³ For just a few examples, see Heather Mac Donald, *The New Nationwide Crime Wave*, THE WALL STREET JOURNAL (May 29, 2015), <http://www.wsj.com/articles/the-new-nationwide-crime-wave-1432938425> (tying the uptick in national crime rates to the introduction of additional scrutiny of police after Ferguson); Heather Mac Donald, *Trying to Hide the Rise of Violent Crime*, THE WALL STREET JOURNAL (Dec. 25, 2015), <http://www.wsj.com/articles/trying-to-hide-the-rise-of-violent-crime-1451066997> (again, connecting crime rates to police scrutiny); Heather Mac Donald, *The Ferguson Effect in Los Angeles—More Crime*, L.A. TIMES (Jan 13, 2016), <http://www.latimes.com/opinion/op-ed/la-oe-mac-donald-ferguson-effect-in-los-angeles-20160113-story.html> (looking specifically at Los Angeles as an example of where scrutiny contributed to an uptick in crime); Mike Pesca, *Grasping for the Ferguson Effect*, SLATE (June 8, 2015), http://www.slate.com/articles/podcasts/gist/2015/06/the_gist_heather_mac_donald_on_the_ferguson_effect_and_crime_statistics.html. For details on the statements made by the FBI and DEA Directors, see Wesley Lowery, *FBI Chief Again Says Ferguson Having Chilling Effect on Law Enforcement*, WASH. POST (Oct. 26, 2015), available at <https://www.washingtonpost.com/politics/fbi-chief-again-says-ferguson-having-chilling-effect-on-law-enforcement/2015/10/26/c51011d4-7c2c->

If true, the de-policing hypothesis has serious implications for the study of police regulation. It suggests that attempts to document, oversee, and regulate unconstitutional misconduct by American police departments may reduce public safety. If true, this hypothesis should make courts and legislatures hesitant to install aggressive regulations of police behavior. Until recently, however, social scientists have been somewhat limited in their ability to test this hypothesis.¹⁵

Using a panel of American law enforcement agencies and difference-in-difference regression analyses, this Article tests whether the introduction of public scrutiny and external regulation is associated with changes in crime rates. To do this, this Article relies on an original dataset of all police departments that have been subject to federally mandated reform under 42 U.S.C. § 14141,¹⁶ acquired via Freedom of Information Act (FOIA) requests, interviews with

11e5-afce-2afd1d3eb896_story.html; Todd C. Frankel, *DEA Chief Joins FBI Chief in Giving Credence to the “Ferguson Effect,”* WASH. POST (Nov 4, 2015), <https://www.washingtonpost.com/news/post-nation/wp/2015/11/04/dea-chief-joins-fbi-chief-in-giving-credence-to-ferguson-effect> (quoting the DEA Director as making such a de-policing claim).

¹⁴ Members of the media from both sides of the debate have taken to describing this hypothesis as the “Ferguson Effect.” See, e.g., Johnathan M. Smith, *Forget the “Ferguson Effect,”* WASH. POST (Oct. 28, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/10/28/forget-the-ferguson-effect-on-crime> (using the “Ferguson Effect” label); Sari Horwitz, *Attorney General: There Is ‘No Data’ Backing Existence of a ‘Ferguson Effect,’* WASH. POST (Nov. 17, 2015), https://www.washingtonpost.com/world/national-security/loretta-lynch-there-is-no-data-backing-the-existence-of-a-ferguson-effect/2015/11/17/ebac5f1a-8d56-11e5-acff-673ae92ddd2b_story.html (also using this label); Eric Lichtblau, *Officials Debate Whether ‘Ferguson Effect’ Is Real*, N.Y. TIMES (Nov. 4, 2015), <http://www.nytimes.com/2015/11/05/us/politics/officials-debate-effect-of-scrutiny-on-police.html> (again, using the term “Ferguson Effect”).

¹⁵ This is because most major reforms of American law enforcement have happened through piecemeal case law handed down by courts. This regulatory approach has made it difficult to test the validity of the de-policing hypothesis for two reasons. First, when the U.S. Supreme Court handed down transformational regulations of American law enforcement like *Miranda* or *Mapp v. Ohio*, their decisions bound all state and local law enforcement agencies equally. This made it impossible for researchers to compare a police agency burdened by *Miranda* or *Mapp* with a similarly situated police department unburdened by these decisions over the same time period. Put differently, it has previously been difficult for researchers to engage in contemporaneous, cross-departmental comparisons between police departments. Second, most of the regulations handed down by courts have only regulated one small aspect of police work. Because of this, it was difficult to casually link any corresponding increases in crime rates to the introduction of piecemeal reforms of local police practices. Until recently, we have lacked an ideal way to test the theoretical assumptions underlying the de-policing hypothesis. For a more detailed account of these prior limitations, see *infra* Parts. I.B and II.A.

¹⁶ See *infra* Part II.C & D.

relevant stakeholders, and a review of available court documents.¹⁷ Passed in 1994, § 14141 gives the U.S. Attorney General the power to seek equitable relief against local police departments engaged in a pattern or practice of unconstitutional misconduct.¹⁸ This unique dataset facilitates an examination of two different versions of the de-policing hypothesis. One version of the de-policing hypothesis argues that the mere presence of public scrutiny is enough to increase crime rates.¹⁹ The other version of the de-policing hypothesis ties increases in crime to the imposition of external regulation.²⁰

¹⁷ For more information on the methodology used to collect this original dataset, *see* app. F.

¹⁸ Congress passed 42 U.S.C. § 14141 as part of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA). Pub. L. No. 103-322, § 210401, 108 Stat. 1796, 2071. The statute makes it unlawful for a police department to engage in a pattern or practice of unconstitutional misconduct. 42 U.S.C. § 14141(a). The statute gives the U.S. Attorney General the authority to seek injunctive relief to force police agencies to implement reforms aimed at curbing misconduct. *Id.* § 14141(b). Federally mandated reform via § 14141 represents the single most invasive forms of external legal regulation imposed on American police departments. Theoretically, each agreement should be specifically tailored to the unique needs of the individual police department—that is tailored to the type of misconduct that must be rooted out. However, these agreements have actually looked remarkably similar over time. Most agreements have included sections regulating the officer use of force. *See, e.g.*, *United States v. Seattle*, No. 2:12-cv-01282-JLR, at 16-40 (W.D. Wa. July 27, 2013) (settlement agreement and stipulated [proposed] order of resolution) [hereinafter *Seattle Agreement*], *text available at* http://www.justice.gov/crt/about/spl/documents/spd_consentdecree_7-27-12.pdf (detailing regulations on use of firearms, conductive energy devices, oleoresin capsicum spray, and impact weapons). Almost all agreements require the implementation of an early warning system to identify officers engaged in a systematic misconduct. *See, e.g.*, *United States v. New Jersey State Police*, 99-5970, at 15-18, para.40-56 (D. N.J. Dec. 30, 1999) (joint application for entry of consent decree) [hereinafter *New Jersey Consent Decree*] (describing the development of the management awareness program), *text available at* <http://www.clearinghouse.net/chDocs/public/PN-NJ-0002-0001.pdf>. It is common for agreements to regulate the handling of citizen complaints and the internal investigation of officer wrongdoing. *See, e.g.*, *United States v. Pittsburgh*, No. 2:97-cv-00354-RJC, at 23-32, para. 44-69 (W.D. Pa. Feb. 26, 1997) (Consent Decree) [hereinafter *Pittsburgh Consent Decree*], *text available at* <http://www.clearinghouse.net/chDocs/public/PN-PA-0003-0002.pdf> (mandating such reforms). In recent years, though, the DOJ under President Barack Obama has expanded the scope of structural police reform to cover a wide range of topics, including gender bias, interrogations, lineup procedures, recruitment, crisis intervention, and promotion standards. Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 MINN. L. REV. 1343,1387 (2015).

¹⁹ *See infra* Part I.B.1 and accompanying text (describing this as the “Ferguson Effect”).

²⁰ *See infra* Part I.B.2 and accompanying text (describing this as “Drive and Wave Syndrome”).

Federal intervention via § 14141 allows for a careful testing of the theoretical assumptions underlying both versions of the depolicing hypothesis. When the Department of Justice (hereinafter “DOJ”) identifies a local police department as a target for § 14141 reform, it first initiates a formal investigation.²¹ These formal investigations are public and can last for a year or more.²² During these investigatory periods, the DOJ puts local police departments under intense public scrutiny.²³ However, during this initial investigatory period, the DOJ does not mandate any formal changes to departmental policy—it merely identifies the department’s behavior as suspicious.²⁴ This Article identified 61 formal investigations of American police departments pursuant to § 14141 since 1994.²⁵ This

²¹ Technically, the DOJ first initiates a preliminary inquiry before it opens a formal investigation. But these preliminary inquiries are not made public. Preliminary inquiries generally involve the DOJ examining publicly available information to determine whether a police department may warrant a full-scale public investigation. For more information on how these preliminary inquiries operate, see Rushin, *supra* note 18, at 1367-72 (providing a detailed account of how the DOJ identifies agencies for preliminary inquiries and showing that only a fraction of preliminary inquiries become formal investigations).

²² *Id.* at 1370-71 (“Investigations are expensive and time-consuming—sometimes costing millions of dollars and taking several months to even years to complete”).

²³ For a vivid example of the kind of public scrutiny a police department can face in the wake of a formal investigation being announced by the DOJ pursuant to § 14141, consider the ongoing investigation of the Chicago Police Department. In the wake of the Laquan McDonald, the DOJ has initiated a formal investigation of the Chicago Police Department, which has resulted in significant media attention, and even pressure on Chicago Mayor Rahm Emanuel. Monica Davey & Mitch Smith, *Justice Officials to Investigate Chicago Police Department After Laquan McDonald Case*, N.Y. Times (Dec. 6, 2015), <http://www.nytimes.com/2015/12/07/us/justice-dept-expected-to-investigate-chicago-police-after-laquan-mcdonald-case.html> (raising questions from critics after the DOJ formal investigation announcement about whether the Mayor’s office did enough to address the shooting of Laquan McDonald); Dan Roberts, Alan Yuhas, Ciara McCarthy, Michael Lansu, & Zach Stafford, *Chicago Mayor ‘Welcomes’ US Justice Department Inquiry Into Police Practices*, The Guardian (Dec. 7, 2015), <http://www.theguardian.com/us-news/2015/dec/07/justice-department-investigation-chicago-police> (describing Chicago Mayor Rahm Emanuel as “beleaguered” in light of the apparent misconduct in the shooting of Laquan McDonald and the subsequent federal investigation).

²⁴ The DOJ does not demand any reforms until it can identify a pattern or practice of misconduct in violation of the underlying statute. For more information on this entire process, see Rushin, *supra* note 18, at 1366-96 (recounting this process from beginning to end).

²⁵ *Fixing the Force*, PBS FRONTLINE, available at <http://apps.frontline.org/fixingtheforce> (showing a complete list of all § 14141 investigations until the end of 2015); see also Stephen Rushin, *Federal Enforcement*

Article uses data from these agencies to test whether the introduction of public scrutiny contributes to de-policing.

If the DOJ concludes that a local police department is engaged in a pattern of unconstitutional misconduct in violation of § 14141, the DOJ will then typically negotiate a settlement with the targeted police department.²⁶ These settlements are sweeping.²⁷ They represent the single most invasive form of external regulation of local police departments.²⁸ They require police departments to make substantial changes to internal oversight measures, officer training, disciplinary procedure, and more.²⁹ These agreements bind local law enforcement

of Police Reform, 82 FORDHAM L. REV. 3189, 3244 (2014) (in app. A. showing a complete list of all § 14141 investigations through 2013).

²⁶ Rushin, *supra* note 18, at 1372 (“After the DOJ has completed its internal investigatory phases, [§ 14141 reform] advances to the negotiation stage. During this phase, the DOJ spends anywhere from a few months to a few years negotiating over the types of reforms that a police agency ought to make to avoid full-scale litigation.”). But negotiation is not always successful. *See, e.g.*, Matt Ford, *United States v. Ferguson*, THE ATLANTIC (Feb. 11, 2016), <http://www.theatlantic.com/politics/archive/2016/02/doj-ferguson-lawsuit/462300> (describing how negotiations between the DOJ and the Ferguson Police Department broke down, resulting in the DOJ filing a suit against the troubled agency).

²⁷ *See supra* note 18, and accompanying text (describing in detail the different components of a normal settlement in a § 14141 case).

²⁸ Historically, the United States has regulated police misconduct through a range of minimally invasive measures. The exclusionary rule prevents prosecutors from using some evidence obtained in violation of the Constitution. *Mapp v. Ohio*, 367 U.S. 643 (1961) (applying this so-called exclusionary rule to all police officers, including those at the state-level). Federal law also permits private individuals to bring civil lawsuits against police officers that violate their constitutional rights. 42 U.S.C. § 1983 (2006). And in some cases, aggrieved victims of police misconduct can also bring suits against police departments or municipalities. *Monell v. N.Y.C. Dep’t of Soc. Servs.*, 436 U.S. 658, 695–701 (1978); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (explaining that a state agent employer may be liable for the actions of an employee under § 1983 if the employer’s policy or practice was deliberately indifferent to the likelihood that a constitutional violation would occur). Finally, the federal government maintains the legal authority to file federal criminal charges against a police officer willfully deprives a person of their constitutional rights. 18 U.S.C. § 242 (2012). While each of these can help reduce misconduct, they ultimately permit police departments to continue to violate constitutional rights, as long as they are willing to pay the price. That is, as long as a police department is willing to pay the costs associated with litigation or the costs of evidentiary exclusion, these measures cannot force such an agency to adopt proactive reforms. In contract terms, they permit efficient breaches by police departments. Robert L. Birmingham, *Breach of Contract, Damage Measures, and Economic Efficiency*, 24 RUTGERS L. REV. 273, 284 (1970) (defining and explaining the concept of efficient breach in the context of contract law).

²⁹ *See supra* note 18, and accompanying text.

agencies for around five to ten years.³⁰ Between 1994 and 2016, the DOJ reached 31 such settlements.³¹ Thus, this Article uses data from these agencies to test whether the introduction of external regulation contributes to de-policing.

While this Article finds little evidence that scrutiny contributed to higher crime rates, it concludes that the introduction of external regulations contributed to a statistically significant uptick in crime rates in affected jurisdictions.³² This uptick in crime was concentrated in the years immediately after federal intervention, and diminishes to statistical insignificance over time.³³ This finding is consistent with accusations levied by police unions and law enforcement leaders.³⁴ It appears that external regulation of American police departments may come with some costly growing pains. Based on these findings, this Article concludes by offering some normative recommendations for how policymakers could more effectively regulate local police departments. It argues that policymakers could solicit feedback from frontline police officers members before implementing invasive regulations, in hopes of obtaining organizational buy-in and minimizing these growing pains.³⁵

This Article proceeds in four parts. Part I describes the theoretical basis for the de-policing hypothesis. This Part elaborates two different versions of the de-policing hypothesis levied by critics in the past—one that links de-policing to mere scrutiny and the other that links de-policing to external regulation. Part II details the methodology for this study. In doing so, Part II describes the history of § 14141 and explains why this statute provides a unique opportunity to test both versions of the de-policing hypothesis. This Part also breaks down the empirical methodology, variables, and controls used in this Article. Part III describes the findings from the study. And Part VI discusses the implications of these findings and offers normative recommendations.

³⁰ Rushin, *supra* note 18, at 1392 (showing the average length of these settlements, ranging from as little as 5.0 years in Cincinnati, Ohio and Prince George's County, Maryland, to as long as 10.7 years in Washington, D.C. and 11.9 years in Los Angeles, California).

³¹ See *supra* note 25 and accompanying text.

³² See *infra* Part IV (showing in Figures 3 through 7 a slight uptick in overall crime rates in cities targeted for federal intervention)

³³ *Id.* (showing in Figures 8 and 9 that this uptick in crime is concentrated in the early years of federal intervention).

³⁴ For a detailed rundown of these critiques by police unions and other police leaders, see *infra* Part I.B.1 & 2 (describing the “Ferguson Effect” and “Drive and Wave” hypotheses).

³⁵ See *infra* Part IV.B.

I. THE DE-POLICING HYPOTHESIS

On October 23, 2015, James B. Comey, Director of the Federal Bureau of Investigations (hereinafter “FBI”), gave a speech at the University of Chicago Law School discussing the recent surge in violent crimes in the nation’s 50 largest cities.³⁶ “What could be driving an increase in murder in some cities across the country, all at the same time?” Director Comey wondered aloud.³⁷ His answer would reignite a national debate about the effects of police oversight. According to Director Comey, the cause of this crime spike may be the increased reluctance of police officers to police the streets proactively.³⁸ In the era of YouTube, viral videos, and cellphone cameras, Director Comey worried that many police officers feel “under siege,” and thus “don’t feel much like getting out of [their] cars.”³⁹ The result, speculates Comey, is a “chill wind blowing through American law enforcement over the last year . . . that is surely changing behavior.”⁴⁰ While controversial, Comey is not the first to argue that scrutiny, oversight, or regulation of American law enforcement may contribute to de-policing.

Throughout American history, critics have expressed similar concerns. For example, after the implementation of the exclusionary rule⁴¹ and the *Miranda v. Arizona* decision,⁴² critics similarly worried

³⁶ Federal Bureau of Investigations Director James B. Comey, Address to the University of Chicago Law School (Oct. 23, 2015) [hereinafter Comey Speech at the University of Chicago], transcript available at <https://www.fbi.gov/news/speeches/law-enforcement-and-the-communities-we-serve-bending-the-lines-toward-safety-and-justice>. (“Most of America’s 50 largest cities have seen an increase in homicides and shootings this year, and many of them have seen a huge increase. These are cities with little in common except being American cities—places like Chicago, Tampa, Minneapolis, Sacramento, Orlando, Cleveland, and Dallas”).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See, e.g., Raymond A. Atkins & Paul H. Rubin, *The Effects of Criminal Procedure on Crime Rates: mapping Out the Consequences of the Exclusionary Rule*, 46 J. L. & ECON. 157 (2003) (finding that the exclusionary rule’s passage was associated with a uptick in national crime); National Institute of Justice, Criminal Justice Report—The Effects of the Exclusionary Rule: A Study in California (Washington, D.C.: Department of Justice, National Institute of Justice, 1982) (finding that the use of the exclusionary rule led to prosecutors dropping complaints in 86,033 felony arrest cases).

⁴² See, e.g., Paul G. Cassell & Richard Fowles, *Handcuffing The Cops? A Thirty-Year Perspective on Miranda’s Harmful Effects on Law Enforcement*, 50 STANFORD LAW REV. 1055–1145, 1063–66 (1998) (linking *Miranda* to decreased

that police facing additional scrutiny or oversight would engage in de-policing. And long before the current, partisan debate about Comey's statements, the de-policing hypothesis has been a source of political wrangling. In 1968, the Senate debated the Omnibus Crime Control and Safe Streets Act of 1968, which attempted to repeal *Miranda*.⁴³ During the debates, Senator John McClellan argued that Supreme Court cases like *Miranda* and *Escobedo v. Illinois*⁴⁴ hurt law enforcement and caused crime to "spiral upward and upward and upward."⁴⁵ In May of that year, Republican Presidential Candidate Richard Nixon released a "well-received position paper on crime" entitled *Toward Freedom From Fear*.⁴⁶ In it, Nixon cited the 88% increase in crime in the United States during the 1960s and bluntly pinned the blame for this crime increase on court decisions designed to reform police departments.⁴⁷

clearance rates in the United States); see also *More Criminals to Go Free? Effect of High Court's Ruling*, U.S. NEWS & WORLD REP., June 27, 1966, at 32, 33 (quoting Los Angeles Mayor as saying the *Miranda* decision would handcuff police and contribute to more criminals going free); S. REP. NO. 90-101097, at 25 (1968), reprinted in 1968 U.S.C.C.A.N. 2112, 2123 (determining that "crime will not be effectively abated so long as criminals who have voluntarily confessed their crimes are released on mere technicalities); LIVA BAKER, *MIRANDA: CRIME, LAW AND POLITICS* 248 (1983) (citing Nixon's campaign speeches criticizing *Miranda* as a decision that will increase crime).

⁴³ Yale Kamisar, *How to Use, Abuse—and Fight Back with—Crime Statistics*, 25 OKLA. L. REV. 239, 240 (1972).

⁴⁴ 378 U.S. 478 (1964) (holding that criminal suspects had a right to counsel during police interrogations under the Sixth Amendment of the United States Constitution).

⁴⁵ Kamisar, *supra* note 43, at 240. Senator McClellan also welcomed listeners to "weep for your country" since these cases had "set a low tone in law enforcement." *Id.*

⁴⁶ *Id.* at 241.

⁴⁷ *Id.* (stating that "[t]he *Miranda* and *Escobedo* decisions of the high court have had the effect of seriously hamstringing the peace forces in our society and strengthening the criminal forces"). Of course these jarring crime statistics often grossly misrepresented the size of the crime epidemic during the time period. Often, these alleged increases in crime were nothing more than efforts by law enforcement to more accurately and thoroughly record reported crimes. For example, Kamisar explains:

When, upon taking command of the Chicago Police Department in 1960, Orlando Wilson dramatically revamped the department's method of reporting crime and maintaining of records, he warned that the new system's more accurate reporting would create the impression of a 'crime wave.' A common practice of the pre-Wilson era was for a commander to ignore a lot of crimes in order to 'save work and make the district look better on paper.' When, more than a full year after his new system of reporting went into effect, Chicago crime continued to rise, Wilson had a ready explanation: a massive publicity campaign to call the police at a new

It is safe to say that the de-policing hypothesis did not start with Director Comey's statements. His statements were just the latest iteration of a long history of scholars, politicians, and pundits worrying that scrutiny and oversight handcuff police officer effectiveness. Within the academic literature and public discourse, this phenomenon has taken on many different names including "passive law enforcement," "selective disengagement," "tactical detachment," or officer "retreat."⁴⁸ Critics have worried that police officers will respond by de-policing when faced with allegations of racial profiling,⁴⁹ riots,⁵⁰ civil suits,⁵¹ or federal consent decrees.⁵²

central number when crime occurred—and increased the confidence in the force—had encouraged people to report crimes they would not have reported in the past.

Id. at 243.

⁴⁸ Willard M. Oliver, *Depolicing: Rhetoric or Reality?* 36 CRIM. JUST. POL'Y REV. 1, 2 (2015).

⁴⁹ Frank Rudy Cooper, *Understanding 'Depolicing': Symbiosis Theory and Critical Cultural Theory*, 71 U. MO. K.C. L. REV. 1 (2003); Frank Rudy Cooper, *The "Seesaw Effect" From Racial Profiling to Depolicing: Towards a Critical Cultural Theory*, in BENJAMIN FLEURY-STEINER & LAURA BETH NIELSEN, *THE NEW CIVIL RIGHTS RESEARCH: A CONSTITUTIVE APPROACH* 139-56 (2006).

⁵⁰ The response of some officers after the Los Angeles riots is demonstrative of this argument. As one Los Angeles Police Department (hereinafter "LAPD") officer observed, some of the older officers "are so angry and frustrated by the events surrounding the Rodney King video that they have all but given up on doing any effective police work. Many of them only respond to radio calls, and they do slowly." Oliver, *supra* note 48, at 4. Similar claims were made by officers in the wake of the Cincinnati riots after the shooting of Timothy Thomas in 2001. According to one report, arrests dropped by 50% in the 3 months after the Thomas shooting, and traffic stops fell by 55%. *Id.* There is also some evidence that the Cincinnati Fraternal Order of Police (the union for Cincinnati police officers) actually advocated for officers to pull back on enforcement, telling officers:

If you want to make 20 traffic stops a shift and chase every dope dealer you see, go right ahead. Just remember that if something goes wrong, or you make the slightest mistake in that split second, it could result in having your worst nightmare come true for you and your family, and City Hall will sell you out.

Id.

⁵¹ Kenneth J. Novak, Brad W. Smith, & James Frank, *Strange Bedfellows: Civil Liability and Aggressive Policing*, 26 POLICING 352 (2003) (arguing that despite accusations that civil litigation may decrease officer aggressiveness, empirical examinations reveals that civil litigation is actually a weak and inconsistent predictor of such de-policing behavior).

⁵² ROBERT C. DAVIS, CHRISTOPHER W. ORTIZ, NICOLE J. HENDERSON, JOE MILLER, & MICHELLE K. MASSIE, *TURNING NECESSITY INTO VIRTUE* 48-58 (2002), available at http://www.cops.usdoj.gov/html/cd_rom/inaction1/pubs/TurningNecessityintoVirtue.pdf (identifying the depolicing hypothesis as a concern expressed by frontline officers in Pittsburgh during and after federal intervention); ROBERT C. DAVIS, NICOLE J. HENDERSON & CHRISTOPHER W. ORTIZ, *CAN FEDERAL*

Within the legal literature, the de-policing hypothesis has received the greatest attention in the context of racial profiling cases. For example, in *Garcina v. State*, a New Jersey Superior Court articulated the de-policing concern as “officers, on their own, [who] decide to stop taking proactive steps to engage citizens.”⁵³ Similarly, in *United States v. Hare*, “a state trooper admitted in court that he typically engaged in de-policing and the only reason he stopped the defendant, a Black male, was because he had cut the trooper and another car off when illegally changing lanes.”⁵⁴ He further testified that he sometimes felt compelled to not stop minority drivers who had committed traffic violations to avoid “being perceived as a racist.”⁵⁵ Over time, scholars have used de-policing to describe a wide range of circumstances.⁵⁶ But at its core, the modern articulation of the de-policing hypothesis describes the possibility that police may

INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING? THE PITTSBURGH CONSENT DECREE 42 (2005), *available at* <http://www.calea.org/content/calea-2010-annualreport> (again expressing concern about possible de-policing effects of federal intervention).

⁵³ Oliver, *supra* note 48, at 5 (quoting Lewis R. Katz, “Lonesome Road”: *Driving Without the Fourth Amendment*, 36 SEATTLE U. L. REV. 1413, 1421 (2013)).

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*

⁵⁶ Oliver explains that Donald Black and M.P. Baumgartner appear to be the first academics to use the term “depolicing.” But they used the word in a slightly different way. They argued that “if police protection were reduced . . . the volume of and intensity of self-help would rise correspondingly.” Thus, they used the term to describe the “cutting back on the police—or *depolicing*” as a way to facilitate more self-help. Oliver, *supra* note 48, at 3; Donald Black & M.P. Baumgartner, *On Self-Help in Modern Society*, 12 DIALECTICAL ANTHROPOLOGY 33 (1987). Obviously, this definition does not fit with how modern scholars use this term. In 1998, George L. Kelling and William Bratton both used the term to describe something more similar to how the term is used today. Oliver explains their depolicing arguments:

...Kelling and Bratton have, both separately and together made the argument that America had already witnessed depolicing and the outcome was one that had a deleterious on society. Specifically, they point to the reduction in police officers in the 1970s, coming on the heels of the findings of the Kansas city Preventative patrol Report by, ironically, Kelling, Pate, Dieckman, and Brown. This occurred at a time when cities were facing the 1970s recession and because of the widespread implementation of 9-1-1. Police departments failed to replace officers in the wake of attrition believing they did not deter crime on routine patrol, only to then discover the need for more officers to answer the increased calls-for-service. Kelling argued that there were “tragic consequences of depolicing city streets,” specifically as it related to “the crime problem.”

Oliver, *supra* note 48, at 3

“disengage from active police work as a reaction to a negative experience.”⁵⁷

The two sections that follow distinguish between two distinct versions of the de-policing hypothesis. Section A describes the so-called Ferguson Effect, which connects external scrutiny to reductions in officer aggressiveness and subsequent increases in crime. Section B details a slightly different version of the de-policing hypothesis, which suggests that officers facing stringent external regulation will not engage in proactive street policing, thereby contributing to an increase in crime. These sections also consider some of the available literature on both versions of these de-policing hypotheses.

A. *The De-Policing Effects of Public Scrutiny*

Some allege that increases in public scrutiny make police less aggressive, thereby increasing crime. Various media outlets have labeled this hypothesis the Ferguson Effect.⁵⁸ Not only has FBI Director Comey articulated some version of this hypothesis,⁵⁹ so too has the head of the Drug Enforcement Agency, Chuck Rosenberg, who argued that police today are changing their behavior “rightly or wrongly” because of a perception that they may become the subject of “the next viral video.”⁶⁰ This hypothesis links the mere presence of public scrutiny—not necessarily regulation—to depolicing. Public

⁵⁷ Oliver, *supra* note 48, at 4.

⁵⁸ See, e.g., Christine Byers, *Crime Up After Ferguson and More Police Needed, Top St. Louis Area Chiefs Say*, ST. LOUIS POST-DISPATCH (Nov. 15, 2014), http://www.stltoday.com/news/local/crime-and-courts/crime-up-after-ferguson-and-more-police-needed-top-st/article_04d9f99f-9a9a-51be-a231-1707a57b50d6.html (quoting Chief Sam Doston as using the term “Ferguson Effect,” one of the earliest document cases of the term appearing in popular media); Kevin Johnson, *Providence One of Many U.S. Police Forces Feeling Ferguson Aftershocks*, USA TODAY (Dec. 28, 2015), <http://www.usatoday.com/story/news/nation/2015/12/28/providence-police-force-ferguson-effect-aftershocks/77005198/> (using the term “Ferguson Effect”).

⁵⁹ Wesley Lowery, *FBI Chief Again Says Ferguson Having Chilling Effect on Law Enforcement*, WASH. POST (Oct. 26, 2015), https://www.washingtonpost.com/politics/fbi-chief-again-says-ferguson-having-chilling-effect-on-law-enforcement/2015/10/26/c51011d4-7c2c-11e5-afce-2afd1d3eb896_story.html.

⁶⁰ Todd C. Frankel, *DEA Chief Joins FBI Chief in Giving Credence to the “Ferguson Effect,”* WASH. POST (Nov. 4, 2015), <https://www.washingtonpost.com/news/post-nation/wp/2015/11/04/dea-chief-joins-fbi-chief-in-giving-credence-to-ferguson-effect>.

scrutiny can take many forms, including press coverage, public protests, or the video recording of police officers.⁶¹

Scholars have disagreed about whether external scrutiny contributes to depolicing. Scott E. Wolfe and Justin Nix have argued that negative publicity may have made police officers less likely to engage in community partnerships.⁶² Willard M. Oliver used a convenience sample of twenty-five officers to understand the nature, scope, and causes of depolicing.⁶³ That study found a widespread belief among American police officers that public accusations of racial profiling, among other external stimuli, can contribute to depolicing.⁶⁴ Similarly, a study by Richard Rosenfeld and the Sentencing Project found some support for this version of the depolicing hypothesis.⁶⁵ Rosenfeld specifically looked at data on crime rates in St. Louis before and after the Michael Brown shooting. He found a “double-digit homicide increase in St. Louis.”⁶⁶ While such a startling increase “should not be discounted,” he was careful to conclude that this was not necessarily the result of increased scrutiny on police officers.⁶⁷ A more sweeping study conducted by David Pyrooz, et al. found that robbery rates may have increased in the wake of Ferguson.⁶⁸ Ultimately, though, that study ultimately failed to find any other definitive evidence that the introduction of heightened police scrutiny after Ferguson caused an increase in crime across 81

⁶¹ See *supra* note 13 and accompanying text. Supporters of the Ferguson Effect have linked the recent increase in the national murder rate to this sort of heightened public scrutiny. See Heather Mac Donald, *The New Nationwide Crime Wave*, WALL STREET JOURNAL, May 29, 2015, available at <http://www.wsj.com/articles/the-new-nationwide-crime-wave-1432938425>.

⁶² Scott E. Wolfe & Justin Nix, *The Alleged “Ferguson Effect” and Police Willingness to Engage in Community Partnership*, 40 L. & HUMAN BEHAVIOR 1 (2015) (using a cross-sectional survey of 567 deputies at an agency in the southeastern United States to reach the conclusion that

⁶³ See generally Oliver, *supra* note 48.

⁶⁴ *Id.* at 9-17 (discussing the results of his interviews and providing detailed accounts of officers alleging the negative effects of de-policing).

⁶⁵ Richard Rosenfeld, *Was There a “Ferguson Effect” on Crime in St. Louis*, THE SENTENCING PROJECT (2015), http://sentencingproject.org/doc/publications/inc_Ferguson_Effect.pdf.

⁶⁶ *Id.* at 3.

⁶⁷ *Id.* at 4 (“In the absence of credible and comprehensive evidence, sounding alarm bells over a ‘Ferguson Effect’ or any other putative cause will not help.”). This sort of caution is in order, as the Rosenfeld study did not consider any alternative explanations for this increase in crime.

⁶⁸ David C. Pyrooz, Scott H. Decker, Scott E. Wolfe, & John A. Shjarback, *Was There a Ferguson Effect on Crime Rates in Large U.S. Cities*, 46 J. CRIM. JUST. 1, 1 (2016) (stating that, “disaggregated analyses revealed that robbery rates, declining before Ferguson, increased in the months after Ferguson”).

large American cities.⁶⁹ Overall, the available literature suggests that external scrutiny may contribute to de-policing—but the evidence is limited at best.

B. *The De-Policing Effects of External Regulation*

Another derivation of the de-policing hypothesis alleges that the introduction of externally mandated legal regulation cause police to be less aggressive, thereby emboldening criminals and increasing crime. According to this hypothesis, police officers facing new forms of external regulation will shy away from engaging in proactive street policing. In some cases, external legal regulation may contribute to officers hesitating to use necessary force.⁷⁰ This “hesitation might end up” getting an officer “killed or assaulted.”⁷¹ As the Pittsburgh Bureau of Police was undergoing federally mandated legal reform to curb unconstitutional misconduct, officers reported feeling “hesitant to intervene in situations involving conflicts because they were afraid of having citizens file an unwarranted anonymous complaint against them.”⁷² Roughly three out of every four Pittsburgh officers shared this viewpoint.⁷³ A high proportion of officers in that department reported that the threat of community complaints and heightened disciplinary action after federally mandated reforms contributed to less proactive street policing.⁷⁴ And in Washington, D.C., police union officials alleged that measures designed to combat misconduct require additional paperwork, which prevent officers from spending time on the streets fighting crime.⁷⁵ Some have colloquially labeled

⁶⁹ *Id.* at 4 (“After the shooting of Michael Brown, and the subsequent social unrest and social media responses, was there a *systematic* change in crime trends in large American cities? We find no evidence for this contention.”).

⁷⁰ Timothy Williams, *Long Taught to Use Force, Police Warily Learn to De-escalate*, N.Y. TIMES, June 28, 2015, at A16.

⁷¹ *Id.* at A16 (quoting Harvey Hedden, the executive director of the International Law Enforcement Educators and Trainers Association).

⁷² ROBERT C. DAVIS, NICOLE J. HENDERSON & CHRISTOPHER W. ORTIZ, CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING? THE PITTSBURGH CONSENT DECREE 16 (2005), http://www.vera.org/sites/default/files/resources/downloads/277_530.pdf.

⁷³ *Id.* at 21.

⁷⁴ *Id.* (showing in Figure 10 that a high proportion of LAPD officers believed that the threat of community complaints would hurt proactive street policing).

⁷⁵ Joshua M. Chanin, *Negotiated Justice? The Legal, Administrative, and Policy Implications of “Pattern or Practice” Police Misconduct Reform*, 2011 (quoting a leader from the Washington, D.C. Police Union as saying that structural police reform leads to more time-consuming paperwork).

this the “Drive and Wave Syndrome”⁷⁶—suggesting that when faced with burdensome regulation, police officers will choose to stay in their squad cars rather than interact with the public.

Like the Ferguson Effect, the available literature on the link between external regulation and de-policing is mixed. Christopher Stone et al. found that external regulation of the Los Angeles Police Department did not appear to coincide with any increases in crime or decreases in police aggressiveness.⁷⁷ However, a study by Lan Shi found that in the wake of the Cincinnati Riots, arrests fell substantially, with the greatest effect observed for crimes where police have considerable discretion.⁷⁸ An investigation of the Seattle Police Department similarly found that officers regularly engaged in less proactive policing after the initiation of external federal regulation.⁷⁹ And Paul G. Cassell and Richard Fowles have conducted one of the most rigorous studies on the effect of police regulation on officer behavior.⁸⁰ They found that the introduction of external regulations in the form of *Miranda* warnings contributed to a statistically significant reduction in police clearance rates.⁸¹

C. Gaps in Existing Literature

Both of these versions of the de-policing hypothesis link public scrutiny or external legal regulation to a reduction in police aggressiveness. And each hypothesis contends that this reduction in

⁷⁶ CHRISTOPHER STONE, TODD FOGLESONG & CHRISTINE M. COLE, *POLICING LOS ANGELES UNDER A CONSENT DECREE: THE DYNAMICS OF CHANGE AT THE LAPD 19-20* (2009), <http://www.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf>.

⁷⁷ Like in the other similar studies, LAPD officers “frequently” raised concerns about how federal intervention hampered their abilities to exercise discretion, commonly saying that paperwork deterred them from making arrests, and arguing that compliance with the terms of the decree hurt their ability to proactively fight crime on the streets. *Id.* at 19–20. But Stone et al. study rejected this argument and showed that since the start of the consent decree, motor vehicle and pedestrian stops actually increased significantly. *Id.* at 22. Further, comparisons between similar surveys conducted in 1999 and 2003 found that the percentage of officers who reported being afraid that an honest mistake would negatively impact their careers actually decreased. *Id.* at 21. Because of this, Stone et al. concluded that most of the concern about de-policing was likely misplaced.

⁷⁸ Shi Lan, *Does Oversight Reduce Policing? Evidence from the Cincinnati Police Department After the April 2001 Riot*, 93 J. PUB. ECON. 99 (2009).

⁷⁹ Jonah Spangenthal-Lee, *SPD Disputes Rumors of De-Policing Within the Department*, SEATTLE METROPOLITAN (Nov. 1, 2011), <http://www.seattlemet.com/articles/2011/11/1/spd-disputes-rumors-of-de-policing-within-the-department>.

⁸⁰ Cassell & Fowles, *supra* note 11.

⁸¹ *Id.*

aggressiveness will have measurable consequences—namely, an increase in crime. Presumably, these theories implicitly assume that police behavior can influence crime rates. Thus, these hypotheses adopt a situational view of criminology.⁸² This criminological view says that law enforcement can deter crime through altering situational incentives of would-be criminals.⁸³ While scholars were skeptical

⁸² Historically, criminologists had explained the causes of crime in four ways. Classical criminologists generally argue that individuals are rational actors; thus, in order to deter crime policymakers ought to raise the costs of crime through increasing the length or certainty of criminal penalties. CESARE BECCARIA, *ON CRIMES AND PUNISHMENTS* (1764); James Q. Wilson, *On Deterrence*, in *THINKING ABOUT Crime* 117-23, 142-44 (1975). Sociological criminologists contend that society defines and creates crime through poverty, income inequality and culture. Adolphe Quetelet, *Of the Development of the Propensity to Crime*, from *A TREATISE ON MAN* 82-96, 103-8 (1842); Emile Durkheim, *The Normal and the Pathological*, from *THE RULES OF SOCIOLOGICAL METHOD* 65-73 (1964); Peter Kropotkin, *Law and Authority*, from *WORDS OF A REBEL* 159-64 (1898); WILLIAM BONGER, *CRIMINALITY AND ECONOMIC CONDITIONS* 402-5, 667-72 (1916); John Lea and Jock Young, *Relative Deprivation*, from *WHAT IS TO BE DONE ABOUT LAW AND ORDER?* 81, 95-101, 218-25 (1984); Elliott Currie, *Social Crime Prevention in a Market Strategy*, from *INTERNATIONAL DEVELOPMENTS IN CRIME AND SOCIAL POLICY* 107-20 (1991). Positivist criminologists believe that biological differences may increase an individual's propensity for criminal behavior. CESARE LOMBROSO AND WILLIAM FERRERO, *THE FEMALE OFFENDER* 103-13, 147-52, 190-1 (1895); H.J. Eysenck, *Personality Theory and the Problem of Criminality*, from *APPLYING PSYCHOLOGY TO IMPRISONMENT* 30-1, 34-46 (1987); SARNOFF A. MEDNICK, WILLAIM F. GABRIELLI AND BARRY HUTCHINGS, *THE CAUSES OF CRIME: NEW BIOLOGICAL APPROACHES* 74-91 (1987). And situational criminologists claim that society can deter criminal deviance by adjusting situational incentives for illegal behavior. Richard Clarke, *"Situational" Crime Prevention: Theory and Practice*, 20 *BRITISH J. CRIMINOLOGY* 136 (1980); James Q. Wilson and George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, *THE ATLANTIC MONTHLY* (March 1982); Marcus Felson, *The Routine Activity Approach as a General Crime Theory*, in S.S. SIMPSON, *OF CRIME AND CRIMINALITY* 205-216 (2000). Other ancillary schools of criminology have explored topics such as the need to rehabilitate and reintegrate criminal offenders, and the unequal impact of the criminal justice system on minorities. FRANCIS T. CULLEN AND KAREN E. GILBERT, *REAFFIRMING REHABILITATION* 247-63 (1982); JOHN BRAITHWAITE, *CRIME, SHAME AND REINTEGRATION* 69-83 (1989); Angela Davis, *Race and Criminalization: Black Americans and the Punishment Industry*, in W. LUBIANO, *THE HOUSE THAT RACE BUILT* 264-78 (1998).

⁸³ Marcus Felson has argued that criminologists ought to view crime as largely opportunistic—only possible in many cases because of the convergence of a likely offender, a suitable target, and the absence of supervision. Felson, *supra* note 82. When applying his so-called routine activity theory of crime prevention, Felson imagines a hypothetical situation where a burglar looks for an opportunistic target:

A burglar tries to find a suitable household that is empty of guardians...The burglar seeks a place containing valuables easy to remove. Easy access and visibility further draw in the burglar further. The larger community structure offer the burglar crime opportunities by producing

about the role of police officers in combatting crime in the mid-twentieth century, emerging evidence suggests that police officers may have some measurable effects on crime rates.⁸⁴ If true, these hypotheses have serious consequences for the study of policing and criminal procedure. They suggest that procedural efforts to protect the Constitution come at a serious cost.

While a handful of studies have shed light on various versions of the de-policing hypothesis, there remain significant gaps in the existing literature. The existing studies generally suffer from common methodological limitations. First, some of these studies have only looked at the effects of scrutiny or intervention in individual police departments.⁸⁵ While this methodology may provide helpful insight into a specific case, questions understandably remain about the generalizability of any such findings.

Second, some of the existing de-policing studies rely on time-series analysis, as opposed to panel data analysis. Time-series analysis uses successive measurements made over a continuous time interval

more lightweight but valuable goods and getting people out of their homes for work, school, or leisure.

Id. at 213-14.

Richard Clarke has similarly argued that the traditional criminological academy has failed to sufficiently explore situations determinants of crime. Clarke has recommended that criminologists focus on reducing physical opportunities for crime. Clark, *supra* note 82. But early situational criminologists like Clarke have been skeptical of the ability of police to alter situational opportunities for crime—and for good reason. Many of the earliest social scientists studies of police and crime control found that tactics like preventative patrols could not successfully deter crime. *See, e.g.* GEORGE L. KELLING, ANTHONY PATE, DUANE DIECKMAN AND CHARLES E. BROWN, THE KANSAS CITY PREVENTATIVE PATROL EXPERIMENT: A TECHNICAL REPORT (1974) (finding that changes in the Kansas City preventative patrol methods did not substantially affect crime); GEORGE L. KELLING, ANTHONY PATE, AMY FERRARA, MARY UTNE AND CHARLES E. BROWN, THE NEWARK FOOT PATROL EXPERIMENT (1981) (finding that changes in the use of preventative foot patrols in Newark, New Jersey had no significant effect on crime rates).

⁸⁴ *See, e.g.*, Anthony A. Braga, Andrew V. Papachristos, & David M. Hureau, *The Effects of Hot Spot Policing on Crime: An Updated Systematic Review and Meta-Analysis*, 31 JUSTICE QUARTERLY 633 (2012) (conducting a meta-analysis of existing studies and finding that hot spot policing strategies produce small but noteworthy reductions in crime, while problem-oriented policing interventions create larger reductions); Richard Rosenfeld, Michael J. Deckard, & Emily Blackburn, *The Effects of Directed Patrol and Self-Initiated Enforcement on Firearm Violence: A Randomized Controlled Study of Hot Spot Policing*, 52 CRIMINOLOGY 428 (2014) (using a difference-in-difference regression analyses to conclude that hot spot policing reduced the incidence of nondomestic firearm assaults); Steven D. Levitt, *Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime: Reply*, 92 AMER. ECON. REV. 1244 (2002) (using a number of proxies to show that police have a negative impact on crime).

⁸⁵ *See, e.g.*, Shi, *supra* note 78; STONE ET AL. *supra* note 77.

to see how the introduction of a condition affects an outcome variable in a given jurisdiction.⁸⁶ In some contexts, time-series analysis may be the best available option because a change in law might have affected all municipalities across the country equally. However, “[t]he preferred methodology for assessing a social policy” is an analysis which involves “a true experiment in which one jurisdiction at random is subject to a new policy, while another ‘control’ jurisdiction is not.”⁸⁷ Thus, the ideal study of the de-policing hypothesis, or any other “[p]rofessional econometrics stud[y] on the impact of legal rules” would ideally look at comparative panel data, not aggregate, time-series data.⁸⁸

These realizations lead to some obvious questions. How can researchers develop an experiment to test the de-policing hypothesis that involves a sufficiently large number of police departments to allow for some generalizability? And what circumstances exist that would allow for comparative, panel data analysis, rather than mere time-series analysis? The next Part suggests that a little known statute—42 U.S.C. § 14141—provides a unique opportunity to overcome both of these methodological challenges in testing the de-policing hypothesis.

II. METHODOLOGY

This Article uses a panel of American law enforcement agencies and difference-in-difference regression analyses to test the validity of the de-policing hypothesis. In doing so, this Article takes advantage of an original dataset of all American police departments that have been subject to a unique form of federal intervention via 42 U.S.C. § 14141. As described in more detail in Appendix F, we acquired this dataset through Freedom of Information (hereinafter “FOIA”) requests, stakeholder interviews, and an examination of court records.⁸⁹ Congress passed § 14141 to provide the U.S. Attorney General with an equitable remedy against law enforcement agencies engaged in systemic misconduct. The sections that follow argue that §

⁸⁶ For example, scholars like Paul G Cassell and Richard Fowles have used time-series analysis to investigate the effect of *Miranda v. Arizona* on police clearance rates. To do this, they examined trends in clearance rates before and after 1966—the year the Court handed down the controversial decision. Cassell & Fowles, *supra* note 11.

⁸⁷ *Id.* at 1072.

⁸⁸ Stephen J. Schulhofer, *Miranda and Clearance Rates*, 91 NW. U. L. REV. 278, 291 (1996).

⁸⁹ *See* app. F.

14141 is a useful test of the de-policing hypothesis. These sections also describe our model, variables, and controls.

A. Background on 42 U.S.C. § 14141

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act (hereinafter “VCCLEA”)—an omnibus measure that touched on nearly every aspect of the American criminal justice system.⁹⁰ This law funded the hiring of 100,000 new police officers, increased sanctions for criminal offenders, funded the construction of new prisons, banned assault weapons, and passed the Violent Against Women Act.⁹¹ But hidden inside this major reform package was a little known statute that transformed the role of the federal government in local policing. 42 U.S.C. § 14141 provides the U.S. Attorney General with the authority to seek equitable relief against American police departments engaged in a “pattern or practice” of unconstitutional wrongdoing.⁹² Before the passage of § 14141, neither the Department of Justice (hereinafter “DOJ”) nor private litigants had the standing to pursue equitable relief against American police departments.⁹³

⁹⁰ Pub. L. No. 103-322, § 210401, 108 Stat. 1796, 2071.

⁹¹ Perhaps the best description of the VCCLEA’s passage comes from a book published by Lord Windlesham. *See* LORD WINDLESHAM, *POLITICS, PUNISHMENT, AND POPULISM* (1998). In total, the Act cost taxpayers around \$30 billion. *Id.* at 122. The measure provided funding for the hiring of 100,000 more police officers. *Id.* It also provided \$9.9 billion for the building of new prisons. SHAHID M. SHAHIDULLAH, *CRIME POLICY IN AMERICA: LAWS, INSTITUTIONS, AND PROGRAMS* 17 (2008). The VCCLEA mandated so-called strict truth-in-sentencing requirements, implemented life sentences for repeat violent offenders, banned nineteen types of assault weapons, banned juvenile ownership of handguns, added additional penalties for hate crimes, and extended the death penalty. *Id.* Additionally, the Act allocated another “\$2.6 billion for the Federal Bureau of Investigations, the Drug Enforcement Agency, Immigration and Naturalization Services, United States Attorney Offices, and other Justice Department components.” ERICA R. MEINERS, *RIGHT TO BE HOSTILE: SCHOOLS, PRISONS, AND THE MAKING OF PUBLIC ENEMIES* 103 (2007).

⁹² 42 U.S.C. § 14141 (“It shall be unlawful for any governmental authority . . . to engage in a pattern or practice of conduct by law enforcement officers . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution . . .” and “Whenever the Attorney General has reasonable cause to believe [that there is a pattern or practice of misconduct] . . . the Attorney General . . . may in a civil action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.”).

⁹³ For a detailed summary of these cases, *see* Rushin, *supra* note 25, at 3204-07 (describing the details in *Lyons* and *City of Philadelphia*, the two major cases that limited equitable and injunctive standing in cases of police brutality).

In *Los Angeles v. Lyons*, the U.S. Supreme Court held that a private litigant did not have standing to bring suit against the Los Angeles Police Department, even though he was victimized by an unjustified chokehold.⁹⁴ The Court concluded that a person can only have standing to enjoin police behavior when they can show “a real and immediate threat that he would against be stopped . . . by an officer who would illegally choke him into unconsciousness.”⁹⁵ Since virtually no private party can show such a continuing threat, the *Lyons* decision meant that few private parties could ever successfully obtain equitable relief against a police department. Similarly, in *City of Philadelphia v. United States*, the DOJ attempted to enjoin unconstitutional behavior on the part of the Philadelphia Police Department.⁹⁶ The Third Circuit held that absent congressional authorization, the DOJ also lacked standing to seek such injunctive relief.⁹⁷

After *Lyons* and *City of Philadelphia*, it appeared that neither the DOJ nor private parties generally had the authority to seek equitable relief against American police departments. So in 1991, in

⁹⁴ In 1976, Los Angeles Police Department (LAPD) officers stopped Adolph Lyons for a typical traffic violation. While Lyons did not resist, the officers nonetheless seized Lyons in a chokehold without any apparent provocation. Lyons brought suit against the LAPD, asking in part for the court to enjoin the LAPD from using such chokeholds in the future. *City of L.A. v. Lyons*, 461 U.S. 95, 97-100, 111 (1983) (“Absent a sufficient likelihood that he will again be wronged in a similar way, Lyons is no more entitled to an injunction than any other citizen of Los Angeles.”).

⁹⁵ *Id.* at 111.

⁹⁶ This case happened when the DOJ filed a lawsuit against the Philadelphia Police Department (PPD), alleging a pattern of police abuse that systemically violated residents’ constitutional rights. *United States v. City of Phila.*, 644 F.2d 187, 190 (3rd Cir. 1980) (explaining at the appellate level that “[t]he government’s theory is that the appellees, the City of Philadelphia and numerous high-ranking officials of the City and its Police Department, have engaged in a pattern or practice of depriving persons of rights protected by the due process clause of the fourteenth amendment”). The DOJ alleged that the PPD maintained policies and procedures that thwarted the investigation and the disciplining of police officers engaged in unconstitutional behavior. The DOJ asked for an injunction to prohibit the PPD from engaging in this sort of unconstitutional misconduct. *Id.* The DOJ had previously prosecuted six homicide PPD homicide detectives for coercing confessions out of possibly innocent suspects. BONNIE MATHEWS & GLORIA IZUMI, U.S. COMM’N ON CIVIL RIGHTS, WHO IS GUARDING THE GUARDIANS?: A REPORT ON POLICE PRACTICES 135-36(1981), available at <http://catalog.hathitrust.org/Record/007105152>. But rather than punishing these officers, the City actually promoted and supported these officers. *Id.*

⁹⁷ *City of Phila.*, 644 F.2d at 206 (“We will hold the Attorney General to the same pleading requirements we demand of a private litigant who brings an action under the Civil Rights Acts. The appellant failed to satisfy these standards, and it deliberately rejected an opportunity to amend its complaint.”).

direct response to the Rodney King video,⁹⁸ Congress considered legislation to provide the federal government with a larger role in local police affairs.⁹⁹ This legislation, known as the Police Accountability Act of 1991, failed to garner widespread support.¹⁰⁰ But by 1994, Congress incorporated a version of the Police Accountability Act into the omnibus VCCLEA.¹⁰¹

B. *The § 14141 Reform Process*

When Congress eventually passed § 14141, scholars hailed it as one of the most important federal regulations of policing in

⁹⁸ Rushin, *supra* note 25, at 3209 (explaining the role of the Rodney King video in spurring the passage of § 14141). The Rodney King beating was caught on video by George Holliday. *Tape of Police Beating Causes Major Furor*, SEATTLE TIMES, Mar. 6, 1991, at A2 (“The video, shot by amateur photographer George Holliday, shows no indication that King tried to hit or charge the officers.”). The video showed Rodney King being kicked and struck with a baton by several officers near a southern California highway. INDEP. COMM’N ON THE L.A. POLICE DEP’T, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 3 (1991). Within days of the video going public, it sparked national outrage and calls for the resignation of then LAPD Chief Daryl Gates. *An ‘Aberration’ or Police Business As Usual?*, N.Y. TIMES, Mar. 10, 1994, at E7 (“More than 1,000 callers from around the country phoned Mr. Gates’s office expressing their outrage and demanding that he resign.”). Observers, including President George H. W. Bush, condemned the behavior of the officers in the video. Seth Mydans, *Videotaped Beating by Officers Puts Full Glare on Brutality Issue*, N.Y. TIMES, Mar. 18, 1991, at A1. The Rodney King beating happened on March 3, 1991. On March 20, 1991, the House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary called a hearing to discuss the issue of police brutality. *Police Brutality: Hearing Before the Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary*, 102d Cong. (1991) [hereinafter *Police Brutality Hearing*].

⁹⁹ At the hearings post-Rodney King hearing, the Police Accountability Act of 1991 emerged. Police Accountability Act of 1991, H.R. 2972, 102d Cong. The measure was sponsored by Representatives William Edwards, Howard Berman, John Conyers, Julian Dixon, Mervyn Dymally, Michael Kopetski, Meldon Levine, Craig Washington, and Maxine Waters. Four of those individuals—Edwards, Conyers, Washington, and Kopetski—served on the Subcommittee that heard the initial recommendation that Congress pass a measure to permit private and/or public litigants file for equitable relief against police departments.

¹⁰⁰ *Federal Response to Police Misconduct: Hearing Before the H. Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary*, 103rd Cong. 2 (1992) [hereinafter *Federal Response to Police Misconduct*] (statement of Rep. William Edwards, Member, H. Comm. on the Judiciary) (reporting Representative Edwards’s statement that, after the subcommittee unanimously approved the structural police reform measure and incorporated the measure into the Omnibus Crime Bill of 1991, “there’s been a filibuster ever since on the whole crime bill”).

¹⁰¹ Pub. L. No. 103-322, § 210401, 108 Stat. 1796, 2071.

American history.¹⁰² However, the DOJ has only had the resources to pursue § 14141 action against a small subsection of American police departments.¹⁰³ For much of the statute's history, the DOJ's enforcement of § 14141 was somewhat secret. That changed in 2014 when a scholar conducted interviews with stakeholders involved in § 14141 cases.¹⁰⁴ This research revealed that the DOJ engages in a six-part enforcement approach.¹⁰⁵

Figure 1, Stages § 14141 Enforcement

Stage 1. Case Selection
Stage 2. Preliminary Inquiry
Stage 3. Formal Investigation
Stage 4. Settlement Negotiations
Stage 5. Appointment of Monitor
Stage 6. Monitored Reform

To start, the DOJ must identify which American police departments are engaged in a pattern or practice of unconstitutional misconduct, in violation of the state.¹⁰⁶ This is a challenging feat,

¹⁰²See, e.g., William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 538–39 n.134 (2001) (stating that § 14141 may be “more significant, in the long run, than *Mapp v. Ohio*, which mandated the exclusion of evidence obtained in violation of the Fourth Amendment.”); Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 464–65 (2003) (calling § 14141 perhaps the most promising legal mechanism” for reducing police misconduct).

¹⁰³Rushin, *supra* note 25, at 3226 (showing in Figure 2 that between 2000 and 2013, the DOJ only investigated 38 agencies and only settled with around 19 agencies). This is in part because “investigations are costly endeavors.” *Id.* The “can take years as investigators waded through piles of internal records and personnel files.” Jamie Stockwell, *Rights Investigation of Police Continues*, WASH. POST, Dec. 22, 2002, at C6. Thus, Even if that systemic misconduct is present in only small percentage of the nation’s approximately 17,985 police agencies, the DOJ has only initiated § 14141 investigations against a tiny fraction of these problematic agencies. BRIAN A. REAVES, U.S. DEP’T OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2008, at 2 (2011), available at <http://www.bjs.gov/content/pub/pdf/cslla08.pdf> (putting the number of state and local law enforcement agencies at 17,985).

¹⁰⁴See generally Rushin, *supra* note 25 (describing the enforcement process for § 14141 litigation); Rushin, *supra* note 18 (describing the rest of the § 14141 reform process).

¹⁰⁵Rushin, *supra* note 18, at 1367 (showing these stages in Figure 1, recreated in this article also as Figure 1).

¹⁰⁶*Id.* (stating “The first step in the [structural reform litigation] process is case selection. In this stage, the DOJ has the responsibility of identifying police agencies that may be engaged in a pattern or practice of misconduct.”).

given that there are 18,000 police departments in the United States.¹⁰⁷ To do this, DOJ litigators uses a diverse array of proxies to identify police departments that may be engaged in problematic practices.¹⁰⁸ The DOJ refers to the scrutiny applied to police departments after this initial case selection as the preliminary inquiry.¹⁰⁹ While this stage involves some scrutiny of law enforcement agencies, the DOJ has a strict policy of not publicly releasing the identity of police departments subject to preliminary inquiries.¹¹⁰ If the DOJ finds evidence of potentially suspect behavior during the preliminary inquiry stage, litigators will next conduct a formal investigation.¹¹¹ At this point, the DOJ's interest in a police department becomes public knowledge.¹¹² Investigations can last anywhere from a few months to a year or more in length.¹¹³ During this time, the DOJ puts these targeted police departments under intense public scrutiny.¹¹⁴

¹⁰⁷ REAVES, *supra* note 103 (putting the number of police departments at just under 18,000).

¹⁰⁸ Rushin, *supra* note 25, at 3219-3224 (identifying four major proxies that the DOJ uses to identify potentially problematic police departments: (1) media reports, (2) existing civil litigation, (3) whistleblowers, (4) single, egregious examples of wrongdoing, and (5) research studies).

¹⁰⁹ *Id.* at 3224 (“The second step of the structural police reform process is the preliminary inquiry. If a police agency comes to the attention of the DOJ through one of the manners listed above, the agency will open a preliminary inquiry into that department’s conduct.”)

¹¹⁰ To further elaborate on this stage of § 14141 cases:

During this initial phase, litigators at the DOJ, both past and present, are careful to describe their actions as inquiries, as opposed to investigations. This distinction matters, they say, because of the serious implications of a formal investigation. Participants consistently explained that by identifying a department as “under investigation,” the DOJ would expose that department to immediate criticism in the media. Moreover, such a decision also triggers a long and expensive investigation. Thus, the DOJ prefers to only advance a case to the investigatory realm if the litigator finds reason to believe the agency is involved in systemic misconduct, and the leadership at the Department believes that such an investigation would be a worthwhile use of limited resources.

Id. at 3225 (citations omitted).

¹¹¹ *Id.* at 3226 (“If this initial inquiry uncovers the possibility of persistent misconduct in a police department, the DOJ may conduct a formal investigation.”).

¹¹² *Id.*

¹¹³ *Id.*; see also David Hench, *City Police To Get Federal Review*, PORTLAND PRESS HERALD May 8, 2002, at 1A (stating that investigations can as long as a year in some cases).

¹¹⁴ See *supra* note 23 and accompanying text (describing the Chicago Police Department as example where DOJ began an investigation soon after the Laquan McDonald shooting).

If the formal investigation results in a finding that a police department is in violation of § 14141,¹¹⁵ the DOJ next attempts to intervene into the troubled agency. In most cases, this reform process starts with the DOJ attempting to negotiate an amicable set of reforms.¹¹⁶ Virtually all § 14141 cases have ended in settlements.¹¹⁷ These settlements look fairly similar from one agency to the next.¹¹⁸ Common requirements include officer use of force provisions,¹¹⁹ the

¹¹⁵ Thus far, the DOJ has found the following constitutional violations in the following number of police agencies: excessive uses of force (48 agencies), discriminatory policing (38 agencies), Unlawful Stops, Searches, or Seizures (29 agencies), Unlawful Arrests (5 agencies), Poor Jail Conditions (4 agencies), Gender Bias in Handling Sexual Assault Reports (2 agencies), Improper Detentions (2 agencies), sexual misconduct (1 agency), retaliation (1 agency), and improper treatment of the mentally ill (1 agency). See Sarah Childress, *Fixing the Force*, PBS FRONTLINE, <http://apps.frontline.org/fixingtheforce>. There have been a few cases, though, that have not ended in amicable settlements—notably Maricopa County, Arizona, Alamance County. There, the DOJ believed that Sheriff Terry Johnson’s department was engaged in a pattern of racially charged policing tactics. A full-scale investigation by the DOJ concluded that Sheriff Johnson was in violation of § 14141. See David Zucchino, *Sheriff’s Treatment of Latinos Splits Town: A North Carolina Lawman Practices Discriminatory Policing, the Justice Department Says*, L.A. TIMES, Nov. 24, 2012, at A13; Press Release, ACLU, ACLU Urges Alamance Sheriff to Comply with DOJ Requests in Light of Lawsuit, (Dec. 20, 2012), <https://www.aclu.org/news/aclu-urges-alamance-sheriff-comply-doj-requests-light-lawsuit?redirect=criminal-law-reform-immigrants-rights/aclu-urges-alamance-sheriff-comply-doj-requests-light-lawsuit>; Colin Campbell, *McCrary Honors Alamance County Sheriff Facing Federal Allegations of Racial Profiling*, THE NEWS & OBSERVER (Dec. 19, 2014), <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article10198235.html>. But this DOJ effort ultimately failed. Michael D. Abernethy, *Judge Dismisses DOJ Case Against Johnson, Finds No Evidence of Unconstitutional Practices*, TIMES-NEWS (Aug. 7, 2015), <http://www.thetimesnews.com/article/20150807/NEWS/150809283>.

¹¹⁶ For a detailed description of this settlement negotiation process, see Rushin, *supra* note 18, at 1372-78. This settlement negotiation is often a real negotiation, where both sides make separate demands before meeting somewhere in the middle. However, while “these settlement agreements do appear to emerge via true negotiation between various stakeholders, the DOJ typically holds an advantageous bargaining position.” *Id.* at 1375.

¹¹⁷ *Id.* at 1418 (describing the recent Alamance County case as the “first time a municipality brings a § 14141 case to trial” rather than settling with the DOJ).

¹¹⁸ *Id.* at 1378 (“While each negotiated settlement should be specifically tailored to the unique needs of the individual municipality, the settlements have proven to be remarkably similar over time.”).

¹¹⁹ See, e.g., *United States v. City of L.A.*, No. 2:00-cv-11769-GAF-RC, at 23-27 (C.D. Cal. June 15, 2001), <http://www.clearinghouse.net/chDocs/public/PN-CA-0002-0006.pdf> (establishing a clear chain of review every time an officer uses force); *United States v. The Territory of the Virgin Islands*, No. 3:08-cv-00158-CVG-RM, at 6 (D.V.I. Mar. 24, 2009), <http://www.clearinghouse.net/chDocs/public/PN-VI-0001-0003.pdf> (requiring

implementation of early interventions system,¹²⁰ complaint management reforms,¹²¹ training overhauls,¹²² stipulations dealing with bias-free policing,¹²³ community oriented policing, and a range

documentation of all uses of force); Consent Decree at 15, *United States v. Prince George's County*, Md., No. 8:04-cv-00185-RWT (D. Md. Jan. 22, 2004), <http://www.clearinghouse.net/chDocs/public/PN-MD-0001-0003.pdf> [hereinafter *Canine Consent Decree*] (explaining reporting requirements for use of canines); Memorandum of Agreement Between the United States Department of Justice and Prince George's County Police Department, at 6-10 (Jan. 22, 2004) [hereinafter *Prince George's County MOA*], *text available at* <http://www.clearinghouse.net/chDocs/public/PN-MD-0001-0002.pdf> (specifically regulating only the use of force involving oleoresin capsicum spray); *United States v. Seattle*, No. 2:12-cv-01282-JLR, at 16-40 (W.D. Wa. July 27, 2013) (settlement agreement and stipulated [proposed] order of resolution) [hereinafter *Seattle Agreement*], *text available at* http://www.justice.gov/crt/about/spl/documents/spd_consentdecree_7-27-12.pdf (detailing regulations on use of firearms, conductive energy devices, oleoresin capsicum spray, and impact weapons).

¹²⁰ See, e.g., *United States v. Pittsburgh*, No. 2:97-cv-00354-RJC, at 16-17, para. 23 (W.D. Pa. Feb. 26, 1997) (Consent Decree) [hereinafter *Pittsburgh Consent Decree*], *text available at* <http://www.clearinghouse.net/chDocs/public/PN-PA-0003-0002.pdf> (describing the annual review process for this early information system); *United States v. City of Steubenville*, No. 97-0966, at 6-19, para. 12-30 (S.D. Ohio Aug. 28, 1997) (Consent Decree) [hereinafter *Steubenville Consent Decree*], *text available at* <http://www.clearinghouse.net/chDocs/public/PN-OH-0002-0005.pdf> (stating that the city should implement an early warning system within twelve months); *United States v. New Jersey State Police*, 99-5970, at 15-18, para. 40-56 (D. N.J. Dec. 30, 1999) (joint application for entry of consent decree) [hereinafter *New Jersey Consent Decree*], *text available at* <http://www.clearinghouse.net/chDocs/public/PN-NJ-0002-0001.pdf> (describing the development of the management awareness program),

¹²¹ See, e.g., Memorandum of Agreement Between the U.S. Dep't of Justice & the District of Columbia & the D.C. Metro. Police Dep't paras. 92-104 (June 13, 2001) [hereinafter *Washington, D.C. MOA*], *available at* <http://www.clearinghouse.net/chDocs/public/PN-DC-0001-0001.pdf> (including sections on the receipt of citizen complaints, the investigation of complaints, and the evaluation of these allegations); *Los Angeles Consent Decree*, *supra* note 119, at 29-35 (detailing rules on the initiation, investigation, and adjudication of complaints).

¹²² See, e.g., *Steubenville Consent Decree*, *supra* note 120, at 6-7 (identifying the need for entry and annual in-service training); *Virgin Islands Consent Decree*, *supra* note 119, para. 77 ("The VIPD shall continue to maintain training records regarding every VIPD officer that reliably indicate the training each officer has received. The training records shall, at a minimum, include the course description and duration, curriculum, and instructor for each officer."); *New Jersey Consent Decree*, *supra* note 120, paras. 108-09 ("[T]he State Police will track all training information, including name of the course, date started, date completed, and training location for each member receiving training.").

¹²³ See, e.g., *Pittsburgh Consent Decree*, *supra* note 120, para. 20; *Steubenville Consent Decree*, *supra* note 171, para. 77 ("The City shall conduct regular audits and reviews of potential racial bias, including use of racial epithets, by all officers."); *United States v. City of New Orleans*, No. 2:12-cv-01924-SM-

of other topics including line-up procedures,¹²⁴ gang unit management,¹²⁵ canine deployment,¹²⁶ crisis intervention,¹²⁷ and even promotion evaluations.¹²⁸

Once an agreement is in place, the reform process can begin. This reform process has taken as little as five years in some places.¹²⁹ In other locations it has taken well over a decade to complete.¹³⁰ During this time, a municipality is required to make significant substantive and procedural changes aimed at deterring misconduct, often overseen by a team of external monitors to ensure regular compliance with the terms of the agreement.¹³¹ Figure 2 illustrates the widespread use of § 14141 across the United States over the last twenty-one years.

JCW, at paras. 177–222 (E.D. La. July 24, 2013) [hereinafter New Orleans Consent Decree], available at <http://www.clearinghouse.net/chDocs/public/PN-LA-0001-0001.pdf> (laying out terms, in great detail, for how the New Orleans Police Department could avoid racially biased and gender biased policing tactics).

¹²⁴ See, e.g., New Orleans Consent Decree, *supra* note 123, at paras. 171–76 (establishing procedures for photographic lineup administrations).

¹²⁵ See, e.g., Los Angeles Consent Decree, *supra* note 119, paras. 106–07 (requiring the development and administration of gang management policy).

¹²⁶ Prince George’s County MOA, *supra* note 119, paras. 40–48 (establishing thorough regulation of canine deployment).

¹²⁷ Seattle Agreement, *supra* note 119, paras. 130–37 (laying out regulations on crisis intervention via the creation of the crisis intervention committee).

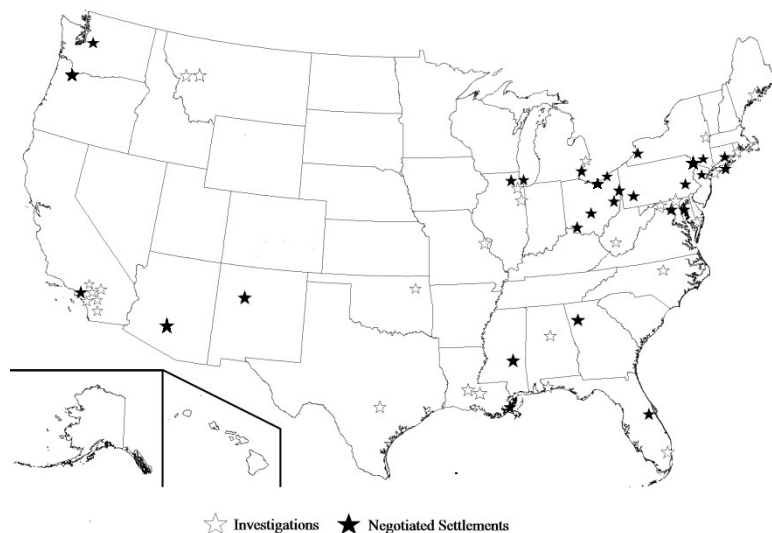
¹²⁸ New Orleans Consent Decree, *supra* note 123, paras. 295–305 (establishing both performance evaluations and promotions and describing how these evaluations ought to be used in the promotion process).

¹²⁹ A complete list of the opening and closing dates for these cases can be found in app. A and B. For example, the Cincinnati monitoring lasted from April 12, 2002, to April 12, 2007—approximately 1826 days or 5.0 years. The Prince George’s County monitoring lasted from January 22, 2004, to January 13, 2009—approximately 1,818 days or 5.0 years. The Steubenville monitoring lasted from September 3, 1997, to March 3, 2005—approximately 2,738 days or 7.5 years. The Pittsburgh monitoring lasted from April 16, 1997, to June 16, 2005—approximately 2983 days or 8.2 years. The New Jersey monitoring lasted from December 29, 1999, to October 26, 2009—approximately 3,589 days or 9.8 years.

¹³⁰ See app. A and B. The Washington, D.C. monitoring lasted from June 13, 2001, to February 10, 2012—approximately 3,884 days or 10.7 years. And the Los Angeles monitoring lasted from June 15, 2001, to May 16, 2013—approximately 4353 days or 11.9 years.

¹³¹ For a detailed description of how the DOJ and targeted municipalities agree on the appointment of an external monitor and the costs associated with these appointments, see Rushin, *supra* note 18, at 1388–91.

Figure 2, Police Departments Targeted for Federal Intervention¹³²



67

C. DOJ Enforcement of § 14141 as a Case Study for De-Policing Hypothesis

Section 14141 presents a unique opportunity to test the de-policing hypothesis. First, a test of the de-policing hypothesis based on § 14141 cases allows for cross-jurisdictional analysis. For much of American history, external regulation of American police departments happened through procedural rulings handed down by state and federal courts. For example, when the U.S. Supreme Court handed down the *Miranda* decision, it required all American police departments to read suspects a set of prophylactic rights before engaging in custodial interrogation.¹³³ As a result, researchers who studied the impact of *Miranda* had to examine the changes in crime rates or clearance rates before and after the Court's decision.¹³⁴ While useful, this methodology has its limitations. When the Court handed down the *Miranda* decision, it equally burdened all police departments in the United States.¹³⁵ This meant that there was no way

¹³² Data for Figure 2 drawn from app. A and B.

¹³³ See *supra* note 15 and accompanying text.

¹³⁴ See, e.g., Cassell & Fowles, *supra* note 11 (using a time-series analysis to show that *Miranda* had a statistically significant role in reducing clearance rates).

¹³⁵ This is because *Miranda*, *Mapp*, and other major criminal procedure cases were found to apply to all state and national law enforcement officers. This meant that the rules applied to every single police officer in the country.

to complete cross-jurisdictional analysis. That is, there was no way to compare jurisdictions affected by *Miranda* with jurisdictions not affected by *Miranda* over the same time period. All jurisdictions were equally burdened. This makes it difficult to distinguish between changes in crime rates or clearance rates caused by *Miranda* and changes caused by other factors that happened to occur at the same time as *Miranda*.

Regulation via § 14141 is different. Since 1994, the DOJ has investigated 61 agencies and reached settlements with 31 agencies.¹³⁶ This includes police departments in large American cities like New York, Los Angeles, Chicago, Washington, D.C., Seattle, Albuquerque, Cincinnati, New Orleans, Newark, and Cleveland, and smaller communities like Ferguson, Missouri, Steubenville, Ohio, and Villa Rica, Georgia.¹³⁷ Despite this wide variation in communities targeted for DOJ intervention, § 14141 cases still represent a small percentage of the country's 18,000 police departments; the vast majority of American police departments have never come under DOJ suspicion.¹³⁸ This provides us with a chance to observe crime rates from a "treatment" group of agencies—those that have been subject to significant public scrutiny or mandatory external regulation via § 14141—and compare them with a "control" group of agencies who have not been subject to similar conditions.

Second, when the DOJ reaches a § 14141 settlement, it typically requires police departments to make significant reforms.¹³⁹ This stands in stark contrast to most external regulations of American law enforcement agencies, which often happen via binding court opinions handed down by court. When a court hands down an important police procedural case, the case typically binds police behavior in a relatively narrow circumstance. For instance, in *Arizona v. Gant*, the U.S. Supreme Court limited the ability of police officers to execute searches of automobiles incident to arrest without a warrant.¹⁴⁰ Some critics may have viewed *Gant* as unnecessary or unjustified regulations of police discretion. But it seems unlikely that *Gant*, in and of itself, would lead to substantial de-policing that would

¹³⁶ See app. A & B.

¹³⁷ For a complete list, see app. A & B.

¹³⁸ In fact, 99.7% of American police departments have not been subject to DOJ intervention or investigation via § 14141—or roughly 17,924 of the nation's approximately 17,985 police departments. See REAVES, *supra* note 103 (estimating that there are approximately 17,985 police departments in the United States); app. A (showing that approximately 61 police departments have been subject to either an investigation or full-scale DOJ intervention under § 14141).

¹³⁹ See *supra* notes 119-128 and accompanying text.

¹⁴⁰ 556 U.S. 332 (2009).

ultimately cause a measurable change in crime rates.¹⁴¹ Even if controversial, reforms taken by police departments after *Gant* were likely insufficiently invasive to result in widespread de-policing. There is also real debate about whether police departments even make the substantive and procedural reforms demanded by court cases—or whether police departments find ways to navigate around these new hurdles.¹⁴²

Again, DOJ action via § 14141 different. For one thing, DOJ intervention has been shown to bring about real, procedural and substantive changes to affected police departments.¹⁴³ This is because so many § 14141 cases involve external monitors who ensure organizational compliance with DOJ demands.¹⁴⁴ Additionally, the DOJ typically requires police departments targeted under § 14141 to implement a substantial package of reforms.¹⁴⁵ Thus, if external regulation does contribute to de-policing, § 14141 cases should be the ideal test case for this hypothesis, as they represent the most invasive form of external regulation permitted under modern American law.

This Article takes advantage of the unique § 14141 enforcement reform process to test both versions of the de-policing

¹⁴¹ It is, of course, possible that either of these decisions could result in officers using less deadly force (perhaps because of the *Garner* decision) or executing fewer automobile searches incident to arrest (because of *Gant*). But given that each decision only affects one narrow type of police behavior, it seems less apparent that these changes to police behavior in very specific situations would eventually result in higher crime rates.

¹⁴² See generally GERALD N. ROSENBERG, *THE HOLLOW HOPE* (1991) (arguing that Supreme Court mandates often do not have the intended effect of stimulating social change, including the Court's *Miranda* decision).

¹⁴³ The Los Angeles Police Department (LAPD) is a particularly good example of a police department that appeared to have made substantial progress during federal intervention. For example, Stone et al. found that federal intervention was associated with an improvement in public opinion of law enforcement in the city. STONE ET AL. *supra* note 76, at 44 fig.29, 50 fig.33 (showing that the proportion of residents who believed that the LAPD offered “good” or “excellent” increased from around 48% in 2005 to around 61% in 2009, and that the percentage of individuals who said that the LAPD treated them fairly went up from 39% in 2005 to around 51% in 2009). Categorical uses of force—defined as the use of serious force like use of a firearm, head strikes, dog bites, other injuries that require hospitalization—fell during federal intervention. Rushin, *supra* note 18, at 1362 n.97. And these were just a couple of the numerous measures that showed that the LAPD made remarkable progress during federal intervention. *Id.* at 1361-63.

¹⁴⁴ Rushin, *supra* note 18, at 1401 (describing the value of external monitoring in bringing about sustainable reform in American police departments).

¹⁴⁵ See *supra* notes 119-128 and accompanying text.

hypothesis identified in Part I, as discussed in the next two subsections.¹⁴⁶

1. Investigations as Proxies for Scrutiny

In testing the de-policing effects of external scrutiny, this study uses public investigations as a proxy for the presence of public scrutiny. To do this, we draw on a dataset of all 61 public investigations that the DOJ has conducted since the passage of § 14141 in 1994.¹⁴⁷ Admittedly, this is a somewhat different way to test for the presence of public scrutiny.¹⁴⁸ But we believe that this represents a defensible and robust way to examine the theoretical underpinnings of the Ferguson Effect.

Previous empirical studies on the link between public scrutiny and de-policing have used somewhat imprecise proxies for public scrutiny. For example, multiple studies used the Michael Brown shooting to test this hypothesis.¹⁴⁹ These studies presumed that the Michael Brown shooting served as a flashpoint, increasing public distrust of law enforcement and the likelihood of negative interactions with the public. While the Michael Brown shooting likely resulted in a shift in public opinion about law enforcement within Ferguson, Missouri, who is to say that it contributed to a similar change in other jurisdictions across the country? In order to accurately test the theoretical underpinnings of the Ferguson Effect hypothesis, we need to find a way to test the effect of a destabilizing policing event—like

¹⁴⁶ We regrettably do not have sufficient data to determine the effect of external regulation and scrutiny on police aggressiveness. While the federal government does collect some data on arrest executed by local law enforcement in major crime categories, the United States does not collect detailed data on minor arrests, traffic stops, *Terry* stops, and other sorts of less serious law enforcement behavior. Without these metrics, it is nearly impossible to draw any definitive conclusions about change in police aggressiveness.

¹⁴⁷ For information on how we collected this data, *see* app. F.

¹⁴⁸ Arguably, this Article's definition of scrutiny may not perfectly capture the idea of scrutiny imagined by some proponents of the Ferguson Effect hypothesis. Some have used the term Ferguson Effect to describe the growing challenges faced by police officers in the era of YouTube and smartphones, not the type of more organized scrutiny a police department suffers after the announcement of a federal civil rights investigation. While this is a fair criticism, we believe that the initiation of public § 14141 investigations represents the most robust proxy for scrutiny that we could readily identify across multiple police departments in the United States. There does not exist, to our knowledge, a naturally occurring situation that would allow us to use panel data analysis to test the effect of increased cell phone camera, YouTube, or other social media use on police behavior and crime rates.

¹⁴⁹ *See, e.g.,* Rosenfeld, *supra* note 65; Pyrooz, *supra* note 68.

the Michael Brown shooting—on the local community where that event happened. To ensure some level of generalizability, we need to ensure that these destabilizing events are roughly the same from one municipality to the next. And we need to test this hypothesis across many different municipalities facing similar situations.

Federal investigations pursuant to § 14141 present a useful opportunity to accomplish all of these goals. Like the Michael Brown shooting, public § 14141 investigations are destabilizing incidents within targeted communities that expose the affected police departments to added public distrust and negative interactions.¹⁵⁰ In fact, § 14141 investigations commonly happen soon after a publicly embarrassing incident of alleged misconduct similar to the Michael Brown shooting in Ferguson.¹⁵¹ And the process by which the DOJ initiates a public § 14141 investigation has remained roughly consistent from one community to the next.¹⁵² Thus, we believe that public § 14141 investigations provide a unique opportunity to test the theoretical underpinning of the Ferguson Effect across a number of police departments.

2. Settlements as Proxies for Regulation

This study uses the presence of a binding DOJ settlement or consent decree pursuant to § 14141 as a proxy for the presence of external regulation. This allows us to test whether the introduction of external regulation contributes to any measurable changes in crime rates, as some critics suggest. We found that the DOJ has reached 31 binding settlements or consent decrees with local and state police departments since 1994.¹⁵³

¹⁵⁰ See *supra* note 23 and accompanying text (describing the Chicago Police Department as example where DOJ began an investigation soon after the Laquan McDonald shooting).

¹⁵¹ Thus, our study does not *just* examine whether the Michael Brown incident led to de-policing. Instead, it examines whether de-policing happened after the Michael Brown shooting in Ferguson, the Timothy Thomas shooting in Cincinnati, the Laquan MacDonald shooting in Chicago, the Rampart Scandal in Los Angeles, or dozens of other highly visible incidents of alleged misconduct that sparked DOJ investigations in their respective jurisdictions.

¹⁵² See *supra* notes 106-115 and accompanying text.

¹⁵³ A full list of these agencies is available in Appendix B. Eighteen of these agencies have fully implemented the terms of these DOJ agreements, while thirteen remain ongoing. See app. B.

D. *Models, Variables, and Control*

We use a difference-in-differences estimation strategy to assess the influence of federal intervention via § 14141 on crime rates. Difference-in-differences estimation “consists of identifying a specific intervention or *treatment* (often the passage of a law)” and then “compar[ing] the differences in outcomes after and before the intervention for groups affected by the intervention to the same difference for unaffected groups.”¹⁵⁴ It uses Ordinary Least Squares (OLS) regressions across repeated cross sections (or a panel) of data on treatment and control groups “for several years before and after a specific intervention.”¹⁵⁵ The goal is to identify whether a treatment group affected by a legal intervention differs over time from a control group unaffected by that legal intervention, when controlling for other potentially explanatory variables.

In this Article, to estimate the average treatment effect that DOJ investigations and regulations via § 14141 have on crime, we estimate the following model on a panel dataset where the unit of observation is measured at the agency by year level:

Model 1

$$\ln(s_{it}) = \beta Intervention_{it} + \Psi_{it} + \gamma_t + \tau_i + \varepsilon_{it}$$

This formula represents a log-linear model where the dependent variable, $\ln(s_{it})$, is the natural log of various measures of reported crime rates per 100,000 residents, measured at time, t , in agency i , and the standard errors are clustered at the agency level.¹⁵⁶ Ψ is a matrix of controls outlined below, γ is a set of year fixed effects, and τ is a set

¹⁵⁴ See Marianne Bertrand, Esther Duflo, & Sendhil Mullainathan, *How Much Should We Trust Differences-In-Differences Estimates?*, 119 Q. J. ECON. 249, 249 (2004). This methodology is commonly used to judge the effects of a legal intervention. It is best used when interventions are “as good as random, conditional on time and group fixed effects.” *Id.* at 250. As a result, some concerns emerge about the “endogeneity of the interventions themselves.” *Id.*

¹⁵⁵ *Id.* (“Difference-in-differences estimates and their standard errors most often derive from Ordinary Least Squares (OLS) in repeated cross sections (or a panel) of data on individuals in treatment and control groups for several years before and after a specific intervention.”).

¹⁵⁶ Clustering the standard errors at the agency level helps adjust for the autocorrelation in the unobserved variation in the outcome variable as well as adjust the standard error estimates for the potential of heteroskedastic standard errors. See Marianne Bertrand, Duflo, & Mullainathan, *supra* note 154.

of agency fixed effects.¹⁵⁷ With the inclusion of agency and year fixed effects, what results is a difference-in-differences modeling approach to estimation.¹⁵⁸

We believe that this model represents the simplest codification of the DOJ investigations and external regulations, and measures the average effect across all treated years.¹⁵⁹ However, there may be reason to believe that the effect of DOJ intervention on crime may vary dynamically as the treated years pass. For example, it is possible that DOJ intervention may have a more significant effect on crime rates in the early years of federal intervention while police officers are still adjusting to a new form of external scrutiny or regulation. If this is true, we may expect to see a reduction in the effect of federal intervention over time. To parse out any such chilling or cooling effect that DOJ interventions may have on crime, we consider the following model:

Model 2

$$\ln(s_{it}) = \sum_{k=0}^{10} \beta_k Intervention_{it} + \Psi_{it} + \gamma_t + \tau_i + \varepsilon_{it}$$

¹⁵⁷ In this context, a “fixed effect” refers to a set of dummy variables—variables that only take the value zero or one—for each category in the group. For instance, a fixed effect for the year 1989 would be zero for all agency by year observations in the data set except for the year of 1989 at which point the dummy variable takes on the value of one. The inclusion of agency fixed effects provides for a within agency estimator. That is, any measured change estimated comes off of a difference observed *within* an agency over time. Because of this, agency fixed effects parse out any time-invariant unobserved factor that may be driving crime rates.

¹⁵⁸ For more on the application of difference-in-differences estimators, *see, e.g.,* John J Donohue, *Guns, Crime, and the Impact of State Right-to-Carry Laws*, 73 *FORDHAM L. REV.* 623 (2004); Justin Wolfers, *Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results.*, 96 *AM. ECON. REV.* 1802 (2006); Griffin Edwards, *Doing Their Duty: An Empirical Analysis of the Unintended Effect of Tarasoff v. Regents on Homicidal Activity*, 57 *J. L. & ECON.* 321 (2014). We also attempted to measure the effect of federal intervention on police activity by duplicating Model 1, only with $\ln(s_{it})$, representing the natural log of the arrest rate of various crimes per 100,000 residents. We include these results in app. D & E by way of information, but feel that arrests rates, while helpful, are not an ideal measure of police aggressiveness which is evidenced by the lack of statistically significant effects found in app. D & E. Localities do not report to the federal government uniform, reliable statistics on traffic stops, *Terry* stops, or other forms of police behavior.

¹⁵⁹ We used this model to calculate the effect of two different types of DOJ interventions: public investigations and external regulation via settlement agreements.

This formula is identical to Model 1, except that the $Intervention_{it}$ variable is expanded into 11 time specific treatment variables that represent the dynamic effect by year since intervention.¹⁶⁰ This allows us to determine whether the effect of federal intervention diminishes over time.

Data for our outcome variable—crime rates—is collected and recorded through the Uniform Crime Report (UCR).¹⁶¹ While the reliability of UCR data reported monthly has been questioned,¹⁶² it has been shown to be reliable in many crimes reported at the yearly level.¹⁶³ The UCR reports the following crimes for most agencies by year: assaults, burglary, larceny, motor vehicle theft, murder, rape, and robbery.¹⁶⁴

Much of what drives crime rates in each agency can be explained by time invariant agency specific idiosyncrasies, which we control for by the inclusion of agency fixed effects. To properly estimate Model 1 and Model 2, however, we must be careful that there is not unexplained variation in our crime outcomes that is associated with a DOJ intervention. To try and capture any outstanding factor that might be associated both with crime rates and a DOJ intervention, we include a host of control variables. First, we include a number of control variables that aim to capture any changes to the demographic make up of an agency's jurisdiction by including the urbanization rate, proportion of the population that is male, proportion of the population that is non-white, and proportion of the population between the ages of 10 and 49.¹⁶⁵ Additionally, we

¹⁶⁰ This approach mirrors that by Wolfers, AMERICAN ECONOMIC REVIEW, (2006). and refined by Jin Young; Lee & Gary Solon, *The Fragility of Estimated Effects of Unilateral Divorce Laws on Divorce Rates*, 11 B.E. J. ECON. ANALYSIS & POL'Y 1 (2011). The estimated effect that comes from model (1) represents an average effect of intervention across all treated years. The aim of model (2) is to relax the assumption that each year of treatment is identical in its potential effect on crime rates.

¹⁶¹ See *Uniform Crime Reports*, FED. BUREAU OF INVESTIGATIONS, available at <http://www.icpsr.umich.edu/icpsrweb/content/nacjd/guides/ucr.html> [hereinafter FBI UCR].

¹⁶² Steven D. Levitt, *The Relationship Between Crime Reporting and Police: Implications for the Use of Uniform Crime Reports*, 14 J. QUANTITATIVE CRIMINOLOGY 61 (1998).

¹⁶³ See generally Edwards, *supra* note 158 (providing a comparison between the UCR data on homicides and the Centers for Disease Control (CDC) data on homicides that comes from death certificate aggregation).

¹⁶⁴ FBI UCR, *supra* note 161.

¹⁶⁵ We include these demographic variables in the same manner as Luis Garicano & Paul Heaton, *Information Technology, Organization, and Productivity in the Public Sector: Evidence from Police Departments*, 28 J. LAB.

include the unemployment rate and median real income of the associated population to try and capture any sort of changes to the economic climate of the jurisdiction.¹⁶⁶

Lastly, since the DOJ interventions are not random in nature, it is important to try and capture the agency specific characteristics that may be driving both crime rates and the interest of the DOJ.¹⁶⁷ To capture this, we include several additional control variables. We include a count of the number of male civilian employees and female civilian employees.¹⁶⁸ These counts give us a good approximation of the funding available to the agency as better-funded agencies will hire more employees and funding cutbacks may result in laying off of civilian employees.¹⁶⁹ Additionally, at the center of each DOJ investigation is some sort of pattern of institutional misconduct. While this misconduct may manifest itself in a number of ways, regardless of the specific nature of the misconduct, it is likely to be associated with other types of misconduct, including discriminatory hiring practices. To capture this, we include as well the ratio of male to female sworn officers.¹⁷⁰ We hope that if there is an underlying attitude of misconduct in an agency—an attitude that would be otherwise hard to observe—that it also manifests itself, at least in part, in the hiring practices of the agency.¹⁷¹

ECON. 167 (2010). When possible, each of these variables were merged with UCR crime data from the census micro data available at ipums.org, for missing agencies, we use county level demographics from John J. Donohue & Justin J. Wolfers, *Uses and Abuses of Empirical Evidence in the Death Penalty Debate*, 58 STAN. L. REV. 791 (2006).

¹⁶⁶ These variables were collected when possible at the agency, county, and state level, in that order, when possible and come from Donohue & Wolfers, *supra* note 165. Missing observations were linearly interpolated and truncated at zero as needed.

¹⁶⁷ As an example, a cutback in funding to a police department may affect crime rates as there are fewer resources to patrol and monitor the agency jurisdiction, but also may affect policing tactics that would result in a DOJ investigation.

¹⁶⁸ FBI UCR, *supra* note 161.

¹⁶⁹ The UCR provides employment information on the number of male and female civilian employees as well as male and female sworn officers. *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* It is important to note that while we control for many factors that we think may be driving crime rates, we do not control for every conceivable factor that explains crime rates. Controlling for everything is impossible. For instance, we would have liked to control for the prevalence of drug use in each jurisdiction. But such data is not available. Even if it were, however, the only thing it would achieve for us are not “better”, or unbiased estimates, just more precise, or efficient estimates—that is, smaller standard errors. Correctly identifying the sign and magnitude of our estimates hinges on capturing all the possible factors that may influence unexplained variation in crime rates *and* DOJ interventions, but does not

III. FINDINGS

We failed to find any consistent relationship between the introduction of mere scrutiny and crime rates. A full breakdown of these results can be found in Appendix C. It is important to note that this finding does not disprove a relationship between the introduction of external scrutiny and changes in crime rates. We simply lack sufficient evidence to make a definitive statement either way. We actually found that the introduction of public scrutiny coincided with an apparent increase in rates of all index crime offenses.¹⁷² However, these increases in crime were, by and large, statistically insignificant—particularly when we introduced our control variables.¹⁷³ Because of our inability to make any definitive determination about the relationship between mere scrutiny and crime rates, we will spend the remainder of this Part evaluating the relationship between external regulation and crime rates.

We found that the introduction of external regulation to a police department via § 14141 was associated with a statistically significant increase in the frequency of several crime categories—particularly property crimes.¹⁷⁴ This finding is consistent with claims made by critics that external regulation may, at least initially, make officers less aggressive or less effective in combatting crime. Upon a more detailed examination, we found that this apparent uptick in crimes was concentrated in the years immediately after the initiation of external regulation and diminished into statistical insignificance over time.¹⁷⁵ This suggests that external regulation may come with growing pains. The sections that follow walk through the data.

rest on us explaining all the variation in crime rates.

¹⁷² See app. C. (showing anywhere from an effect of anywhere from 0.08 to .59).

¹⁷³ *Id.* The only crime categories in which it appears that public scrutiny contributed to a statistically significant increase in crime were assault, motor vehicle theft, and robberies. An effect was also found, at least initially for the aggregate of all violent crimes. But these relationships diminished once controls were added. Only motor vehicle theft and robbery rates appear to be influenced by the introduction of public scrutiny in a manner that may be statistically significant.

¹⁷⁴ See *infra* fig. 7 (showing a statistically significant relationship between the introduction of external regulation and increases in burglary, larceny, murder, and robbery, as well as a highly significant relationship between external regulation and increases in property crimes in the aggregate).

¹⁷⁵ See *infra* fig. 8 & 9 (showing the apparent effect of external regulation on crime decreases into statistical insignificance over time).

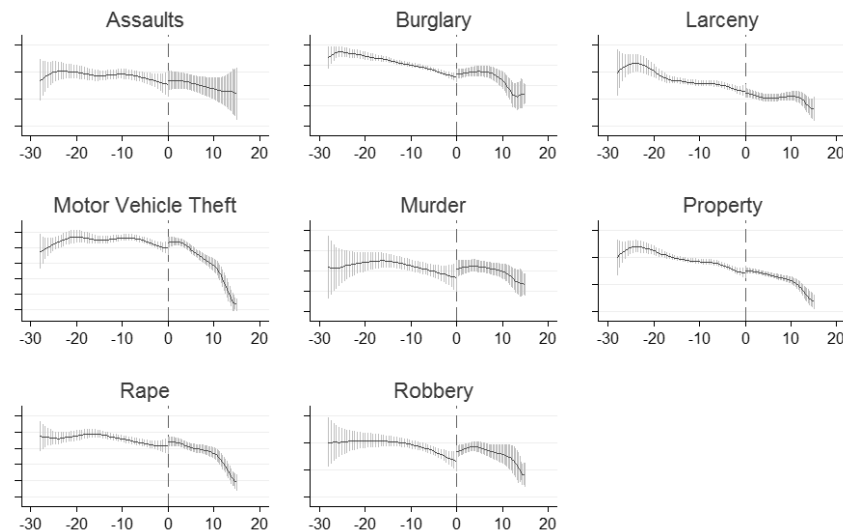
A. *Trends in Raw Data*

Before discussing the results from our more sophisticated difference-in-differences estimation strategy, it is first useful to examine trends in the raw data.¹⁷⁶ Does the raw data suggest an obvious difference in crime trends in the treatment group—that is the group influenced by federal intervention via § 14141—and our control jurisdictions?

To this end, Figure 3 starts by showing the trend in reported crime rates for various index categories across the treatment group. The vertical line in each graph represents the beginning of external federal regulation via § 14141. The trend lines before the vertical lines track the crime rates in these treatment jurisdictions before federal intervention, and the trend lines after track the crime rates after federal regulation. We used a smoothing method called nonparametric regressions, or local linear regressions in drawing these trend lines. The gray vertical lines extending upwards and downward from the trend lines represent the standard errors. Since police departments were subject to federal regulation at different points in time, we adjusted the timeline to center around the year of treatment.

¹⁷⁶ This sort of analysis of raw trends can be useful. For example, if the crime trends differ substantially between the control and treatment groups, this would suggest that federal intervention may be playing a role in this difference. However, failure to find such an obvious disparity in the raw data does not disclose the possibility that such a difference will emerge after more careful analysis. For an example of a previous empirical legal study that first relied on an analysis of raw data before diving into a more nuanced statistical evaluation, see Cassell & Fowles, *supra*, note 11, at 1069-70 (looking at the raw change in clearance rates as potentially relevant).

Figure 3, Trend in Reported Crime Rates in Municipalities Subject to Federal Regulation via § 14141

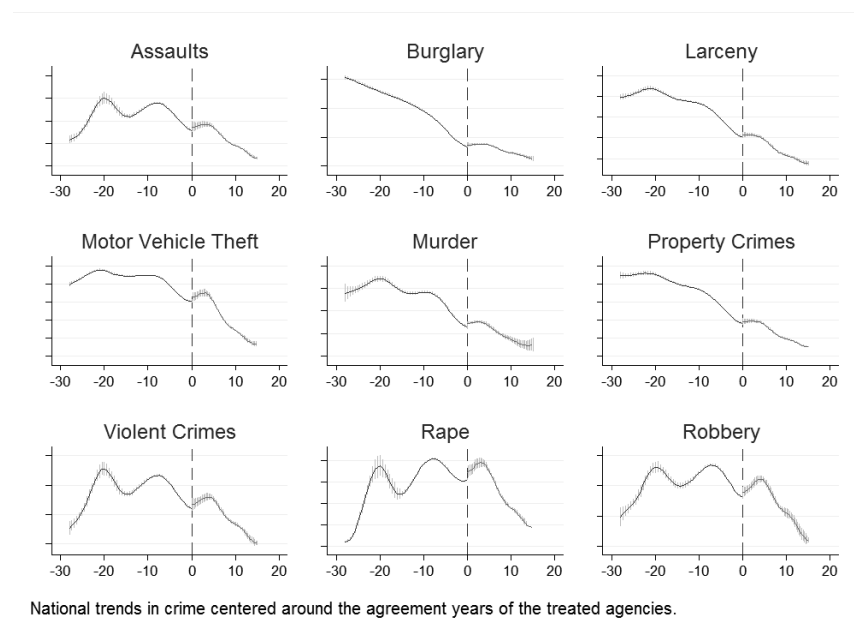


Crime rates generally decline in the years after external regulation. While this is encouraging, it does not necessarily suggest that federal regulation contributed to a reduction in crime rates. Most of these cases happened during a time when crime in the United States was already in decline across virtually all jurisdictions—including the jurisdictions targeted for federal regulation.¹⁷⁷ Since the date of the first federal intervention into an American police department under § 14141 (the Pittsburgh Bureau of Police) until the end of our dataset, property and violent crime rates in the United States have dipped 33.8 and 36.7 percent respectively.¹⁷⁸ Figure 4 graphically illustrates the change in crime rates over this time period across all other unaffected jurisdictions in the United States, using the same methodology described for Figure 3.

¹⁷⁷ For a comprehensive analysis of the extent of this dramatic national crime decline, see FRANKLIN E. ZIMRING, *THE GREAT AMERICAN CRIME DECLINE* (2008).

¹⁷⁸ FBI UCR, *supra* note 161.

Figure 4, Trend in Reported Crime Rates in All Other Jurisdictions in the United States



Much like crime rates in the treatment group, it appears that crime rates in the control group uniformly decline. It is difficult to identify any significant differences between the treatment and control in the post-intervention crime trends based on this simple analysis of trend lines. Another, slightly more fine-grained method for analyzing for identifying any differences between the treatment and the control group is to calculate the change in crime rates during the federal intervention eras for both groups.

Figure 5 does this by comparing the change in property crime rates in jurisdictions targeted for federal regulation with the change in average change in property crime rates across the control agencies during the same time period. So for example, the federal government reached a settlement with the Pittsburgh Bureau of Police (hereinafter “PBP”) on April 16, 1997.¹⁷⁹ In 1996, the year immediately before federal intervention, Pittsburgh reported 4,492.1 property crimes per 100,000 residents.¹⁸⁰ Since then, Pittsburgh has seen property crime rates drop by 32.3%.¹⁸¹ By contrast, our control agencies saw property crime rates drop by 24.3% during this same time period.¹⁸² This means that Pittsburgh saw a decline in property crimes of 8

¹⁷⁹ See app. B.

¹⁸⁰ FBI UCR, *supra* note 161.

¹⁸¹ *Id.*

¹⁸² *Id.*

percentage points relative to the control group since federal intervention. Figure 5 similarly evaluates the change in property crime rates jurisdictions that have been targeted by DOJ intervention under § 14141 relative to the national average.

Figure 5, Change in Property Crime Rates in Targeted Jurisdictions Relative to National Average¹⁸³

Jurisdiction	Change in Property Crime Rates in Treatment	Change in Property Crimes Rates in Control	Difference
Beacon	-20.3%	-27.8%	7.5%
Buffalo	-17.3%	-25.6%	8.4%
Cincinnati	0.9%	-25.6%	26.5%
Cleveland	-3.0%	-26.2%	23.2%
Columbus	-15.6%	-25.6%	10.1%
Detroit	-31.9%	-25.9%	-6.0%
East Haven	-13.5%	-10.6%	-2.9%
Easton	-33.6%	-27.8%	-5.9%
Los Angeles	-39.8%	-25.5%	-14.4%
Mount Prospect	-58.2%	-25.9%	-32.3%
New Orleans	12.2%	-9.2%	21.4%
Pittsburgh	-32.3%	-24.3%	-8.0%
Prince George's County	-23.1%	-26.2%	3.1%
Seattle	19.1%	-10.6%	29.7%
Steubenville	14.0%	-24.3%	38.3%

¹⁸³ *Id.* This table calculates the change in property crime rates by measuring the difference in crime rates in the years before federal intervention to the property crime rates in the year that federal intervention ended. For completed cases, this includes the entire period of federal intervention. For ongoing cases, we used the most recently available crime data from 2014. This table does not include data for Highland Park, Puerto Rico, or the Virgin Islands. These agencies either did not report crime data to the FBI during these time periods, or they do not have enough data on which to make strong conclusions. Additionally, this table does not include crime data from the Orange County Sheriff's Department in Florida, because it is not considered the primary law enforcement agencies for most of that county's residents. Finally, although the New Jersey State Police underwent federal intervention in the past, this table does not include crime data for the entire state of New Jersey, as the state police are not the primary law enforcement unit for New Jersey residents.

Villa Rica	5.6%	-25.9%	31.5%
Washington	-37.7%	-25.5%	-12.2%
Average	-16.2%	-23.1%	6.9%

While Pittsburgh might have seen property crime rates decrease relative to the national average, the same cannot be said for many other jurisdictions. Overall the results are mixed. Since federal intervention, ten of seventeen target cities saw property crime rates increase by more than the control group. On average, agencies target for federal intervention saw property crime rates increase by an average of 6.9 percentage points more than our control group. Figure 6 uses this same methodology to evaluate changes in violent crime rates.

Figure 6, Change in Violent Crime Rates in Targeted Jurisdictions Relative to National Average¹⁸⁴

Jurisdiction	Change in Violent Crime Rates in Treatment	Change in Violent Crimes Rates in Control	Difference
Beacon	-35.1%	-22.6%	-12.5%
Buffalo	-7.3%	-17.2%	9.9%
Cincinnati	1.5%	-17.2%	18.7%
Cleveland	-1.9%	-16.6%	14.7%
Columbus	-19.5%	-17.2%	-2.3%
Detroit	-10.5%	-17.0%	6.4%

¹⁸⁴ *Id.* This table calculates the change in violent crime rates by measuring the difference in crime rates in the years before federal intervention to the property crime rates in the year that federal intervention ended. For completed cases, this includes the entire period of federal intervention. For ongoing cases, we used the most recently available crime data from 2014. This table does not include data for Mount Prospect, Highland Park, Puerto Rico, or the Virgin Islands. These agencies either did not report crime data to the FBI during these time periods, or they do not have enough data on which to make strong conclusions. Additionally, this table does not include crime data from the Orange County Sheriff's Department in Florida, because it is not considered the primary law enforcement agencies for most of that county's residents. Finally, although the New Jersey State Police underwent federal intervention in the past, this table does not include crime data for the entire state of New Jersey, as the state police are not the primary law enforcement unit for New Jersey residents.

East Haven	38.5%	-5.6%	44.1%
Easton	-37.7%	-22.6%	-15.1%
Los Angeles	-40.5%	-17.3%	-23.2%
New Orleans	19.5%	-5.5%	25%
Pittsburgh	-13.2%	-16.2%	3.0%
Prince George's County	-24.9%	-16.6%	-8.3%
Seattle	1.8%	-5.6%	7.4%
Steubenville	-49.3%	-16.2%	-33.1%
Villa Rica	10.1%	-17.0%	27.1%
Washington	-37.9%	-17.3%	-20.6%
Average	-12.9%	-15.5%	2.6%

The results of Figure 6 are similarly mixed. Seven agencies saw violent crime decrease more than the control group, while nine agencies saw violent crime rates increase relative to the control. In the aggregate, violent crime rates in treatment jurisdictions have increased by 2.6 percentage points more than the control group.

While somewhat helpful, this raw data has its limitations. For one thing, if external regulation influences police behavior and corresponding crime rates, this relationship is likely to be dynamic over time, as discussed *supra* Part II.D. For example, regulation may have a greater effect on police behavior in the years immediately after external regulation. And the effects of regulation may dwindle over time. These tables only show a snapshot of two moments in time—crime rates before the external regulation in treatment each city and crime rates in those cities today. These tables do not capture the potentially dynamic effect that regulation may have on crime over the course of this regulatory period. Additionally, the DOJ does not select targets for § 14141 intervention at random.¹⁸⁵ Thus, it is possible that DOJ targets under § 14141 share a common characteristic that is driving any apparent change in crime rates. To address these issues, the next section shows the results of the difference-in-differences estimation strategy described *supra* Part II.D.

B. *Difference-in-Differences Estimation Strategy*

Given the indeterminacy of the raw data analysis, a difference-in-differences estimation strategy serves as a unique methodology for

¹⁸⁵ Although, it is worth noting that scholars have been critical of how seemingly random selection for § 14141 reform can be. One scholar even described a municipality getting selected for § 14141 regulation as “akin to winning a terrible lottery.” Rushin, *supra* note 25, at 3194.

teasing out the likely relationship between external regulation and resulting crime rates in treatment municipalities, relative to the control group—controlling for the variables discussed in Part II.D. Figure 7 shows the results of this difference-in-difference estimation strategy. The “Regulation” column shows the percentage change in various crime rates in treatment jurisdictions attributable to the introduction of external regulation. For each crime category, we include two rows. The top row shows the outcome of this regression without including the control variables. The lower row includes these control variables.

Figure 7, Effect of External Regulation on Crime Rates¹⁸⁶

	Regulation	SE	R²	N	Controls
Assaults	0.239	(0.157)	0.74	62,288	
	0.180	(0.151)	0.74	55,072	X
Burglary	0.272†	(0.133)	0.85	62,979	
	0.264^	(0.137)	0.86	55,700	X
Larceny	0.094	(0.068)	0.88	62,976	
	0.196^	(0.107)	0.88	55,697	X
Motor Vehicle	0.491†	(0.218)	0.72	63,062	
Theft	0.201	(0.168)	0.74	55,767	X
Murder	0.220†	(0.108)	0.66	30,000	
	0.211^	(0.129)	0.67	26,057	X
Rape	0.056	(0.169)	0.60	53,626	
	0.098	(0.214)	0.62	47,471	X
Robbery	0.677†	(0.304)	0.75	59,189	
	0.386^	(0.235)	0.76	52,270	X
Violent	0.374†	(0.169)	0.76	60,406	
Crimes	0.234	(0.175)	0.76	53,498	X
Property	0.162‡	(0.068)	0.89	62,980	
Crimes	0.254‡	(0.109)	0.89	55,701	X

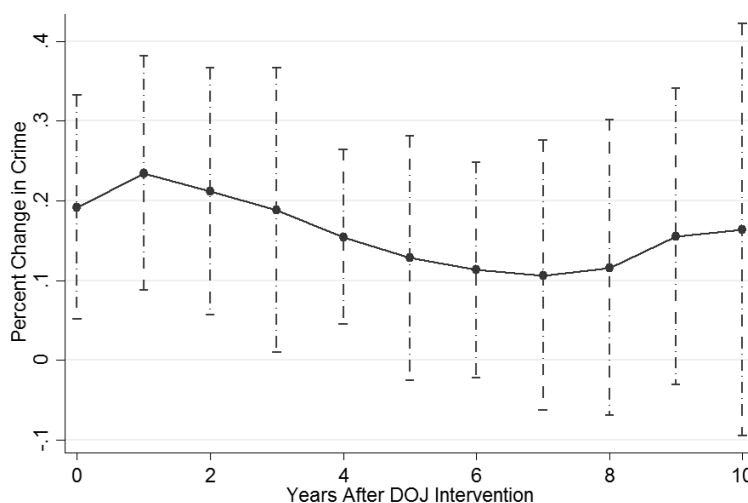
The difference-in-differences estimation strategy reveals that in many of these crime categories, federal intervention coincided with a statistically significant uptick in reported crime rates. This relationship appears to be statistically significant in property and

¹⁸⁶ Each row represents a unique regression. Each observation is at the agency-year level. The dependent variable (reported crime rate) is expressed in the natural log of each respective rate and the standard errors are clustered at the agency level. Regressions including the controls listed *supra* Part II.D. ^ p<0.10 † p<0.05 ‡ p<0.01

street crimes like burglary, larceny, motor vehicle theft, and robbery—that is criminal activity that is likely sensitive to situational deterrents like aggressive street policing. When controlling for other potentially explanatory variables, it appears that external regulation via § 14141 is associated with an apparent increase in property crime rates. This finding is consistent with claims made by proponents of the de-policing hypothesis.

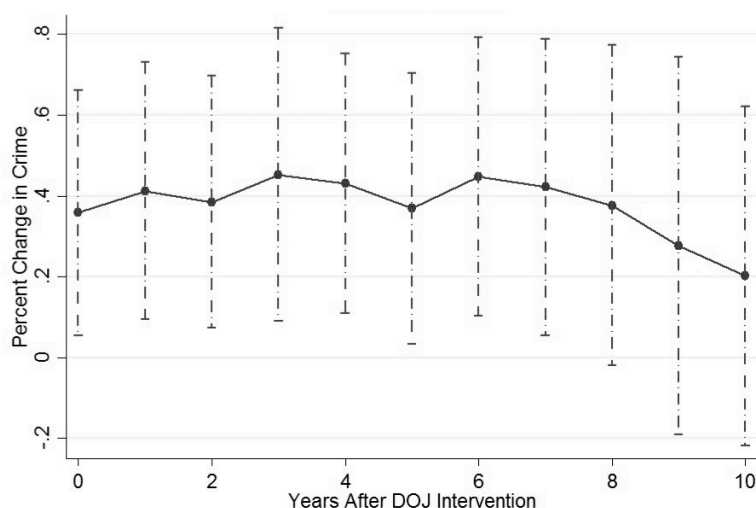
In order to breakdown the relationship between external regulation and crime rates over time, Figures 8 and 9 run separate regressions for each year after the DOJ initiated federal intervention in our treatment cities. In the resulting figures, each data point represents the estimated effect of external regulation in that year on the crime rate in the treatment group. The dashed lines extending upwards and downwards from the trend lines in each figure represent a 90 percent confidence bound.¹⁸⁷ This allows a reader to quickly identify whether a particular data point is statistically significant. If the dotted line includes both positive and negative outcomes, then we cannot say with confidence whether external regulation had any particular effect on crime rates in that year. However, if the dotted line is entirely above or below zero, then we can say with some confidence that external regulation likely had either a positive or negative effect on crime rates.

Figure 8, Percentage Change by Year in Property Crime Rates in Jurisdictions Targeted for Federal Intervention



¹⁸⁷ The idea is that we can be 90% confident that the “true” value of the blue line lies somewhere between the upper and lower bound.

Figure 9, Percentage Change by Year in Violent Crime Rates in Jurisdictions Targeted for Federal Intervention



Figures 8 and 9 confirm that any effects of external regulation on crime rates are strongest in the years immediately after federal intervention. By years five through eight, it appears that any apparent relationship between external regulation and crime rates diminishes into statistical insignificance. This suggests that any negative de-policing effects of external regulation may be frontloaded.

While this data provides compelling support for the de-policing hypothesis, it fails to answer many important questions. Though this data suggests that § 14141 interventions may be associated with a temporary uptick in crime, it does not necessarily suggest that all regulations of law enforcement will similarly result in de-policing. Although the result of this study should be more generalizable than other previous studies, we cannot necessarily say with a high level of certainty which types of legal regulations contribute most significantly to the de-policing effects observed in this Article. The findings from this study represent an incremental, but important step in understanding the real costs associated with police regulation. The next Part will consider the implications of these findings.

IV.

CONSTITUTIONAL POLICING AND COMPROMISE

The core finding in this Article—that external regulation of American law enforcement agencies through § 14141 is associated with a temporary uptick in crime rates—has important implications

for the study of criminal procedure and policing. It suggests that external regulation may come with unforeseen costs. These costs often go unappreciated in the existing legal scholarship. This study, though, only provides a limited insight into the world of de-policing. It leaves many important questions unanswered. For instance, what component of external regulation via § 14141 is driving this apparent, short-term increase in targeted jurisdictions? And can we improve the use of § 14141 to reduce this de-policing effect? Section A considers some possible explanations for the uptick in crime. Section B then offers some normative recommendations for how policymakers could potentially alleviate the de-policing effects of police regulation.

A. Possible Explanations for the Uptick in Crime

This Article can only claim to show a relationship between the introduction of external regulation and an uptick in crime rates. But what exactly is driving this uptick in crime? One possibility is that external regulation—in this case, 42 U.S.C. § 14141 reforms—are inherently cumbersome. Under this view, no matter how they are implemented, external regulations may always come with some de-policing costs. For example, in Pittsburgh—one of the cities where outside researchers compiled qualitative data from frontline officers in the wake of externally mandated reforms—frontline officers complained that accountability “increased to the point that officers are almost afraid to say anything in fear of punishment.”¹⁸⁸ This is in part because the external reforms ensured that “every incident now has a paper trail.”¹⁸⁹ In Los Angeles a stunning 70% of officers agreed with the statement that “paper work deters officers from making arrests,” and even more—79%—believed that as a result, external regulation impeded the LAPD’s ability to fight crime.¹⁹⁰ Officers in Pittsburgh shared this sentiment, with an officer telling researchers that after the beginning of external regulation, “Officers spend too much time doing paperwork as opposed to doing their job.”¹⁹¹ Another way that external regulations could be inherently cumbersome is that the heightened threat of discipline could make police officers less proactive in doing their jobs. A whopping 93% of LAPD officers agreed with the statement that “the threat of community complaints prevents police officers from being proactive on the street,”¹⁹² while

¹⁸⁸ DAVIS, HENDERSON, & ORTIZ, *supra* note 72, at 21.

¹⁸⁹ *Id.*

¹⁹⁰ STONE ET AL. *supra* note 76, at 19.

¹⁹¹ DAVIS, HENDERSON, & ORTIZ, *supra* note 72, at 25.

¹⁹² STONE ET AL. *supra* note 76, at 19.

89% believed that “because of fear of being unfairly disciplined, many LAPD officers are not proactive in doing their jobs.”¹⁹³

If true, this explanation would have the most far reaching implications, as it would suggest that that police regulations designed to combat misconduct by their very nature may come with de-policing side effects. But in our estimation, this explanation seems somewhat unlikely, given the fact that the de-policing effects of external regulation diminish into statistical insignificance over time.¹⁹⁴ Were these regulations so inherently cumbersome that they would cause de-policing, we would expect the de-policing effects to continue after the first few years of DOJ intervention.

This raises another possible explanation for the apparent uptick in crime rates after federal intervention: growing pains. It may be that when frontline officers are faced with new and potentially unpopular external regulations, their first reaction is to temporarily pullback or reduce enforcement until they fully understand the implications of these regulations. One recurring theme in interviews with frontline officers affected by federal regulation is that they continually complained about “low morale.”¹⁹⁵ As an officer in Los Angeles explained, external regulation “hurt their pride [and] hurt their morale” thereby contributing to a reduction in officer productivity.¹⁹⁶ Officers that were once “go-getters” slowed down in the face of this reduction in officer morale.¹⁹⁷ One possible explanation for this reduction in morale is that officers felt as if the

¹⁹³ *Id.* The Stone et al. study elaborated that:

...in focus groups, officers commonly said they sometimes avoid contact with citizens and ‘look the other way’ when observing illegal behavior in order not to create additional work for themselves or provoke the intervention of a sergeant or watch commander. They also said they are ‘timid’ in encounters with suspects or handle them with ‘kid gloves’ in order to avoid generating a use-of-force report, inciting a complaint, or triggering an action item (or a ‘red-flag’) in the computer system that monitors officer performance. *Id.*

Further, the Pittsburgh study quoted one officer who said that “most officers are not aggressive with people who are breaking the law. Officers are afraid that people will complain of their civil rights being violated.” DAVIS, HENDERSON, & ORTIZ, *supra* note 72, at 20.

¹⁹⁴ If municipalities commonly disregarded § 14141 reforms shortly after implementation, this might explain the diminishing de-policing effect over time. But the best available evidence suggests that agencies mostly retain § 14141 reforms after the DOJ ends its oversight. Given this evidence, we are hesitant to believe that the diminishing effects of § 14141 reforms are the result of agencies dropping § 14141 reforms over time.

¹⁹⁵ DAVIS, ORTIZ, HENDERSON, MILLER, & MASSIE, *supra* note 52, at 63.

¹⁹⁶ STONE ET AL. *supra* note 76, at 19.

¹⁹⁷ DAVIS, HENDERSON, & ORTIZ, *supra* note 72, at 24

process used to establish these regulations was procedurally unfair. As one officer in Pittsburgh elaborated, “patrol officers directly affected by the [external regulations] were never given the opportunity to make positive changes in department policy. [The external regulations were] implemented by supervisors that did not participate in patrol functions or understand the day-to-day routines of street patrol work.”¹⁹⁸

Two other possible explanations are worth mentioning as well. First, it may be that the publicly visible, external regulation of a police department emboldens criminals. As one officer in Pittsburgh remarked, “I think the decree limited officers’ ability to perform their jobs. And criminals know this and take advantage.”¹⁹⁹ Second, the effect we see in Figures 7 through 9 may not be the result of an increase in actual crime, but rather the result of an increase in *reported* crimes. It may be that residents feel more comfortable reporting crimes in the wake of visible, external regulation.

B. *Limiting the De-Policing Effects of Regulation*

So where do we go from here? How can policymakers install necessary external regulations to protect constitutional rights without contributing to de-policing? If regulations designed to protect constitutional rights are so inherently burdensome that they will always lead to de-policing, there may be little that policymakers can do. Under this view, constitutional policing may be a compromise—the protection of civil rights at the expense of safety. But in our estimation, the data from this study does not necessarily support this conclusion. It seems more likely that external regulation of law enforcement comes with growing pains. Frontline officers may find the imposition of external mandates to be procedurally unjust. They may find their lack of voice in this regulatory process to be frustrating. Or frontline officers may initially (and rationally) respond to new disciplinary mechanisms with an abundance of caution. All of these sorts of growing pains may contribute to de-policing in the years immediately after federal intervention, but seem to diminish over time—perhaps as frontline officers come to accept the newly installed regulatory measures as the new normal. So how can external regulation of police departments be improved to reduce or eliminate these sorts of growing pains?

One way is that external regulators like the DOJ could incorporate frontline officers in the development and implementation

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 22.

of accountability measures. Professor Kami Chavis Simmons has made similar arguments in her previous writings on § 14141.²⁰⁰ Currently, the DOJ does little to incorporate frontline officers into the development of § 14141 settlement agreements. The DOJ normally negotiates reforms exclusively with the targeted municipality and forces the police union to accept whatever disciplinary measures are developed via this closed-door process.²⁰¹ Thus, the DOJ may be able to reduce the growing pains of external regulation by including police union officials or other frontline officer stakeholders into the process of negotiating § 14141 reforms.²⁰² By including such stakeholders in § 14141 settlement negotiations, the DOJ may be able to improve the perceived legitimacy of the external regulation, create feelings of “ownership” within rank-and-file officers, thereby “increas[ing] their commitment to its successful implementation.”²⁰³ As Professor Simmons has argued, “[t]his enhanced legitimacy could have positive implications for police reform efforts because if those responsible for implementing police services embrace the reform efforts rather than lobby against requirements they view as illegitimately imposed upon them, they are more likely to participate in the implementation process.”²⁰⁴

While this more inclusive approach to police regulation may seem appealing, it would ultimately present its own problems. Past research has shown that one of the reasons that § 14141 regulation is so effective at combatting police misconduct is that it prioritizes the reduction of police misconduct.²⁰⁵ Police unions “commonly attempt to intervene” into § 14141 settlement negotiations between police departments and the DOJ.²⁰⁶ Courts have almost uniformly rejected

²⁰⁰ Kami Chavis Simmons, *The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies*, 98 J. CRIM. L. & CRIMINOLOGY 489, 520 (2008).

²⁰¹ See e.g., *See, e.g.*, United States v. City of Los Angeles, 2:00-cv-11769-GAF-RC (C.D. Cal. Jan. 4, 2001) (order denying the Los Angeles Protective League’s motion to intervene).

²⁰² Simmons, *supra* note 200, at 524 (explaining that “police reform efforts are doomed to fail without significant cooperation of the police officers themselves, thus providing further justification for ensuring the participation of rank-and-file officers” in the negotiation process).

²⁰³ *Id.* at 538 (quoting Jody Freeman, *Collaborative Governance in the Administrative State*, 45 UCLA L. REV. 1, 24 (1997)).

²⁰⁴ *Id.*

²⁰⁵ Rushin, *supra* note 18, at 1404 (describing how § 14141 provides police chiefs and the DOJ with legal cover to implement potentially unpopular reforms over the objection of frontline police officer unions).

²⁰⁶ Rushin, *supra* note 18, at 1376.

such requests.²⁰⁷ In interviews, police administrators have suggested that this exclusion of police unions makes § 14141 litigation a “particularly successful accountability tool” because the collective bargaining process often “constrains their ability to implement accountability measures.”²⁰⁸ Police unions have previously resisted a range of policies designed to fight police misconduct, including civilian review boards, disciplinary procedures, and changes in departmental directives.²⁰⁹ This resistance to oversight by police unions is understandable: “An organized labor unit designed to enhance working conditions for its members should rationally want to block such changes.”²¹⁰ As a result, the DOJ may not be inclined to include police unions in its negotiations in § 14141 cases, if it believes that police unions are more concerned about enhancing working conditions for their members than striking the appropriate balance of accountability measures to ensure constitutionally acceptable policing practices. This sort of cooperative rulemaking may also produce inferior reforms.²¹¹

CONCLUSION

In August 2014, a police officer in Ferguson, Missouri shot and killed an unarmed Black teenager named Michael Brown.²¹² The protests that followed ignited a national conversation about the

²⁰⁷ *Id.* In addition, Simmons has argued that frontline officer participation in these negotiations may have other benefits. It may increase the officers’ willingness to cooperate with the proposed remedy. And it may improve the substantive outcomes by incorporating different voices. *Id.* at 538-39; see also Susan P. Sturm, *The Promise of Participation*, 78 IOWA L. REV. 981 (1993) (exploring the value of participation in the consent decree formation process).

²⁰⁸ *Id.*

²⁰⁹ See COLLEEN KADLECK & LAWRENCE F. TRAVIS, III, NAT’L INST. OF JUSTICE, POLICE DEPARTMENT AND POLICE OFFICER ASSOCIATION LEADERS’ PERCEPTIONS OF COMMUNITY POLICING: DESCRIBING THE NATURE AND EXTENT OF AGREEMENT 3-4 (2004), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/226315.pdf>. Other scholars have also discussed how collective bargaining affects police departments. See, e.g., Seth W. Stoughton, *The Incidental Regulation of Policing*, 98 MINN. L. REV. 2179, 2205-17 (2014).

²¹⁰ Rushin, *supra* note 18, at 1376.

²¹¹ Simmons, *supra* note 200, at 541-42; see also Andrew P. Morriss, Bruce Yandle, & Andrew Dorchak, *Choosing How to Regulate*, HARV. ENVTL. L. REV. 179, 198 (2005) (raising some of the arguments against regulatory negotiation).

²¹² Julie Bosman & Emma G. Fitzsimmons, *Grief and Protests Follow Shooting of a Teenager*, N.Y. TIMES (Aug. 10, 2014), <http://www.nytimes.com/2014/08/11/us/police-say-mike-brown-was-killed-after-struggle-for-gun.html> (providing details on the Michael Brown shooting).

disproportionate effects of police misconduct on racial minorities. It does not appear that this debate will go away anytime soon, as the deaths of Tamir Rice,²¹³ Eric Garner,²¹⁴ Walter Scott,²¹⁵ Laquan McDonald²¹⁶ at the hands of police have continued to fuel these calls for police reform. As this debate rages on, police in the United States have come under intense public scrutiny and increased external regulation. The DOJ has also responded by more aggressively enforcing civil rights statutes against police departments.²¹⁷ Critics have worried that this additional oversight may cause police to be less aggressive, thereby increasing crime. This Article demonstrates that such a de-policing phenomenon is not entirely implausible. At least one form of external regulation of American law enforcement—§ 14141 intervention—is associated with a temporary surge in certain crime rates. Questions remain about the generalizability of this finding to all regulatory contexts. More research will be needed in the future to identify which types of regulations are most closely tied with de-policing. These findings represent an important recognition of the possible negative side effects associated with external regulation of American law enforcement. These findings should not necessarily deter policymakers from enacting regulations of local police departments. Even if external regulations contribute to some temporary de-policing, this may be the cost of ensuring that police departments adhere to constitutional minimums. Constitutional policing may sometimes require compromise.

²¹³ Allen G. Breed, *Police Killing Data Filled with Many Unknowns*, HUFFINGTON POST (Dec. 7, 2014), http://www.huffingtonpost.com/2014/12/07/police-killings_n_6284358.html (describing the police shooting of twelve-year-old Tamir Rice in Cleveland).

²¹⁴ Martin Kaste, *System for Reporting Police Killings Unreliable, Study Finds*, NPR (Mar. 6, 2015), <http://www.npr.org/2015/03/06/391269342/system-for-reporting-police-killings-unreliable-study-finds> (reporting on police shooting of Eric Garner in New York).

²¹⁵ Michael S. Schmidt & Matt Apuzzo, *South Carolina Officer is Charged with Murder of Walter Scott*, N.Y. TIMES (April 7, 2015), <http://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html> (describing the shooting death of Walter Scott by a North Charleston police officer, caught on a cell phone camera).

²¹⁶ Monica Davey & Mitch Smith, *Justice Officials to Investigate Chicago Police Department After Laquan McDonald Case*, N.Y. TIMES (Dec. 6, 2015), <http://www.nytimes.com/2015/12/07/us/justice-dept-expected-to-investigate-chicago-police-after-laquan-mcdonald-case.html> (describing the shooting of Laquan McDonald by a Chicago police officer).

²¹⁷ Historically, the DOJ has only reached around one § 14141 settlement every year. But in 2014 and 2015, the DOJ reached seven settlements—far outpacing most previous years. *See app. B.*

**Appendix A, Investigations of American Police Departments
Conducted by U.S. Department of Justice Under § 14141**

Agency Name	Opened	Closed	Re-Opened	State
Torrance Police Department	5/1/95	9/14/98		CA
Adelanto Police Department	6/16/95	9/14/98		CA
Steubenville Police Department	7/31/95	3/3/05		OH
Pittsburgh Police Department	4/11/96	6/16/05		PA
New Orleans Police Department	4/15/96	3/23/04	5/14/10	LA
New Jersey State Police	4/15/96	10/26/09		NJ
Illinois State Police	4/15/96	9/27/02		IL
Montgomery County Police Department	6/1/96	2/1/05		MD
Los Angeles Police Department	7/31/96	5/16/13		CA
Beverly Hills Police Department	8/12/96	11/14/00		CA
New York City Police Department (Eastern District)	8/21/97	12/23/04		NY
Buffalo Police Department	12/9/97	7/9/08		NY
Columbus Police Department	3/13/98	5/14/04		OH
Eastpointe Police Department	3/20/98	1/12/05		MI
District of Columbia Metropolitan Police Department	1/31/99	2/10/12		
New York City Police Department (Southern District)	3/17/99	3/31/05		NY

Charleston Police Department	3/31/99	11/12/03		WV
Riverside Police Department	6/29/99	3/26/07		CA
Prince George's County Police Department	7/1/99	1/13/09		MD
Cleveland Division of Police	10/1/99	3/15/05	3/14/13	OH
Mount Prospect Police Department	4/5/00	12/28/06		IL
Highland Park Police Department	5/18/00	12/7/04		IL
Tulsa Police Department	2/8/01	7/21/08		OK
Cincinnati Police Department	5/7/01	4/12/07		OH
Detroit Police Department	5/29/01	3/2/16		MI
Schenectady Police Department	4/4/02	1/9/13		NY
Portland Police Department	5/6/02	6/27/05		ME
Miami Police Department	5/31/02	5/19/06	10/11/11	FL
Providence Police Department	12/11/02	3/26/08		RI
Villa Rica Police Department	1/27/03	12/23/06		GA
Alabaster Police Department	3/4/03	9/7/05		AL
Bakersfield Police Department	6/24/03	1/25/08		CA
Virgin Islands Police Department	2/13/04			VI
Beacon Police Department	8/3/04			NY
Warren Police Department	11/29/04			OH

Easton Police Department	10/14/05	7/1/15		PA
Orange County Sheriff's Office	1/10/07	4/4/13		FL
Austin Police Department	5/25/07	5/27/11		TX
Yonkers Police Department	7/24/07			NY
Puerto Rico Police Department	4/30/08			PR
Harvey Police Department	9/5/08	1/24/12		IL
Lorain Police Department	11/20/08	5/22/12		OH
Escambia County Sheriff's Office	12/30/08	10/14/12		FL
Maricopa County Sheriff's Department	3/10/09			AZ
Inglewood Police Department	3/11/09	10/1/15		CA
Suffolk County Police Department	9/9/09			NY
East Haven Police Department	9/30/09			CT
Alamance County Sheriff's Department	6/2/10			NC
Seattle Police Department	3/31/11			WA
Newark Police Department	5/9/11			NJ
Portland Police Department	6/7/11			OR
Los Angeles County Sheriff's Department (Antelope Valley)	8/19/11			CA
Meridian Police Department	11/29/11			MS

Missoula Police Department	4/25/12	5/11/15		MT
University of Montana Office of Public Safety	4/25/12	7/10/15		MT
Albuquerque Police Department	11/27/12			NM
Cleveland Police Department	3/14/13			OH
Ferguson Police Department	9/4/14			MO
Evangeline Parish Sheriff's Department	4/21/15			LA
Villa Plate Police Department	4/21/15			LA
Baltimore Police Department	5/8/15			MD
Chicago Police Department	12/7/15			IL

Appendix B, Agreements Between U.S. Department of Justice and American Police Departments Under § 14141

Agency	Agreement Date	Close Date
Pittsburgh Police Department	4/16/97	6/16/05
Steubenville Police Department	9/3/97	3/3/05
New Jersey State Police	12/29/99	10/26/09
District of Columbia Metropolitan Police Department	6/13/01	2/10/08
Los Angeles Police Department	6/15/01	5/16/13
Highland Park Police Department	7/11/01	12/7/04
Cincinnati Police Department	4/12/02	4/12/07
Columbus Police Department	9/4/02	5/14/04
Buffalo Police Department	9/19/02	7/8/08

Mount Prospect Police Department	1/22/03	12/28/06
Detroit Police Department (1)	6/12/03	3/2/16
Detroit Police Department (2)	7/18/03	12/23/06
Villa Rica Police Department	12/23/03	12/23/06
Prince George's County Police Department (1)	1/22/04	1/13/09
Cleveland Division of Police	2/11/04	3/15/05
Prince George's County Police Department (2)	3/11/04	3/12/07
Virgin Islands Police Department	3/23/09	
Easton Police Department	9/8/10	7/1/15
Orange County Sheriff's Office	9/16/10	4/4/13
Beacon Police Department	12/23/10	
Warren Police Department	1/26/12	
Seattle Police Department	9/21/12	
East Haven Police Department	12/21/12	
New Orleans Police Department	1/11/13	
Missoula Police Department	5/15/13	5/11/15
Puerto Rico Police Department	7/17/13	
Suffolk County Police Department	1/1/14	
University of Montana Police Department	6/10/14	7/10/15
Portland Police Department	8/29/14	
Albuquerque Police Department	11/14/14	
Los Angeles County Sheriff's Department (Antelope Valley)	4/29/15	
Cleveland Police Department	5/26/15	
Meridian Police Department	6/19/15	

Appendix C, Effect of Public Scrutiny on Crime Rates²¹⁸

²¹⁸ Each row represents a unique regression. Each observation is at the agency-year level. The dependent variable (reported crime rate) is expressed in the natural log of each respective rate and the standard errors are clustered at the agency

	Scrutiny	SE	R ²	N	Controls
Assaults	0.321 †	(0.162)	0.74	62,288	
	0.220	(0.136)	0.74	55,072	X
Burglary	0.252	(0.189)	0.85	62,979	
	0.226	(0.189)	0.86	55,700	X
Larceny	0.141	(0.201)	0.88	62,976	
	0.207	(0.221)	0.88	55,697	X
Motor Vehicle	0.435 ‡	(0.151)	0.72	63,062	
Theft	0.212 ^	(0.113)	0.74	55,767	X
Murder	0.218	(0.154)	0.66	30,000	
	0.211	(0.143)	0.67	26,057	X
Rape	0.092	(0.079)	0.60	53,626	
	0.080	(0.101)	0.62	47,471	X
Robbery	0.519 ‡	(0.196)	0.75	59,189	
	0.303 ^	(0.165)	0.76	52,270	X
Violent	0.337 †	(0.160)	0.76	60,406	
Crimes	0.179	(0.126)	0.76	53,498	X
Property	0.204	(0.247)	0.89	62,980	
Crimes	0.265	(0.268)	0.89	55,701	X

Appendix D, Effect of Public Scrutiny on Rate of Arrests per Crime Reported²¹⁹

	Scrutiny	SE	R ²	N	Controls
Assaults	-0.120	(0.121)	0.69	56,813	
	-0.093	(0.105)	0.69	51,653	X
Burglary	-0.061	(0.136)	0.64	57,713	
	-0.085	(0.131)	0.65	52,441	X
Larceny	-0.379 ^	(0.211)	0.76	58,608	
	-0.274	(0.169)	0.77	53,277	X
Motor Vehicle	-0.252	(0.219)	0.62	52,296	
Theft	-0.203	(0.190)	0.63	47,406	X
Murder	-0.048	(0.059)	0.75	22,060	
	-0.035	(0.057)	0.75	19,866	X
Rape	-0.195 ^	(0.106)	0.66	37,978	

level. Regressions including the controls listed *supra* Part II.D. ^ p<0.10 † p<0.05 ‡ p<0.01

²¹⁹ *Id.*

	-0.161	(0.113)	0.66	34,528	X
Robbery	-0.132	(0.088)	0.71	47,783	
	-0.121	(0.082)	0.71	43,508	X
Violent	-0.054	(0.080)	0.80	19,248	
Crimes	-0.046	(0.068)	0.80	17,364	X
Property	-0.223	(0.154)	0.78	51,259	
Crimes	-0.161	(0.125)	0.79	46,466	X

Appendix E, Effect of External Regulation on Rate of Arrests per Index Crime²²⁰

	Regulation	SE	R ²	N	Controls
Assaults	-0.102	(0.259)	0.69	56,813	
	-0.091	(0.251)	0.69	51,653	X
Burglary	-0.085	(0.185)	0.64	57,713	
	-0.096	(0.159)	0.65	52,441	X
Larceny	-0.409	(0.316)	0.76	58,608	
	-0.283	(0.279)	0.77	53,277	X
Motor Vehicle	-0.015	(0.207)	0.62	52,296	
Theft	0.088	(0.201)	0.63	47,406	X
Murder	-0.186	(0.136)	0.75	22,060	
	-0.157	(0.137)	0.75	19,866	X
Rape	-0.276	(0.216)	0.65	58,218	
	-0.246	(0.204)	0.66	52,924	X
Robbery	-0.242[^]	(0.145)	0.66	37,978	
	-0.180	(0.153)	0.66	34,528	X
Violent	-0.124	(0.159)	0.71	47,783	
Crimes	-0.111	(0.157)	0.71	43,508	X
Property	-0.249	(0.215)	0.80	19,248	
Crimes	-0.246	(0.227)	0.80	17,364	X

Appendix F, Explanation of Collection of Unique Dataset of All 42 U.S.C. § 14141 Cases

This Article collected an original dataset including all investigations and interventions by the DOJ pursuant to 42 U.S.C. § 14141. To do so, the authors first submitted a Freedom of Information

²²⁰ *Id.*

Act (hereinafter “FOIA”) request to the Civil Rights Division of the United States Department of Justice. The authors then followed this request up by conducting semi-structured interviews with a number of stakeholders involved in the implementation of § 14141 cases.²²¹ The purpose of these interviews was to both build a descriptive account of how the DOJ enforces § 14141 and to ensure the completeness of data acquired via the FOIA request. The authors also searched media accounts and court records to further verify the completeness of the dataset used in this study.

²²¹ In total, this Article relies on thirty-five in-depth, semi-structured interviews. It is common for qualitative studies to use semi-structured interviews. In this study, the interview participants fell into three different categories: DOJ litigators, external monitors, and police officials. These interview participants generally requested anonymity, given their continued work in this field. For some examples of semi-structured interviews in legal scholarship, *see, e.g.* Avlana Eisenberg, *Expressive Enforcement*, 61 UCLA L. REV. 855, 919 (2014); Keith Guzik, *The Agencies of Abuse: Intimate Abusers' Experience of Presumptive Arrest and Prosecution*, 42 LAW & SOC'Y REV. 111, 115 (2008). During semi-structured interviews, a researcher will normally ask a participant a set of pre-arranged questions. The researcher will then ask unplanned follow-up questions to help the researcher gain a more detail understanding of the participant's responses. *See* Eisenberg, *supra*, at 919.