

DE-POLICING

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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 some crime rates, relative to unaffected municipalities. 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.

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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 (NYPD) to change their stop-and-frisk policy.² She also ordered the appointment of an external monitor to oversee mandated

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> [https://perma.cc/NZY7-NTU5] (providing details about Judge Scheindlin’s ruling); see also John Cassidy, *Judge Scheindlin Stops and Frisks N.Y.C. Mayoral Candidates*, NEW YORKER (Aug. 12, 2013), <http://www.newyorker.com/online/blogs/johncassidy/2013/08/judge-scheindlin-stops-and-frisks-ny-mayoral-candidates.html> [https://perma.cc/7HYX-5ELM] (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, 5:56 PM), <http://www.dailymail.co.uk/news/article-2390077/New-York-stop-frisk-federal-judge-Shira-Scheindlin-rules-policy-violates-constitution-orders-changes.html> [https://perma.cc/DJK6-EEH2] (explaining Judge Scheindlin’s opinion).

² See Daniel Beekman, *Ivy League Law Professors to Help Implement Stop-and-Frisk Reforms*, N.Y. DAILY NEWS (Sept. 19, 2013, 2:26 AM), <http://www.nydailynews.com/news/crime/ivy-league-law-professors-implement-stop-and-frisk-reforms-article-1.1459589> [https://perma.cc/Q2ZB-8YVY] (explaining that a dozen academics are helping the NYPD reform its controversial stop-and-frisk practices); 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> [https://perma.cc/VC94-XENJ] (explaining that Mayor Bloomberg is opposed to the recommendations to monitor the NYPD).

changes to the NYPD 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-frisk, crime rates

³ See Goodman, *supra* note 2 (explaining the judge’s appointment of external monitor Peter L. Zimroth).

⁴ *Id.*; accord Yoav Gonen, *De Blasio Calls NYPD’s Federal Monitor a ‘Temporary Reality,’* N.Y. POST (Sept. 20, 2013), <http://nypost.com/2013/09/20/de-blasio-calls-nypds-federal-monitor-a-temporary-reality/> [<https://perma.cc/2XD9-UT7Q>] (referring to Bloomberg’s conclusion that the appointment of a monitor would be “terrible”); see also Colleen Long, *NYC Stop-and-Frisk Policy Wrongly Targeted Minorities, Judge Rules; Outside Monitor Appointed*, STAR TRIB. (Aug. 12, 2013, 7:40 PM), <http://www.startribune.com/nypd-wrongly-targeted-minorities-judge-rules/219252341/> [<https://perma.cc/C34W-XH44>] (identifying Bloomberg as a strong critic of the decision, and citing Bloomberg’s concern that the law will hurt crime fighting efforts).

⁵ Michael Howard Saul, *Bloomberg Calls Stop-and-Frisk Ruling ‘Dangerous,’* WALL ST. J. (Aug. 13, 2013, 8:02 PM), <http://www.wsj.com/articles/SB10001424127887323585604579009191911601838> [<https://perma.cc/8WMS-MDTM>] (quoting Mayor Bloomberg as also criticizing the decision in part because of the court’s failure to understand the streets of the city).

⁶ See Goodman, *supra* note 2; see also 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, 6:43 AM), <http://www.dailymail.co.uk/news/article-2425055/Shootings-10-New-York-City-federal-judge-rules-stop-search-unconstitutional-racist.html> [<https://perma.cc/YHB7-KPR5>] (detailing how New York City officials pointed to a 13% increase in shootings over the previous twenty-eight days as evidence that the Judge’s orders contributed to higher crime).

⁷ See, e.g., Tom Howell Jr., *NYC Mayor Bloomberg Staunchly Defends Stop-and-Frisk Program*, WASH. TIMES (Aug. 12, 2013), <http://www.washingtontimes.com/news/2013/aug/12/judge-says-nyc-stop-and-frisk-policy-violated-right/> [<https://perma.cc/YB7Y-QR3J>] (summarizing Mayor Bloomberg’s objections to Judge Scheindlin’s ruling); *New York Police Commissioner Ray Kelly Calls Stop-and-Frisk Decision ‘Disturbing and Offensive’* (TRANSCRIPT), N.Y. DAILY NEWS (Aug. 12, 2013, 3:01 PM), <http://www.nydailynews.com/news/politics/new-york-police-commissioner-ray-kelly-comments-stop-and-frisk-decision-article-1.1424689> [<https://perma.cc/VG5B-GLB9>] (quoting Police Commissioner Ray Kelly, who calls the allegations made in the court case “recklessly untrue”).

plummeted.⁸ But these stop-and-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 reforms in modern American history, including the exclusionary rule¹⁰ and the *Miranda*

⁸ During this time in New York City, violent crime rates fell by approximately 66% and property crime declined 62%. *Uniform Crime Reporting*, FBI, <http://www.fbi.gov/about-us/cjis/ucr/ucr> [<https://perma.cc/P9WC-27UP>] (searching for data on violent crime and property crime between 1970 and 2011).

⁹ The proliferation of stop-and-frisks started after the United States Supreme Court issued the *Terry v. Ohio* case. 392 U.S. 1 (1968). There, the Court permitted a law enforcement officer to execute a limited stop-and-frisk when the officer had reasonable suspicion that a group of individuals were engaged in criminal activity. *Id.* at 30. 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 (noting that Judge Scheindlin found that the police in New York were too quick to crack down on suspicious behavior and thus watered down the meaning of a stop); *Stop-and-Frisk Data*, N.Y.C.L.U., <http://www.nyclu.org/content/stop-and-frisk-data> [<https://perma.cc/9F6Z-UTP8>] (giving a detailed breakdown of the seemingly racially disparate pattern of stop-and-frisks in New York City). In 1990, 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 1,500%. Dylan Matthews, *Here's What You Need to Know About Stop and Frisk—and Why the Courts Shut It Down*, WASH. 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> [<https://perma.cc/C5RY-CAR7>]. In 2011, an estimated 87% of those subject to stop-and-frisks were either Hispanic or African American. ZIMRING, *supra* note 9, at 129. And these stops rarely led to an arrest or yielded illegal contraband. See Adam Serwer & Jaeah Lee, *Charts: Are the NYPD's Stop-and-Frisks Violating the Constitution?*, MOTHER JONES (Apr. 29, 2013, 5:00 AM), <http://www.motherjones.com/politics/2013/04/new-york-nypd-stop-frisk-lawsuit-trial-charts> [<https://perma.cc/Y64U-RFA3>] (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 ninety-nine stops of Hispanics. By contrast, when police officers in New York City *Terry* stop a white suspect, they find contraband about one in every twenty-seven cases. *Id.* This means that *Terry* stops of Hispanic suspects are around three to four times less accurate than stops of white suspects, and *Terry* stops of black suspects are around five to six 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., W. ROBERT BURKHART ET AL., NAT'L INST. OF JUSTICE, *THE EFFECTS OF THE EXCLUSIONARY RULE: A STUDY IN CALIFORNIA* 10 (1982) (finding that the use of the exclusionary rule led to prosecutors dropping complaints in 86,033 felony arrest cases); Raymond A. Atkins & Paul H. Rubin, *Effects of Criminal Procedure on Crime Rates: Mapping Out the Consequences of the Exclusionary Rule*, 46 J.L. & ECON. 157, 159 (2003) (finding that the exclusionary rule's passage was associated with an uptick in national crime).

v. Arizona 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 Investigation (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 contem-

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 STAN. L. REV. 1055, 1063–66 (1998) (linking *Miranda* to decreased clearance rates in the United States); see also S. REP. NO. 90-1097, at 37 (1968), as 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); *More Criminals to Go Free? Effect of High Court’s Ruling*, U.S. NEWS & WORLD REP., June 27, 1966, at 32, 33 (quoting the Los Angeles Mayor as saying the *Miranda* decision would handcuff police and contribute to more criminals going free).

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> [https://perma.cc/PSU2-84EA] (providing details on the Michael Brown shooting); see also Devlin Barrett, *Justice Department to Investigate Ferguson Police Force*, WALL ST. J. (Sep. 4, 2014, 4:54 PM), <http://www.wsj.com/articles/ferguson-police-chief-welcomes-justice-department-probe-1409849928> [https://perma.cc/PWQ8-CUU6] (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*, WALL ST. J. (May 29, 2015, 6:27 PM), <http://www.wsj.com/articles/the-new-nationwide-crime-wave-1432938425> [https://perma.cc/8XWA-8T7W] [hereinafter *Nationwide Crime Wave*] (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*, WALL ST. J. (Dec. 25, 2015, 1:09 PM), <http://www.wsj.com/articles/trying-to-hide-the-rise-of-violent-crime-1451066997> [https://perma.cc/RMY9-77SN] (connecting crime rates to police scrutiny); Heather Mac Donald, *The Ferguson Effect in Los Angeles—More Crime*, L.A. TIMES (Jan 13, 2016, 5:00 AM), <http://www.latimes.com/opinion/op-ed/la-oe-mac-donald-ferguson-effect-in-los-angeles-20160113-story.html> [https://perma.cc/B5A9-HCXE] (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, 8:26 PM), http://www.slate.com/articles/podcasts/gist/2015/06/the_gist_heather_mac_donald_on_the_ferguson_effect_and_crime_statistics.html [https://perma.cc/SG2G-X4HG]. For details on the statements made by the FBI and DEA Directors, see Todd C. Frankel, *DEA Chief Joins FBI Chief in Giving Credence to ‘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> [https://perma.cc/R7WE-BCQB] (quoting the DEA Director as making such a de-policing claim); 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/c51011d>

porary version of the de-policing hypothesis the “Ferguson [E]ffect.”¹⁴

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 Informa-

4-7c2c-11e5-afce-2afd1d3eb896_story.html [https://perma.cc/VAf7-TLc6] (discussing Director Comey’s speech at the University of Chicago and quoting his claims that police officers are becoming more passive).

¹⁴ Members of the media from both sides of the debate have taken to describing this hypothesis as the “Ferguson Effect.” See, e.g., 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-lynn-there-is-no-data-backing-the-existence-of-a-ferguson-effect/2015/11/17/ebac5f1a-8d56-11e5-acff-673ae92ddd2b_story.html [https://perma.cc/H7EN-MQ9X] (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> [https://perma.cc/M8JZ-2WQQ] (also using the label); Johnathan M. Smith, *Forget the ‘Ferguson Effect’ on Crime*, WASH. POST (Oct. 28, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/10/28/forget-the-ferguson-effect-on-crime> [https://perma.cc/TV4M-QRY3] (also using the label).

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* subparts I.B, II.A.

¹⁶ See *infra* subparts II.C, II.D.

tion Act (FOIA) requests, interviews with 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-

¹⁷ For more information on the methodology used to collect this original dataset, see Appendix 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 (1994). 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) (2012). 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. 42 U.S.C. § 14141(b). Federally mandated reform via § 14141 represents the single most invasive form 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.*, Settlement Agreement and Stipulated [Proposed] Order of Resolution [hereinafter Seattle Agreement] at 16–40, *United States v. City of Seattle*, No. 2:12-cv-01282-JLR, (W.D. Wash. July 27, 2012), http://www.justice.gov/crt/about/spl/documents/spd_consentdecree_7-27-12.pdf [<https://perma.cc/9AXG-R7PX>] (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.*, Joint Application for Entry of Consent Decree [hereinafter New Jersey Consent Decree] at 15–18, ¶¶ 40–56, *United States v. New Jersey*, No. 99-5970(MLC) (D.N.J. Dec. 30, 1999), <http://www.clearinghouse.net/chDocs/public/PN-NJ-0002-0001.pdf> [<https://perma.cc/C63C-N2LU>] (requiring the implementation of an early warning system which will be used to assist State Police supervisors “to promote professionalism and civil rights integrity, to identify and modify potentially problematic behavior, and to promote best practices”). It is common for agreements to regulate the handling of citizen complaints and the internal investigation of officer wrongdoing. *See, e.g.*, Consent Decree [hereinafter Pittsburgh Consent Decree] at 23–32, ¶¶ 44–69, *United States v. City of Pittsburgh*, No. 2:97-cv-00354-RJC (W.D. Pa. Feb. 26, 1997), <http://www.clearinghouse.net/chDocs/public/PN-PA-0003-0002.pdf> [<https://perma.cc/HC4Z-BJ5S>] (mandating such reforms). In recent years, though, the Department of Justice 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. *See* Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 MINN. L. REV. 1343, 1387 (2015).

¹⁹ *See infra* subpart I.A and accompanying text (describing this as the “Ferguson Effect”).

policing hypothesis ties increases in crime to the imposition of external regulation.²⁰

Federal intervention via § 14141 allows for a testing of the theoretical assumptions underlying both versions of the depolicing hypothesis. When the Department of Justice (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 sixty-one formal investigations of American police departments pursuant to § 14141 since 1994.²⁵ This Article uses data from

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

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 See *id.* at 1370–71 (“Investigations are expensive and time-consuming—sometimes costing millions of dollars and taking several months or even years to complete.”) (citations omitted).

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 shooting, 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. See 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> [<https://perma.cc/3JRK-VK82>] (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 et al., *Chicago Mayor ‘Welcomes’ US Justice Department Inquiry into Police Practices*, GUARDIAN (Dec. 7, 2015), <http://www.theguardian.com/us-news/2015/dec/07/justice-department-investigation-chicago-police> [<https://perma.cc/FZ46-3834>] (describing Chicago Mayor Rahm Emanuel as “[b]eleaguered” 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 generally Rushin, *supra* note 18, at 1366–96 (recounting the structural reform litigation process from beginning to end).

²⁵ See Sarah Childress et al., *Fixing the Force*, PBS FRONTLINE, <http://apps.frontline.org/fixingtheforce> [<https://perma.cc/84VK-62F9>] (showing a complete

these agencies to test whether the introduction of public scrutiny is associated with 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 procedures, and more.²⁹ These agreements bind local law enforcement

list of all § 14141 investigations until the end of 2015); *see also* Stephen Rushin, *Federal Enforcement of Police Reform*, 82 *FORDHAM L. REV.* 3189, 3244–46 app. A (2014) (showing a complete list of all § 14141 investigations through 2013).

²⁶ *See* 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*, *ATLANTIC* (Feb. 11, 2016), <http://www.theatlantic.com/politics/archive/2016/02/doj-ferguson-lawsuit/462300> [<https://perma.cc/928J-HU4N>] (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. *See Mapp v. Ohio*, 367 U.S. 643, 655–57 (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 (2012). And in some cases, aggrieved victims of police misconduct can also bring suits against police departments or municipalities. *See Monell v. Dep’t of Soc. Servs. of N.Y.C.*, 436 U.S. 658, 695–701 (1978) (overruling the Court’s precedent that had protected municipalities from suit under § 1983); *see also 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 who 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. *See* 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 thirty-one such settlements.³¹ Thus, this Article uses data from these agencies to test whether the introduction of external regulation is associated with de-policing.

While this Article finds little evidence that scrutiny contributed to higher crime rates, it concludes that the introduction of external regulations is associated with 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 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

³⁰ Rushin, *supra* note 18, at 1392 fig.5 (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 III (showing in Figures 3 through 7 a slight uptick in overall crime rates in cities targeted for federal intervention).

³³ See *infra* Part III (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* sections I.B.1, I.B.2 (describing the "Ferguson Effect" and "Drive-and-Wave" hypotheses).

³⁵ See *infra* subpart IV.B.

IV discusses the implications of these findings and offers normative recommendations.

I

THE DE-POLICING HYPOTHESIS

On October 23, 2015, James B. Comey, Director of the Federal Bureau of Investigations (FBI), gave a speech at the University of Chicago Law School discussing the recent surge in violent crimes in the nation's fifty largest cities.³⁶ Director Comey wondered aloud, "What could be driving an increase in murder in some cities across all regions of the country, all at the same time?"³⁷ His answer would reignite a national debate about the effects of police oversight.³⁸ According to Director Comey, the cause of this crime spike may be the increased reluctance of police officers to police the streets proactively.³⁹ 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."⁴⁰ The result, speculates Comey, is a "chill wind blowing through American law enforcement over the last year . . . that . . . is surely changing behavior."⁴¹ 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 rule⁴² and the *Miranda v. Arizona* decision,⁴³ critics similarly worried that police facing additional scrutiny or oversight would engage in de-policing. And long before the

³⁶ James B. Comey, Dir. FBI, Law Enforcement and the Communities We Serve: Bending the Lines Toward Safety and Justice, Remarks at the University of Chicago Law School (Oct. 23, 2015), <https://www.fbi.gov/news/speeches/law-enforcement-and-the-communities-we-serve-bending-the-lines-toward-safety-and-justice> [<https://perma.cc/7FH4-NT96>] [hereinafter Comey Speech at the University of Chicago] ("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 See, e.g., Lowery, *supra* note 13 (discussing reactions to speeches made by Director Comey).

³⁹ Comey Speech at the University of Chicago, *supra* note 36.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See *supra* note 10 and accompanying text.

⁴³ See *supra* note 11 and accompanying text.

current, partisan debate about Comey's statements, the de-policing hypothesis had 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*.⁴⁴ During the debates, Senator John McClellan argued that Supreme Court cases like *Miranda* and *Escobedo v. Illinois*⁴⁵ hurt law enforcement and caused crime to spiral "upward and upward and upward."⁴⁶ In May of that year, Republican Presidential Candidate Richard Nixon released a "well-received position paper on crime" entitled *Toward Freedom from Fear*.⁴⁷ 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.⁴⁸

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 disen-

⁴⁴ See Yale Kamisar, *How to Use, Abuse—and Fight Back With—Crime Statistics*, 25 OKLA. L. REV. 239, 240 (1972).

⁴⁵ 378 U.S. 478, 490–91 (1964) (holding that criminal suspects had a right to counsel during police interrogations under the Sixth Amendment of the United States Constitution).

⁴⁶ Kamisar, *supra* note 44, at 240. Senator McClellan also welcomed listeners to "weep for your country" since these cases had "set a low tone in law enforcement."

⁴⁷ *Id.* at 241.

⁴⁸ See *id.* ("The *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 drastically revamped the department's method of reporting crime and maintaining 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, for example, was for a commander to ignore a lot of crime 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 central number when crime occurred—and increased confidence in the police—had encouraged people to report crimes they would not have reported in the past.

Id. at 243.

gagement,” “tactical detachment,” or officer “retreat.”⁴⁹ Critics have worried that police officers will respond by de-policing when faced with allegations of racial profiling,⁵⁰ riots,⁵¹ civil suits,⁵² or federal consent decrees.⁵³

Within the legal literature, the de-policing hypothesis has received the greatest attention in the context of racial profiling cases.⁵⁴ For example, in *Gacina v. State*, a New Jersey Superior Court articulated the de-policing concern as “officers, on their own, [who] decide to stop taking pro-active steps to en-

⁴⁹ Willard M. Oliver, *Depolicing: Rhetoric or Reality?*, CRIM. JUST. POL'Y REV., May 2015, at 1, 2.

⁵⁰ See Frank Rudy Cooper, *The “Seesaw Effect” from Racial Profiling to Depolicing: Toward a Critical Cultural Theory*, in THE NEW CIVIL RIGHTS RESEARCH: A CONSTITUTIVE APPROACH 139, 147–48 (Benjamin Fleury-Steiner & Laura Beth Nielsen eds., 2006); Frank Rudy Cooper, *Understanding “Depolicing”: Symbiosis Theory and Critical Cultural Theory*, 71 UMKC L. REV. 355, 361 (2002).

⁵¹ The response of some officers after the Los Angeles riots is demonstrative of this argument. As one Los Angeles Police Department (LAPD) officer observed, some of the older officers “are so angry and frustrated by events surrounding the Rodney King video that they have all but given up on doing any effective police work. Many of them will only respond to radio calls, and that they do slowly.” Oliver, *supra* note 49, 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 three 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.

⁵² See, e.g., Kenneth J. Novak et al., *Strange Bedfellows: Civil Liability and Aggressive Policing*, 26 POLICING 352, 362–65 (2003) (arguing that despite accusations that civil litigation may decrease officer aggressiveness, empirical examinations reveal that civil litigation is actually a weak and inconsistent predictor of such de-policing behavior).

⁵³ See, e.g., ROBERT C. DAVIS ET AL., TURNING NECESSITY INTO VIRTUE 48–58 (2002), http://www.cops.usdoj.gov/html/cd_rom/inaction1/pubs/TurningNecessityintoVirtue.pdf [<https://perma.cc/3DMK-DY9B>] [hereinafter TURNING NECESSITY INTO VIRTUE] (identifying the depolicing hypothesis as a concern expressed by frontline officers in Pittsburgh during and after federal intervention); ROBERT C. DAVIS ET AL., CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING? THE PITTSBURGH CONSENT DECREE 42 (2005), <https://www.vera.org/publications/can-federal-intervention-bring-lasting-improvement-in-local-policing-the-pittsburgh-consent-decree> [<https://perma.cc/2P3Q-39FL>] [hereinafter CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING?] (again expressing concern about possible de-policing effects of federal intervention).

⁵⁴ See Oliver, *supra* note 49, at 5, 8 (noting that de-policing “has received little attention in the academic literature” but “has found its way into case law” as a result of its “connection to racial profiling”).

gage citizens.”⁵⁵ Similarly, in *United States v. Hare*, “a state trooper admitted in court that he typically engaged in depolicing 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.”⁵⁶ 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.”⁵⁷ Over time, scholars have used de-policing to describe a wide range of circumstances.⁵⁸ But at its core, the modern articulation of the de-policing hypothesis describes the possibility that police may “disengag[e] from active police work as a reaction to a negative experience.”⁵⁹

The two subparts that follow distinguish between two distinct versions of the de-policing hypothesis. Subpart A describes the so-called Ferguson Effect, which connects external scrutiny to reductions in officer aggressiveness and subsequent increases in crime. Subpart B details a slightly different version of the de-policing hypothesis, which suggests that of-

⁵⁵ *Id.* at 5 (quoting Lewis R. Katz, “Lonesome Road”: *Driving Without the Fourth Amendment*, 36 SEATTLE U. L. REV. 1413, 1421 (2013)).

⁵⁶ *Id.* at 5–6.

⁵⁷ *Id.* at 6.

⁵⁸ 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 and intensity of self-help would rise correspondingly.” *Id.* at 3. Thus, they used the term to describe the “cutting back on the police—or *depolicing*” as a way to facilitate more self-help. *Id.* (quoting Donald Black & M.P. Baumgartner, *On Self-Help in Modern Society*, 12 DIALECTICAL ANTHROPOLOGY 33, 34–35 (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 effect 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 Preventive Patrol Report by, ironically, Kelling, Pate, Dieckman, and Brown. This occurred at a time when cities were facing the 1970s recession and budget cuts, while contemporaneously having to manage increased calls-for-service 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.”

Id. (internal citations omitted) (quoting George L. Kelling, *Perspectives on Crime and Justice: 1997-1998 Lecture Series* (1998)).

⁵⁹ *Id.* at 4.

ficers facing stringent external regulation will not engage in proactive street policing, thereby contributing to an increase in crime. These subparts 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.⁶⁰ Various media outlets have labeled this hypothesis the Ferguson Effect.⁶¹ Not only has FBI Director Comey articulated some version of this hypothesis,⁶² 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.”⁶³ This hypothesis links the mere presence of public scrutiny—not necessarily regulation—to de-policing. Public scrutiny can take many forms, including press coverage, public protests, or the video recording of police officers.⁶⁴

Scholars have disagreed about whether external scrutiny contributes to de-policing. Scott E. Wolfe and Justin Nix have argued that negative publicity may have made police officers less likely to engage in community partnerships.⁶⁵ Willard M. Oliver used a convenience sample of twenty-five officers to understand the nature, scope, and causes of de-policing.⁶⁶ That study found a widespread belief among American police officers

⁶⁰ See Lowery, *supra* note 13.

⁶¹ 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 [<https://perma.cc/JH2E-NXHE>] (quoting Chief Sam Dotson as using the term “Ferguson [E]ffect,” one of the earliest documented 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, 9:39 PM), <http://www.usatoday.com/story/news/nation/2015/12/28/providence-police-force-ferguson-effect-aftershocks/77005198/> [<https://perma.cc/DY7M-L6QN>] (using the term “Ferguson Effect”).

⁶² See Lowery, *supra* note 13.

⁶³ Frankel, *supra* note 13.

⁶⁴ See *supra* note 13 and accompanying text. Supporters of the “Ferguson Effect” thesis have linked the recent increase in the national murder rate to this sort of heightened public scrutiny. See *Nationwide Crime Wave*, *supra* note 13.

⁶⁵ Scott E. Wolfe & Justin Nix, *The Alleged “Ferguson Effect” and Police Willingness to Engage in Community Partnership*, 40 L. & HUM. BEHAV. 1, 1–2 (2016) (using a cross-sectional survey of 567 deputies at an agency in the southeastern United States to reach the conclusion that “officers who have confidence in their authority or perceive their agency as fair are more willing to partner with the community to solve problems, regardless of the effects of negative publicity”).

⁶⁶ Oliver, *supra* note 49, at 1.

that public accusations of racial profiling, among other external stimuli, can contribute to de-policing.⁶⁷ Similarly, a study by Richard Rosenfeld and the Sentencing Project found some support for this version of the de-policing hypothesis.⁶⁸ Rosenfeld specifically looked at data on crime rates in St. Louis before and after the Michael Brown shooting. He found a “double-digit homicide increas[e] in St. Louis.”⁶⁹ 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.⁷⁰ A more sweeping study conducted by David Pyrooz et al. found that robbery rates may have increased in the wake of Ferguson.⁷¹ Ultimately, though, that study failed to find any other definitive evidence that the introduction of heightened police scrutiny after Ferguson caused an increase in crime across eighty-one large American cities.⁷² 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 causes police to be less aggressive, thereby emboldening criminals and increasing crime.⁷³ According to this hypothesis, police officers facing new forms of external regulation will shy away from engaging in proactive street policing.⁷⁴ In some cases, external legal regulation may contribute to officers hesi-

⁶⁷ *Id.* at 9–17 (discussing the results of his interviews and providing detailed accounts of officers alleging the negative effects of de-policing).

⁶⁸ RICHARD ROSENFELD, THE SENTENCING PROJECT, WAS THERE A “FERGUSON EFFECT” ON CRIME IN ST. LOUIS? (2015), <http://sentencingproject.org/wp-content/uploads/2015/09/Ferguson-Effect.pdf> [<https://perma.cc/W3DX-T9RD>].

⁶⁹ *Id.* at 3.

⁷⁰ *Id.* at 3–4 (“In the absence of credible and comprehensive evidence, sounding alarm bells over a ‘Ferguson [E]ffect’ 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.

⁷¹ David C. Pyrooz et al., *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”).

⁷² *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 U.S. cities? We find no evidence in support of this contention.”).

⁷³ See CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING?, *supra* note 53, at 21.

⁷⁴ See *id.* at 22 (showing in Figure 7 that 79% of officers have been less proactive in approaching their jobs).

tating to use necessary force.⁷⁵ This “hesitation might end up” getting an officer “killed or assaulted.”⁷⁶ 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 conflict because they were afraid of having a citizen file an unwarranted anonymous complaint against them”⁷⁷ Roughly three out of every four Pittsburgh officers shared this viewpoint.⁷⁸ 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.⁷⁹ 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.⁸⁰ Some have colloquially labeled this the “Drive-and-Wave Syndrome”⁸¹—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.⁸²

⁷⁵ Timothy Williams, *Long Taught to Use Force, Police Warily Learn to De-Escalate*, N.Y. TIMES, June 27, 2015, at A16.

⁷⁶ *Id.* (quoting Harvey Hedden, the executive director of the International Law Enforcement Educators and Trainers Association).

⁷⁷ CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING?, *supra* note 53, at 16.

⁷⁸ *See id.* at 21.

⁷⁹ CHRISTOPHER STONE ET AL., POLICING LOS ANGELES UNDER A CONSENT DECREE: THE DYNAMICS OF CHANGE AT THE LAPD 20 (2009), <http://www.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf> [<https://perma.cc/Z3DC-943S>] (showing in Figure 10 that a high proportion of LAPD officers believed that the threat of community complaints would hurt proactive street policing).

⁸⁰ *See* Joshua M. Chanin, *Negotiated Justice? The Legal, Administrative, and Policy Implications of ‘Pattern or Practice’ Police Misconduct Reform* (2011) (unpublished Ph.D dissertation, American University) (on file with authors) (quoting a leader from the Washington, D.C. Police Union as saying that structural police reform leads to more time-consuming paperwork).

⁸¹ STONE ET AL., *supra* note 79, at 19–20.

⁸² 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 the 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

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.⁸³ An investigation of the Seattle Police Department similarly found that officers regularly engaged in less proactive policing after the initiation of external federal regulation.⁸⁴ And Paul G. Cassell and Richard Fowles have conducted one of the most rigorous studies on the effect of police regulation on officer behavior.⁸⁵ They found that the introduction of external regulations in the form of *Miranda* warnings contributed to a statistically significant reduction in police clearance rates.⁸⁶

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 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.⁸⁷ This criminological view says that law enforce-

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. *Id.* at 68.

⁸³ Lan Shi, *The Limit of Oversight in Policing: Evidence from the 2001 Cincinnati Riot*, 93 J. PUB. ECON. 99, 111 (2009).

⁸⁴ See Jonah Spangenthal-Lee, *SPD Disputes Rumors of De-Policing Within the Department*, SEATTLE METROPOLITAN (Nov. 1, 2011, 12:00 PM), <http://www.seattlemet.com/articles/2011/11/1/spd-disputes-rumors-of-de-policing-within-the-department> [perma.cc/R5SL-SCR9].

⁸⁵ Cassell & Fowles, *supra* note 11.

⁸⁶ *Id.* at 1118.

⁸⁷ 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. See CESARE BECCARIA, ON CRIMES AND PUNISHMENTS (Graeme R. Newman trans., Transaction Publishers 5th ed. 2009) (1764); JAMES Q. WILSON, THINKING ABOUT CRIME 117–23, 142–44 (rev. ed. 1985). Sociological criminologists contend that society defines and creates crime through poverty, income inequality, and culture. See WILLIAM ADRIAN BONGER, CRIMINALITY AND ECONOMIC CONDITIONS 402–05, 667–72 (Edward Lindsey ed., Henry P. Horton trans., Agathon Press, Inc. 1967) (1916); Elliott Currie, *Social Crime Prevention in a Market Strategy*, in CRIMINOLOGICAL PERSPECTIVES: ESSENTIAL READINGS 369, 369–82 (Eugene McLaughlin et al. eds., 2d ed. 2001); Emile Durkheim, *Rules for the Distinction of the Normal from the Pathological*, in THE RULES OF SOCIOLOGICAL METHOD AND SELECTED TEXTS ON SOCIOLOGY AND ITS METHOD 85, 85–107 (Steven Lukes ed., W.D. Halls trans., 1982); PETER KROPOTKIN, *Law and Authority*, in WORDS OF A REBEL 145, 159–64 (George Woodcock trans. 1992); JOHN LEA & JOCK

ment can deter crime through altering situational incentives of would-be criminals.⁸⁸ While scholars were skeptical about the role of police officers in combatting crime in the mid-twentieth century, emerging evidence suggests that police officers may

YOUNG, WHAT IS TO BE DONE ABOUT LAW AND ORDER? 81, 95–101, 218–25 (1984); Adolphe Quetelet, *Of the Development of the Propensity to Crime*, in A TREATISE ON MAN 82, 82–96, 103–8 (R. Knox trans., 1842). Positivist criminologists believe that biological differences may increase an individual's propensity for criminal behavior. See H.J. Eysenck, *Personality Theory and the Problem of Criminality*, in APPLYING PSYCHOLOGY TO IMPRISONMENT 28, 30–31, 34–46 (Barry J. McGurk et al. eds., 1987); CESARE LOMBROSO & WILLIAM FERRERO, THE FEMALE OFFENDER 103–13, 147–52, 190–91 (1895); Sarnoff A. Mednick et al., *Genetic Factors in the Etiology of Criminal Behavior*, in THE CAUSES OF CRIME: NEW BIOLOGICAL APPROACHES 74, 74–91 (Sarnoff A. Mednick et al. eds., 1987). And situational criminologists claim that society can deter criminal deviance by adjusting situational incentives for illegal behavior. See Marcus Felson, *The Routine Activity Approach as a General Crime Theory*, in OF CRIME & CRIMINALITY 205, 205–216 (Sally S. Simpson ed., 2000); George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC, Mar. 1982, at 29; R.V.G. Clarke, "Situational" *Crime Prevention: Theory and Practice*, 20 BRIT. J. CRIMINOLOGY 136, 139–40 (1980). 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. See JOHN BRAITHWAITE, CRIME, SHAME AND REINTEGRATION 69–83 (1989); FRANCIS T. CULLEN & KAREN E. GILBERT, REAFFIRMING REHABILITATION 247–63 (1982); Angela Y. Davis, *Race and Criminalization: Black Americans and the Punishment Industry*, in THE HOUSE THAT RACE BUILT 264, 264–78 (Wahneema Lubiano ed., 1997).

⁸⁸ 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 87, at 207–08. 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 draw the burglar further. The larger community structure offers the burglar crime opportunities by producing more lightweight but valuable goods and getting people out of their homes for work, school, or leisure.

Id. at 209.

Richard Clarke has similarly argued that the traditional criminological academy has failed to sufficiently explore situations determinant of crime. Clarke, *supra* note 87, at 136. Clarke has recommended that criminologists focus on reducing physical opportunities for crime. 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 ET AL., THE KANSAS CITY PREVENTIVE PATROL EXPERIMENT: A SUMMARY REPORT 1–4 (1974) (finding that changes in the Kansas City preventative patrol methods did not substantially affect crime); GEORGE L. KELLING ET AL., THE NEWARK FOOT PATROL EXPERIMENT 4–6 (1981) (finding that changes in the use of preventative foot patrols in Newark, New Jersey had no significant effect on crime rates).

have some measurable effects on crime rates.⁸⁹ 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.⁹⁰ 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 to see how the introduction of a condition affects an outcome variable in a given jurisdiction.⁹¹ 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 subjected to the new policy, while another ‘control’ jurisdiction is not.”⁹² Thus, the ideal study of the de-policing

⁸⁹ See, e.g., Anthony A. Braga et al., *The Effects of Hot Spots Policing on Crime: An Updated Systematic Review and Meta-Analysis*, 31 JUST. Q. 633, 634–35 (2014) (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); Steven D. Levitt, *Using Electoral Cycles in Police Hiring to Estimate the Effects of Police on Crime: Reply*, 92 AM. ECON. REV. 1244, 1244 (2002) (using a number of proxies to show that police have a negative impact on crime); Richard Rosenfeld et al., *The Effects of Directed Patrol and Self-Initiated Enforcement on Firearm Violence: A Randomized Controlled Study of Hot Spot Policing*, 52 CRIMINOLOGY 428, 439–43 (2014) (using a difference-in-difference regression analysis to conclude that hot spot policing reduced the incidence of nondomestic firearm assaults).

⁹⁰ See, e.g., STONE ET AL., *supra* note 82, at 2–5 (studying the Los Angeles Police Department under a Justice Department intervention and a federal court consent decree); Shi, *supra* note 83, at 78–79 (studying the impact of a Justice Department intervention in the Cincinnati Police Department after the 2001 Cincinnati Riot).

⁹¹ 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, at 1071–74.

⁹² *Id.* at 1072.

hypothesis, or any other “[p]rofessional econometric stud[y] on the impact of legal rules” would ideally look at comparative panel data, not aggregate, time-series data.⁹³

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 (FOIA) requests, stakeholder interviews, and an examination of court records.⁹⁴ Congress passed § 14141 to provide the U.S. Attorney General with an equitable remedy against law enforcement agencies engaged in systemic misconduct.⁹⁵ The subparts that follow argue that § 14141 is a useful test of the de-policing hypothesis. These subparts 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 (VCCLEA)—an omnibus measure that touched on nearly every aspect of the American criminal justice system.⁹⁶ 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

⁹³ Stephen J. Schulhofer, *Miranda and Clearance Rates*, 91 NW. U. L. REV. 278, 291 (1996).

⁹⁴ See *infra* Appendix F.

⁹⁵ See Rushin, *supra* note 18, at 1346–47.

⁹⁶ Pub. L. No. 103-322, § 210401, 108 Stat. 2071 (1994).

passed the Violence Against Women Act.⁹⁷ 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.⁹⁸ Before the passage of § 14141, neither the DOJ nor private litigants had the standing to pursue equitable relief against American police departments.⁹⁹

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.¹⁰⁰ 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 again be stopped . . . by an officer or officers who would illegally choke him into unconsciousness without any provocation.”¹⁰¹

⁹⁷ Perhaps the best description of the VCCLEA’s passage comes from a book published by Lord Windlesham. LORD WINDLESHAM, POLITICS, PUNISHMENT, AND POPULISM 119–23 (1998) (discussing the political climate leading up to the VCCLEA’s passage). 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. It also provided \$9.9 billion for the building of new prisons. SHAHID M. SHAHIDULLAH, CRIME POLICY IN AMERICA: LAWS, INSTITUTIONS, AND PROGRAMS 23 (2d ed. 2016). 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. *See id.* Additionally, the Act allocated another “\$2.6 billion . . . for the Federal Bureau of Investigation, Drug Enforcement Agency, Immigration and Naturalization Services, United States Attorneys, and other Justice Department components.” ERICA R. MEINERS, RIGHT TO BE HOSTILE: SCHOOLS, PRISONS, AND THE MAKING OF PUBLIC ENEMIES 103 (2007).

⁹⁸ 42 U.S.C. § 14141 (2012) (“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”).

⁹⁹ 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).

¹⁰⁰ 461 U.S. 95, 97–100, 111 (1983). In 1976, 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. The court stated that, “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.” *Id.* at 111.

¹⁰¹ *Id.* at 105.

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.¹⁰² The Third Circuit held that absent congressional authorization, the DOJ also lacked standing to seek such injunctive relief.¹⁰³

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 direct response to the Rodney King video,¹⁰⁴

¹⁰² 644 F.2d 187, 190 (3d Cir. 1980). 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. *Id.* (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 who engaged in unconstitutional behavior. The DOJ asked for an injunction to prohibit the PPD from engaging in this sort of unconstitutional misconduct. *See id.* The DOJ had previously prosecuted six PPD homicide detectives for coercing confessions out of possibly innocent suspects. *See* BONNIE MATHEWS & GLORIA IZUMI, U.S. COMM'N ON CIVIL RIGHTS, WHO IS GUARDING THE GUARDIANS?: A REPORT ON POLICE PRACTICES 135-36 (1981), <http://catalog.hathitrust.org/Record/007105152> [<https://perma.cc/9TAM-CY6Y>]. But rather than punishing these officers, the City actually promoted and supported these officers. *See id.*

¹⁰³ *See City of Phila.*, 644 F.2d at 206 ("[W]e 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.").

¹⁰⁴ *See* 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. *See Tape of Police Beating Causes 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. *See* Seth Mydans, *Videotaped Beating by Officers Puts Full Glare on Brutality Issue*, N.Y. TIMES, Mar. 18, 1991, at A1. Within days of the video going public, it sparked national outrage and calls for the resignation of then-LAPD Chief Daryl Gates. *See* Editorial, *An 'Aberration' or Police Business as Usual?*, N.Y. TIMES, Mar. 10, 1991, 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. *See* INDEP. COMM'N ON THE L.A. POLICE DEP'T, REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 3 (1991). 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: Hearings Before the Subcomm. on Civil and Con-*

Congress considered legislation to provide the federal government with a larger role in local police affairs.¹⁰⁵ This legislation, known as the Police Accountability Act of 1991, failed to garner widespread support.¹⁰⁶ But by 1994, Congress incorporated a version of the Police Accountability Act into the omnibus VCCLEA.¹⁰⁷

B. The § 14141 Reform Process

When Congress eventually passed § 14141, scholars hailed it as one of the most important federal regulations of policing in American history.¹⁰⁸ However, the DOJ has only had the resources to pursue § 14141 actions against a small subsection of American police departments.¹⁰⁹ For much of the statute's

stitutional Rights of the Comm. on the Judiciary, 102nd Cong. (1991) [hereinafter *Police Brutality Hearing*].

¹⁰⁵ At the hearings post-Rodney King, the Police Accountability Act of 1991 emerged. Police Accountability Act of 1991, H.R. Res. 2972, 102nd Cong (1991). 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. See *Police Brutality Hearing*, *supra* note 104, at 1.

¹⁰⁶ See *Federal Response to Police Misconduct: Hearing Before the H. Subcomm. on Civil and Constitutional Rights of the Comm. on the Judiciary*, 102nd Cong. 2 (1992) (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").

¹⁰⁷ Pub. L. No. 103-322, § 210401, 108 Stat. 2071 (1994).

¹⁰⁸ See, e.g., Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 457, 464–65 (2004) (calling § 14141 "perhaps the most promising legal mechanism" for reducing police misconduct); 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." (citation omitted)).

¹⁰⁹ See Rushin, *supra* note 25, at 3226 (showing in Figure 2 that between 2000 and 2013 the DOJ only investigated thirty-eight agencies and only settled with around nineteen agencies). This is in part because "investigations are a costly endeavor." *Id.* They "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 a 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. DEPT OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2008, at 2 (2011), <http://www.bjs.gov/content/pub/pdf/cslllea08.pdf> [<https://perma.cc/VUJ8-NXG7>] (putting the number of state and local law enforcement agencies at 17,985).

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.¹¹⁰ This research revealed that the DOJ engages in a six-part enforcement approach.¹¹¹

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 statute.¹¹² This is a challenging feat, given that there are 18,000 police departments in the United States.¹¹³ To do this, DOJ litigators use a diverse array of proxies to identify police departments that may be engaged in problematic practices.¹¹⁴ The DOJ refers to the scrutiny applied to police departments after this initial case selection as the preliminary inquiry.¹¹⁵ 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.¹¹⁶ If the DOJ finds evidence of potentially suspect behavior during the pre-

¹¹⁰ See generally Rushin, *supra* note 25, at 3218–28 (describing the enforcement process for § 14141 litigation); Rushin, *supra* note 18, at 1366–96 (describing the rest of the § 14141 reform process).

¹¹¹ Rushin, *supra* note 18, at 1367 (showing these stages in Figure 1, recreated in this article also as Figure 1).

¹¹² See *id.* “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.”)

¹¹³ See REAVES, *supra* note 109, at 2 tbl.1 (putting the number of police departments at just under 18,000).

¹¹⁴ See Rushin, *supra* note 25, at 3219–24 (identifying five major proxies that the DOJ uses to identify potentially problematic police departments: (1) existing civil litigation, (2) media reports, (3) research studies, (4) whistleblowers, and (5) single, egregious examples of wrongdoing).

¹¹⁵ See *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.”).

¹¹⁶ To further elaborate on this stage of § 14141 cases:

liminary inquiry stage, litigators will next conduct a formal investigation.¹¹⁷ At this point, the DOJ's interest in a police department becomes public knowledge.¹¹⁸ Investigations can last anywhere from a few months to a year or more in length.¹¹⁹ During this time, the DOJ puts these targeted police departments under intense public scrutiny.¹²⁰

If the formal investigation results in a finding that a police department is in violation of § 14141,¹²¹ the DOJ next attempts to intervene in the troubled agency. In most cases, this reform process starts with the DOJ attempting to negotiate an amicable set of reforms.¹²² Virtually all § 14141 cases have ended in settlements.¹²³ These settlements look fairly similar from one

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).

¹¹⁷ *See id.* at 3226 ("If this initial inquiry uncovers the possibility of persistent misconduct in a police department, the DOJ may conduct a formal investigation.").

¹¹⁸ *See id.*

¹¹⁹ *See id.*; *see also* David Hench, *City Police to Get Federal Review*, PORTLAND PRESS HERALD, May 8, 2002, at 1A (stating that investigations can last as long as a year in some cases).

¹²⁰ *See supra* note 23 and accompanying text (describing the Chicago Police Department as an example where the DOJ began an investigation soon after the Laquan McDonald shooting).

¹²¹ Thus far, the DOJ has found the following constitutional violations in the following number of police agencies: Excessive 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). PBS FRONTLINE, *supra* note 25.

¹²² 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.

¹²³ *See 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). In that case, 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 led to a lawsuit alleging that Sheriff Johnson was in violation of

agency to the next.¹²⁴ Common requirements include officer use of force provisions,¹²⁵ the implementation of an early interventions system,¹²⁶ complaint management reforms,¹²⁷ train-

§ 14141, but the claim was later dismissed by a U.S. district judge. See Michael D. Abernethy, *Judge Dismisses DOJ Case Against Johnson, Finds No Evidence of Unconstitutional Practices*, TIMES-NEWS (Aug. 7, 2015, 6:55 PM), <http://www.the-timesnews.com/article/20150807/NEWS/150809283> [https://perma.cc/XD9K-4P6N]; Colin Campbell, *McCrorry Honors Alamance County Sheriff Facing Federal Allegations of Racial Profiling*, NEWS & OBSERVER (Dec. 19, 2014, 2:08 PM), <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article10198235.html> [https://perma.cc/UF8Q-XTHF]; David Zucchini, *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> [https://perma.cc/7JQZ-SZJ2].

¹²⁴ See Rushin, *supra* note 18, 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.”).

¹²⁵ See, e.g., Seattle Agreement, *supra* note 18, at 16–40 (detailing regulations on use of firearms, conductive energy devices, oleoresin capsicum spray, and impact weapons); Consent Decree, *United States v. The Territory of the Virgin Islands*, No. 3:08-cv-00158-CVG-RM, at 6, ¶ 32 (D.V.I. Mar. 24, 2009), <http://www.clearinghouse.net/chDocs/public/PN-VI-0001-0003.pdf> [https://perma.cc/VC44-B4CL] [hereinafter *Virgin Islands Consent Decree*] (requiring documentation of all uses of force); Consent Decree, *United States v. Prince George's County, Md.*, No. 8:04-cv-00185-RWT, at 15–17, ¶¶ 47–52 (D. Md. Jan. 22, 2004), <http://www.clearinghouse.net/chDocs/public/PN-MD-0001-0003.pdf> [https://perma.cc/PE9X-LTLC] (explaining reporting requirements for use of canines); Consent Decree, *United States v. City of L.A.*, No. 2:00-cv-11769-GAF-RC, at 23–27, ¶¶ 55–69 (C.D. Cal. June 15, 2001), <http://www.clearinghouse.net/chDocs/public/PN-CA-0002-0006.pdf> [https://perma.cc/JT9K-6GVA] [hereinafter *Los Angeles Consent Decree*] (establishing a clear chain of review every time an officer uses force); Memorandum of Agreement Between the United States Department of Justice and Prince George's County, Maryland and the Prince George's County Police Department, at 7–8, ¶¶ 35–39 (Jan. 22, 2004), <http://www.clearinghouse.net/chDocs/public/PN-MD-0001-0002.pdf> [https://perma.cc/68YH-SDK5] [hereinafter *Prince George's County MOA*] (specifically regulating only the use of force involving oleoresin capsicum spray).

¹²⁶ See, e.g., New Jersey Consent Decree, *supra* note 18, at 15–18, ¶¶ 40–56 (describing the development of the management awareness program); Pittsburgh Consent Decree, *supra* note 18, at 6–7, ¶¶ 12, 16–17, 23 (stating that the city should implement the early information system within twelve months and describing the annual review process for this system).

¹²⁷ See, e.g., Los Angeles Consent Decree, *supra* note 125, at 29–35, ¶¶ 74–87 (detailing rules on the initiation, investigation, and adjudication of complaints); Memorandum of Agreement Between the United States Dep't of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department, ¶¶ 92–104 (June 13, 2001), <http://www.clearinghouse.net/chDocs/public/PN-DC-0001-0001.pdf> [https://perma.cc/A6D5-X8K2] (including sections on the receipt of citizen complaints, the investigation of complaints, and the evaluation of these allegations).

ing overhauls,¹²⁸ stipulations dealing with bias-free policing,¹²⁹ community oriented policing, and a range of other topics including line-up procedures,¹³⁰ gang unit management,¹³¹ canine deployment,¹³² crisis intervention,¹³³ and even promotion evaluations.¹³⁴

Once an agreement is in place, the reform process can begin. This reform process has taken as little as five years in some places.¹³⁵ In other locations it has taken well over a dec-

¹²⁸ See, e.g., Virgin Islands Consent Decree, *supra* note 125, at 18, ¶ 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 18, at ¶¶ 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.”); Consent Decree, *United States v. City of Steubenville*, No. 97-7966, at 6–7, ¶ 14 (S.D. Ohio Aug. 28, 1997), <http://www.clearinghouse.net/chDocs/public/PN-OH-0002-0005.pdf> [<https://perma.cc/FEY9-7KK2>] [hereinafter *Steubenville Consent Decree*] (identifying the need for entry and annual in-service training).

¹²⁹ See, e.g., Consent Decree Regarding the New Orleans Police Department, *United States v. City of New Orleans*, No. 2:12-cv-01924-SM-JCW, at ¶¶ 177–222 (E.D. La. July 24, 2012), <http://www.clearinghouse.net/chDocs/public/PN-LA-0001-0001.pdf> [<https://perma.cc/24Q7-ZSKN>] [hereinafter *New Orleans Consent Decree*] (laying out terms, in great detail, for how the New Orleans Police Department could avoid racially-biased and gender-biased policing tactics); Pittsburgh Consent Decree, *supra* note 18, at 13–14, ¶ 20 (requiring regular audits and reviews of potential racial bias by officers); *Steubenville Consent Decree*, *supra* note 128, at 31, ¶ 77 (“The City shall conduct regular audits and reviews of potential racial bias (including use of racial epithets) by all officers.”).

¹³⁰ See, e.g., *New Orleans Consent Decree*, *supra* note 129, ¶¶ 171–76 (establishing procedures for photographic lineup administrations).

¹³¹ See, e.g., *Los Angeles Consent Decree*, *supra* note 125, ¶¶ 106–07 (requiring the development and administration of gang management policy).

¹³² *Prince George’s County MOA*, *supra* note 125, at 8–11, ¶¶ 40–48 (establishing thorough regulation of canine deployment).

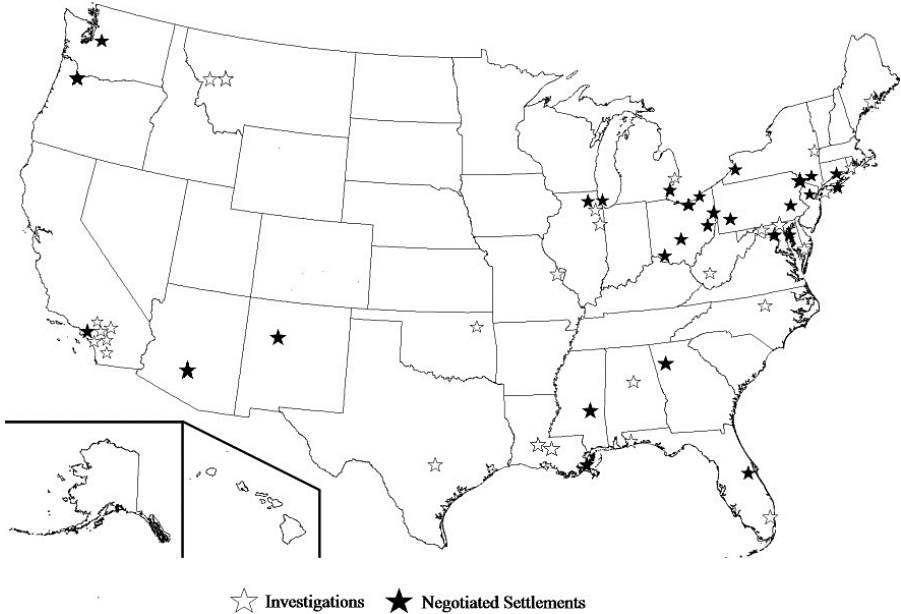
¹³³ *Seattle Agreement*, *supra* note 18, at 37–39, ¶¶ 130–37 (laying out regulations on crisis intervention via the creation of the crisis intervention committee).

¹³⁴ *New Orleans Consent Decree*, *supra* note 129, ¶¶ 295–305 (establishing both performance evaluations and promotions and describing how these evaluations ought to be used in the promotion process).

¹³⁵ A complete list of the opening and closing dates for these cases can be found in Appendices A and B. For example, the Cincinnati monitoring lasted from April 12, 2002, to April 12, 2007—approximately 1,826 days or 5.0 years. See *infra* Appendix B. One of the monitoring periods for Prince George’s County lasted from January 22, 2004, to January 13, 2009—approximately 1,818 days or 5.0 years. See *infra* Appendix B. The Steubenville monitoring lasted from September 3, 1997, to March 3, 2005—approximately 2,738 days or 7.5 years. See *infra* Appendix B. The Pittsburgh monitoring lasted from April 16, 1997, to June 16, 2005—approximately 2983 days or 8.2 years. See *infra* Appendix B. The New Jersey monitoring lasted from December 29, 1999, to October 26, 2009—approximately 3,589 days or 9.8 years. See *infra* Appendix B.

ade to complete.¹³⁶ 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.¹³⁷ Figure 2 illustrates the widespread use of § 14141 across the United States over the last twenty-one years.

FIGURE 2. POLICE DEPARTMENTS TARGETED FOR FEDERAL INTERVENTION.¹³⁸



C. DOJ Enforcement of § 14141 as a Case Study for the 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,

¹³⁶ See *infra* Appendices A & B. The Washington, D.C. monitoring lasted from June 13, 2001, to February 10, 2012—approximately 3,884 days or 10.7 years. See *infra* Appendix B. And the Los Angeles monitoring lasted from June 15, 2001, to May 16, 2013—approximately 4353 days or 11.9 years. See *infra* Appendix B.

¹³⁷ 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.

¹³⁸ Data for Figure 2 drawn from Appendices A and B.

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.¹³⁹ 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.¹⁴⁰ 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.¹⁴¹ This meant that there was no way 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 sixty-one agencies and reached settlements with thirty-one agencies.¹⁴² 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.¹⁴³ Despite this wide variation in communities targeted for DOJ intervention, § 14141 cases still represent a small percentage of the country's 18,000 law enforcement agencies; the vast majority of American police departments have never come under DOJ suspicion.¹⁴⁴ 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

¹³⁹ See *supra* note 15 and accompanying text.

¹⁴⁰ See, e.g., Cassell & Fowles, *supra* note 11, at 1087 (using a time-series analysis to show that *Miranda* had a statistically significant role in reducing clearance rates).

¹⁴¹ 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.

¹⁴² See *infra* Appendices A & B.

¹⁴³ For a complete list, see *infra* Appendices A & B.

¹⁴⁴ In fact, 99.7% of American law enforcement agencies have not been subject to DOJ intervention or investigation via § 14141—or roughly 17,924 of the nation's approximately 17,985 agencies. See REAVES, *supra* note 109, at 2 (estimating that there are approximately 17,985 state and local law enforcement agencies in the United States); *infra* Appendix A (showing that approximately sixty-one police departments have been subject to either an investigation or full-scale DOJ intervention under § 14141).

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.¹⁴⁵ This stands in stark contrast to most external regulations of American law enforcement agencies, which often happen via binding court opinions handed down by courts. 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 arrests without a warrant.¹⁴⁶ 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 ultimately cause a measurable change in crime rates.¹⁴⁷ 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.¹⁴⁸

Again, DOJ action via § 14141 different. For one thing, DOJ intervention seems to bring about real, procedural and substantive changes to affected police departments.¹⁴⁹ This is

¹⁴⁵ See *supra* notes 125–134 and accompanying text.

¹⁴⁶ 556 U.S. 332, 351 (2009)

¹⁴⁷ It is, of course, possible that this decision could result in officers executing fewer automobile searches incident to arrest. But given that this decision only affects one narrow type of police behavior, it seems less apparent that changes to police behavior in very specific situations would eventually result in higher crime rates.

¹⁴⁸ 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).

¹⁴⁹ The 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 81, at 44 fig.29, 50 fig.33 (showing that the proportion of residents who believed that the LAPD offered “good” or “excellent” services increased from around 48% in 2005 to around 61% in 2009, and that the percentage of individuals who said that the LAPD treated all racial groups 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. See Rushin, *supra* note

because so many § 14141 cases involve external monitors who ensure organizational compliance with DOJ demands.¹⁵⁰ Additionally, the DOJ typically requires police departments targeted under § 14141 to implement a substantial package of reforms.¹⁵¹ Thus, if external regulation is associated with de-policing, § 14141 cases should be a useful 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 hypothesis identified in Part I, as discussed in the next two subparts.¹⁵²

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 sixty-one public investigations that the DOJ has conducted since the passage of § 14141 in 1994.¹⁵³ Admittedly, this is a somewhat different way to test for the presence of public scrutiny.¹⁵⁴ But we believe that this represents a defensible and robust way to examine the theoretical underpinnings of the Ferguson Effect.

18, at 1361–62. These were just a couple of the numerous measures that showed that the LAPD made remarkable progress during federal intervention. *See id.* at 1361–63.

¹⁵⁰ *See* Rushin, *supra* note 18, at 1401 (describing the value of external monitoring in bringing about sustainable reform in American police departments).

¹⁵¹ *See supra* notes 125–134 and accompanying text.

¹⁵² 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 arrests 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 changes in police aggressiveness.

¹⁵³ For information on how we collected this data, see *infra* Appendix F.

¹⁵⁴ 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.

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.¹⁵⁵ 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.¹⁵⁶ 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 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.¹⁵⁷ In fact, § 14141 investigations commonly happen soon after a publicly embarrassing incident of alleged misconduct similar to the Michael Brown shooting in Ferguson.¹⁵⁸ And the process by which the DOJ initiates a public § 14141 investigation has remained roughly consistent

¹⁵⁵ See, e.g., ROSENFELD, *supra* note 68, at 3–4 (analyzing crimes rates in St. Louis and arguing that “double-digit homicide increases in St. Louis and other cities during the past several months should not be discounted as unimportant”); Pyrooz et al., *supra* note 71, at 7 (analyzing nationwide crime rates and determining that “there is no nationwide Ferguson Effect on crime rates”).

¹⁵⁶ See, e.g., Pyrooz et al., *supra* note 71, at 2 (arguing that “high-profile incidents such as Ferguson may convey to the public that justice is being administered unfairly and lead to challenges to the legitimacy of the law,” and that “[o]ne response to the belief that the law is not administered fairly is increased participation in crime”).

¹⁵⁷ See *supra* note 23 and accompanying text (describing the Chicago Police Department as an example where the DOJ began an investigation soon after the Laquan McDonald shooting).

¹⁵⁸ 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.

from one community to the next.¹⁵⁹ 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 is associated with any measurable changes in crime rates, as some critics suggest. We found that the DOJ has reached thirty-one binding settlements or consent decrees with local and state police departments since 1994.¹⁶⁰

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 difference[s] in outcomes after and before the intervention for groups affected by the intervention to the same difference for unaffected groups.”¹⁶¹ 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.”¹⁶² 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,

¹⁵⁹ See *supra* notes 112–121 and accompanying text.

¹⁶⁰ 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 *infra* Appendix B.

¹⁶¹ See Marianne Bertrand et al., *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.*

¹⁶² *Id.* at 250 (“[Difference-in-differences] estimates and their standard errors most often derive from using 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.”).

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.¹⁶³ Ψ is a matrix of controls outlined below, γ is a set of year fixed effects, and τ is a set of agency fixed effects.¹⁶⁴ With the inclusion of agency and year fixed effects, what results is a difference-in-differences modeling approach to estimation.¹⁶⁵

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.¹⁶⁶ 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

¹⁶³ 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 *id.*, at 265.

¹⁶⁴ 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.

¹⁶⁵ For more on the application of difference-in-differences estimators, see generally John J. Donohue, *Guns, Crime, and the Impact of State Right-to-Carry Laws*, 73 *FORDHAM L. REV.* 623 (2004); 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); Justin Wolfers, *Did Unilateral Divorce Laws Raise Divorce Rates? A Reconciliation and New Results*, 96 *AM. ECON. REV.* 1802 (2006). 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 included these results in Appendices D and E by way of information, but feel that arrest rates, while helpful, are not an ideal measure of police aggressiveness, as evidenced by the lack of statistically significant effects found in Appendices D and E. Localities do not report to the federal government uniform, reliable statistics on traffic stops, *Terry* stops, or other forms of police behavior.

¹⁶⁶ We used this model to calculate the effect of two different types of DOJ interventions: public investigations and external regulation via settlement agreements.

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.

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

This formula is identical to Model 1, except that the variable is expanded into eleven time specific treatment variables that represent the dynamic effect by year since intervention.¹⁶⁷ 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).¹⁶⁸ While the reliability of UCR data reported monthly has been questioned,¹⁶⁹ it has been shown to be reliable in many crimes reported at the yearly level.¹⁷⁰ The UCR reports the following crimes for most agencies by year: assaults, burglary, larceny, motor vehicle theft, murder, rape, and robbery.¹⁷¹

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

¹⁶⁷ This approach mirrors that used by Wolfers, *supra* note 165, 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, 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.

¹⁶⁸ See *Uniform Crime Reporting Resource Guide*, NACJD, <http://www.icpsr.umich.edu/icpsrweb/content/nacjd/guides/ucr.html> [<https://perma.cc/6SLS-NNUZ>] [hereinafter UCR, FBI].

¹⁶⁹ See Steven D. Levitt, *The Relationship Between Crime Reporting and Police: Implications for the Use of Uniform Crime Reports*, 14 J. QUANTITATIVE CRIMINOLOGY 61, 62 (1998).

¹⁷⁰ See generally Edwards, *supra* note 165 (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).

¹⁷¹ UCR, FBI, *supra* note 168.

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 makeup 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 ten and forty-nine.¹⁷² Additionally, we 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.¹⁷³

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.¹⁷⁴ To capture this, we include several additional control variables. We include a count of the number of male civilian employees and female civilian employees.¹⁷⁵ 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 the laying off of civilian employees.¹⁷⁶ 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 also include the ratio of male to female sworn officers.¹⁷⁷ We hope that if there is an underlying attitude of misconduct in an agency—an attitude that would be otherwise hard to observe—

¹⁷² 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. ECON. 167, 172 (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 Wolfers, *Uses and Abuses of Empirical Evidence in the Death Penalty Debate*, 58 STAN. L. REV. 791 (2005).

¹⁷³ These variables were collected when possible at the agency, county, and state level, in that order, and come from Donohue & Wolfers, *supra* note 172. Missing observations were linearly interpolated and truncated at zero as needed.

¹⁷⁴ 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.

¹⁷⁵ See UCR, FBI, *supra* note 168.

¹⁷⁶ The UCR provides employment information on the number of male and female civilian employees as well as male and female sworn officers. *Id.*

¹⁷⁷ See *id.*

that it also manifests itself, at least in part, in the hiring practices of the agency.¹⁷⁸

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.¹⁷⁹ However, these increases in crime were, by and large, statistically insignificant—particularly when we introduced our control variables.¹⁸⁰ 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.¹⁸¹ This finding is consistent with claims made by critics that external regulation may, at least initially, make officers less aggressive or less ef-

¹⁷⁸ 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 rest on us explaining all the variation in crime rates.

¹⁷⁹ See *infra* Appendix C (showing an effect of anywhere from 0.08 to 0.519).

¹⁸⁰ See *infra* Appendix C. 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.

¹⁸¹ See *infra* Figure 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).

fective 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.¹⁸² This suggests that external regulation may come with growing pains. The subparts that follow walk through the data.

A. Trends in the Raw Data

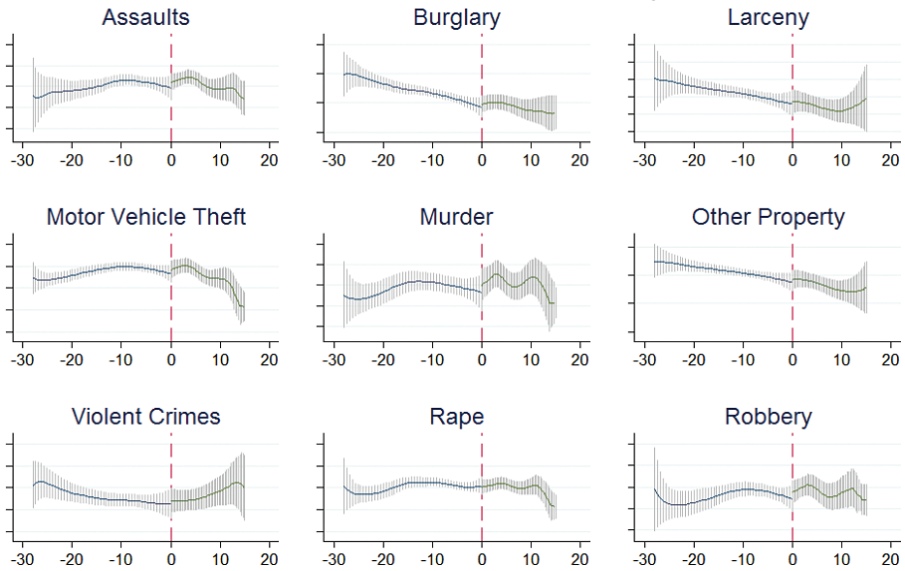
Before discussing the results from our more sophisticated difference-in-differences estimation strategy, it is first useful to examine trends in the raw data.¹⁸³ Does the raw data suggest an obvious difference in crime trends in the treatment group—that is the group influenced by federal intervention 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 downwards 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.

¹⁸² See *infra* Figures 8 & 9 (showing the apparent effect of external regulation on crime decreases into statistical insignificance over time).

¹⁸³ 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.

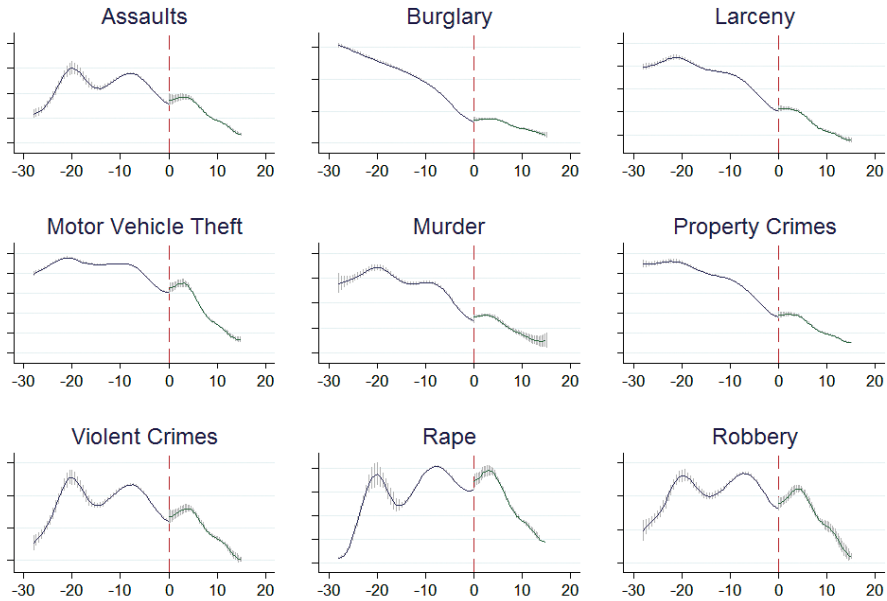


Crime rates generally decline in the years after external regulation. While this is encouraging, it does not necessarily suggest that federal regulation contributed to a reduction in crime rates. Most of these cases happened during a time when crime in the United States was already in decline across virtually all jurisdictions—including the jurisdictions targeted for federal regulation.¹⁸⁴ 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% respectively.¹⁸⁵ 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.

¹⁸⁴ For a comprehensive analysis of the extent of this dramatic national crime decline, see generally FRANKLIN E. ZIMRING, *THE GREAT AMERICAN CRIME DECLINE* (2007).

¹⁸⁵ UCR, FBI, *supra* note 168.

FIGURE 4. TREND IN REPORTED CRIME RATES IN ALL OTHER JURISDICTIONS IN THE UNITED STATES.



National trends in crime centered around the agreement years of the treated agencies.

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 of analysis for identifying any differences between the treatment and control groups 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 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 (PBP) on April 16, 1997.¹⁸⁶ In 1996, the year immediately before federal intervention, Pittsburgh reported 4,492.1 property crimes per 100,000 residents.¹⁸⁷ Since then, Pittsburgh has seen property crime rates drop by 32.3%. By contrast, our control agencies saw property crime rates drop by 24.3% during this same time period. This means that Pitts-

¹⁸⁶ See *infra* Appendix B.

¹⁸⁷ UCR, FBI, *supra* note 168.

burgh saw a decline in property crimes of 8 percentage points relative to the control group since federal intervention. Figure 5 similarly evaluates the change in property crime rates in 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 AVERAGE.¹⁸⁸

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

¹⁸⁸ 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 agency for most of that county's residents. Finally, although the New Jersey State Police underwent

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 AVERAGE.¹⁸⁹

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%
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%

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.

¹⁸⁹ This table calculates the change in violent crime rates by measuring the difference in crime rates in the years before federal intervention to the violent 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

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 in subpart 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 each treatment 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.¹⁹⁰ 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 subpart shows the results of the difference-in-differences estimation strategy described in subpart II.D.

B. Difference-in-Differences Estimation Strategy

Given the indeterminacy of the raw data analysis, a difference-in-differences estimation strategy, outlined as Model 1 in subpart II.D., serves as a unique methodology for 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 subpart II.D. Figure 7 shows the results of this difference-in-difference

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.

¹⁹⁰ 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.

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 RATES.¹⁹¹

	Regulation	SE	R ²	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

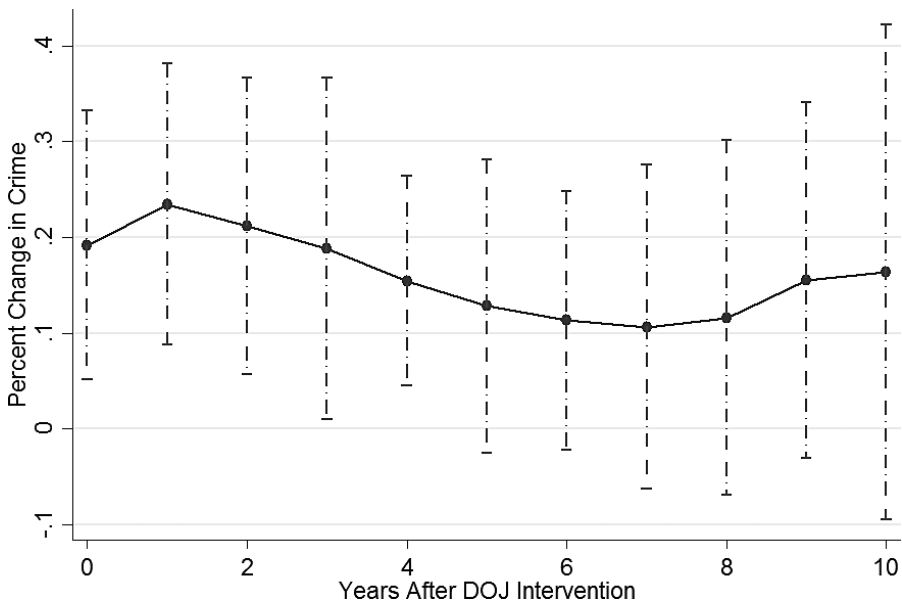
The difference-in-differences estimation strategy reveals that in many of these crime categories, federal intervention seemed to coincide with a statistically significant uptick in reported crime rates, relative to the control jurisdictions. This relationship appears to be statistically significant in property and street crimes like burglary, motor vehicle theft, and robbery—i.e., criminal activity that is likely sensitive to situational

¹⁹¹ 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* subpart II.D. ^ $p < 0.10$, † $p < 0.05$, ‡ $p < 0.01$.

deterrents like aggressive street policing. This finding is consistent with claims made by proponents of the de-policing hypothesis.

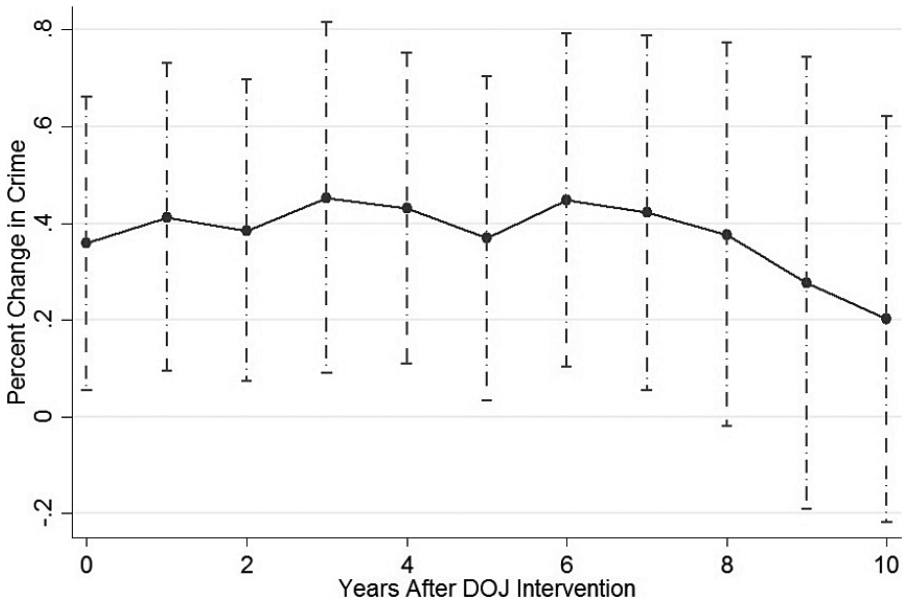
In order to breakdown the relationship between external regulation and changes in crime rates over time, we estimate Model 2 in subpart II.D. Figures 8 and 9 represent the results of Model 2 that attempts to measure the effect of the DOJ initiated federal intervention in our treatment cities. In the 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% confidence bound.¹⁹² 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.



¹⁹² The idea is that we can be 90% confident that the “true” value of the trend 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 suggest 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 provide compelling support for the de-policing hypothesis, they fail to answer many important questions. Though these data suggest that § 14141 interventions may be associated with a temporary uptick in reported crime, they do 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 some 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 appears to be associated with a temporary uptick in some reported crime rates—has important implications for the study of criminal procedure and policing. It suggests that external regulation may come with unforeseen costs. 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 crime rates within targeted jurisdictions? And can we improve the use of § 14141 to reduce this de-policing effect? Subpart A considers some possible explanations for the uptick in crime. Subpart B highlights some important limitations of this study. Subpart C then offers some normative recommendations for how policymakers could potentially alleviate the de-policing effects of police regulation.

A. Possible Explanations for the Apparent Uptick in Reported Crime

This Article can only claim to show a relationship between the introduction of external regulation and an apparent uptick in reported crime rates. The important question, though, is what exactly is driving this uptick in reported 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.”¹⁹³ This is in part because the external reforms ensured that “[e]very incident now has a paper trail.” 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.¹⁹⁴ Officers in Pittsburgh shared this sentiment,

¹⁹³ CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING?, *supra* note 53, at 21.

¹⁹⁴ STONE ET AL., *supra* note 81, at 19.

with an officer telling researchers that after the beginning of external regulation, “[o]fficers spend too much time doing paperwork as opposed to doing their job.”¹⁹⁵ 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,”¹⁹⁶ while 89% believed that “because of fear of being unfairly disciplined, many LAPD officers are not proactive in doing their jobs.”¹⁹⁷

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.¹⁹⁸ 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 pull back or reduce enforcement until they

¹⁹⁵ CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING?, *supra* note 53, at 25.

¹⁹⁶ STONE ET AL., *supra* note 81, at 19.

¹⁹⁷ *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 “[m]ost officers are not aggressive with people who are breaking the law. Officers are afraid that people will complain of their civil rights being violated.” CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING?, *supra* note 53, at 20.

¹⁹⁸ 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.

fully understand the implications of these regulations. One recurring theme in interviews with frontline officers in targeted municipalities is that they continually complained about “low morale.”¹⁹⁹ As an officer in Los Angeles explained, external regulation “hurt their pride [and] hurt their morale,” thereby contributing to a reduction in officer productivity.²⁰⁰ Officers that were once “go-getters” slowed down in the face of this reduction in officer morale.²⁰¹ One possible explanation for this reduction in morale is that officers felt as if the process used to establish these regulations was procedurally unfair. As one officer in Pittsburgh elaborated, “[p]atrol 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.”²⁰²

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.”²⁰³ This explanation focuses less on the reaction of the police officers to external regulation and more on the signaling effect of external regulation to would-be criminals.

Second, the effect we see in this study may not be the result of an increase in actual crime, but rather the result of an increase in *reported* crimes. Such an increase in the reporting of crime could happen in a couple different ways. It could be that before federal intervention, citizens were hesitant to report criminal activity to police. Or it could be that before federal intervention, police departments did not properly record reports of criminal activity. In either case, though, we would expect to see the kind of statistical patterns observed in Figures 7 through 9.

If true, this explanation would suggest that there might be no relationship at all between external regulation and actual crime rates. This explanation would be consistent with a recent study by Matthew Desmond, Andrew Papachristos, and

199 TURNING NECESSITY INTO VIRTUE, *supra* note 53, at 63.

200 STONE ET AL., *supra* note 81, at 19.

201 CAN FEDERAL INTERVENTION BRING LASTING IMPROVEMENT IN LOCAL POLICING?, *supra* note 53, at 24.

202 *Id.*

203 *Id.* at 21–22.

David Kirk, who used an interrupted time series analysis to show that members of the Milwaukee community—particularly residents of mostly black neighborhoods—were less likely to report crime to the police after a highly publicized incident of police brutality.²⁰⁴ Other studies have similarly argued that incidents of visible police misconduct lead to legal cynicism within black communities in particular.²⁰⁵

In our estimation, this proves to be the most compelling alternative explanation for the statistical trend observed in this Article. Ultimately, though, we view this alternative explanation as somewhat less likely than the de-policing hypothesis. For one thing, virtually none of the DOJ investigations found the failure to properly document crimes as a major problem in communities targeted for federal intervention.²⁰⁶ This is not to say that federal intervention may nonetheless contribute to improved internal recordkeeping.²⁰⁷ Federal settlements, though, have not focused on the proper recordation of reported crimes. Finally, while we have no doubt that highly visible incidents of police brutality could spur a change in the willingness of citizens to report crime to the police, we remain somewhat less convinced that news of federal investigations and settlements reach the average citizen or have the same power to change citizen behavior.

B. Limitations of the Data

Before considering the normative implications of the de-policing hypothesis, it is first important to fully recognize the limitations of the data used in this study. First, even though

²⁰⁴ Matthew Desmond, Andrew V. Papachristos & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOC. REV. 857, 858 (2016).

²⁰⁵ See, e.g., ROBERT J. SAMPSON, GREAT AMERICAN CITY: CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT (2012) (discussing the relationship between police misconduct and crime rates); David S. Kirk & Andrew V. Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 AM. J. SOCIOLOGY 1190 (2011) (arguing that legal cynicism leads to increased neighborhood violence); Ronald Weitzer, *Incidents of Police Misconduct and Public Opinion*, 30 J. CRIM. JUST. 397, 398 (2002) (noting the effects that “highly publicized incidents of police misconduct” have on crime).

²⁰⁶ The closest we could find to a DOJ finding that a municipality failed to document crime rates properly was the case in Missoula, Montana, where the DOJ alleged a failure on the part of local law enforcement to respond to certain sex crimes. For a detailed examination of this case and its implications for the future of policing litigation, see Deborah Tuerkheimer, *Underenforcement as Unqual Protection*, 57 B.C. L. REV. 1287, 1322 (2016).

²⁰⁷ For example, it is not uncommon for consent decrees to discuss the proper method for collecting citizen complaints. See *supra* note 127 and accompanying text (describing consent decrees that deal with this subject).

federal settlements look reasonably similar from one municipality to the next, the kind of reforms that the DOJ has demanded in cases of federal intervention has changed somewhat over time. Perhaps most noticeably, the DOJ has appeared to expand the range of topics covered in some recent consent decrees, like that in New Orleans.²⁰⁸ This makes it difficult to say with any certainty which types of external reforms mandated by federal intervention most contribute to apparent de-policing.

Second, because federal intervention is such a major, disruptive form of external regulation, readers should use caution when making generalizable conclusions about the broader relationship between external regulations and de-policing based on the data from this Article. As discussed in subpart II.C, the scope of these settlements means that federal intervention is where we would most expect to find de-policing happening. Readers should be cautious, though, in assuming that other limited forms of external regulation, like criminal procedure cases handed down by the Supreme Court, would similarly contribute to de-policing. The apparent de-policing found in this article may be the result of frontline officers rejecting the content of external regulations. It may also be the result of frontline officers pushing back against the failure of the DOJ to take into account frontline officer opinions in crafting these external regulations, or it may be the result of some other part of the federal intervention process that we are not fully considering. In any case, readers should view the results of this study for what they are: one data point in what will hopefully be a growing literature on the relationship between police regulation, officer behavior, and crime rates.

C. 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

²⁰⁸ New Orleans Consent Decree, *supra* note 129 (laying out one of the most expansive federal consent decrees binding a police department under § 14141 in American history).

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 of accountability measures. Professor Kami Chavis Simmons has made similar arguments in her previous writings on § 14141.²⁰⁹ Professors Catherine Fisk and L. Song Richardson have similarly argued that the incorporation of frontline officers into the development of departmental policies and procedures can reduce resistance from frontline officers.²¹⁰

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.²¹¹ 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.²¹² By including such stake-

²⁰⁹ 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).

²¹⁰ Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. (forthcoming 2017) (manuscript at 10–11, 52–53) (on file with authors) (explaining that when police departments implement policies on officers without adequate consultation, frontline officers may feel “compelled to oppose new policies for fear that the policy will be implemented punitively or unfairly as a way to discipline rank and file who are unpopular with management,” and further explaining how “failing to give [frontline officers] any voice” in designing internal policies may fuel resentment because it communicates to them “just how unimportant their views” are and “just how low their status” is within the department).

²¹¹ See, e.g., David Rosenzweig, *Police Union Loses Bid for Role in Consent Decree*, L.A. TIMES (Jan. 9, 2001), <http://articles.latimes.com/2001/jan/09/local/me-10218> [<https://perma.cc/JZV5-GRHF>] (describing the court order denying the Los Angeles Police Protective League’s motion to intervene in the DOJ’s negotiations with the municipality).

²¹² See Simmons, *supra* note 209, at 524 (explaining that “[p]olice reform efforts are doomed to fail without significant cooperation of the police officers

holders 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.”²¹³ 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.”²¹⁴

While this more inclusive approach to police regulation may seem appealing, it would ultimately present its own problems. Past research has argued that one of the reasons that § 14141 regulation is so effective at combatting police misconduct is that it prioritizes the reduction of police misconduct.²¹⁵ Police unions “commonly attempt to intervene” in § 14141 settlement negotiations between police departments and the DOJ.²¹⁶ Courts have almost uniformly rejected such requests.²¹⁷ 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 “restrains their ability to implement accountability measures.”²¹⁸ 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.²¹⁹ This re-

themselves, thus providing further justification for ensuring the participation of rank-and-file officers” in the negotiation process).

²¹³ *Id.* at 538 (quoting Jody Freeman, *Collaborative Governance in the Administrative State*, 45 UCLA L. REV. 1, 24 (1997)).

²¹⁴ *Id.*

²¹⁵ See 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).

²¹⁶ *Id.* at 1376; see also Stephen Rushin, *Police Union Contracts*, 66 DUKE L. J. (forthcoming 2017) (manuscript at 46–48) (on file with authors) (describing how police union contracts have been a source of contention during § 14141 cases).

²¹⁷ See *id.* In addition, Kami 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, as well as improve the substantive outcomes by incorporating different voices. See Simmons, *supra* note 209, at 538–39; see also Susan P. Sturm, *The Promise of Participation*, 78 IOWA L. REV. 981, 983 (1993) (exploring the value of participation in the consent decree formation process and in public law litigation generally).

²¹⁸ Rushin, *supra* note 18, at 1376.

²¹⁹ See Colleen Kadleck & Lawrence F. Travis, III, Nat’l Inst. of Justice, Police Department and Police Officer Association Leaders’ Perceptions of Community

sistance 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. . . .”²²⁰ 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.²²¹

CONCLUSION

In August 2014, a police officer in Ferguson, Missouri shot and killed an unarmed black teenager named Michael Brown.²²² The protests that followed ignited a national conversation about the 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,²²³ Eric Garner,²²⁴ Walter Scott,²²⁵ and Laquan McDonald²²⁶ at the hands of police have continued to fuel calls for police reform. As this debate rages on, police in the United States have come under

Policing: Describing the Nature and Extent of Agreement 3–4 (2004), <https://www.ncjrs.gov/pdffiles1/nij/grants/226315.pdf> [<https://perma.cc/WVW8-2C22>]. 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) (identifying three ways in which collective bargaining impacts policing).

²²⁰ Rushin, *supra* note 18, at 1376.

²²¹ See Simmons, *supra* note 209, at 541–42; see also Andrew P. Morriss et al., *Choosing How to Regulate*, 29 HARV. ENVTL. L. REV. 179, 198 (2005) (raising some of the arguments against regulatory negotiation).

²²² See Bosman & Fitzsimmons, *supra* note 12 (providing details on the Michael Brown shooting).

²²³ See Emma G. Fitzsimmons, *12-Year-Old Boy Dies After Police in Cleveland Shoot Him*, N.Y. TIMES (Nov. 23, 2014), <http://www.nytimes.com/2014/11/24/us/boy-12-dies-after-being-shot-by-cleveland-police-officer.html> [<https://perma.cc/M2ZN-SFTK>] (describing the police shooting of twelve-year-old Tamir Rice in Cleveland).

²²⁴ See Martin Kaste, *System for Reporting Police Killings Unreliable, Study Finds*, NPR (Mar. 6, 2015, 4:26 PM), <http://www.npr.org/2015/03/06/391269342/system-for-reporting-police-killings-unreliable-study-finds> [<https://perma.cc/DM4N-32AE>] (reporting on police shooting of Eric Garner in New York).

²²⁵ See 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> [<https://perma.cc/RYL6-BHG4>] (describing the shooting death of Walter Scott by a North Charleston police officer, which was caught on a cell phone camera).

²²⁶ See Davey & Smith, *supra* note 23 (describing the shooting of Laquan McDonald by a Chicago police officer).

intense public scrutiny and increased external regulation. The DOJ has also responded by more aggressively enforcing civil rights statutes against police departments.²²⁷ 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.

²²⁷ 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 *infra* Appendix 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		DC
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	2/10/12
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 RATES.²²⁸

	Scrutiny	SE	R²	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 Theft	0.435 ‡	(0.151)	0.72	63,062	
	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 Crimes	0.337 †	(0.160)	0.76	60,406	
	0.179	(0.126)	0.76	53,498	X
Property Crimes	0.204	(0.247)	0.89	62,980	
	0.265	(0.268)	0.89	55,701	X

APPENDIX D. EFFECT OF PUBLIC SCRUTINY ON RATE OF ARRESTS PER CRIME REPORTED.²²⁹

	Scrutiny	SE	R²	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 Theft	-0.252	(0.219)	0.62	52,296	
	-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	
	-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 Crimes	-0.054	(0.080)	0.80	19,248	
	-0.046	(0.068)	0.80	17,364	X
Property Crimes	-0.223	(0.154)	0.78	51,259	
	-0.161	(0.125)	0.79	46,466	X

²²⁸ 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 include the controls listed *supra* subpart II.D. ^*p* < 0.10, †*p* < 0.05, ‡*p* < 0.01.

²²⁹ *Id.* ^*p* < 0.10, †*p* < 0.05, ‡*p* < 0.01.

APPENDIX E. EFFECT OF EXTERNAL REGULATION ON RATE OF ARRESTS PER INDEX CRIME.²³⁰

	Scrutiny	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 Theft	-0.015	(0.207)	0.62	52,296	
	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 Crimes	-0.124	(0.159)	0.71	47,783	
	-0.111	(0.157)	0.71	43,508	X
Property Crimes	-0.249	(0.215)	0.80	19,248	
	-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 Act (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.²³¹ 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.

²³⁰ *Id.* [^] $p < 0.10$ [†] $p < 0.05$ [‡] $p < 0.01$.

²³¹ 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 Avlana Eisenberg, *Expressive Enforcement*, 61 UCLA L. REV. 858, 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 detailed understanding of the participant's responses. See Eisenberg, *supra*, at 919.