

ADDRESSING POLICE MISCONDUCT

LAWS ENFORCED BY THE UNITED STATES DEPARTMENT OF JUSTICE

The vast majority of the law enforcement officers in this country perform their very difficult jobs with respect for their communities and in compliance with the law. Even so, there are incidents in which this is not the case. This document outlines the laws enforced by the United States Department of Justice (DOJ) that address police misconduct and explains how you can file a complaint with DOJ if you believe that your rights have been violated.

Federal laws that address police misconduct include both criminal and civil statutes. These laws cover the actions of State, county, and local officers, including those who work in prisons and jails. In addition, several laws also apply to Federal law enforcement officers. The laws protect all persons in the United States (citizens and non-citizens).

Each law DOJ enforces is briefly discussed below. In DOJ investigations, whether criminal or civil, the person whose rights have been reportedly violated is referred to as a victim and often is an important witness. DOJ generally will inform the victim of the results of the investigation, but we do not act as the victim's lawyer and cannot give legal advice as a private attorney could.

The various offices within DOJ that are responsible for enforcing the laws discussed in this document coordinate their investigation and enforcement efforts where appropriate. For example, a complaint received by one office may be referred to another if necessary to address the allegations. In addition, more than one office may investigate the same complaint if the allegations raise issues covered by more than one statute.

What is the difference between criminal and civil cases?

Criminal and civil laws are different. Criminal cases usually are investigated and handled separately from civil cases, even if they concern the same incident. In a criminal case, DOJ brings a case against the accused person; in a civil case, DOJ brings the case (either through litigation or an administrative investigation) against a governmental authority or law enforcement agency. In a criminal case, the evidence must establish proof "beyond a reasonable doubt," while in civil cases the proof need only satisfy the lower standard of a "preponderance of the evidence." Finally, in criminal cases, DOJ seeks to punish a wrongdoer for past misconduct through imprisonment or other sanction. In civil cases, DOJ seeks to correct a law enforcement agency's policies and practices that fostered the misconduct and, where appropriate, may require individual relief for the victim(s).

Federal Criminal Enforcement

It is a crime for one or more persons acting under color of law willfully to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States. (18 U.S.C. §§ 241, 242). "Color of law" simply means that the person doing the act is using power given to him or her by a governmental agency (local, State, or Federal). A law enforcement officer acts "under color of law" even if he or she is exceeding his or her rightful power. The types of law enforcement misconduct covered by these laws include excessive force, sexual assault, intentional false arrests, or the intentional fabrication of evidence resulting in a loss of liberty to another. Enforcement

of these provisions does not require that any racial, religious, or other discriminatory motive existed.

What remedies are available under these laws?

Violations of these laws are punishable by fine and/or imprisonment. There is no private right of action under these statutes; in other words, these are not the legal provisions under which you would file a lawsuit on your own.

Federal Civil Enforcement

"Police Misconduct Provision"

This law makes it unlawful for State or local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States. (42 U.S.C. § 14141). The types of conduct covered by this law can include, among other things, excessive force, discriminatory harassment, false arrests, coercive sexual conduct, and unlawful stops, searches or arrests. In order to be covered by this law, the misconduct must constitute a "pattern or practice" -- it may not simply be an isolated incident. The DOJ must be able to show in court that the agency has an unlawful policy or that the incidents constituted a pattern of unlawful conduct. However, unlike the other civil laws discussed below, DOJ does not have to show that discrimination has occurred in order to prove a pattern or practice of misconduct.

What remedies are available under this law?

The remedies available under this law do not provide for individual monetary relief for the victims of the misconduct. Rather, they provide for injunctive relief, such as orders to end the misconduct and changes in the agency's policies and procedures that resulted in or allowed the misconduct. There is no private right of action under this law; only DOJ may file suit for violations of the Police Misconduct Provision.

Title VI of the Civil Rights Act of 1964 and the "OJP Program Statute"

Together, these laws prohibit discrimination on the basis of race, color, national origin, sex, and religion by State and local law enforcement agencies that receive financial assistance from the Department of Justice. (42 U.S.C. § 2000d, et seq. and 42 U.S.C. § 3789d(c)). Currently, most persons are served by a law enforcement agency that receives DOJ funds. These laws prohibit both individual instances and patterns or practices of discriminatory misconduct, i.e., treating a person differently because of race, color, national origin, sex, or religion. The misconduct covered by Title VI and the OJP (Office of Justice Programs) Program Statute includes, for example, harassment or use of racial slurs, unjustified arrests, discriminatory traffic stops, coercive sexual conduct, retaliation for filing a complaint with DOJ or participating in the investigation, use of excessive force, or refusal by the agency to respond to complaints alleging discriminatory treatment by its officers.

What remedies are available under these laws?

DOJ may seek changes in the policies and procedures of the agency to remedy violations of these laws and, if appropriate, also seek individual remedial relief for the victim(s). Individuals also have a private right of action under Title VI and under the OJP Program Statute; in other words, you may file a lawsuit yourself under these laws. However, you must first exhaust your administrative remedies by filing a complaint with DOJ if you wish to file in Federal Court under the OJP Program Statute.

Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973

The Americans with Disabilities Act (ADA) and Section 504 prohibit discrimination against individuals with disabilities on the basis of disability. (42 U.S.C. § 12131, *et seq.* and 29 U.S.C. § 794). These laws protect all people with disabilities in the United States. An individual is considered to have a "disability" if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

The ADA prohibits discrimination on the basis of disability in all State and local government programs, services, and activities regardless of whether they receive DOJ financial assistance; it also protects people who are discriminated against because of their association with a person with a disability. Section 504 prohibits discrimination by State and local law enforcement agencies that receive financial assistance from DOJ. Section 504 also prohibits discrimination in programs and activities conducted by Federal agencies, including law enforcement agencies.

These laws prohibit discriminatory treatment, including misconduct, on the basis of disability in virtually all law enforcement services and activities. These activities include, among others, interrogating witnesses, providing emergency services, enforcing laws, addressing citizen complaints, and arresting, booking, and holding suspects. These laws also prohibit retaliation for filing a complaint with DOJ or participating in the investigation.

What remedies are available under these laws?

If appropriate, DOJ may seek individual relief for the victim(s), in addition to changes in the policies and procedures of the law enforcement agency. Individuals have a private right of action under both the ADA and Section 504; you may file a private lawsuit for violations of these statutes. There is no requirement that you exhaust your administrative remedies by filing a complaint with DOJ first.

How to File a Complaint with DOJ

Criminal Enforcement

If you would like to file a complaint alleging a violation of the criminal laws discussed above, you may contact the Federal Bureau of Investigation (FBI), which is responsible for investigating allegations of criminal deprivations of civil rights. You may also contact the United States Attorney's Office (USAO) in your district. The FBI and USAOs have offices in most major cities and have publicly-listed phone numbers. In addition, you may send a written complaint to:

Criminal Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66018
Washington, D.C. 20035-6018

Civil Enforcement

If you would like to file a complaint alleging violations of the Police Misconduct Statute, Title VI, or the OJP Program Statute, you may send a written complaint to:

Coordination and Review Section
Civil Rights Division
U.S. Department of Justice

P.O. Box 66560
Washington, D.C. 20035-6560

You may also call the Coordination and Review Section's toll-free number for information and a complaint form, at (888) 848-5306 (voice and TDD).

If you would like to file a complaint alleging discrimination on the basis of disability, you may send a written complaint to:

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

You may also call the Disability Rights Section's toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TDD).

How do I file a complaint about the conduct of a law enforcement officer from a Federal agency?

If you believe that you are a victim of criminal misconduct by a Federal law enforcement officer (such as the Immigration and Naturalization Service; the FBI; the Customs Service; Alcohol, Tobacco, and Firearms; or the Border Patrol), you should follow the procedures discussed above concerning how to file a complaint alleging violations of the criminal laws we enforce. If you believe that you have been subjected by a Federal law enforcement officer to the type of misconduct discussed above concerning "Federal Civil Enforcement," you may send a complaint to the Coordination and Review Section, at the address listed above. That office will forward your complaint to the appropriate agency and office.

What information should I include in a complaint to DOJ?

Your complaint, whether alleging violations of criminal or civil laws listed in this document, should include the following information:

- Your name, address, and telephone number(s).
- The name(s) of the law enforcement agency (or agencies) involved.
- A description of the conduct you believe violates one of the laws discussed above, with as many details as possible. You should include: the dates and times of incident(s); any injuries sustained; the name(s), or other identifying information, of the officer(s) involved (if possible); and any other examples of similar misconduct.
- The names and telephone numbers of witnesses who can support your allegations.
- If you believe that the misconduct is based on your race, color, national origin, sex, religion, or disability, please identify the basis and explain what led you to believe that you were treated in a discriminatory manner (i.e., differently from persons of another race, sex, etc.).

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