



**Testimony for the House Judiciary Committee**

**March 10, 2020**

**HB 1640 Morgan State University - Police Force Powers -  
Authorization**

**UNFAVORABLE**

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The ACLU of Maryland urges an unfavorable report on HB 1640, which would expand the authority of the Morgan State University Police Force to police beyond the university's property if requested or authorized by the Baltimore City Mayor or Police Commissioner.

The Baltimore City Police Department has yet to correct a pattern and practice of racist, abusive, and unconstitutional policing practices—it is arguably the least qualified entity to request or authorize another police force in any capacity.

The BPD is undergoing what we can only hope is a radical transformation. However, until that transformation occurs, we strongly oppose further empowering a broken system of unconstitutional, racist, and abusive policing by allowing the department to expand its reach to the Morgan State University Police Department.

For more context about BPD's failures, please see attached an excerpt from the DOJ investigative findings report.

For the foregoing reasons, we urge an unfavorable report on HB 1640.



## **B. BPD DISCRIMINATES AGAINST AFRICAN AMERICANS IN ITS ENFORCEMENT ACTIVITIES**

We find reasonable cause to believe that BPD engages in a pattern or practice of discriminatory policing against African Americans. Statistical evidence shows that the Department intrudes disproportionately upon the lives of African Americans at every stage of its enforcement activities. BPD officers disproportionately stop African Americans; search them more frequently during these stops; and arrest them at rates that significantly exceed relevant benchmarks for criminal activity. African Americans are likewise subjected more often to false arrests. Indeed, for each misdemeanor street offense that we examined, local prosecutors and booking officials dismissed a higher proportion of African-American arrests upon initial review compared to arrests of people from other racial backgrounds. BPD officers also disproportionately use force—including constitutionally excessive force—against African-American subjects. Nearly 90 percent of the excessive force incidents identified by the Justice Department review involve force used against African Americans.

In the early 2000s, BPD began a “zero tolerance” enforcement strategy that encouraged officers to make frequent stops, searches, and arrests for misdemeanor offenses. This strategy overwhelmingly impacted the City’s African-American residents and predominantly African-American neighborhoods. BPD has had notice of concerns about its policing of African-American communities for many years, yet it has failed to take adequate steps to ensure that its enforcement activities are non-discriminatory. The Department did not implement a “Fair and Impartial Policing” policy until 2015 and conducted virtually no analysis of its own data to assess the impact of its enforcement activities on African-American communities. BPD likewise has failed to effectively investigate complaints alleging racial bias—often misclassifying complaints to preclude any meaningful investigation. In some cases, BPD supervisors have ordered their subordinates to target African Americans specifically for heightened enforcement. We also found numerous examples of BPD officers using racial slurs or making other statements that exhibit bias against African Americans without being held accountable by the Department. These racial disparities and indications of intentional discrimination erode community trust that is a critical component of effective law enforcement. We heard repeatedly from community members who believed they were treated disrespectfully or singled out for enforcement because of their race. BPD leadership acknowledges that its legacy of zero tolerance enforcement in certain neighborhoods has damaged community partnerships and has taken steps to begin improving the Department’s relationship with African-American communities. While we applaud these steps, significant work remains.

In addition to harming its relationship with the broader community, BPD’s racially disparate enforcement violates the Safe Streets Act and Title VI of the Civil Rights Act of 1964. These statutes prohibit law enforcement practices that disparately impact African Americans unless the practices are necessary to achieve non-discriminatory objectives. *Cf. Gallagher v. Magner*, 619 F.3d 823, 837 (8th Cir. 2010) (in the related context of Fair Housing Act litigation, an official action that causes racially disparate impact may be justified only by showing that the action “has a manifest relationship to legitimate, non-discriminatory objectives”); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975) (finding in the Title VII employment discrimination context that an employer may rebut prima facie showing of disproportionate impact by proving that the requirement causing disparate

impact has a “manifest relationship to the employment in question”). Title VI provides that no person shall “be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving [f]ederal financial assistance” based on race. 42 U.S.C. § 2000d. The Title VI implementing regulations ban recipients of federal funds from using “criteria or methods of administration” that have an unnecessary disparate impact based on race. 28 C.F.R. § 42.104(b)(2). The Safe Streets Act likewise proscribes law enforcement practices that cause disparate impact based on race except where such impact is necessary to achieve nondiscriminatory objectives. *See* 28 C.F.R. § 42.203.

## **1. BPD’s Enforcement Activities Disproportionately Impact African Americans**

There is overwhelming statistical evidence of racial disparities in BPD’s stops, searches, and arrests. This evidence demonstrates a discriminatory impact on African Americans under Title VI and the Safe Streets Act. *See Chavez v. Illinois State Police*, 251 F.3d 612, 637 (7th Cir. 2001) (“The Supreme Court has long noted the importance of statistical analysis in cases in which the existence of discrimination is a disputed issue.”) (internal citation omitted); *Bradley v. United States*, 299 F.3d 197, 206 n.11 (3d Cir. 2002) (“In profiling cases . . . statistical evidence of discrimination may be the only means of proving a discriminatory effect”); *Floyd v. City of New York*, 959 F. Supp. 2d 540, 661–62 (S.D.N.Y. 2013) (statistical evidence of racial and ethnic disparities in police stop and frisk practices, including post-stop outcomes, proved adverse impact under the Equal Protection Clause); *Melendres v. Arpaio*, No. CV-97092513, 2013 WL 2297173 (D. Ariz. May 24, 2013) (statistical evidence proved that certain patrol operations at a sheriff’s office disparately impacted Latinos); *Maryland NAACP v. Maryland State Police*, 454 F. Supp. 2d 339, 349 (D. Md. 2006) (disparities in stops and searches of African Americans constituted “powerful circumstantial evidence of racial profiling”). Here, statistical evidence highlights racial disparities at all levels of BPD’s street enforcement, from the initial decision to stop pedestrians or vehicles to conducting searches and making arrests. We also found troubling trends in the sample of use of force reports we reviewed, suggesting that force may be used disproportionately against African Americans.

### **a. Racial Disparities in Stops and Searches**

BPD officers subject African Americans to a disproportionate number of pedestrian and vehicle stops on Baltimore streets and search African Americans disproportionately during these stops.

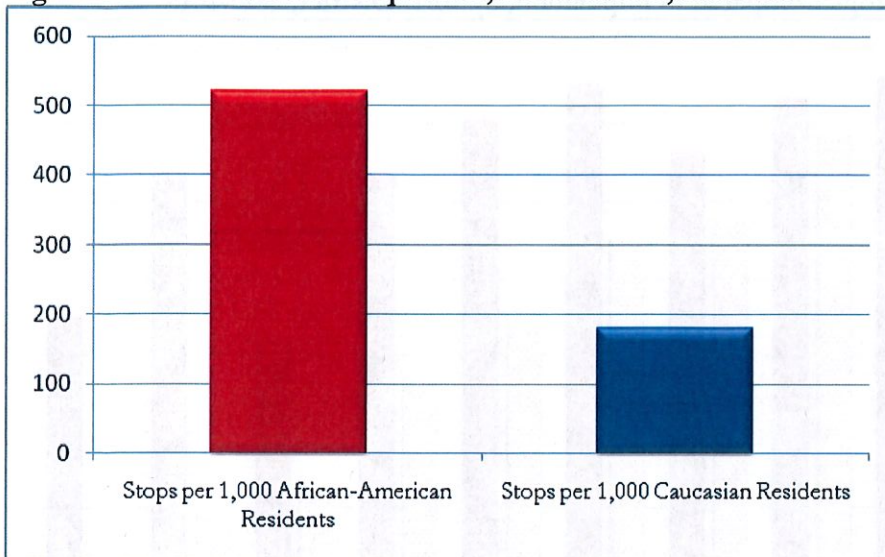
#### **i. Stops**

BPD disproportionately stops African Americans standing, walking, or driving on Baltimore streets. The Department’s data on all pedestrian stops from January 2010 to June 2015 shows that African Americans account for 84 percent of stops<sup>55</sup> despite comprising only 63 percent of the City’s population. Expressed differently, BPD officers made 520 stops for every 1,000 black residents in Baltimore, but only 180 stops for every 1,000 Caucasian residents.

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<sup>55</sup> Stops for which officers did not record the subject’s race are excluded from this analysis.

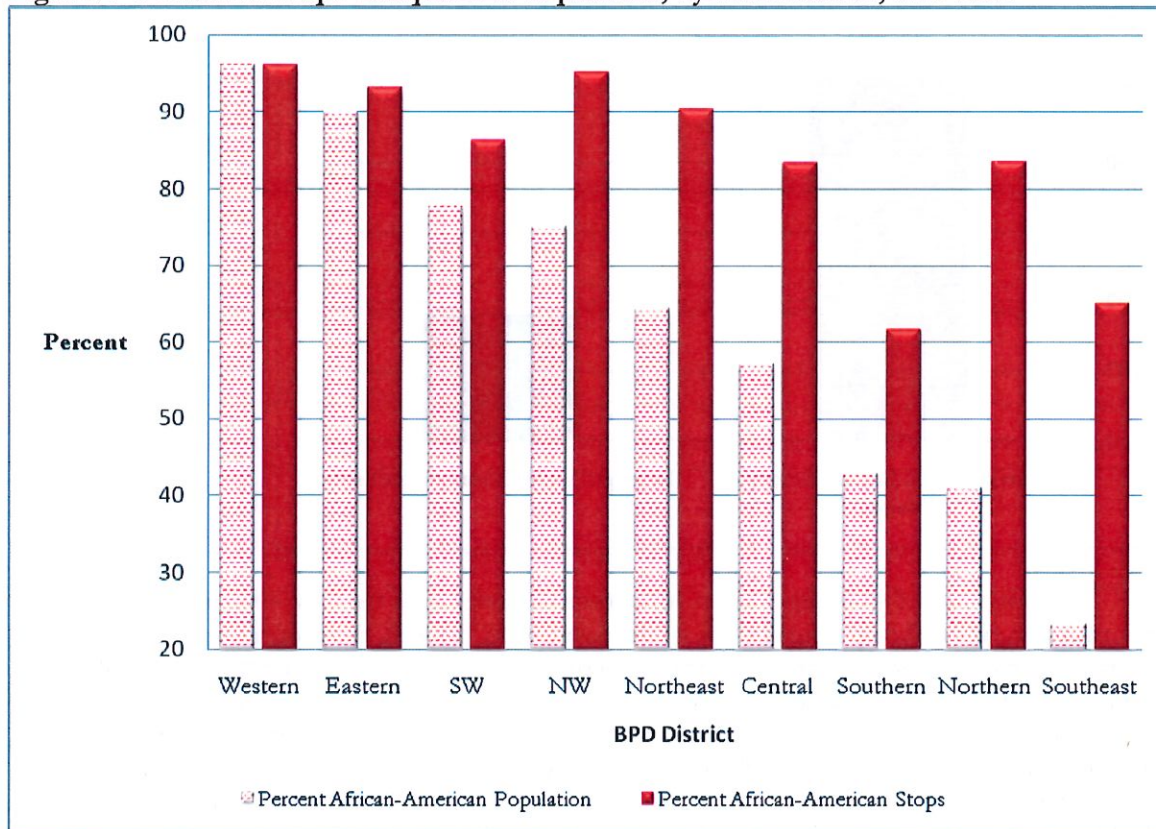
**Figure 1 – BPD Pedestrian Stops Per 1,000 Residents, 2010-2015**



The high rate of stopping African Americans persists across the City, even in districts where African Americans make up a small share of the population. Indeed, the proportion of African-American stops exceeds the share of African-American population in each of BPD’s nine police districts, despite significant variation in the districts’ racial, socioeconomic, and geographic composition.<sup>56</sup> For example, African Americans accounted for: 83 percent of stops in the Central District (compared to 57 percent of the population), which contains the City’s downtown business area; over 93 percent of stops in the Eastern District (compared to 90 percent of the population), which includes predominantly low-income, urban neighborhoods; and 83 percent of stops in the Northern District (compared to 41 percent of the population), which includes many affluent, suburban neighborhoods. Even in the Southeast District—with an African-American population of only 23 percent—two out of three BPD stops involved African-American subjects. Figure 2 illustrates this pattern.

<sup>56</sup> The proportion of African American pedestrian stops and population was virtually identical in the Western District, where both figures are approximately 96 percent.

Figure 2 –Pedestrian Stops Compared to Population, by BPD District, 2010-2015



Closer analysis highlights the impact of these racial disparities. Individual African Americans are far more likely to be subjected to multiple stops within relatively short periods of time. African Americans accounted for 95 percent of the 410 individuals stopped at least ten times by BPD officers from 2010–2015. During this period, BPD stopped 34 African Americans at least 20 times and seven other African Americans at least 30 times.<sup>57</sup> No person of any other race was stopped more than 12 times. One African-American man in his mid-fifties was stopped 30 times in less than four years. The only reasons provided for these stops were officers’ suspicion that the man was “loitering” or “trespassing,” or as part of a “CDS investigation.” On at least 15 occasions, officers detained the man while they checked to see if he had outstanding warrants. Despite these repeated intrusions, none of the 30 stops resulted in a citation or criminal charge. The map on the following page shows the concentration of stops in African-American neighborhoods.

<sup>57</sup> As explained in Section II.A.1, there is strong evidence that BPD under-reports its pedestrian stops. Thus, the true number of African Americans who hit these—or higher—stop thresholds may be significantly larger.