

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 658

(The President)(By Request - Office of the Attorney General)

Judicial Proceedings

Human Relations - Patterns and Practices of Civil Rights Violations - Remedies

This bill explicitly prohibits a governmental authority, agent of a governmental authority, or a person acting on behalf of a governmental authority, from engaging in *a pattern or practice of conduct* that deprives an individual of rights, privileges, or immunities secured or protected by the U.S. Constitution, the Maryland Constitution, or State or federal law. The bill grants the Attorney General the power to investigate and initiate civil actions to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice of conduct.

Fiscal Summary

State Effect: General fund expenditures increase by \$1,055,000 in FY 2024 for staff at the Office of the Attorney General (OAG). Future years reflect annualization and inflation. Potential significant increase in State expenditures for other State agencies, as discussed below. Revenues are not affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,055,000	1,298,000	1,354,100	1,411,400	1,482,800
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$1,055,000)	(\$1,298,000)	(\$1,354,100)	(\$1,411,400)	(\$1,482,800)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential significant increase in local government expenditures, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: No governmental authority, agent of a governmental authority, or person acting on behalf of a governmental authority, may engage in a pattern or practice of conduct by any officials or employees of (1) a law enforcement agency; (2) a State behavioral health facility; (3) a correctional facility; (4) an immigration detention facility; (5) the Division of Correction; (6) the Division of Parole and Probation; or (7) the Department of Juvenile Services that deprives an individual of rights, privileges, or immunities secured or protected by the U.S. Constitution, the Maryland Constitution, or State or federal law.

If the Attorney General has reasonable cause to believe that a violation has occurred, the Attorney General may (1) subpoena witnesses; (2) administer oaths; (3) examine individuals under oath; and (4) compel production of records, books, papers, contracts, and other documents.

The Attorney General may bring a civil action to obtain appropriate equitable and declaratory relief to eliminate the pattern or practice of conduct.

Information obtained under a subpoena issued under the bill's provisions is not admissible in a later criminal proceeding against the person who provided the evidence.

Current Law/Background: The Attorney General is an elected official who serves a four-year term of office. Pursuant to the State Constitution, the Attorney General has enumerated responsibilities, including investigating, commencing, and prosecuting or defending any civil or criminal suit or action, as specified, which the General Assembly, by law or joint resolution, or the Governor, directs to be investigated, commenced, and prosecuted or defended. The Attorney General does not, however, have general authority to prosecute matters in the absence of specific statutory authority or an executive order. The Attorney General also has and must perform any other duties and possess any other powers as the General Assembly prescribes by law. OAG advises that approximately 10 other states' Attorneys General have authority to investigate patterns or practices of misconduct by law enforcement.

State/Local Expenditures:

Office of the Attorney General – Staffing Costs

OAG advises that pattern or practice investigations are inherently labor-intensive. According to OAG, establishing a pattern or practice of misconduct is significantly more complicated than proving a single instance of wrongdoing, as is required in most litigation. Furthermore, pattern or practice investigations must identify the systemic and structural factors that led to such misconduct becoming prevalent, as well as identify remedies and

reach detailed, systemic resolutions with the subject entities. In addition to investigative work, a pattern or practice unit must negotiate and litigate systemic resolutions and monitor compliance with any agreement, among other duties.

Accordingly, general fund expenditures increase by up to \$1,055,023 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date and reflects the staffing estimate submitted by OAG. The estimate reflects the cost of hiring one principal counsel to act as unit chief, four assistant Attorneys General, two investigators, and one paralegal. It includes salaries, fringe benefits, one-time start-up costs, costs for consultants/experts, and ongoing operating expenses

Positions	8.0
Salaries and Fringe Benefits	\$958,251
Operating Expenses	\$59,272
Consultant costs/Expert fees	<u>\$37,500</u>
Total FY 2024 State Expenditures	\$1,055,023

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Impacts on Other State Agencies and Local Governments

Specified State agencies may incur significant costs if they are investigated by/involved in civil actions with OAG under the authority granted in the bill and to the extent that equitable and declarative relief is ordered. For example, the Department of Public Safety and Correctional Services (DPSCS) advises that each action could incur costs exceeding \$250,000 for case preparation. DPSCS further notes that as an agency with approximately 6,000 employees, multiple investigations are possible. The Maryland Department of Health advises of an indeterminate fiscal impact but notes generally that the bill could result in costs associated with hiring outside counsel. The Department of Legislative Services notes that these estimates do not take into account potential equitable/declarative relief that may be ordered, and costs that may be required to implement changes in policies or practices as a result of such relief. Such costs may be significant but cannot be reliably estimated in advance.

Local governments may also incur significant costs to the extent that they are the subject of investigations by OAG. For example, Baltimore City advises that the Baltimore City Police Department and the City of Baltimore have been under a Federal Consent Decree since 2017 following an investigation by the U.S. Department of Justice and a finding of a pattern and practice of unconstitutional policing. Under the consent decree, the police department is required to make changes to multiple aspects of the department’s operations,

such as policies related to use of force, interaction with youth, and impartiality in policing. Using the federal consent decree as a basis, Baltimore City estimates nearly \$5 million in initial costs should there be a concurrent or consecutive State-run investigation and consent decree. This includes costs of approximately \$2.0 million for legal services, and annually recurring costs of \$2.8 million for the first year for compliance staff and independent monitoring costs. This estimate does not take into account additional spending that may be mandated as part of any corrective action required (*i.e.*, equitable or declarative relief) under a potential State consent decree.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 771 (The Speaker)(By Request - Office of the Attorney General) - Judiciary.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Montgomery, Talbot, and Wicomico counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of General Services; Maryland Department of Health; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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