

Department of Legislative Services
Maryland General Assembly
2021 Session

RACIAL AND EQUITY IMPACT NOTE

2021 Maryland Police Reform Proposals

Summary

During the 2021 session of the Maryland General Assembly, a number of proposals have been introduced related to reforms of processes, procedures, and discipline of police officers and law enforcement agencies. There is much overlap between the bills with regard to the issues covered, consequently this note will discuss the entire collection of bills as they relate to possible racial impacts. Provisions in the bills include:

Use of Force

- Establishing limitations on use of force and use of deadly force except under certain circumstances;
- Establishing a Maryland Use of Force Statute that prohibits police officers and police supervisors from using force and deadly force except under certain circumstances;
- Authorizing criminal charges to be filed against a law enforcement officer if the use of force against a person results in death and is inconsistent with use of force limitations;
- Creating criminal penalties for violations of use of force limitations and authorizing a civil action for the use of force by a law enforcement officer in a manner inconsistent with the use of force limitations;
- Prohibiting police officers from discharging a firearm at a moving vehicle except under specified circumstances and from using a chokehold or restraint that restricts blood flow or breath; and
- Revoking the certification of specified police officers who have been (1) found to have violated use of force limitations; (2) convicted of specified crimes; or (3) previously fired or resigned while being investigated for serious misconduct or use of excessive force.

No-knock warrants

- Limiting the circumstances under which no-knock warrants may be utilized; and
- Repealing the authorization to apply for or execute a no-knock warrant.

Duty to Intervene

- Creating a duty to intervene to stop or prevent use of excessive force and to notify a supervisor of use of excessive force;
- Creating a duty to render aid;
- Requiring a law enforcement officer to promptly obtain medical treatment for a person injured as a result of a law enforcement officer's use of force; and
- Establishing a criminal penalty and a civil cause of action for a police officer who violates a duty to intervene.

Law Enforcement Officers' Bill of Rights

- Repealing the Law Enforcement Officers' Bill of Rights (LEOBR); and
- Repealing LEOBR and establishing an alternate discipline process for police officers.

Surplus Military Equipment

- Prohibiting a law enforcement agency from acquiring a surplus armored or weaponized vehicle; and
- Prohibiting a law enforcement agency from receiving specific equipment from a surplus program operated by the federal government: (1) an armored or weaponized aircraft, drone, or vehicle; (2) a "destructive device"; (3) a "firearm silencer"; or (4) a grenade launcher.

Independent Investigations

- Requiring an independent investigative agency to investigate a shooting involving a police officer or other incident involving the use of physical force by a police officer causing death or serious injury;
- Requiring the Attorney General to investigate all alleged or potential incidents involving the death of a person caused by a police officer and requiring a law enforcement agency to notify the Office of the Attorney General of any alleged or potential incident involving the death of a person caused by a police officer as soon as the law enforcement agency becomes aware of the incident; and
- Requiring the Attorney General to prosecute a police officer in specified circumstances.

Body-worn Cameras

- Requiring that law enforcement agencies require the use of body-worn cameras; and
- Creating a rebuttable presumption that failure to activate a body-worn camera under specified circumstances means that any testimony of the police officer relating to the incident that was not recorded is inadmissible in a criminal prosecution.

Duty to Report Misconduct and Whistleblower Protections

- Requiring a police officer to report misconduct if the police officer has actual knowledge of certain behavior of another police officer;
- Requiring a police officer to report the misconduct to the officer's supervisor or the chief of the law enforcement agency that employs the reporting police officer;
- Creating a criminal penalty for a violation of the duty to report misconduct; and
- Prohibiting retaliatory action against a law enforcement officer who discloses specified information or, following such a disclosure, seeks a remedy under the bill's provisions or any other law or policy governing the law enforcement agency.

Maryland Public Information Act

- Providing that a record relating to a formal complaint of job-related misconduct made against a police officer, including an investigation record, a hearing record, or a disciplinary decision, is not a personnel record for purposes of the Maryland Public Information Act (PIA) under certain circumstances; and
- Establishing that a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer, including an internal affairs investigatory record, is not a personnel record for purposes of PIA and is not subject to mandatory denial of inspection under PIA.

Data Collection and Reporting

- Requiring local law enforcement agencies to document, investigate, and post on a public website specified data regarding use of force;
- Requiring creation of a statewide database to track police officer de-certifications due to improper use of force;
- Requiring creation of a data collection and reporting program related to law enforcement "SWAT team" activities; and
- Requiring the State's Attorney for each county to maintain a list of law enforcement officers who have been found to have committed or are alleged to have committed acts that bear on credibility, integrity, honesty, or other characteristics that would constitute exculpatory or impeachment evidence in a criminal case and making the records subject to PIA.

Baltimore Police Department

- Establishing the Baltimore Police Department (BPD) as an agency and instrumentality of Baltimore City instead of the State.

Other

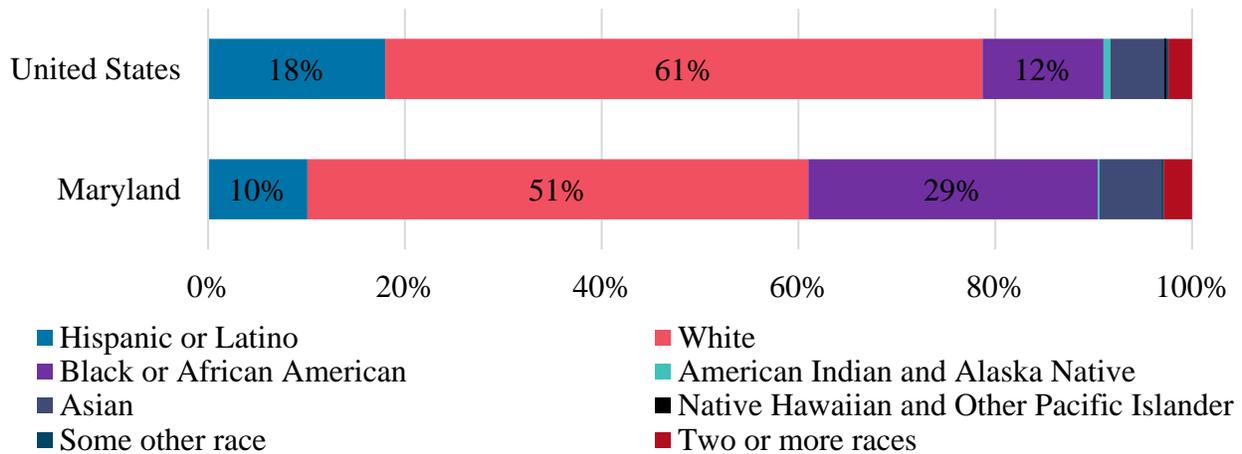
- Establishing a tuition exemption for specified individuals attending a public institution of higher education who intend to become a police officer;
- Altering annual certification requirements for police officers;
- Requiring law enforcement agencies to establish a data-based early intervention system, as specified, to identify police officers who are at risk of engaging in the use of excessive force and to provide those officers with retraining and behavioral interventions, reassignments, or other appropriate responses to reduce the risk of the use of excessive force;
- Requiring psychological screenings of police officers and police officer applicants related to certain behaviors and biases;
- Requiring a law enforcement agency to direct, as soon as is practicable, a law enforcement officer employed by the agency to submit to drug and alcohol testing if the officer, in the course of the officer's official duties, engages in conduct that results in the death of or serious bodily injury to another or discharges a firearm; and
- Increasing the limits on liability under the Maryland Tort Claims Act and the Local Government Tort Claims Act and establishing separate limits on liability for a claim that arises from the tortious acts or omissions committed by a law enforcement officer.

Maryland Demographics

Race and Ethnicity of the Maryland Population

In 2019, Maryland's estimated population was just over 6 million individuals. Compared to the U.S. population overall, the State's population by race alone is more diverse. In Maryland, 44.5% of the population identify as non-White or multi-racial compared to 27.5% of the national population. In both the State and national population, the largest shares of the non-White population are individuals who are Black or African American, with 29.9% of the State population identifying only as Black or African American and another 1.4% identifying as more than one race including Black or African American. In both the State and the nation, approximately 6% of the population identified as Asian and 5% identified as "some other race." Maryland's population is slightly less diverse than the U.S. population overall by ethnicity, however. In Maryland, 10.1% of the population identified as Hispanic or Latino in 2019 compared to 18.0% of the U.S. population overall. **Exhibit 1** shows the U.S. and Maryland populations by race and ethnicity in 2019.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2019



Source: University of Baltimore Schaefer Center

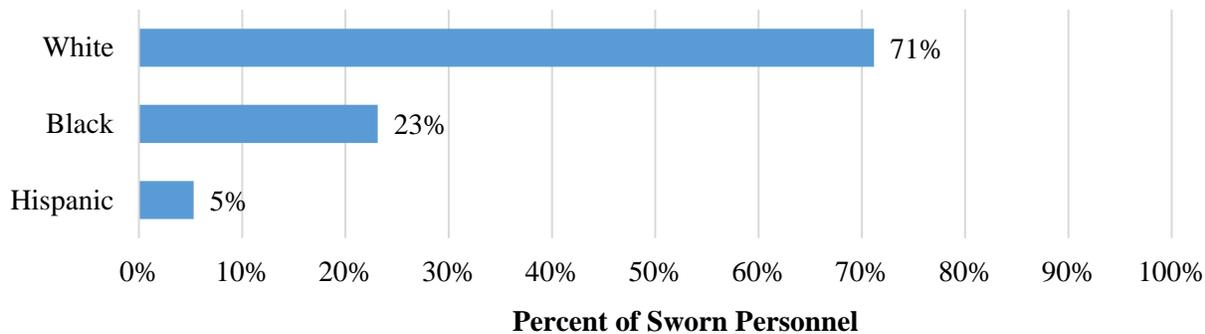
Data in the criminal justice field often combines race and ethnicity into one demographic indicator. This combination helps demonstrate the diverse nature of the state population compared to the nation overall – less than 51% of the State’s population identified as White, compared to almost 61% of the nation’s population. Also of note, while the second largest population group by race or ethnicity in Maryland is comprised of those identifying as Black or African American, individuals who are Hispanic or Latino are the second largest racial or ethnic group nationally.

Race and Ethnicity of Police in Maryland

In the 2016 Law Enforcement Management and Administrative Statistics (LEMAS) survey, the Bureau of Justice Statistics collected data for Maryland from 20 local or county police departments (out of approximately 130), seven county sheriff’s offices, and the State Police (Bureau of Justice Statistics, 2016).¹ As shown in **Exhibit 2**, in these agencies, 7 in 10 sworn personnel (or 7,980 officers) were White, while 23% were Black and 5% were Hispanic. In comparison, approximately 80% of both immediate supervisors and sergeants (or equivalent) were White, 16% were Black, and 2% were Hispanic. However, while new sworn officers also tended to be White (62%, compared to 26% who were Black and 7% who were Hispanic), those leaving these agencies were even more likely to be White (70%, compared to 24% Black and 4% Hispanic).

¹ The LEMAS survey is irregularly conducted, with the most recent survey in 2016 and the most immediate prior ones in 2013 and 2007. However, it is the most comprehensive data available on law enforcement officer demographics at the state level.

Exhibit 2
Law Enforcement Officers by Race and Ethnicity in LEMAS Sampled Agencies
2016



LEMAS: Law Enforcement Management and Administrative Statistics

Note: The share of officers of American Indian or Alaska Native, Native Hawaiian or other Pacific Islander, two or more races, or unknown race combined were less than 0.5% and are not shown in the chart.

Source: University of Baltimore Schaefer Center, Bureau of Justice Statistics, 2016

As noted, the LEMAS only covers a sample of law enforcement agencies in Maryland. Three of the 20 local police departments in the 2016 LEMAS had police departments where a majority of the sworn officers were not White: Baltimore City; Mount Rainier; and Prince George’s County. Three also had forces where all sworn officers were White: Hancock; Oakland; and Smithburg. Of the seven sheriff’s offices surveyed, all had majority White forces: Allegany; Calvert; Charles; Frederick; Garrett; Montgomery; and St. Mary’s counties.

Racial and Equity Impact of the Current Police Reform Bills

Use of Force Limitations and Creation of a Duty to Intervene

A substantial portion of the police reform bills relate to use of force by police officers, including police shootings and deaths, police actions resulting in people needing first aid or medical assistance, police shooting at vehicles, and definitions of “lethal force” including restraints such as chokeholds or neck restraints. Similarly, a number of bills include the creation of a law enforcement officer’s duty to intervene to prevent excessive use of force incidents. State and national data shows racial and ethnic disparities with both use of force and severity of force used. To the extent that excessive use of force and types and severity of force used declines due to increased limitations and prevention through officer interventions, disparities in treatment can be expected to decline accordingly.

The most recent data collected by the Maryland State Police show that, in 2019, a total of 62 police officers were involved in cases related to civilian death. In that year, there were 31 police-related civilian deaths. Of these, 18 were classified as a homicide by the police (Governor's Office of Crime Prevention, Youth, and Victim Services (GOCPYVS), 2020). Fifty percent of these 18 civilians were African American, 44% were White, and 6% were Hispanic or Latinx. In other words, over half, or 56%, of the fatal shootings were racial and ethnic minorities. Of the officers involved in these deaths, 84% were White, 15% were Black, and 2% were Hispanic or Latinx.

GOCPYVS also reported a five year general pattern showing Blacks or African Americans represented the majority of civilian deaths involving a law enforcement officer. Since 2015, Maryland police fatally shot 87 civilians of which 59% were African American, 32% were White, and 5% were Latinx. From 2010-2014, 109 people died in police encounters in Maryland. Of the 109 individuals, 69% of those who died were Black. During this period, Blacks represented 29% of Maryland's population. The rate at which Blacks died by a police encounter was five times that of Whites. Nationally, data for police killings in 2020 revealed similar racial and ethnic disparities. Despite representing 12% of the national population, fatal police shootings of Black civilians accounted for 28% of those killed by police.

Although acknowledging data collection challenges, a report titled *Mapping Police Violence* indicated that between 2013 and 2020, 144 people were killed by police in Maryland. Blacks accounted for 87, or 60%, of those individuals, Whites accounted for 38 of those individuals, and Latinx accounted for 8 of those individuals. This data indicated that in Maryland, Blacks were four times as likely to be killed by a police officer and that Latinx were slightly more likely to be killed by a police officer. National data included in the report for 2020 revealed similar racial and ethnic disparities. In 2020, 1,127 people nationally were killed by police and, despite representing only 13% of the population, Blacks accounted for 28% of those killed by police.

Moreover, studies have found that there are also racial disparities in the severity of force used by law enforcement. The Center for Policing Equity examined racial disparities in six categories of force including lethal, less lethal and taser, canine, weapon, pepper spray, and hands and body. The study determined that even when controlling for arrest demographics, racial disparities existed across multiple levels of force severity.

Repeal of the Law Enforcement Officers' Bill of Rights/Alternate Disciplinary Processes

To the extent that procedures for police discipline contained in LEOBR inhibit the ability to discipline police officers who have been accused of use of excessive force or other problematic behavior, this will impact individuals who interact with law enforcement in the same manner as use of force described above. Although some individual researchers have examined LEOBR and whether racial disparities can be demonstrated, there is no State or national data on this topic.

Duty to Report Misconduct/Whistleblower Protections

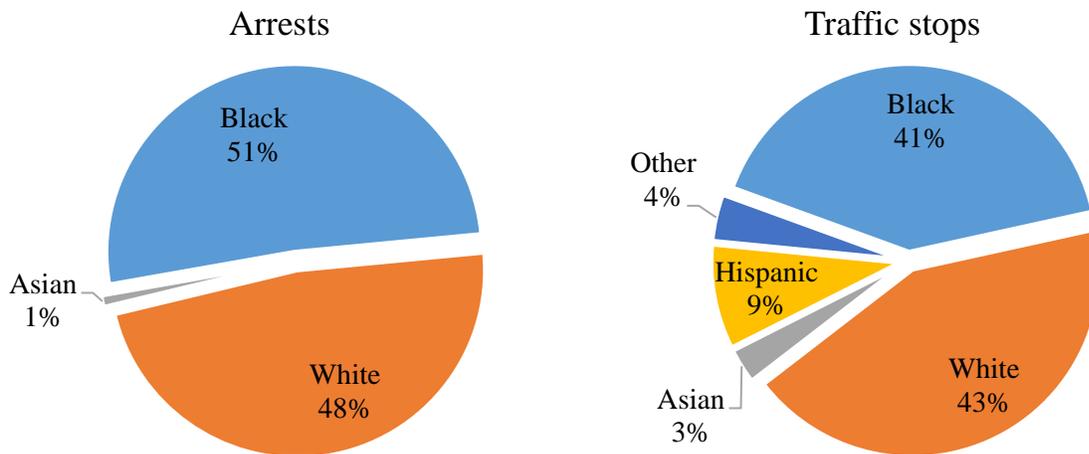
Data does not exist to demonstrate how creation of a duty to report misconduct or a duty to intervene would impact racial or ethnic disparities, but there is some data available regarding police officer attitudes toward reporting misconduct. In a 2015 report titled *The Abuse of Police*

Authority: A National Study of Police Officers Attitudes, produced by the National Police Foundation, 900 police officers from state and local police forces were surveyed. The survey showed that more than 80% of police surveyed did not accept that the code of silence is an essential part of the mutual trust necessary to achieve good policing. At the same time, a quarter of those surveyed indicated that “whistleblowing is not worth it,” and over 66% agreed or strongly agreed that police officers were likely to be given a “cold shoulder” by fellow officers if they reported incidents of misconduct. Over 52% agreed or strongly agreed that it was not unusual for police officers to turn a “blind eye” to improper conduct by other officers, and 60% agreed or strongly agreed that police officers did not always report serious criminal violations involving abuse of authority by fellow officers.

Body-worn Camera Requirements

Requiring that all law enforcement agencies in Maryland use body-worn cameras would primarily impact those arrested, injured, or killed by police. A breakdown of both arrests (Maryland State Police, 2020) and traffic stops (Governor’s Office of Crime Prevention, Youth, and Victim Services, 2019) in Maryland by race for 2019 is presented in **Exhibit 3**. Arrests in Maryland were divided 51%-48% between those who were Black and those who were White, with the remaining arrests of those who were Asian, American Indian, or Pacific Islander. Most traffic stops were also of individuals who were either Black (41%) or White (43%), with a difference of only two percentage points. Of those who were stopped, 9% were Hispanic, 3% were Asian, and 4% were of other races.

Exhibit 3
Arrests and Traffic Stops in Maryland by Race and Ethnicity
2019



Note: Arrest data does not include percentage of those arrested who were Hispanic; in addition, percentages of those arrested who were American Indian or Pacific Islander were less than 1% of total arrests.

Source: University of Baltimore Schaefer Center

Prohibiting Purchase of Surplus Military Equipment

The racial impact of prohibiting law enforcement agencies in Maryland from purchasing specific surplus military equipment, such as weaponized drones or aircraft or grenade launchers, is likely to also be on those arrested by law enforcement agencies, especially those during SWAT team activities or police use of force. As discussed below, prior reporting on SWAT team activities indicated that the largest use was reported in Baltimore City and Prince George's County, both majority Black populated jurisdictions.

Baltimore City Police Department

It is unclear how altering BPD from designation as a State agency to a part of Baltimore City government will impact racial or ethnic disparities, although as a clearly local agency, it may be helpful in enacting the reforms required under the federal consent decree and agreed to in 2017 by the City of Baltimore and the U.S. Department of Justice (DOJ) resulting from the DOJ investigation of BPD regarding the death of Freddie Gray. DOJ found a "pattern and practice" of police misconduct in Baltimore, including that African Americans were the targets of 90% of the excessive force incidents it reviewed (DOJ, 2016). Additionally, DOJ found that 88% of those who BPD officers used nondeadly force against were African American. The American Civil Liberties Union also conducted an analysis of complaints against BPD officers between 2015 and 2019 and found that, while Black residents filed a much higher percentage of complaints compared to White residents (73% compared to 14%, respectively), the latter were more likely to be sustained (12% of complaints by White residents compared to 8% of those by Black residents).

Other Reform Proposals

Tuition Exemption and Removal of Hiring Barriers

Disparities currently exist in the racial and ethnic makeup of law enforcement agencies across the State with Black officers and Latinx officers comprising 23% and 5%, respectively, of the officers in sampled agencies. Establishing a tuition exemption for specified individuals attending a public institution of higher education who intend to become a police officer could assist in reducing these disparities.

Implicit Bias Trainings and Evaluation

Police implicit bias is a concern addressed in many of the bills. Implicit bias has been tested through experiments with police officers and the general public to determine the prevalence of this issue within policing, and often on the decision to "shoot" at a potentially violent suspect. Research has consistently found that members of law enforcement, as well as those in the general public, are more likely to associate violence with Black people and/or Latinos than White or Asian people. To the extent that officers differentially utilize force or aggressive responses for suspects that are perceived to be violent, these populations could be positively impacted by changes in officer behavior.

Behavioral and Mental Health Screenings and Intervention

A number of proposals include provisions requiring law enforcement agencies to establish behavioral early intervention systems and require psychological screenings of police officers and police officer applicants related to certain behaviors and bias. Although data does not exist to determine how these provisions would impact racial or ethnic populations, a 2020 study in the *Journal of American Medicine* cited a mental health survey of 424 officers in a large law enforcement agency in Texas. Of those surveyed, 12% had a lifetime mental health diagnosis and 26% reported current symptoms of mental illness. Of these officers, 17% had sought mental health care services in the past 12 months. The officers did report interest in seeking behavioral health services if concerns such as assurance of confidentiality were met.

In 2018, the Fraternal Order of Police and NBC News conducted a national Police Officer Mental and Behavioral Health survey of 8,000 police officers. The survey indicated that 79% of officers reported experiencing critical stress defined as “a strong emotional reaction that overwhelms usually effective coping abilities” with 69% reporting that stressful experiences as a police officer caused unresolved or lingering emotional issues. These unresolved emotional issues led to a range of effects in their lives, including sleep problems, relationship problems, and thoughts of suicide. Almost 90% of officers surveyed viewed stigma as a barrier to seeking treatment. Only one-third of respondents indicated they had received any behavioral health awareness education during their careers.

Criminal and Civil Liability

There is no data or research available on the impact of creating new civil and criminal liability for police officers under certain circumstances or regarding an increase in the limits on liability under the Maryland Tort Claims Act and the Local Government Tort Claims Act related to the actions of a police officer.

Data Collection and Reporting

A number of the proposals require local law enforcement agencies to document, investigate, and make publicly available data related to use of force and other issues related to police officer misconduct. As discussed below, limited publicly available data impedes the ability to fully evaluate racial and ethnic disparities in use of force, arrests, policing practices, and related matters.

A prior data collection and reporting program related to law enforcement “SWAT team” activities shows that in 2014, the largest number of SWAT deployments occurred in majority Black populated counties. Baltimore City and Prince George’s County had 230 and 418 deployments, respectively. Overall, 70.6% of SWAT deployments were considered forcible entry.

Conclusion

In Maryland, racial and ethnic disparities exist throughout the criminal justice system. These disparities are not exclusive to Maryland but are prevalent throughout the American criminal justice system. National and statewide data reveal racial and ethnic disparities in excessive use of

force, police misconduct, police purchases of surplus military equipment, and officer body-worn cameras. Additionally, the data shows evidence of racial and ethnic disproportionality as the proportions of each of the identified populations are comparatively different from the proportion associated with Maryland’s racial and ethnic residential population. Documented data reports that racial and ethnic minorities are stopped, questioned, arrested, or injured by police disproportionately more than their White counterparts. Thus, any State-level legislation advanced to address police conduct, behavior, and discipline will undoubtedly impact racial minorities in Maryland.

Methodologies, Assumptions, and Uncertainties

Although some reports use disparity and disproportionality interchangeably, this racial and equity impact note distinguishes them. Disproportionality is the state of being out of proportion. It compares the proportion of one racial or ethnic group of a target population to the proportion of the *same* racial or ethnic demographic group in the general population. Disparity, however, refers to a state of being unequal. A disparity describes an unequal outcome experienced by one racial or ethnic group of the target population as contrast against a different racial or ethnic group in the target population.²

The information provided in this note is drawn from quantitative data analysis of available statistical datasets on crime and criminal justice collected by entities at the national and state level. Moreover, the information includes scholarly literature on racial and ethnic disparities in the U.S. criminal justice system.

Currently, there are no large-scale state-level data available documenting the impact of implicit racial biases occurring in criminal justice decision-making behaviors. The lack of data prohibits an analysis of the implicit biases of criminal justice decision-making behaviors between law enforcement and civilians. Lastly, there are two other significant gaps in available data. First, there is a lack of comprehensive data on the demographics of law enforcement agencies in Maryland. The most comprehensive recent dataset is from 2016, but it only includes a sample of Maryland law enforcement agencies. In 2020, only eight Maryland law enforcement agencies were enrolled in the FBI National Use of Force database. Of those eight agencies, only seven participated by providing data. Because participation for Maryland is below the required 40% participation threshold, none of the reported data for Maryland are publicly available.

The enrolled law enforcement agencies include: Anne Arundel County Police Department; Anne Arundel County Sheriff’s Office; Baltimore County Police Department (enrolled, but not reporting); Cecil County Sheriff’s Office; Frederick Police Department; Maryland State Police; Montgomery County Police Department; and Ocean City Police Department.

² In this note, “law enforcement” and “police,” along with related terms, are generally used interchangeably. However, it should be noted that, in Maryland, both “law enforcement” and “policing” are conducted by more than just State, county, or local police departments; other actors include county-level sheriff’s offices, college and university police forces, Maryland Transit Administration Police, Metro Transit Police Department, Maryland Department of Natural Resources Police, and others.

Information Source(s): The University of Baltimore Schaefer Center; Bowie State University

Analysis by: Dr. Jasmón Bailey

Published: March 2, 2021