



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session
HB0857

Office of the Attorney General - Independent Investigations Division - Authority to Prosecute

Bill Summary

This bill expands the investigative jurisdiction of the Independent Investigations Division (IID) of the Office of the Attorney General (OAG) and makes corresponding changes. The bill also expands the prosecutorial authority of the Attorney General with respect to criminal offenses discovered during IID investigations and police-involved incidents referred to the Attorney General by State's Attorneys. The bill's provisions apply to any police-involved incident that results in the death of an individual or injury to an individual that occurs on or after October 1, 2023.

Racial Equity Impact Statement

Adequate data is not currently available to estimate the potential equity impacts resulting from the bill if it is implemented. However, some limited national and state level data suggest that Black or African American individuals may be overrepresented in incidents of police misconduct and/or use of force. Future data reporting on use of force incidents that includes demographic data will be useful in conducting quantitative racial equity impact analyses going forward.

Analysis

Under current law, IID is the primary investigative unit for police-involved incidents that result in the death of *civilians* or injuries likely to result in death. OAG must determine whether an incident is police-involved and whether an injury is likely to result in death. IID must investigate all police-involved incidents that result in the death of a civilian or injuries that are likely to result in the death of a *civilian*. IID may investigate any other crimes related to police misconduct that are discovered during an investigation of these incidents.

The bill would expand the investigative authority of IID to require it to investigate police-involved incidents that result in the death of *individuals* (as opposed to civilians) or where the injuries are likely to result in death. In addition, it is authorized to investigate police-involved incidents that lead to *any* injury of an individual if referred by a local State's Attorney. The bill also expands the prosecutorial authority of IID. If OAG investigates and finds sufficient grounds to prosecute, it would have exclusive authority to prosecute. Under existing law, only the local State's Attorney is authorized to prosecute. The Attorney General may also prosecute *any* police-involved incident referred to it by a State's Attorney, regardless of whether it is within the Attorney General's investigative jurisdiction.

OAG Independent Investigations Division

Chapter 132 of 2021 established IID, which is granted jurisdiction over incidents that have occurred in Maryland since October 1, 2021. As an independent investigative authority, IID's purpose is to conduct investigations into police-involved use of force incidents to mitigate the conflict of interest that is often involved when local law enforcement agencies investigate fatalities or serious injuries caused by its own personnel.

In its first report covering police-involved deaths of civilians occurring in Maryland between October 1, 2021, and September 30, 2022, IID investigated 13 fatal shootings, 7 fatal vehicle incidents, and 3 in-custody deaths. Because the total number of cases provides a relatively small sample size, and only one year of data is available, no conclusions can be drawn from this data. The limited data does show that 17 of the 23 fatalities were Black or African American and Hispanic or Latino individuals. Of the 45 law enforcement officers involved in those cases (some cases involved more than one officer), 38 were white and 34 had between 1 and 10 years of service.

Use of Force Data Reporting in Maryland

There are additional data sources for law enforcement use of force type incidents. The Maryland Police Training and Standards Commission reports on incidents involving serious injury or death. In 2021 it reported the following number of serious officer-involved incidents from 133 law enforcement agencies in Maryland (four agencies did not report):

- 34 direct officer contacts that resulted in serious injury or the death of the officer or a person;
- 2 complaints of excessive force which were investigated and sustained against an officer where the force resulted in serious injury or the death of a person;
- 50 complaints of criminal misconduct that were investigated and sustained against an officer; and
- 72 reports of criminal charges that were filed against an officer.

More robust reporting of officer-involved use of force and/or serious injury data by Maryland law enforcement agencies has recently been implemented. The following reports are currently required under the Public Safety Article: (1) the Serious Officer-Involved Incidents Report; (2) the Maryland Law Enforcement Agency Use of Force Data Resulting in Monetary Settlement or Judgement Report; and (3) the Aggregate Data of Police Officers' Use of Force Report. Some of these reports have only recently been required by statute or have been recently required to include

demographic data. Consequently, existing available data is inadequate to complete a quantitative analysis of this bill's possible racial equity impacts.

Use of Force Reporting and Investigations in Other States

According to the National Conference of State Legislatures, Maryland and nine other states – California, Connecticut, Delaware, Iowa, Maine, New Hampshire, New York, Oregon, and Utah – have authorized an independent investigative entity to investigate police use of force incidents that lead to a death or severe injury. Many of these state laws are similar to Maryland's in that OAG is given the investigative authority, while other states authorize some other governmental independent entity to investigate, such the Division of Civil Rights and Public Trust in Delaware.

The Federal Bureau of Investigation reports that in 2022, 8,482 out of 18,514 federal, state, local, and tribal law enforcement agencies nationwide provided use of force data. The officers employed by these agencies represented 66% of federal, state, local, and tribal sworn officers in the nation. The use of force data shows that 51% of the reports were for serious bodily injury due to law enforcement use of force, 32% reported the death of a person due to use of force, and 17% involved the use of a firearm by law enforcement that did not result in death or serious injury.

Conclusion

A number of high-profile cases of alleged police misconduct around the country have led to public protests and calls for increased police accountability, including systemic reforms of police use of force. Several public policy initiatives have been implemented in Maryland and other states, including body-worn cameras, empowered civilian oversight boards, and authorizing Attorneys General to investigate police-involved incidents where there is a death or severe injury of a member of the public.

While limited national and state data and anecdotal reporting suggest that Black or African American individuals may be overrepresented in incidents of police misconduct and/or use of force, there is not a sufficient amount of Maryland-specific data available as of yet that would present a clear picture of the racial and ethnic identities of individuals injured in police incidents in the State, or of the officers involved. However, it is anticipated that data that is expected to be collected and shared with the General Assembly in the near future will allow for more in-depth analysis.

Methodologies, Assumptions, and Uncertainties

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.

Information Sources: Maryland Police Training and Standards Commission; National Conference of State Legislatures; Center for American Progress; Federal Bureau of Investigation; Department of Legislative Services

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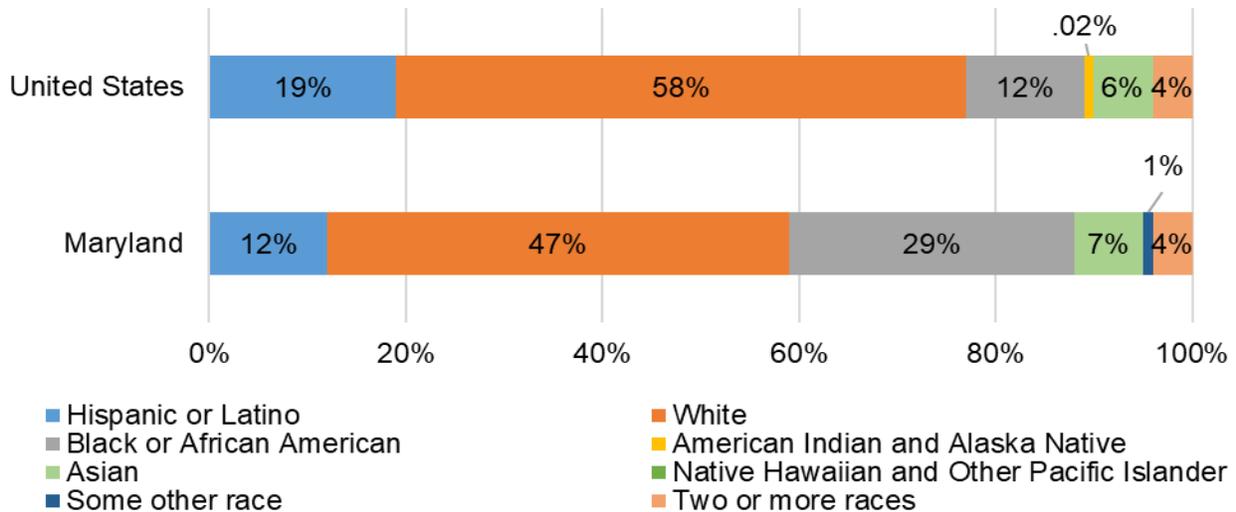
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% 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% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.