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DEFEND EDUCATE EMPOWER

March 3, 2020

Hand Delivery

Luke H. Clippinger, Chair
Vanessa E. Atterbeary, Vice Chair
House Judiciary Committee
Maryland House of Delegates
Room 101
House Office Building
Annapolis, Maryland 21401

> RE: House Bill 1251 – Attorney General – Independent Investigation of Law
> Enforcement–Involved Death **– Support with Amendments**

Dear Chairperson Clippinger and Vice Chair Atterbeary:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), [1] we appreciate the opportunity to submit written testimony concerning House Bill (H.B.) 1251, which would allow the Maryland Attorney General (MD-AG) to conduct an independent investigation of an individual's death during an encounter with or while in the custody of a police officer. LDF supports H.B. 1251 and urge amendments to the bill that will: 1) allow the MD-AG to investigate and prosecute police-involved deaths; 2) ensure investigations and prosecutions are external and independent; and 4) require detailed public reporting of investigative outcomes.

I.   H.B. 1251 Must Give the MD-AG the Authority to both Investigate and Prosecute Officers Involved in an Individual's Death

In Maryland and nationwide, family members of persons killed by police and policymakers have demanded independent investigations and prosecutions of the officers involved to address the reality or perception that law enforcement agencies are unable to investigate themselves.[2] For

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[1] Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education. economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. Throughout its history, LDF has consistently worked to promote unbiased and accountable policing policies and practices at the national, state, and local levels. For the past five years, we have partnered with advocates, activists, and attorneys to reform unlawful policing practices in Baltimore City by joining the community call for a federal investigation of the police department, advocating for fair provisions in the police union contract, and calling for more transparency regarding police misconduct complaints.

[2] *See, e.g.,* Alessia Grunberger, *Police-Involved Deaths to Get Independent Investigations*, PATCH NETWORK, May 19, 2019 (announcing a local law in Montgomery County, MD requiring an independent investigation of police-involve deaths), https://patch.com/maryland/silverspring/police-involved-deaths-will-now-get-independent-investigations.

example, after prosecutors failed to charge the officers involved in the deaths of Michael Bell, Jr. in Kenosha, Wisconsin in 2004 and the Eric Garner in Staten Island, New York in 2014, family members and activists demanded changes in state laws and policies requiring the independent investigation and prosecution of officer-involved killings.[3] In Wisconsin, the state legislature passed a law that requires law enforcement agencies to create a written policy mandating the investigation of police-involved deaths by two investigators who are not employed by the same agency as the officer involved in the death.[4] New York State took a different approach. The Governor signed an executive order appointing a special prosecutor through the New York State Attorney General's Office to both investigate and prosecute law enforcement-involved killings.[5]

H.B. 1251 is modeled after the Wisconsin law, but we urge Maryland lawmakers to follow New York's lead by amending H.B. 1251 to allow the MD-AG to both investigate and prosecute officer-involved deaths.

II.   H.B. 1251 Must Ensure Investigations of Police-Involved Deaths Are External and Independent

The federal Final Report of the President's Taskforce on 21st Century Policing encouraged law enforcement agencies to build public trust by ensuring that independent investigations of officer-involved deaths are "external and independent."[6] Here, H.B. 1251 prohibits investigators from being employed by a law enforcement agency in a county where the death occurred. Additionally, the bill provides that any prosecution of an involved officer must be brought in a county other than the county where the death occurred. The bill does not, however, address a scenario in which the death occurs outside of the county where the involved officer is employed. Accordingly, we urge amendments to H.B. 1251 stating that the prosecution of a police-involved death must be brought in the county other than the county in which the death occurred and/or where the involved officer is employed, and investigators must have never been employed by a law enforcement agency in the county where the death occurred or where the involved officer is employed.

Also, H.B. 1251 should explicitly state that the investigator and/or prosecutor must not have any personal or professional conflicts of interest to ensure that the investigations are impartial.

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[3] *See* Morry Gash, *In Wisconsin, a Trial Run for a New Law*, N.Y. TIMES, Mar. 18, 2015, https://www.nytimes.com/2015/03/19/us/in-wisconsin-a-trial-run-for-a-new-law.html; *see also*, Associated Press, *Relatives of Eric Garner, 7 Others Who Died by Police Demand Special Prosecutor*, 4 New York, Apr. 28, 2015. https://www.nbcnewyork.com/news/local/eric-garner-police-chokehold-death-new-york-albany-cuomo-special-prosecutor/1226963/.

[4] WIS. STAT. ANN. 175.47 (2015).

[5] Governor Andrew Cuomo, *A Special Prosecutor to Investigate and Prosecute Matters Relating to the Deaths of Civilians Caused by Law Enforcement Officers,* Executive Order No. 147, July 8, 2015, https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/old-files//EO147.pdf .

[6] *See* THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, Final Report of The President's Task Force on 21st Century Policing, 21 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.
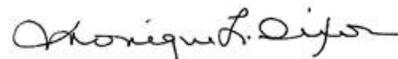
III.   H.B. 1251 Must Provide Detailed Public Reporting Requirements

Section 6–504 of the bill requires the MD-AG to publicly release a report when an investigation does not result in prosecution. We urge Maryland lawmakers to amend this requirement to include specific information that should be included in the report as well as time frames for the release of the reports. At the very least, the report should include: the MD-AG's conclusion as to whether the officer involved in a person's death is criminally culpable; an explanation as to why the attorney general or state's attorney declined to prosecute the case; a report of the outcome of any grand jury proceedings and, to the greatest extent possible, an explanation of that outcome; the circumstances of the officer(s) uses of force,[7] the evidence and witnesses examined during the investigation, and recommendations for systemic or other reforms arising from the investigation.

Additionally, H.B. 1251 should require the MD-AG to release an annual public report that states the county and geographic location of each matter investigated under the law in the prior year; a description of the circumstances of each case; racial, ethnic, age, gender and other demographic information concerning the persons involved or alleged to be involved; information concerning whether a criminal charge or charges were filed against the involved officer or other persons in the police encounter; and the status or outcome with respect to all criminal charges. This report should also include recommendations for systemic or other reforms recommended as a result of such investigations.[8]

Thank you for considering our testimony supporting with amendments H.B. 1251. If you have questions, please do not hesitate to contact us at 202-682-1300.

Sincerely,

Monique Dixon
Deputy Director of Policy and Director of State Advocacy

Katurah Topps
Policy Counsel

cc: House Judiciary Committee members

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[7] *Id.* at 22.

[8] *Id.* at 2 (noting that policies and provisions that mandate independent investigations should "include provisions for the collection of demographic data on all parties involved. All policies and aggregate data should be made publicly available to ensure transparency").