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Via Electronic Delivery

Luke H. Clippinger, Chair
David Moon, Vice Chair
House Judiciary Committee
Maryland House of Delegates
House office Building
6 Bladen St. Room 101
Annapolis, MD 21401

Re: House Bill 1044 – Public Safety Use of Force Incident Reports – **Favorable with Amendment**

Dear Chairperson, Clippinger and Vice Chair Moon:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ we appreciate the opportunity to submit written testimony regarding House Bill (HB) 1044. The measure would repeal and replace Section 3-514 of the Maryland Public Safety Article. It delineates the information that officers' "use of force" incident reports must include as well as annual and quarterly reporting and publishing requirements for law enforcement agencies. LDF strongly supports HB 1044, because the data the bill requires is necessary for the public to evaluate whether officers are complying with the state's use of force standard. This is particularly important to Black Marylanders who are disproportionately stopped and arrested, and likely to be subjected to force in encounters with law enforcement officers.² Additionally, the data would help law enforcement

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. LDF's work to address police violence and misconduct dates back to its inception. *See, Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men accused of raping a white woman in 1949; the men were brutally beaten by sheriff's deputies in an attempt to force confessions). Today, LDF's Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to transform public safety systems, advance police accountability, and prevent and remedy the impact of racial bias in public safety.

² *See e.g.* U.S. Dep't of Justice C.R. Div., *Investigation of the Baltimore City Police Department* 48-52, 61 (2016) ("We found that African Americans accounted for roughly 88 percent of the subjects of non-deadly force used by BPD officers in a random sample of over 800 cases we reviewed."); Justice Policy Institute, *Rethinking Approaches*

agencies to identify and evaluate the way officers use force, with the goal of furthering both officers' and the public's safety through reducing the use of force.

I. H.B. 1044 Would Improve Current Law Enforcement Use of Force Data Collection and Reporting and Promote Public Safety

HB 1044 would amend Public Safety Article 3-514, developed by the bipartisan Public Safety & Policing Work Group formed in response to the tragic 2015 killing of Freddie Gray by Baltimore Police officers.³ The statute required law enforcement agencies to report use of force incidents that occur while officers are on duty but did not delineate the information required within an incident report or that incident information be publicly available.⁴ In 2021, that statute was amended to require that law enforcement agencies report "use of force" complaints made against officers annually to the Maryland Police Training and Standards Commission ("MPTSC"). The MPTSC is then required to post the aggregated data for all reporting agencies on its public website and to submit a report to the General Assembly. Under the current statute, agencies that do not submit timely annual use of force complaint reports may not receive grant funds from the Governor's Office of Crime Prevention, Youth and Victims Services.

HB 1044 would improve upon Section 3-514 of the Maryland Public Safety Article by requiring that "use of force" incident reporting include the following demographic information of the subject of force and the law enforcement officer: race, ethnicity, gender, age and disability. Additionally, the incident report would include: the type of force used, the law enforcement officer's justification for force, what charges an individual is under arrest for, if any, and if the law enforcement officer or subject of force requested medical care. The bill aims to add annual reporting on "use of force" incidents, and on a quarterly basis, report whether a law enforcement agency determined that the "use of force" incidents were justified based on a department's policies and state law. Incident and justification reporting must be made available on an agency's public website.

We suggest amending the requirement that an incident report include whether an officer or person "requested" medical care to also require documentation of whether an officer or person "received" medical care. This would account for any instances where law enforcement officers or persons subjected to force may not be able to request medical care needed, but they receive it without requesting it.

Commented [LCB1]: We want to have them report both, correct??

Commented [PC2R1]: In practice, people aren't going to request care from an officer after they've been beaten by the officer. If the officers don't transfer them of their own volition, the care happens upon admission to a jail, when the jail won't admit the person if they have a physical injury, until they've been treated. I think it's fine to ask for both to be documented, as long as it's an "or" (requested or received).

to Over Incarceration of Black Young Adults in Maryland 3 (2019) ("As recently as July 2018, more than 70 percent of Maryland's prison population was black, compared to 31 percent of the state population.").

³ *Maryland General Assembly – Public Safety & Policing Work Group*, MARYLAND GENERAL ASSEMBLY (January 12, 2018), <https://msa.maryland.gov/msa/mdmanual/07leg/html/com/defunct/spublicsafety.html>.

⁴ *Public Safety and Policing Workgroup – Recommendations*, ch. 519 (2016) (codified in scattered sections of MD. CODE ANN.). .

A. Use of Force Data Transparency Can Help Refine Practices and Pinpoint Policy Reforms in the Interest of Public Safety

The proposed amendments to Section 3-514 of the Maryland Public Safety Article would help provide a clearer image of how law enforcement officers use force throughout the state. The data collected under HB 1044 would help determine the efficacy of Maryland's 2021 law enforcement use of force standard⁵ by evaluating whether officers and agencies are implementing the law as intended and will shed light on whether further policy or regulation is needed to prevent excessive or illegal force.

The transparency created by HB 1044 would fill an important gap in public knowledge about law enforcement officers' uses of force in Maryland. Despite federal efforts to collect use of force data via the FBI's National Use of Force Data Collection Program⁶ and the 2014 reauthorization of Death in Custody Reporting Act,⁷ the public lacks knowledge, because no data is available, about the circumstances in which force is used by law enforcement officers in Maryland. This information is particularly important to Maryland's Black communities given the disproportionate numbers of Black people in Maryland who are subjected to force during police interactions and who become system-involved.⁸ For example, a DOJ investigation of Baltimore found that Black people "in Baltimore were charged with one offense for every 1.4 residents, while individuals of other races were charged with only one offense per 5.1 residents."⁹ Creating transparency into the circumstances under which officers use force against Black Marylanders, and all Marylanders, is critical to promoting public safety. HB 1044 will help to close the gap in public reporting about officers' use of force.

Furthermore, data produced pursuant to HB 1044 would also help law enforcement agencies understand patterns and trends related to officers' use force, which each agency would then be able to evaluate.

⁵ MD. CODE ANN., Pub. Safety § 3-524.

⁶ *Use-of-force*, FBI, <https://www.fbi.gov/services/cjis/ucr/use-of-force> (last visited February 24, 2022).

⁷ Death in Custody Reporting Act of 2013, 34 U.S.C. § 60105.

⁸ *See supra* note 2.

⁹ U.S. Dep't of Justice C.R. Div., *Investigation of the Baltimore City Police Department* 55 (2016)

B. Through HB 1044, Maryland Can Lead on Law Enforcement Use of Force Reporting

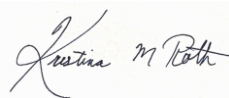
Several states only mandate reporting of use of force incidents that result in death, serious bodily injury, or the discharge of a firearm.¹⁰ While these categories may fit within the FBI National Use of Force Data Collection Program, they leave out many other occasions where officers may use force in an excessive manner, and which warrant close examination and review. Currently, Arizona,¹¹ California,¹² Colorado,¹³ Oregon¹⁴ and Washington¹⁵ require regular or annual public reporting for law enforcement use of force incidents similar to components of HB 1044.

The broader collection of data required by HB 1044 would make Maryland a leader in the collection and publication of the data regarding officers' use and will assist the State and the general public in efforts to understand the impact of reforms seeking to reduce the use of force.

Maryland should pass HB 1044 to add additional incident reporting details and require publication of the data to current reporting requirements for law enforcement use of force. We urge the House Judiciary Committee to favorably report this bill, with our recommended amendment.

Thank you for considering our testimony. If you have any questions, please do not hesitate to contact us via email at kroth@naacpldf.org.

Sincerely yours,



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Project

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¹⁰ See *supra* notes 10-13. Arizona, Colorado, California report data on the use of force that results in death, serious bodily injury, and the discharge of a firearm or a shooting. Oregon's use of force data collection is limited to the use of deadly physical force only.

¹¹ ARIZ. REV. STAT. ANN. § 38-1117.

¹² Cal. Code § 12525.2.

¹³ Colo. Rev. Stat. § 24-31-903.

¹⁴ OR. REV. STAT. § 181A.790.

¹⁵ WASH. REV. CODE §§ 10.118.030, 10.118.040.