

Testimony of Jonathan M. Smith

**Before the Maryland State Senate Committee on Judicial Proceedings
In Support of Senate Bill 0658 – Pattern and Practice Authority for Civil Rights
Violations**

February 28, 2023

Law enforcement agencies and correctional institutions play a critical role in the creation of public safety. Officials in these institutions are given extraordinary powers that are unique in our Constitutional form of government – the power to use force, to detain individuals and to deprive them of their liberty. These powers are not unlimited and must be exercised within the boundaries of Maryland laws and the State and federal Constitutions. When our criminal justice agencies operate outside of the law – when there are patterns and practices of conduct that do not comply with the Constitution – public safety and the legitimacy of these institutions are undermined.

Pattern and practice cases pursued by the State Attorney General are one effective tool to ensure that the policies, training, supervision, and accountability systems of police and correctional agencies are designed to ensure that misconduct is avoided, and when it occurs, that it is identified and addressed. I strongly support Senate Bill 0658 to give the Maryland Attorney General pattern and practice authority.

I am Jonathan M. Smith. I am the Executive Director of the Washington Lawyers Committee for Civil Rights and Urban Affairs. From 2010 through 2015, I served as the Chief of the Special Litigation Section of the Civil Rights Division of the United States Department of Justice. The Section is responsible for the enforcement of, among other laws, the law enforcement provisions of the Omnibus Violent Crime Control and Law Enforcement Act, 42 U.S.C. 14141 (recodified 34 U.S.C. 12601) and the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. 1997, et. Seq. Thus, the Special Litigation Section has the authority to address patterns and practices of the violation of the Constitution and federal laws with regard to a broad range of criminal justice institutions – police, prisons, jails, and juvenile justice systems.

Since leaving the Department of Justice, I have worked as a consultant to the Illinois Attorney General regarding the State's negotiation of its consent decree with the City of Chicago and on the investigation of the Joliet, Illinois Police Department. I am a subject matter expert to the Minnesota Department of Human Rights in its consent decree negotiations with Minneapolis. I was recently made a member of the Baltimore Police Department monitoring team.

The State Attorney General, as the highest law enforcement official in the State, is ideally positioned to ensure that criminal justice officials operate within the bounds of

their authority. The ability of the State Attorney General to bring cases is an essential, powerful, but reasonably limited and measured tool.

Pattern and practice authority is designed to:

Address wide spread problems that have significant community impact. Pattern and practice authority is effective and appropriate where there is a deep seated and long-standing problem in a police department or correctional institution that cannot be addressed by local leadership alone. The authority is not used for a single incident or event, but instead problems that go to core operational deficiencies that lead to routine or regular violations of residents' rights.

Result in improved policy, training, and internal accountability. I have been involved in the investigation of patterns and practices in more than 30 police departments around the nation. In every case in which we have found a pattern or practice, at core was a failed system of internal accountability. Accountability starts with clear policy guidance, adequate training, and strong supervision, but also requires data collection and internal structures of review and corrective action.

A pattern and practice case is a uniquely effective mechanism to address systemic issues. Any remedy is based on a thorough investigation. The process provides transparency to the jurisdiction and its residents, and can create durable remedies. When it works best, the process creates a collaboration between the agency, the community, and the Attorney General.

Increase trust and legitimacy. For law enforcement to play its role in the creation of public safety, it must have the trust of the community. Pattern and practice cases play an important role in rebuilding trust that is broken by repeated incidents of misconduct. Trust is built over time through engagement, transparency, accountability, and measurable outcomes. The independence of the Attorney General, and where necessary the court and a monitor, provide assurance to communities that change is meaningful and long lasting. We have seen in cities as diverse as Los Angeles, Seattle, New Orleans, and East Haven, Connecticut that community confidence in law enforcement rises through the consent decree process.

Protect the public fisc through the reduction in litigation. A single damages case for police misconduct or arising out of prison conditions can result in millions of dollars paid out of a local government's budget.¹ Proactive measures through a pattern and

¹ Alexander, Rich & Thacker, The hidden billion dollar cost of repeated police misconduct, Washington Post (March 9, 2022) [Repeated police misconduct cost taxpayers \\$1.5 billion in settlements - Washington Post](#); Thomson-Devaux & Bronner, Police Misconduct Costs Cities Millions Every Year. But that is

practice case reduce litigation by imposing measures that will decrease the likelihood that officers will engage in conduct that deprive residents of their rights.

Importantly, they uphold the community's values that the law applies equally to everyone regardless of position. In the protests that followed the murder of George Floyd, one of the constant themes was that communities experienced two standards of accountability – a harsh and unforgiving system that is applied to residents of color and persons who are low-income and second system that protects law enforcement and correctional officials from and consequences regardless of their actions. In every pattern and practice case that I have worked on, amongst the most critical outcomes was the strengthening of internal affairs and civilian oversight. These measures give communities a greater sense of fairness and that the rules apply equally to all.

While the effect of these cases is great, it is important to underscore the very limited nature of this remedy. The powers that will be given to the Attorney General will be to seek compliance with the laws and Constitution of the State – nothing more. For a remedy to be imposed it must be necessary to correct a systemic problem that leads to repeated violations of residents' rights. In many cases this might require a detailed consent decree or settlement agreement, but that is because it is essential to be effective that the remedy be implemented in a staged fashion, that the concerns be addressed throughout the institutions systems, and that the remedy be in place long enough to change the culture of the agency. Policy deficiencies must be addressed before training can be conducted; training completed before officers can be held to the policy standards; and accountability systems fixed before they can function fairly and effectively. Data must be collected and analyzed to ensure that change is effective.

More than ten state attorneys general currently have pattern and practice authority and that number is likely to grow after this legislative session. I am most familiar with the work in Illinois, Minnesota, and Colorado. In each of those states, the attorney general has conducted investigations and has negotiated or is in the process of negotiating a consent decree. These cases have addressed critical systemic deficiencies including patterns of serious, and some cases lethal, excessive force and racial and gender bias in enforcement practices. The work of these attorneys general go to the very core of law enforcement functions and effectiveness.

I have seen these cases work effectively at the federal and the state level. Important change can be achieved through this process. I urge your support for this legislation.

Where Accountability Ends., Marshall Project (February 22, 2021). [Police Misconduct Costs Cities Millions Every Year. But That's Where The Accountability Ends. | The Marshall Project.](#)