



Testimony for the House Judiciary Committee

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HB0771 Human Relations – Patterns and Practices of Civil Rights Violations – Remedies

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FAVORABLE WITH AMENDMENTS

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The ACLU of Maryland urges a favorable report on HB 0771, which would authorize the Maryland Attorney General to investigate and initiate civil actions to remedy unlawful patterns or practices of misconduct committed by law enforcement officials, state behavioral health facilities, correctional facilities, immigration detention facilities, the Division of Correction, the Division of Parole and Probation, and the Department of Juvenile Services. We would like to offer a friendly amendment to section 20-1041 (b) (2) on page 3 of the bill, discussed further below.

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Black and Brown people shoulder the brunt of harmful police practices in Maryland and across the country. In the wake of this now often-broadcasted police violence, a host of states have authorized pattern or practice authority for the State Attorney General including California, Colorado, Illinois, Massachusetts, Nevada, New York, Oregon, Rhode Island, Virginia, and Washington. And many of these statutes are modeled on the federal statute giving the United States Attorney General authority to investigate and remedy patterns and practices of misconduct, passed in the wake of the assault on Rodney King. 34 U.S.C. 12601; <https://www.justice.gov/crt/conduct-law-enforcement-agencies>.

The General Assembly knows Maryland needs strong police oversight too. After the killing of Anton Black, the General Assembly passed Anton's law requiring public disclosure of police misconduct records. More can be done to minimize police misconduct and end harmful police practices fostering the distrust between the community and the officers meant to protect and serve. The ACLU of Maryland supports HB 0771 with an amendment because it allows the Attorney General to investigate issues in typically removed from public oversight like jails and detention centers, because it complements our independent oversight efforts,

and because it can help challenge institutional practices and failures linked to police violence and misconduct.

HB 0771 allows the Attorney General to investigate issues into law enforcement agencies, jails, and detention centers if provided with reasonable cause.

The ACLU of Maryland has long fought for increased community oversight of law enforcement agencies and holding facilities. HB 0771 allows community members to file reports providing the reasonable cause necessary for the Attorney General to conduct investigations into possible patterns and practices of misconduct at these facilities.

Recent reports on conditions at the Baltimore City Jail are just one example of potential reasonable cause showings that would likely give rise to investigation by the Attorney General under HB 0771. After years of litigation and settlement negotiations, a visit to the Baltimore City Jail in 2022 led to a detailed report¹ listing serious living condition issues, attributable in part to the pandemic leading to lack of inspections, and in part to the self-reported compliance by jail officials. Some of the cited problems include extremely harsh living conditions in the Inpatient Mental Health Unit, profound problems with the infirmary's accessibility for people with disabilities, the quality of medical care for patients, shortages of health care staff, dangerous and inappropriate insulin administration practices, delays in outside specialty medical care, hygiene problems in living units and more. HB 0771 would allow for pervasive issues like this to be reported to and investigated by the Attorney General.

HB 0771 will help challenge institutional practices and failures linked to police violence and misconduct.

A recent expert report² highlights use of force and misconduct issues in the Prince George's County Police Department, and the department's repeated failure to hold officers accountable for their actions. The expert's report detailed PG County's repeated failure to investigate complaints of racial profiling and pervasive discrimination in Prince George's County's disciplinary processes. The report emphasized not only Prince George's County's failure to initially investigate claims but the improper handling of complaints and investigations into the claims as well. The report noted that at least seventeen Black and Brown Prince George's County officers experienced retaliation following their filing of complaints that white officers engaged in racist, discriminatory, or other unethical conduct.

¹ *Duvall v. Hogan*, Civil Action No. ELH-94-2541 (D. Md. May. 20, 2021), <https://www.aclu.org/wp-content/uploads/legal-documents/774-1-Redacted-Plaintiffs-Tour-Report-2022.10.20.pdf>

² *Hispanic National Law Enforcement Association NCR et al. v. Prince George's County et al.*, District of Maryland No. 18-cv-3821, Expert Report of Michael E. Graham, Aug. 28, 2020

The report further highlights both the lack of discipline for officers who made racist statements or applied unnecessary amounts of force and the ways high-level officers conspired with the Fraternal Order of Police to shield fellow officers and conclude their uses of force were justified. HB 0771 will support oversight and bring about more effective processes in entire departments like Prince George's County Police Department and facilities like the Baltimore City jail.

We would like to offer a friendly amendment to strike section 20-1041 (b) (2) of HB 0771 because as drafted, the language goes beyond codifying an exclusionary rule required by 5th Amendment, and is instead unnecessarily overbroad in its application to any person who provides evidence. The language of this section could instead be amended to "Information obtained under such a subpoena is not admissible in a later criminal proceeding if admission would violate the accused's constitutional right against self-incrimination."

HB 0771 may not be able to remedy the bias that leads to racial profiling, but this legislation makes strides toward addressing problematic policing practices that leave Black and Brown communities incredibly vulnerable to police violence and misconduct. We support HB 0771 with an amendment and urge the General Assembly to continue legislating with community-centered, racial justice-related policy at the forefront, until the pattern of Black and Brown police-involved deaths and the practice of killing and brutalization is no more.

For these reasons, the ACLU of Maryland urges a favorable report of HB 0771 with amendments.