

March 1, 2023

Submitted Electronically

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 771 – Human Relations – Patterns and Practices of Civil Rights Violations – Remedies – 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 in support of House Bill 771 (HB 771), the Patterns and Practices of Civil Rights Violations – Remedies Act. HB 771 would authorize the Maryland Attorney General, upon a reasonable belief that a law enforcement agency has engaged in a pattern or practice of misconduct that violates the civil rights of people in Maryland, to initiate an investigation and bring civil suit to remedy any civil rights violations. In pursuit of its investigation, the Attorney General may subpoena witnesses and compel the production of documents. For the reasons outlined below, LDF submits testimony in support of HB 771.

I. Black Marylanders are Disproportionately Impacted by Police Brutality and Independent Investigations by the Attorney General can Help Remedy this Abuse and Deter Future Violations of Maryland Residents' Civil Rights

Maryland's Black residents are disproportionately policed and more likely to be victims of police violence. In Maryland, Black residents make up just 31.4% of the population whereas white residents make up 57.8% of the population.² However, from 2013 to today, based on available data,

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, e.g., Shepherd v. Florida*, 341 U.S. 50 (1951) (in reversing the wrongful interracial rape convictions of Black men who 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 QuickFacts, Maryland (last accessed Feb. 27, 2023), <https://www.census.gov/quickfacts/MD>.

Maryland law enforcement officers have killed 177 people – 61% were Black victims while 26% were white victims.³ In 2022 alone, Black Marylanders made up 60% of people fatally shot by police.⁴

Black residents are also disproportionately subjected to non-fatal uses of force. Montgomery County’s Office of Legislative Oversight’s July 2020 report noted that in 2018, while Black residents made up 18% of the county’s population, Black residents were subject to 55% of all use of force incidents.⁵ Similarly, in 2017, 44% of all arrests in the county were of Black residents.⁶ Additionally, in the city of Baltimore, between 2015 and 2019, where 63% of residents are Black, 90% of all police use of force incidents were against Black people whereas just 7.3% of incidents were against white people.⁷

There is currently limited recourse for Marylanders when officers systemically act unlawfully. For example, Marylanders may file civil suit pursuant to 42 U.S.C. § 1983, which provides for a private right of action against law enforcement officers who violate an individual’s civil rights. However, such a suit must be brought by and using the resources of the individual whose civil rights were violated against the officer who violated the civil right and would not permit for the wide examination of a law enforcement agency for systemic unlawful actions.

Additionally, while the U.S. Department of Justice (DOJ) conducts pattern or practice investigations of local law enforcement agencies, federal intervention is rare, and is often focused on the most egregious systemically unlawful acts. Furthermore, the ability of DOJ to intervene depends upon its varying priorities and investigatory resources that are spread across the country.⁸ Marylanders should not have to wait for federal power to enforce civil rights and remedy harm caused by local and

³ Maryland, <https://mappingpoliceviolence.org/?year=2022&location=Maryland&race=Black+people> (last visited Feb. 27, 2023).

⁴ Wash. Post, Fatal Force (last updated Jan. 25 2023) <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (selecting for deaths in Maryland for 2022). The Governor’s Office of Crime Prevention, Youth, and Victim Services 2020 report on deaths involving law enforcement in 2020 concluded that 15 civilian deaths were homicides by law enforcement officers - 46.7% were Black victims while 33.3% were white victims. In contrast, 31.1% of Maryland’s population is Black while 58.5% of Maryland’s population is white. See Governor’s Office of Crime Prevention, Youth, and Victim Services, Sixth Report to the State of Maryland – Deaths Involving a Law Enforcement Officer (June 30, 2021), http://goccp.maryland.gov/wp-content/uploads/PS-%C2%A7-3-507e_GOCOPYVS-2020-Deaths-Involving-a-Law-Enforcement-Officer-MSAR-12665.pdf; Jasmon Bailey, *Maryland General Assembly 2021 Session: Racial and Equity Impact Note*, Dept. of Leg. Services (Mar. 2, 2021), <https://mgaleg.maryland.gov/pubs/BudgetFiscal/2021RS-Maryland%20Police%20Reform%20Proposals.pdf>.

⁵ Elaine Bonner-Tompkins & Natalia Carrizosa, *Local Policing Data and Best Practices*, Office of Leg. Oversight Montgomery County, Maryland 65 (July 21, 2020), <https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/OLORReport2020-9.pdf>.

⁶ *Id.*

⁷ AMERICAN CIVIL LIBERTIES UNION OF MARYLAND, CHASING JUSTICE: ADDRESSING POLICE VIOLENCE AND CORRUPTION IN MARYLAND, 15 (Jan. 2019), <https://www.aclu-md.org/en/publications/chasing-justice-addressing-police-violence-and-corruption-maryland>.

⁸ Two examples of federal investigations are the 2004 Memorandum of Agreement with the Prince George’s County Police Department and the 2017 federal consent decree with the Baltimore Police Department. See Memorandum of Agreement Between United States Department of Justice and Prince George’s County, Maryland and The Prince George’s County Police Department (Jan. 22, 2004), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/pg_memo_agree.pdf; Consent Decree, *United States of America v. Police Department of Baltimore City, et. al.*, (Jan. 12, 2017), https://static1.squarespace.com/static/59db8644e45a7c08738ca2f1/t/59db9ddf197aea9a587ac43/1507565027137/bpd_decree_1-12-17.pdf.

state law enforcement. By authorizing Maryland's Attorney General to conduct pattern or practice investigations, Maryland equips the Attorney General to conduct investigations and file suits without federal intervention, better protecting Maryland citizens and providing a state-based avenue for addressing law enforcement agencies engaged in long-standing or systemic violations.

II. House Bill 771 Builds Upon Authorities Previously Granted to the Attorney General and Positions Maryland to Join Other States which have Granted Pattern and Practice Investigatory Authority to their Attorney Generals

In 2021, Maryland rightly authorized the Attorney General to conduct independent investigations of fatal uses of force by law enforcement officers to determine individual wrongdoing and issue reports to State's Attorney's Offices for local prosecutors to make the decision of whether to prosecute a case.⁹ While the authority granted to the Attorney General in 2021 was an important step, it is limited to the investigation of police-involved incidents that result or are likely to result in the death of civilians. The Attorney General's office opened 7 investigations in 2021, 20 investigations in 2022, and 2 in 2023.¹⁰ None have yet led to a prosecution. There is no state accountability mechanism for law enforcement agencies whose officers systematically act unlawfully, or in the wide variety of unlawful conduct that does not carry a risk of death, to prevent such conduct from recurring. Maryland should now expand authority granted to the Attorney General to conduct independent civil investigations of law enforcement agencies to ferret out and cure systemic violations of Marylanders' civil rights.

Virginia, Illinois, California, Colorado, and Nevada have laws that permit their respective Attorney Generals to investigate law enforcement agencies for widespread unlawful conduct such as excessive force, or discriminatory stops, searches, and arrests.¹¹ These laws have provided an additional mechanism for law enforcement accountability in these states. Maryland should join the example provided by these States and grant the Attorney General this important authority to address systemic abuse by law enforcement agencies.

III. Any Investigations and Remedies Must be Informed by and Work for the Communities Impacted to Result in Greater Public Safety in Maryland

HB 771 rightly permits the Attorney General to file suit to address systemic unlawful conduct found pursuant to investigations permitted by the bill. While investigations of law enforcement agencies may provide accountability for systemic unlawful conduct, they will not result in the broader changes to our public safety systems that are so sorely needed to dramatically reduce reliance on law

⁹ See S.B. 600, 444th Leg., Maryland Police Accountability Act of 2021 - Surplus Military Equipment and Investigation of Deaths Caused by Police Officers (Md. 2021) <https://mgaleg.maryland.gov/mgaweb/site/Legislation/Details/sb0600?ys=2021RS&search=True>.

¹⁰ 2023 Investigations, Maryland Office of the Attorney General, Independent Investigations Division, (last updated Feb. 10, 2023), https://www.marylandattorneygeneral.gov/Pages/IID/2023_Investigations.aspx.

¹¹ Kenny Lo, *The Facts on Pattern-or-Practice Investigations*, CENTER FOR AMERICAN PROGRESS 2 (July 8, 2021), <https://www.americanprogress.org/wp-content/uploads/2021/07/PatternPractice-factsheet1.pdf>.

enforcement, develop alternative responders, implement restorative justice solutions to disputes, and make the individual and community investments that bring about sustainable safety.¹²

In conducting the investigations authorized under HB 771, it is imperative that the Attorney General work in concert with community members, particularly those whose rights have been violated by law enforcement, to ensure proposed remedies are consistent with the overall public safety goals of impacted communities. LDF urges all court ordered agreements reached pursuant to investigations by the Attorney General authorized by this bill to reflect the public safety goals of impacted community members, including reducing reliance on law enforcement and investing in alternative responders, restorative justice practices, and investments in individuals and communities to reduce police interactions.

IV. Proposed Amendments to House Bill 771 will Help Avoid the Appearance of a Conflict of Interest

While the Attorney General is positioned to investigate local entities, there may be an appearance of a conflict of interest to investigate state entities. To avoid this appearance of a conflict of interest, the Attorney General has submitted proposed amendments to HB 771 which provide for the appointment of a State Agency Accountability Counsel. We believe the proposed amendments will provide sufficient independence from the Attorney General to investigate state entities and urge the General Assembly to consider the amendments offered.

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

Sincerely yours,



Allen Liu
Policy Counsel

Puneet Cheema
Manager, Justice in Public Safety Project

Lisa Cylar Barrett
Director, Policy and Director,
Washington D.C. Office

¹² NAACP Legal Defense and Educational Fund, Inc., Justice in Public Safety Project, Framework for Public Safety (calling for a corps of unarmed civilian responders to respond to routine traffic infractions and mental and behavioral health crisis incidents and increased investments in community resources such as community-based violence intervention programs and programs that improve social determinants of health, such as housing, infrastructure, economic security, and access to health care), <https://www.naacpldf.org/framework-for-public-safety/>.