

ANTHONY G. BROWN
Attorney General



CANDACE McLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
443-681-1060

WRITER'S DIRECT DIAL NO.
410-576-7070

February 28, 2023

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, Maryland 21401

*Re: SB 658 – Human Relations – Patterns and Practices of Civil Rights
Violations – Remedies*

Dear Chair Smith:

I urge the Judicial Proceedings Committee to adopt sponsor amendments and then favorably report Senate Bill 658.

Senate Bill 658 would give the Office of the Attorney General, or, in the case of state entities, the State Agency Accountability Counsel, authority to investigate and remedy patterns or practices of misconduct by law enforcement and others responsible for the custody or supervision of civilians. This latter category includes correctional facilities, behavioral health facilities, immigration detention facilities, juvenile facilities, and parole and probation services.

Pattern or practice investigations target systemic misconduct by law enforcement and others in the criminal justice system. They uncover widespread abuses within an agency—such as discrimination or the consistent use of excessive force—and create change by requiring reforms to agency policies, processes, and culture. The implementation of these reforms is then monitored to ensure agencies actually follow through on their commitments. Pattern or practice investigations are an important complement to existing law enforcement accountability tools. Most of the current tools in Maryland address past individual instances of misconduct. Pattern or practice investigations, on the other hand, look for widespread trends and put in place reforms to reduce and eliminate misconduct going forward. The bill does not authorize private enforcement or create a private cause of action for a private remedy.

Senate Bill 658 would add Maryland to the growing number of states that use pattern or practice investigations as a key part of their police reform efforts. The United States Department of Justice first obtained pattern or practice authority in 1994, following the brutal beating of

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

Rodney King. In 2000, California became the first state to obtain pattern or practice authority. Since 2020, in the wake of the killings of George Floyd, Breonna Taylor, and far too many others, at least nine more states' attorneys general have obtained authority to conduct pattern or practice investigations: Colorado, Illinois, Massachusetts, Nevada, New York, Oregon, Rhode Island, Virginia, and Washington.

Senate Bill 658 is also consistent with the federal George Floyd Justice in Policing Act of 2021, which I twice helped pass in the U.S. House of Representatives. The bill would have, among other things, provided states grant funding to conduct pattern or practice investigations. The Act recognized that state pattern or practice authority, in addition to federal authority, is essential to meaningfully and proactively addressing police misconduct. The United States Department of Justice ("DOJ") lacks the resources to address misconduct at each of the thousands of law enforcement agencies nationwide. And DOJ's exercise of its authority ebbs and flows with administrations. While the Obama and Biden administrations have used their authority proactively, the Trump administration initiated just one pattern or practice investigation of a police department in four years. Granting the Office of the Attorney General pattern or practice authority will ensure that such investigations are always available as a tool to protect Marylanders, and that these investigations are led by officials who understand the needs of and are accountable to the people of this State.

Notably, state-level pattern or practice investigations are often more targeted and of shorter duration than those at the federal level. State investigations often target specific units or policies within an agency, not the agency as a whole. This allows for investigations that are more limited in scope and time, and which therefore deliver practical benefits to communities more efficiently.

Finally, and perhaps most importantly, pattern or practice investigations work. They have a demonstrated track record of increasing public safety, decreasing violent crime, and leading to higher job satisfaction among officers. A Harvard study found that after the Los Angeles Police Department entered a consent decree, there was a positive effect on both the quantity and quality of police activity.¹ The LAPD used force less often, crime declined, relations between the community and police improved, and there was less attrition among officers.² Likewise, a Center for American Progress analysis found that violent crime decreased in all ten jurisdictions studied that had entered reform agreements following pattern or practice investigations.³ These reductions in violent crime were particularly consistent as time went on and reforms were more fully implemented.⁴ And a University of Pennsylvania study found a 29% decrease in officer-involved fatalities when pattern or practice investigations led to well-monitored consent decrees.⁵

¹ Christopher Stone, Todd Foglesong, & Christine M. Cole, *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD*, HARV. KENNEDY SCH. i, 22, 31–32 (May 2009) (available at <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/12/Harvard-LAPD-Study.pdf>).

² *Id.* at i–ii, 6–8, 15, 32–38, 44–53.

³ Kenny Lo and Sarah Figgatt, *Violent Crime Rates Declined in 10 Jurisdictions Following Comprehensive Police Reform*, CTR. FOR AM. PROGRESS (Nov. 16, 2020), <https://www.americanprogress.org/article/violent-crime-rates-declined-10-jurisdictions-following-comprehensive-police-reform/>.

⁴ *See id.*

⁵ *Consent Decrees Can Reduce the Number of Police-Related Killings, But Only When Used Alongside Court-Appointed Monitoring*, THE LONDON SCH. OF ECON. AND POL. SCI. (Mar. 18, 2020),

The empirical evidence consistently shows that pattern or practice investigations improve the safety of the communities in which they occur.

For the foregoing reasons, I urge the adoption of sponsor amendments and a favorable report of SB 658. Thank you.

Sincerely,

Anthony G. Brown

cc: Committee Members

<https://blogs.lse.ac.uk/usappblog/2020/03/18/consent-decrees-can-reduce-the-number-of-police-related-killings-but-only-when-used-alongside-court-appointed-monitoring/> (discussing a paper by Li Sian Goh at the University of Pennsylvania).

Amendments:

- On page 1, strike lines 3 – 9, and insert the following: “FOR the purpose of authorizing the Attorney General or the State Agency Accountability Counsel to investigate and initiate a civil action to remedy certain unlawful patterns or practices committed by certain government officials; providing that the Attorney General or the State Agency Accountability Counsel shall have subpoena power to support certain investigations; providing that the Attorney General or the State Agency Accountability Counsel may obtain equitable and declaratory relief to eliminate the pattern or practice of certain conduct; and generally relating to remedies for civil rights violations committed by certain government officials.”
- On page 2, line 7, after “(D)” insert “‘DEPARTMENT OF JUVENILE SERVICES’ HAS THE MEANING STATED IN § 9-201 OF THE HUMAN SERVICES ARTICLE AND INCLUDES THE JUVENILE DETENTION FACILITIES SET FORTH IN § 9-226 OF THAT ARTICLE.” And renumber the remaining subsections accordingly.
- On page 2, line 15 after renumbered “(I)” insert “‘LOCAL CORRECTIONAL FACILITY’ HAS THE MEANING STATED IN § 1—101 OF THE CORRECTIONAL SERVICES ARTICLE.”
- On page 2, line 17, insert “(K) ‘STATE AGENCY ACCOUNTABILITY COUNSEL’ MEANS THE INDIVIDUAL APPOINTED PURSUANT TO § 20[----] OF THIS ARTICLE.”
- On page 2, line 22, after “CORRECTIONAL” INSERT “OR LOCAL CORRECTIONAL” before “FACILITY”
- On page 2, line 28, after “(A)” strike “HAS OCCURRED, THE ATTORNEY GENERAL MAY:” and insert “HAS OCCURRED AT A COUNTY OR MUNICIPAL ENTITY COVERED BY SUBSECTION (A), THE ATTORNEY GENERAL MAY TAKE ACTION AS SET FORTH IN SUBSECTION (C)”
- On page 2, line 29, insert “(2) IF THE STATE AGENCY ACCOUNTABILITY COUNSEL HAS REASONABLE CAUSE TO BELIEVE THAT A VIOLATION OF SUBSECTION (A) HAS OCCURRED AT A STATE ENTITY COVERED BY SUBSECTION (A), THE STATE AGENCY ACCOUNTABILITY COUNSEL MAY TAKE ACTION SET FORTH IN SUBSECTION (C).”
- On page 2, line 30, insert “(C)(1) IN EXERCISING THEIR AUTHORITY UNDER SUBSECTION (B), THE ATTORNEY GENERAL AND THE STATE AGENCY ACCOUNTABILITY COUNSEL MAY:” before “(I) 1. SUBPOENA WITNESSES; 2. ADMINISTER OATHS; 3. EXAMINE INDIVIDUALS UNDER OATH; AND 4. COMPEL PRODUCTION OR RECORDS, BOOKS, PAPERS, CONTRACTS, AND OTHER DOCUMENTS; AND”On page 3, line 9, after “EVIDENCE” insert “UNLESS THE INFORMATION IS ALSO OBTAINED BY A METHOD INDEPENDENT OF THE SUBPOENA”
- On page 3, line 10, insert “§ 20[----] OFFICE OF STATE AGENCY ACCOUNTABILITY COUNSEL
(A) THERE IS AN OFFICE OF STATE AGENCY ACCOUNTABILITY

COUNSEL.

(B) WITH THE ADVICE AND CONSENT OF THE SENATE, THE ATTORNEY GENERAL SHALL APPOINT THE STATE AGENCY ACCOUNTABILITY COUNSEL.

(C) (1) THE TERM OF THE STATE AGENCY ACCOUNTABILITY COUNSEL IS 5 YEARS AND BEGINS ON JULY 1.

(2) AT THE END OF A TERM, THE STATE AGENCY ACCOUNTABILITY COUNSEL CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(3) A STATE AGENCY ACCOUNTABILITY COUNSEL WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(D) THE STATE AGENCY ACCOUNTABILITY COUNSEL SHALL HAVE BEEN ADMITTED TO PRACTICE LAW IN THE STATE.

(E) BEFORE TAKING OFFICE, THE STATE AGENCY ACCOUNTABILITY COUNSEL SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND CONSTITUTION.

(F) THE STATE AGENCY ACCOUNTABILITY COUNSEL SHALL DEVOTE FULL TIME AND MAY HIRE NECESSARY STAFF TO CARRY OUT THE DUTIES OF THE OFFICE SET FORTH IN SUBSECTION (A).

(G) THE SALARY OF THE STATE AGENCY ACCOUNTABILITY COUNSEL AND STAFF, AND EXPENSES FOR RENT, EQUIPMENT, SUPPLIES, AND GENERAL OPERATING EXPENSES NECESSARY FOR THE WORK OF THE UNIT SHALL BE AS PROVIDED IN THE STATE BUDGET. THE SALARY OF THE STATE AGENCY ACCOUNTABILITY COUNSEL SHALL NOT BE REDUCED DURING THE COUNSEL'S TERM OF OFFICE.

(H) THE ATTORNEY GENERAL MAY REMOVE THE STATE AGENCY ACCOUNTABILITY COUNSEL FOR GOOD CAUSE SHOWN AFTER NOTICE AND AN OPPORTUNITY TO BE HEARD.

Anthony G. Brown: Give Maryland. A.G.'s office the power to enforce civil rights laws | GUEST COMMENTARY

By Anthony G. Brown

For The Baltimore Sun

Feb 24, 2023 at 8:48 am



Maryland Attorney General Anthony Brown speaks to news crews before participating in the crime summit to discuss public safety in Baltimore. (Karl Merton Ferron/Baltimore Sun)

Civil rights violations occur every day in virtually every sphere of our lives, from where we live to how we work. From the obstacles we face accessing health care to whether we are protected — or brutalized — by those charged with keeping us safe. From who bears the brunt of environmental harms to how we cast our votes to elect our leaders.

- A Black couple's home is appraised at \$472,000. When a second appraiser is led to believe a white family owns the house, he values it at \$750,000.
- An abortion clinic outside Baltimore faces break-ins and harassment, including the stalking of an administrator's child. The incidents are among a recent 128% increase in assaults against abortion clinics and patients.
- A Maryland employer terminates a long-time, high-performing employee who experiences hearing and vision loss from a genetic disorder.
- A Maryland hospital cancels a surgical procedure and refuses to treat a transgender man.
- A female warehouse dispatcher at a Baltimore County auto dealership is fired after she objects to receiving a lower salary than her male counterpart.
- Residents of a predominantly Black neighborhood are exposed disproportionately to toxic fumes from Baltimore's biggest single source of air pollution.
- The city's low-lying areas most vulnerable to increased flooding and sewage backups from climate change are disproportionately communities of color.
- And our hearts break again as another Black man dies at the hands of police.

Safeguarding our fundamental rights has been a long and painful struggle, beginning with the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968, which were conceived to combat racial discrimination, though more recently have been expanded to also target discrimination based on sexual orientation and gender identity. The country has made slow and uneven progress, and we remain far from achieving our founding and aspirational ideals of liberty, equity and justice for all. Those who are the targets of discrimination, who for generations have been the focus of dehumanizing bias and hatred, suffer the most. But none of us is better off in a world still so distant from our ideals.

Yet we would not have achieved even this imperfect progress — where we constantly fall short but keep striving to do better — without the critical and sometimes heroic efforts of those given the authority and responsibility to enforce these laws. Recognizing that a law in and of itself cannot bring about reform unless accompanied by robust enforcement, Congress created the Civil Rights Division of the Department of Justice in 1957 at the same time it enacted the first civil rights statute of the modern era. In the nearly 70 years

since, the U.S. Attorney General has deployed this enforcement arm to stop all manner of discrimination, from [Alabama landlords](#) steering Black tenants to different housing projects; to patterns and practices of police misconduct and racial bias in [Ferguson, Missouri](#); to denying a [transgender student](#) access to educational facilities in California.

But the Department of Justice cannot possibly stand vigilant against every act of discrimination across our 50 states, or by itself protect the rights of 332 million people, including 6 million Marylanders. Successful federal enforcement must be supported and reinforced by state law enforcement partners. A nearby example of what a difference additional enforcement can make is former District of Columbia Attorney General Karl Racine's \$10 million penalty imposed on three real estate firms in the [largest housing discrimination case](#) in U.S. history. Over half of this country's state attorneys general have some degree of authority to enforce [civil rights](#) and/or investigate [patterns or practices](#) of law enforcement misconduct. It is time for Maryland to join their ranks.

We have an exemplary [Commission on Civil Rights](#) in Maryland that does terrific work addressing individual complaints of discrimination. But the Office of the Attorney General must become a partner in its efforts. Just as the federal Equal Employment Opportunity Commission works in tandem with the Department of Justice, each functioning as a force-multiplier for the other, so too should my office work alongside the commission to effect broader and more systemic change. We will be able to build upon the commission's work on behalf of individual Marylanders to root out widespread discrimination on behalf of all Marylanders.

To this end, I have asked the General Assembly, as a top priority for my first session as attorney general, to pass legislation affording my office this authority.

We want to do our part. We must help in the continuing struggle to create a world in which children grow up untouched by any form of discrimination. A world in which they are free to choose where to live and who to love. With equal rights to clean air and water, good jobs, adequate health care, and protection from harm. With our full support for who they are and who they want to be.

Anthony G. Brown (oag@oag.state.md.us) is Maryland's attorney general.