

# National Police Accountability Project

A Project of the National Lawyers Guild

January 26, 2024

Washington State House Democrats  
C/O Speaker Laurie Jinkins  
339C Legislative Building  
P.O. Box 40600  
Olympia, WA 98504

Sent via electronic mail

**RE: Support for HB 1445: An act relating to strengthening and clarifying the authority of the attorney general to address law enforcement and local corrections agency misconduct through investigations and legal actions.**

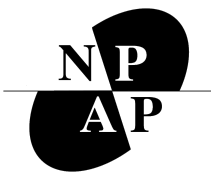
Dear Speaker Jinkins and House Democrats,

I write to you on behalf of the National Police Accountability Project (“NPAP”) to urge you to take early action on HB 1445 and pass it from the House Floor as soon as possible this legislative session. HB 1445 would provide critical tools to remedy—and prevent—violations of Washingtonians’ statutory and constitutional rights by clarifying and strengthening the Washington Attorney General’s (“AG”) authority to investigate and correct pervasive patterns and practices of misconduct within state law enforcement agencies.

NPAP is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards. We have over 550 attorney members who litigate police and correctional officer misconduct in state and federal courts around the country, including in the state of Washington. As civil rights litigators, we know that more often than not, the abuses our clients suffer at the hands of police are not isolated incidents caused by individual officers but the result of department policies, practices, and/or customs that tolerate, sanction, or even encourage such conduct.<sup>1</sup> So long as these systemic

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<sup>1</sup> See Rachel A. Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 2 (2009) (“Much police misconduct is not accidental, incidental, or inevitable. Instead, it is systemic, arising out of departmental deficiencies that undermine officer adherence to legal rules. When a police department resists public feedback, provides inadequate training and policy guidance to officers, or disciplines laxly those who violate legal rules, it facilitates—even encourages—law breaking.”); Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 493 (2004) (explaining that an officer- or incident-specific explanation for police misconduct ignores the fact that “[l]aw enforcement organizations



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deficiencies remain unchecked, we can expect continued violations of civilians' constitutional and statutory rights.

We take great pride in the impact our work has on our clients' lives and in its potential to promote departmental reform. But we also know that, due to various practical and legal barriers, civil lawsuits brought by individual victims of police abuse cannot guarantee the kinds of sweeping, agency-wide changes that are necessary to prevent future misconduct. In many cases, individual plaintiffs are allowed to seek monetary damages for the past harm they suffered, but not the injunctive relief that would require the agency to change its policies, practices, and/or customs.<sup>2</sup> And even when plaintiffs manage to make it all the way to trial on their claims seeking injunctive relief, they face potential bias from jurors who may, whether consciously or not, discredit their testimony over that of sworn officers.<sup>3</sup>

These barriers, along with many others too numerous to list here, highlight the absolute necessity of government-driven mechanisms for identifying and rectifying systemic misconduct. The Special Litigation Section of the U.S. Department of Justice ("DOJ") is designed to fulfill this very purpose, but it cannot do this work alone.<sup>4</sup> With more than 18,000 law enforcement agencies within its jurisdiction, the DOJ simply does not have the capacity to investigate every police department, sheriff's office, and correctional facility engaging in a pattern or practice of unlawful conduct. Several states, including Colorado,<sup>5</sup> California,<sup>6</sup>

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have cultures—commonly held norms, social practices, expectations, and assumptions—that encourage or discourage certain values, goals, and behaviors” and “causes us to miss important systemic and organizational causes that lie behind individual acts of brutality”).

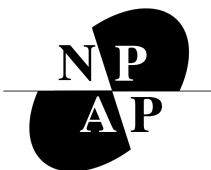
<sup>2</sup> See Armacost, *supra* note 1 at 490 (discussing how the U.S. Supreme Court's decision in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) established impossibly strict standing requirements that largely foreclosed civil rights plaintiffs' abilities to “address patterns or systemic harms” through injunctive relief).

<sup>3</sup> See *id.* at 467 (“The typical complainant in an excessive force case is a criminal suspect from a poor, minority neighborhood, often with a criminal record—not a very credible witness in the eyes of the jury.”).

<sup>4</sup> See Connor Maxwell and Danyelle Solomon, *Expanding the Authority of State Attorneys General to Combat Police Misconduct*, CENTER FOR AMERICAN PROGRESS (Dec. 12, 2018), <https://www.americanprogress.org/article/expanding-authority-state-attorneys-general-combat-police-misconduct/>.

<sup>5</sup> See Colorado Attorney General Phil Weiser, *Colorado Department of Law finds pattern and practice of racially biased policing, use of excessive force by Aurora Police* (Sept. 15, 2021), <https://coag.gov/press-releases/9-15-21/>.

<sup>6</sup> See State of California Department of Justice, *Civil Rights Major Initiatives – Police Practices*, <https://oag.ca.gov/civil/major-initiatives#policePractices> (listing examples of its successful



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Virginia,<sup>7</sup> Illinois,<sup>8</sup> and Nevada,<sup>9</sup> have all recognized the need to supplement the DOJ's investigatory and enforcement authority by granting their attorneys general parallel authority under state law. Their accomplishments to date are a testament to the importance of state-led accountability measures.

The department-wide reforms made possible by pattern-or-practice investigations not only protect the rights of civilians but also provide significant benefits to the departments themselves. According to the Police Executive Research Forum ("PERF"), "many police chiefs who have been through the process of a DOJ investigation said that the end result was a better police department—with improved policies on critical issues such as use of force, better training of officers, and more advanced information systems that help police executives to know what is going on in the department and manage their employees."<sup>10</sup> Police chiefs have even reported that consent decrees provided them the political cover and funding necessary to implement the reforms they had independently wanted to make.<sup>11</sup> Moreover, because "[t]he reform process initiated by a pattern-or-practice investigation can . . . repair mistrust between the community and the police, . . . [i]t can also help police officers . . . by helping to foster the community confidence they rely on in performing their duties."<sup>12</sup>

We expect, based on research related to officer recruitment and retention, that HB 1445 will help Washington's law enforcement agencies resolve staffing

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pattern and practice investigations).

<sup>7</sup> See Commonwealth of Virginia Office of the Attorney General, *Attorney General Herring's Criminal Justice Reform and COVID Response Bills Signed Into Law* (Oct. 21, 2020), <https://www.oag.state.va.us/consumer-protection/index.php/news/431-october-21-2020-herring-s-criminal-justice-reform-and-covid-response-bills-signed-into-law>.

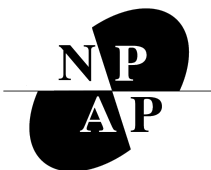
<sup>8</sup> See Office of the Illinois Attorney General Kwame Raoul, *Rights of the People – Civil Rights*, <https://www.illinoisattorneygeneral.gov/rights-of-the-people/civil-rights/>.

<sup>9</sup> See Office of the Nevada Attorney General, *Pattern or Practice Investigations*, [https://www.leg.state.nv.us/App/NELIS/REL/81st2021/ExhibitDocument/OpenExhibitDocument?exhibitId=53193&fileDownloadName=AB%2058\\_Pattern%20or%20Practice%20Presentation\\_Aaron%20Ford\\_Attorney%20General.pdf](https://www.leg.state.nv.us/App/NELIS/REL/81st2021/ExhibitDocument/OpenExhibitDocument?exhibitId=53193&fileDownloadName=AB%2058_Pattern%20or%20Practice%20Presentation_Aaron%20Ford_Attorney%20General.pdf).

<sup>10</sup> POLICE EXECUTIVE RESEARCH FORUM, *CIVIL RIGHTS INVESTIGATIONS OF LOCAL POLICE: LESSONS LEARNED 37* (Jul. 2013), available at [https://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf](https://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> United States Department of Justice, *How Department of Justice Civil Rights Division Conducts Pattern-or-Practice Investigations* (May 8, 2015), available at: <https://www.justice.gov/file/how-pp-investigations-work/download>.



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shortages. Officers have reported “[n]egative public perceptions and media portrayals of police” as one of the many factors leading to increased retirements and resignations in the past three years.<sup>13</sup> Because these negative perceptions stem from the public’s growing sense of pervasive, systemic deficiencies that perpetuate racially discriminatory policing and other misconduct,<sup>14</sup> a key way to improve public perception of law enforcement is through departmental reform.<sup>15</sup> HB 1445 would facilitate the improved department standards and accountability measures needed to build community faith in the fairness and integrity of law enforcement, thus mitigating officer attrition.

Moreover, there is no evidence that departmental oversight prompts officers to resign or retire. To the contrary, law enforcement employment levels in California sharply increased from 2001 to 2002, after the state’s equivalent of HB 1445 went into effect on January 1, 2001.<sup>16</sup> And in 2020, the year Virginia’s attorney general investigations law went into effect, the state experienced “a 21.7% bump in the number of sworn police officers” compared to the previous year.<sup>17</sup>

It is true that law enforcement agencies, like public-sector employers more generally, are currently facing unprecedented staffing shortages.<sup>18</sup> But this crisis is impacting all law enforcement agencies uniformly—not just those in states with AG

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<sup>13</sup> Police Executive Research Forum, *Responding to the Staffing Crisis: Innovations in Recruitment and Retention* 14 (Aug. 2023), available at:

<https://www.policeforum.org/assets/RecruitmentRetention.pdf>.

<sup>14</sup> Pew Research Center, *Majority of Public Favors Giving Civilians the Power to Sue Police Officers for Misconduct* (Jul. 9, 2020), available at:

<https://www.pewresearch.org/politics/2020/07/09/majority-of-public-favors-giving-civilians-the-power-to-sue-police-officers-for-misconduct/>.

<sup>15</sup> See Steve Crabtree, *Most Americans Say Policing Needs ‘Major Changes’*, GALLUP (Jul. 22, 2020), available at: <https://news.gallup.com/poll/315962/americans-say-policing-needs-major-changes.aspx>.

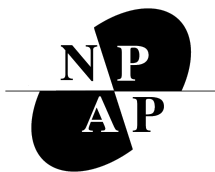
<sup>16</sup> See Brandon Martin, et al., *Law Enforcement Staffing in California*, PUBLIC POLICY

INSTITUTE OF CALIFORNIA (Jan. 2024), available at: <https://www.pplic.org/publication/law-enforcement-staffing-in-california/#:~:text=In%202022%20there%20were%20116%2C000.about%2040%2C000%20were%20civilian%20staff>.

<sup>17</sup> VCU Capital News Service, *Virginia police agencies battle loss of recruits in ‘changing profession’*, THE ROYAL EXAMINER (May 8, 2023), available at:

<https://royalexaminer.com/virginia-police-agencies-battle-loss-of-recruits-in-changing-profession/>. Notably, Dana Schrad, the executive director of the Virginia Association of Chiefs of Police, did not list the attorney general investigations law as a potential cause of the state’s current law enforcement shortage. *See id.*

<sup>18</sup> *See* POLICE EXECUTIVE RESEARCH FORUM, *supra* note 13 at 12.



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pattern-or-practice investigation laws.<sup>19</sup> Leaders in law enforcement have identified a number of factors contributing to this current crisis, none of which relate to state or federal efforts to improve department policies and practices: “[a] growing economy, low unemployment, and increasing options for remote work” making non-law enforcement employment increasingly appealing; an “unprecedented” level of competition between law enforcement agencies leading officers to leave their departments for higher-paying jobs at other agencies; the negative public perception of police, which has “made the job far more difficult and less fulfilling for many officers;” the COVID-19 pandemic, which “was the leading cause of officer deaths in 2020 and 2021;” and law enforcement’s diminished appeal to younger workers who desire a better work-life balance and more opportunities for early- and mid-career promotions than law enforcement can offer.<sup>20</sup>

Considering the critical role pattern-or-practice investigations play in redressing systemic law enforcement misconduct, the serious need for a state corollary to the DOJ’s investigatory and enforcement authority, and the lack of any evidence suggesting that such accountability measures exacerbate the current law enforcement employment shortage, we strongly support HB 1445. We urge you to take early action on HB 1445 and pass it from the House Floor as soon possible. If you have any questions, please do not hesitate to contact me at [fellow.npap@nlg.org](mailto:fellow.npap@nlg.org).

Sincerely,

Eliana Machefsky  
National Police Accountability Project

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<sup>19</sup> See generally *id.*

<sup>20</sup> *Id.* at 14-15. See also Daphne Duret and Weihua Li, *It’s Not Just a Police Problem, Americans Are Opting Out of Government Jobs*, THE MARSHALL PROJECT (Jan. 1, 2023), available at: <https://www.themarshallproject.org/2023/01/21/police-hiring-government-jobs-decline> (“Even after 2014, when protests erupted in Ferguson, Missouri, after the police killing of Michael Brown, census survey numbers show police employment still rose nationally. The increase continued year after year, as other controversial police killings made national headlines and distrust of police heightened, especially in Black and other minority communities, until the pandemic reversed the employment trend.”).