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TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: The Office of the Attorney General

RE: Senate Bill 50: Criminal Procedure - Police Officers - Duty to Intervene and
Senate Bill 419: No-Knock Warrants - Elimination (SUPPORT IN CONCEPT)

The Office of the Attorney General submits this general statement in support of efforts to advance criminal justice reform. Despite variations in specifics, the proposals in Senate Bill 50 and Senate Bill 419 reflect two important guiding principles: the need to end excessive force and re-evaluate the standards for middle-of-the-night no-knock warrants. Policies implementing these principles would help prevent horrific outcomes while supporting the majority of police officers who perform difficult jobs responsibly.

Central to achieving meaningful police reform is ending the use of excessive force.

First, the State should codify a standard that restricts police use of deadly force, including the use of chokeholds, to that which is necessary to protect the officer or other persons from the imminent threat of death or serious bodily injury. Some common-sense measures include: requiring officers to rely on de-escalation techniques where possible and to intervene to stop another officer from using excessive force; requiring officers to report misconduct by other officers; and requiring agencies to report all use of force incidents for internal and external review and tracking.

Senate Bill 50 seeks to prevent the use of excessive force by establishing a duty for a police officer to intervene if the officer knows or reasonably should know that another officer is using or intends to use excessive force and prescribing criminal penalties for a failure to perform that duty. That an officer should be obligated to intercede to stop or prevent another officer's use of excessive force is a critical component of ending the use of excessive force and improving community trust. Particularly when employed with de-escalation techniques, such intervention

also promotes the increased safety for both civilians and officers. Perhaps for these reasons, the duty to intervene enjoys broad stakeholder support from law enforcement agencies and reform advocates: it is among the list of best practices for police use of force issued by the Maryland Police Training and Standards Commission (MPTSC), is endorsed by the International Association of the Chiefs of Police, and has been incorporated into the policies of many of the largest police departments in the United States, including the Baltimore City and Baltimore County Police Departments.

All Maryland law enforcement officers should be obligated to intervene to stop or prevent another officer's use of force where it is feasible to do so. While we have reservations about whether criminal liability is the appropriate sanction, a duty to intervene should be a part of every law enforcement agency's administrative policies, and officers failing to comply with that policy should face discipline or be terminated consistent with their agency's administrative procedures. To ensure that officers know how and when to intervene, officers should be trained regularly on intervention strategies and scenarios.

No-knock warrants should be used only where they are necessary to protect officer safety.

Breonna Taylor was killed in the middle of the night after police secured a no-knock warrant to enter her home. A woman should not be killed in her own home because the police were authorized to force down her door in the middle of the night to execute a warrant related to a drug investigation of an ex-boyfriend who did not even live there.

Senate Bill 419 eliminates the use of no-knock warrants entirely. Although no-knock warrants are an important tool to protect the safety of law enforcement officers, the enactment of several reforms can reduce the tragic consequences that result from their overuse.

No-knock warrants should be authorized only when necessary to secure the safety of police—not to avoid the destruction of evidence. The level of scrutiny needed for no-knock warrants should also be considered—perhaps requiring high-level approvals within the Police Department and review by the State's Attorneys. Finally, the time at which warrants like these are served—a factor which clearly contributed to Breonna Taylor's death—should be examined. Middle-of-the-night warrant execution should be limited to situations where police and public safety truly require it.

For these reasons, the Office of the Attorney General supports the goals of Senate Bill 50 and Senate Bill 419.

cc: Committee Members