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SUPPORT WITH AMENDMENTS- SB922

Dear Mr. Chairman and Members of the Education, Health, and Environmental Affairs Committee:

We are writing to express the Office of the State Prosecutor's support with amendments to Senate Bill 922. The bill, as originally drafted, would allow the Office of Legislative Audits to compel documents and witnesses in ongoing criminal investigations conducted by all law enforcement and prosecutorial entities in this state. While we value the work of our wonderful and valued partner, the Office of Legislative Audits, in addressing systemic change and identifying criminal behavior, this legislation would create significant challenges in ongoing criminal investigations and undermine our efforts to hold individuals accountable for corruption. We have worked with the sponsor on the proposed amendments and they would alleviate our concerns.

We support the creation of a hotline for the Office of Legislative Audits and that the hotline be advertised in State Agencies but would want to ensure that there was no required reporting that might conflict with our investigative and prosecutorial mission.

We are committed to working with the Office of Legislative Audits to expand their fraud investigations and hope to workshop components of their original bill related to that. We outline below the concerns we have to the bill as drafted.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of state government and elections by conducting thorough, independent investigations, and when appropriate, employing our criminal and civil enforcement power to prosecute conduct affecting the integrity of our government institutions, officials, employees, and elections.

SB 922

The Office of Legislative Audits has an essential mission in safeguarding our statewide institutions from fraud, waste and abuse. The agency, since its creation, has been a valued partner of the Office of the State Prosecutor, Office of the Attorney General, and the citizens of Maryland in detecting illicit behavior on the part of individuals in government. However, the Office of Legislative Audits have a very different function than agencies that conduct criminal investigations, and their policies and practices reflect that. For example, the Office of Legislative Audits can compel an agency to

show documents related to agency functions even if the documents would be otherwise confidential. In a criminal investigation, individual targets have a right against self-incrimination and we cannot require them to produce documents or use documents acquired by an auditor against them. Agencies that have both audit and enforcement functions work hard to separate the audit and enforcement arms of their agencies for this very reason, such as the Internal Revenue Service or the Maryland Office of the Comptroller.

Both the criminal investigation and the audit function are essential in serving our citizens, to ensure transparency and hold agencies accountable. This legislation, however, would allow the Office of Legislative Audits to dictate which documents from a criminal investigation they can compel, undermining these unique roles and creating a situation where the criminal investigation and the legal rights of individual defendants can be compromised.

The language of this legislation identifies the auditors as the directors of a criminal investigation, despite the fact their office does not have prosecutors, criminal investigators or organic law enforcement expertise. Corruption investigations are benefitted immensely by the contributions and specialized expertise of the forensic auditors and accountants at the Office of Legislative Audits, but should not and cannot be directed by them. Our prosecutors and investigators are trained in using many investigative tools to identify and investigate criminal activity, while preserving confidentiality and the individual rights of potential defendants, requiring skills outside of those available at the Office of Legislative Audits, but found in abundance in our law enforcement, prosecutorial agencies and federal partners.

It is also important to note that our criminal investigations target both individual and multiple defendants, as well as corporate entities, and we often utilize statements by confidential informants, grand jury witnesses, immunity agreements, search warrants, bank records, medical records, and other materials that fall outside the mission scope of the Office of Legislative Audits. We also have cases with victims of crime that mandate affording individual victim services and specialized treatment, such as in cases of sexual assaults, physical abuse, and intimidation, and we have professional investigators and victim witness coordinators trained to handle these special circumstances.

Raising awareness of fraud, waste, abuse and criminal activity is an essential part of our mission. We support any effort to highlight and support the incredible work that the Office of Legislative Audits currently undertakes, and we value them as essential partners in efforts to protect the citizens of Maryland. We will continue to provide whatever materials and support that we can to the Office of Legislative Audits as soon as we can, given our professional and legal requirements, and will proactively do so when our criminal investigations are resolved and relate to their important mission.

Thank you for your attention to this matter and please feel free to follow up with Deputy State Prosecutor Sarah David, sarah.david@maryland.gov, with any questions.

Sincerely,

Charlton T. Howard

