

SUPPORT HB 1035 – independent investigation and prosecution for police

MARYLAND ALLIANCE FOR JUSTICE REFORM
Working to end unnecessary incarceration and build strong, safe communities



To: Chair Luke Clippinger and House Judiciary Committee
From: MAJR Executive Committee
Date: February 15, 2021

Md. Alliance for Justice Reform (MAJR-www.ma4jr.org) strongly supports HB 1035 for its practical solution to a serious crisis in public confidence. According to a recent survey, 85% of Marylanders survey support the concept of an independent prosecutor when police conduct is alleged. See Goucher College poll, October 2020. Similar support is shown by national surveys across the political spectrum. See Cato Inst.poll, January 2017.

“Who will police the policemen?” is a perennial problem memorialized by Plato more than 300 B.C.E. Maryland’s version of the problem, today, is obvious: Currently, local police investigators investigate the alleged misconduct of their peers. As a former participant in police disciplinary boards, the undersigned can attest to that the factors of peer pressure and team loyalty work against solid accountability. Compare “Plea to Maryland leaders: Fix Baltimore police discipline,” Baltimore Sun opinion July 2018 by David Plymyer, former County Attorney for Anne Arundel Co. and legal advisor to local police.

Notably, in other jurisdictions, independent civilian oversight as resulted in 78% increase in findings of misconduct. Citizen Complaints Against the Police: An Eight City Examination, Police Quarterly (Oct.2015). That statistic should not scare legislators, but should let you know how bad the problem is without independent oversight.

Even when misconduct is found administratively, current law relies on local prosecutors to a) decide on the sufficiency of potential evidence, b) decide whether they themselves have a conflict of interest, and c) seek an outside special prosecutor when needed.

However, the local prosecutors themselves are conflicted because the work with the very same police offices on a daily basis. Public prosecution of these colleagues may result in weakening and loss of many other prosecutions in which suspected officers were involved as investigators and witnesses, as again the undersigned can confirm based on personal experience as a local prosecutor.

Because the Attorney General’s relationship with local prosecutors and local police is limited, this plan should provide sufficient independence for more reliable outcomes.

HB 1035 provides a reasonable and effective solution to these problems in the context of police-caused fatalities by automatically referring investigations and possible prosecution to the Law Enforcement Prosecution Unit within the Maryland Attorney General’s office. Such cases, historically, are the most likely to result in strong public protests such as those brought by the killings of Freddie Gray, George Floyd, Breonna Taylor and others.

The only improvement the undersigned might suggest to this bill would involve expansion of its scope beyond fatalities to cases of serious injuries as well.

Please give a favorable report to SB 1035, a very valuable bill. -Phil Caroom

Please note: Phil Caroom provides this testimony for MAJR and not for the Md. Judiciary.