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To: Sen. William C. Smith, Jr.  
Chair, Judicial Proceedings

From: Brian E. Frosh  
Attorney General

Re: SB 896 – Office of the Attorney General – Independent Investigations – Revisions –  
**Support with Amendment**

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The Office of the Attorney General (“OAG”) urges the Judicial Proceedings Committee to report SB 896 favorably while considering two amendments. The amendments would align SB 896 with HB 638, companion legislation in the House.

Senate Bill 896 would accomplish two important goals. First, it would grant the OAG the ability to conduct independent prosecutions of officer-involved fatalities while providing State’s Attorneys an opportunity to prosecute. Second, it would clarify provisions in the original bill ([SB 600](#) (2021)) that created the Independent Investigations Division (“IID”) that have been challenged by some local officials.

Senate Bill 896 would grant OAG the power to prosecute officer-involved fatalities if the local State’s Attorney declines to prosecute. As demonstrated by the legislature’s creation of the IID last year, there is robust agreement across Maryland on the benefit of independent investigations of officer-involved fatalities. The benefit of independent prosecution stems from the same principles: giving confidence to the public that prosecution decisions are being made in a disinterested way, by people who do not work together or rely on each other professionally or personally. As the U.S. Commission on Civil Rights explained, “Investigation and prosecution of use of force cases should be made as independent and public as possible. The agencies investigating and determining whether to move forward with prosecution should not have an ongoing relationship with the department.” *Police Use of Force: An Examination of Modern Policing Practices*, Nov. 15, 2018.

This bill also fixes two narrower problems. It clarifies the language in the current statute that the IID “shall investigate all alleged or potential police-involved deaths of civilians” to remove any confusion as to whether the statute permits the OAG to begin investigating before a civilian dies. It is important to have a firm answer to such issues before they occur. Similarly, this bill provides a mechanism for resolving disputes between the IID and another law-enforcement agency that might wish to conduct a competing investigation that could harm the independence of the investigation guaranteed under the existing law.

The OAG does support two amendments to SB 896 to enhance the salutary effects of the existing bill. First, the OAG supports language that would provide the OAG the first opportunity to prosecute in officer-involved fatalities—in line with nationwide best practices—while still allowing State’s Attorneys the ability to prosecute if the OAG declines. This change would give the public even greater assurance of impartial prosecution decisions by allowing the independent entity—the OAG—to retain control over the investigation continuously until the prosecution decision has been made, rather than requiring it to turn the case over to the State’s Attorney for a 45-day window in the middle of that process. The revised procedure would maintain the State’s Attorney’s role if the OAG chooses not to act.

Second, the OAG supports language that would fix a procedural problem with the OAG’s subpoena process by bringing it in line with the subpoena authority already granted to the Office of the Special Prosecutor and the State’s Attorneys. Currently, the OAG must use grand-jury subpoenas, which are not otherwise used in many courts and can be cumbersome. This has already delayed several of the IID’s investigations. The supported change would allow the IID to use direct subpoenas to obtain records. The language does not add any substantive rights; it only lowers procedural burdens.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of Senate Bill 896 with amendment.

cc: Committee Members