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March 1, 2022

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

From: Brian E. Frosh  
Attorney General

Re: Senate Bill 866 (Baltimore Police Department – Consent Decree – Exceptions to State Law): **Concern**

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Senate Bill 866 specifically addresses the Federal Consent Decree with the Baltimore City Police Department (BPD) and provides that the United States District Court for the District of Maryland shall determine if “any provision or requirement with this section is in conflict or otherwise inconsistent with a provision of the consent decree” between Baltimore and the Department of Justice. It also provides that the federal court may determine the resolution in the event of a conflict. Because the legislation and the consent decree do not conflict, there is no need for this provision. And should the legislature wish to provide one, it must guarantee notice and the ability to participate to the Office of the Attorney General, which this bill does not.

There is no conflict between the Baltimore consent decree and the statute. During the formative months after the passage of the original bill (SB 600 (2021)), the Independent Investigations Division (IID) of the Office of the Attorney General met numerous times with BPD, city solicitors, and the Department of Justice to determine whether any provision in the bill conflicts with the consent decree.<sup>1</sup> The Department of Justice, along with all of the aforementioned parties, found no such conflict. Moreover, since SB 600 (2021) went into effect on October 1, 2021, BPD had two qualifying incidents where civilians were fatality shot by officers. The provisions under the consent decree have not encumbered the IID’s investigation into either of these matters, nor has the state law encumbered BPD’s ability to fulfill its own obligations under the consent decree. In short, none of the parties was able to find a conflict in theory, nor has there been a conflict in practice.

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<sup>1</sup> These meetings, in turn, led to a September 30, 2021, “Maryland Attorney General Independent Investigations Division, Maryland State Police, and the Police Department of Baltimore City Memorandum of Understanding.” See attached.

Even if the General Assembly does believe that such a remedy is necessary, the current bill does not provide adequate protections for the State's interests. Senate Bill 866 fails to provide a requirement that BPD or the City of Baltimore notify the IID if they intend to argue to the court that a portion of SB600 should be invalidated, nor does it provide the IID the ability to participate in any such court hearing. As a result, if this statute were enacted as written, portions of SB600 could be invalidated without any notice. Such a system is neither fair nor what the legislature intended in crafting the bill.

Encl: Maryland Attorney General Independent Investigations Division, Maryland State Police, and the Police Department of Baltimore City Memorandum of Understanding

cc: Sponsor