

## MEMORANDUM

To: Members of the House Judiciary Committee

From: Maryland State Bar Association (MSBA)  
Shaoli Katana, Esq., Director

Subject: House Bill 249 – Attorney General – Wrongful Convictions –  
Investigations

Date: January 28, 2022

Position: Oppose

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The Maryland State Bar Association (MSBA) respectfully opposes **House Bill 249 – Attorney General – Wrongful Convictions – Investigations**. House Bill 249 requires copies of certain orders related to wrongful convictions to be sent to the Attorney General; requires the Attorney General to conduct investigations into the circumstances giving rise to the issuance of certain orders related to wrongful convictions; and requires the Attorney General to send recommendations regarding the discipline of law enforcement officers, attorneys, or judges involved in wrongful convictions to the appropriate entities under certain circumstances.

MSBA represents more attorneys than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland's legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession.

MSBA believes that HB 249 violates separation of powers by allowing the Office of the Attorney General, as part of the Executive Branch, to intrude into the Judiciary and investigate judges, who are integral members of the Bar. The bill also raises serious concerns about violations of attorney-client privilege, a central aspect of our practice, during investigations by the Office of the Attorney General. No guidance or limitations are provided for the Office's inquiries into prosecutors and defense attorneys involved in the relevant cases. Attorneys could be asked to disclose privileged information regularly as a result of this bill.

The legal profession in Maryland already has two established entities, the Attorney Grievance Commission and the Commission on Judicial Disabilities, with clearly defined procedures that govern investigations of attorney or judicial misconduct. The proposed legislation displaces the functions of those two Commissions, and extends those powers to the Office of the Attorney General, an Executive Branch entity.

Investigative and disciplinary functions for attorneys and judges are already defined by rule. Md. Rule 19-Chapter 700 governs attorney discipline and outlines the specific process of administrative proceedings through the Attorney Grievance Commission, with any petitions for Disciplinary or Remedial Action filed by the Commission going to the Court of Appeals for a final disposition, including disbarment, suspension, reprimand, or dismissal. Likewise, Md. Rule 18-Chapter 400 identifies the Commission on Judicial Disabilities as an independent body to investigate complaints against Maryland judges, conduct hearings when appropriate, and make a recommendation for further action to the Court of Appeals.

The proposed legislation provides no guidance to the Office of the Attorney General to conduct its investigation. No standard of proof or findings of fact would be required before the Attorney General submits the names of any State's Attorney, Deputy State's Attorney, Assistant State's Attorney, defense attorney, or judge to the Court of Appeals for disciplinary review, with the most serious consequence of disbarment.

MSBA has serious concerns with the details of this legislation and respectfully requests an unfavorable report.

For additional information, please feel free to contact Shaoli Katana at MSBA at [shaoli@msba.org](mailto:shaoli@msba.org).