



HOUSE BILL 0249

ATTORNEY GENERAL – WRONGFUL CONVICTIONS- INVESTIGATIONS

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

POSITION: UNFAVORABLE

January 28, 2022

My name is Rich Gibson, I am the State's Attorney for Howard County and the President of the Maryland State's Attorneys' Association. Part of my obligations as State's Attorney is to advocate for laws that enhance the safety and well-being of our community; that is the reason I am writing today to **OPPOSE** House Bill 0249.

House Bill 0249 seeks to mandate investigative work by the Attorney General where remedies already exist. Furthermore, if enacted this bill would pose a significant public safety risk. HB 0249 seeks to require the Attorney General to investigate prosecutors, judges, law enforcement officers, and defense counsel upon receipt of an order under 3-801 or 10-501. The most dangerous aspect of this bill is that it will create a chilling effect on prosecutors proceeding on difficult cases. It is incredibly common for cases to present evidentiary challenges. State prosecutors should have no hinderances or second thoughts about pursuing a factually or legally challenging case, provided that after reviewing the evidence, they believe that probable cause exist that a crime occurred, and that the defendant committed the crime, and that the prosecutor believes that admissible evidence will be sufficient to support conviction beyond a reasonable doubt. (ABA Standard 3-4.3) This bill will create an environment where

prosecutors will only go forward on cases where they believe they can prove the guilt of the accused beyond any doubt for fear of being prosecuted by the Attorney General's office if, at a later point in time, evidence shows that the underlying theory of the prosecution was in error.

Undoubtedly, this would lead to horrific results. Consider the common fact pattern in sex offense cases where the issue is not whether the sex act occurred but rather whether it was a consensual act. The presence or absence of DNA in those cases is irrelevant; these cases advance based upon whether or not the prosecutor believes the rendition of events as described by the victim. If this bill comes to pass, these cases will not be prosecuted. Non-fatal shooting cases & homicides are another category of cases that would have a stark decline in prosecution, if this bill passes. Witness' recantation in non-fatal shootings & homicides is incredibly common for all sorts of reasons; some of which are consistent with the defendant's innocence and some of which are consistent with the witnesses/victim's desire not to be involved in a case. Drug addicts, drug dealers, prostitutes, and people involved in criminal activity have a wide array of reasons that they would not want to be labeled a witness in a criminal case. (i.e.: concerns for their safety, negative social stigma of cooperation with the government in their social circles, an inability to sell or purchase drugs or engage in illegal activity once their status as a witness is publicized) However, these same individuals are commonly present when crime occurs. If this bill were to pass, prosecutors would be reluctant to proceed on cases with recanting witness, which would absolutely lead to an increase in violent criminal activity in our community. It is not in the best interest of society or public safety to create an environment where prosecutors fear proceeding on difficult cases. The result would be a denial of justice to many victims who

deserve it and more violent offenders on our streets, which of course would lead to more people in our community becoming victims of violent crime.

Currently, there are numerous avenues which exist addressing the problem of the rogue prosecutor, attorney, judge, or police officer. The Attorney Grievance Commission oversees the conduct of Maryland attorneys who engage in the practice of law within the State. The Office of Bar Counsel investigates and prosecutes violations of the professional rules of conduct binding upon prosecutors and defense counsel. If a prosecutor or defense counsel is found to have violated the professional rules of conduct, they can be sanctioned, and even disbarred. The Maryland Commission for Judicial Disabilities is an independent body that has the power to investigate complaints regarding the conduct of Maryland Judges and if necessary, can proceed against them in the Maryland Court of Appeals. Judicial Disabilities has the power to recommend censure, reprimand, or removal of a judge who is found to have engaged in sanctionable conduct. Police have Internal Affairs Divisions, and police accountability boards are currently being established all over the State. These entities function to investigate violations of the administrative rules of our law enforcement officers and if a violation is found officers can be administratively charged, sanctioned, or fired.

I ask that the legislature give House Bill 0249 an **unfavorable** report.