

# **SB0290-Ofc AG IID-Authority to Prosecute.pdf**

Uploaded by: Adiena Britt

Position: FAV

## **SB0290-Office of Attorney General – Independent Investigations Division-Authority to Prosecute**

**Stance:** Favorable

**Testimony:** My name is Adiena Britt and I reside in the 45<sup>th</sup> District of Baltimore City. I am writing to lend my support for Senate Bill 0290. As the victim of police brutality, I am strongly in favor of this Bill passing as it is written.

It is widely known that there appears to be some “unwritten” rule in the State of Maryland that even if there is probable cause to charge police officers that engage in misconduct, that the State’s Attorneys in EVERY jurisdiction choose to not charge them for their crimes. This is one reason the IID was formed, because victims’ families were crying out for accountability where there was none. For the first full year that the IID was in charge of investigating cases, they investigated 23 cases of police brutality that resulted in extreme harm or death of a civilian. Approximately half of these, 11, were referred to the State’s Attorney in the jurisdiction where the event occurred as having probable cause for potential prosecution of one or more officers. Not ONE of these resulted in the decision by ANY of the State’s Attorneys in MD to prosecute any of the offending officer(s). This is why civilians believe that there is some kind of unwritten agreement between the various State’s Attorneys Offices, the Police Departments, and the F.O.P. to not prosecute. This is unacceptable.

If the Attorney General performs a comprehensive investigation and finds probable cause to prosecute an officer, then an indictment should be sought, and this prosecution should take place. Since the various State’s Attorneys refuse to do so, it only makes sense to keep these cases within the Attorney General’s Office and provide them with the authority and jurisdiction to prosecute; whereby keeping the case in the office in which it was originally investigated. This removes the obstacle of whatever agreement the various SAOs have with the Police and allows officers accused of misconduct in office to be held accountable. No one should be above the law, regardless of the position that they hold for their employment. Police officers who utilize excessive force for any reason earned the right to be investigated, prosecuted, and, if found guilty, jailed.

This Bill will ensure fairness in prosecution of wrong doing, proving that no one is above the law. This Bill will also allow grieving family members, and even victims who manage to survive their ordeal with egregious injuries to have some level of accountability that has been elusive up until this current era. The time is now for this jurisdictional change to occur. It will not place an undue burden on the AG’s office, since the cases, thankfully, don’t number in the hundreds. It is my wish that once prosecutions begin to take place, that these cases will cease to occur and police brutality becomes a thing of the past. Until then, let’s hold anyone accountable that commits such an act, and get these victims and their families some accountability.

Thank you.

## **SB290 testimony.pdf**

Uploaded by: Cassandra Beverley

Position: FAV

February 13, 2023

TESTIMONY IN FAVOR OF SB290

Dear Chairman Smith & Committee Members,

I'm writing in support of the bill authorizing the IID to conduct independent prosecutions. Local prosecutors develop relationships with law enforcement officers with whom they have worked closely sometimes over many years. While prosecutors believe that they can maintain their independence when prosecutorial judgments and decisions are made, human nature tells us that the relationships will very likely color their judgment. Prosecutors must run for office and are thus subject to pressure from their constituents who may disfavor a decision to prosecute. Granting this authority to the IID does not deprive the local prosecutor the ability to move forward if the IID declines to prosecute.

The public will have greater faith in a decision made by an independent body following a complete and thorough investigation. Given the strained relationships between some segments of the community and the police, the grant of this authority is fully justified. Thank you for your consideration of this testimony.

Cassandra R. Beverley, Esquire

## **SB0290 Attorney General's Office -Authority to Pro**

Uploaded by: Cecilia Plante

Position: FAV



## TESTIMONY FOR SB0290

### Office of the Attorney General - Independent Investigations Division - Authority to Prosecute

**Bill Sponsor:** Senator Smith

**Committee:** Judicial Proceedings

**Organization Submitting:** Maryland Legislative Coalition

**Person Submitting:** Cecilia Plante, co-chair

**Position:** FAVORABLE

I am submitting this testimony in strong support of SB0290 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

It is unfortunate that policing has become such a flashpoint in our society. Trust in police officers is at an all-time low, even though many officers do their jobs with professionalism and courtesy. The problem is not the small percentage of officers who bully and abuse the people they have sworn to serve. The problem is the system that allows the local police offices to manage investigations into their own employees with little oversight and transparency.

Too many officers have committed atrocities and simply moved to another police office in another location. Too many cases have never seen justice, or even the appearance of an investigation.

This bill will expand the reach of the Independent Investigations Division in Attorney General's Office to allow them to investigate killings of individuals in the state, as well as any other ancillary crimes that might have been submitted.

Our members have much more confidence that an independent party will do a thorough job. We strongly support this bill and recommend a **FAVORABLE** report in committee.

# **Statement in support of Senate Bill 0290.pdf**

Uploaded by: Gerard Hogan

Position: FAV

Monday, February 13, 2023

To: Maryland State Senator Will Smith

From: Gerard Hogan, Esq.

Re: Proposed Senate Bill 0290

Dear Senator Smith:

I am writing in favor of the pending bill to grant prosecution authority in police excessive force cases to the Independent Investigation Division of the State Attorney General's office. My support for this bill is based on 37 years as both a state and federal prosecutor, the first 7 as an Assistant State's Attorney in Howard County, the last 30 with the Criminal Section of DOJ's Civil Rights Division. In that former capacity I worked (and socialized) extensively with members of the Howard County Police Department and the Maryland State Police; in the latter role I investigated and prosecuted police excessive force cases in over thirty states and US territories. In retirement I have consulted and trained on these issues, and worked for six months as an Assistant Attorney General in Colorado, focusing on a high profile death in custody case. I've lived in Columbia for forty plus years.

We Howard County prosecutors had to rely, every day, on the good work of Howard County officers to do our job, whether prosecuting DWIs or misdemeanors in District Court, or serious felonies in Circuit Court. It is no exaggeration to say that we ASAs and the police were a team, often together in our office or at the police station, at crime scenes, or, just as often, at Shannon's Bar on Route 40 after work. Many of us became friends, and in a county the size of Howard, I knew most of the officers by name, knew many of their families, etc. Though the county has grown since I left that office in 1987, I know from friends still practicing that it remains a closeknit law enforcement community. This is even more true in counties smaller than Howard. Even in Maryland's larger counties, there is an interdependence that necessarily fosters loyalty and a strong bond. That is a good thing, a positive mind set, unless and until the actions of one's teammates are called into question.

Traveling and prosecuting excessive force cases all over this country, I quickly learned that Howard County and Maryland are not unique in this regard. Countless times in my three decades with DOJ's Criminal Section I encountered state prosecutors whose prosecutive decisions in police excessive force cases were colored by their working relationship with the departments or individuals they were asked to investigate. I am not judging; these decisions were often the product of an unconscious bias, as it is fundamentally unfair to ask people to make tough, life-altering determinations regarding organizations and individuals on whom they must depend and trust.

The flip side of the issue is that sometimes elected prosecutors are pressured to prosecute excessive force cases because of community outrage, without careful consideration of the evidence. This can—and has—resulted in prosecutions that are both fundamentally unfair to law enforcement and doomed to failure. An independent prosecutor's office is relatively insulated from these pressures, and, accordingly, can protect the rights of alleged victims as well as subject officers.



Finally, there is the question of expertise. When a local prosecutor is called upon to assess whether a police excessive force case should be prosecuted, it may be the first time she or he has had to make that call, and will not have the benefit of directing the investigation and weighing the evidence in the light of other similar cases. Police excessive force cases are simply not like other cases: they require a deep understanding of the applicable law, the appropriate investigative techniques that can lead to developing sufficient corroborative evidence, and use of expert testimony that can be the key to a successful outcome. An independent prosecutor will have the experience and the careful focus that is necessary in carefully preparing these difficult cases, and that is why I am in favor of the pending bill.

I hope these comments have been helpful. If you would like to discuss the issue further, I can be reached at 410 446 1697.

Sincerely,

Gerard Hogan, Esq.

# **2023-02-14 Senate Bill 290 OAG (Support).pdf**

Uploaded by: Hannibal Kemerer

Position: FAV

ANTHONY G. BROWN  
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February 14, 2023

The Honorable William C. Smith, Jr.  
Chairman  
Maryland State Senate  
Judicial Proceedings Committee  
2 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

Re: Senate Bill 0290 – Office of the Attorney General – Independent Investigations  
Division Authority to Prosecute: **Support**

Dear Chair Smith:

The Office of the Attorney General (“OAG”) urges the Judicial Proceedings Committee to report Senate Bill 290 favorably. If enacted into law, this bill would enhance the thoroughness, independence, and transparency of the investigation and prosecution of police officer-involved fatal incidents in Maryland. By affording the Attorney General the authority to prosecute police-involved fatalities, the bill would align Maryland with best practices in this crucial area of police accountability.

Senate Bill 290 would grant the OAG exclusive authority to prosecute, when appropriate, certain criminal offenses that are discovered in the course of an investigation of police-involved fatalities. As demonstrated by the General Assembly’s votes to create the Independent Investigations Division (“the IID”) within OAG in 2021, and strengthen it in 2022, there is robust agreement across Maryland on the benefits of independence between the police officer under investigation and the law enforcement entity that is conducting that investigation. Those same benefits apply to the prosecution of officer-involved fatalities. The public should have confidence that prosecution decisions are made in an impartial manner, by people who do not work together or rely on each other professionally or personally. As the United States 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. Multiple states follow this best practice, including California, Connecticut, Delaware,

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or [sbrantley@oag.state.md.us](mailto:sbrantley@oag.state.md.us)

Maine, New Jersey, New York, Rhode Island, Vermont, and Washington. In Maryland, the IID is uniquely positioned to handle such prosecutions, having the existing structure in place, including a team of experienced trial attorneys and investigators who specialize in these types of cases.

Second, SB 290 would allow a State's Attorney to voluntarily refer to the IID any police-involved incident that occurs in their jurisdiction and results in injury to an individual, even if that case would not otherwise fall within the IID's purview. If the IID accepted the State's Attorney's referral, the IID would have the exact same authority it would possess in a fatal case. The IID has received referral inquiries like this before, but the OAG's inability to use its full range of statutory authority in such cases has made it difficult for the IID to accept. Senate Bill 290 would allow the locally elected State's Attorneys, at their discretion, to ensure that critical incidents that occur in their communities, such as police shootings and other significant use of force events, are handled by a capable, independent entity.

Finally, the bill would clarify that the IID has jurisdiction over any police-involved incident that results in death, or injuries that are likely to result in death, of any "individual," including another police officer. At present, the IID's enabling statute references only "civilians," which could be construed to exclude law enforcement officers. Senate Bill 290 would make clear that in a case of "friendly fire," or a similar situation where one officer is involved in the death of another officer, the IID would be required to investigate. Since the IID's inception, there have been no reports of such incidents, but these cases have previously occurred in Maryland. Given the inherent conflict of interest that exists in these specific types of cases, the IID's jurisdiction should be unambiguous so that any subsequent investigation is not harmed or obstructed.

For the foregoing reasons, I urge a favorable report of SB 290. Thank you.

Very respectfully,

A handwritten signature in black ink, appearing to read "AG Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

cc: Committee Members

# **In Suppport of SB 290 CCJR.pdf**

Uploaded by: Heather Warnken

Position: FAV



**TESTIMONY IN SUPPORT OF SB 290:**

**Office of the Attorney General – Independent Investigations Division – Authority to Prosecute**

TO: Members of the Senate Judicial Proceedings and House Judiciary Committees

FROM: **Heather Warnken, Center for Criminal Justice Reform, University of Baltimore School of Law**

DATE: February 13, 2023

My name is Heather Warnken and I am the Executive Director of the University of Baltimore School of Law's Center for Criminal Justice Reform. The Center is dedicated to supporting community driven efforts to improve public safety and address the harm and inequity caused by the criminal legal system.

In direct alignment with this mission, we are grateful for this opportunity to testify in support of Senate Bill 290.

Impartial independent investigations are the bedrock of the American legal system. Few incidents challenge the integrity and legitimacy of this system more than the decision to prosecute or decline to charge a death involving a police officer. An inherent conflict of interest exists when States Attorneys investigate and prosecute officers from the same police departments that they work with and rely upon everyday. This conflict of interest casts doubt not only on the capacity and effectiveness of local prosecutions of officers when needed and warranted, but also undermines their credibility when those offices legitimately determine that a prosecution is unwarranted.

SB 290 represents an important step toward legitimacy and viability of a legal system notoriously rife with systemic racism, and continually damaged by the litany of police violence and misconduct cases that have given rise to some of the strongest social movements in recent memory. By taking this important step, aligned with best practices as discussed below, of vesting prosecution authority in the Attorney General, SB 290 will help to ensure that cases warranting a criminal charge are pursued, and that decisions *not* to prosecute are accepted by the public as the product of a legitimate and unbiased evaluation of the facts and the law.

**Challenges in police accountability**

No matter a person's view of the current state of policing, there is simply no question that some officers, some of the time, abuse their authority in tragic and utterly inexcusable ways. There is no shortage of evidence to support this, with a disturbingly regular cadence of high profile police violence in the headlines, including the cell phone, body camera and other footage that has brought this reality into the American consciousness and dialogue in inescapable ways. Most recently the devastating footage of

officers brutally beating Tyre Nichols to death in Memphis served as such an example. We have in Maryland our own long list of high profile deaths at the hands of police, along with an ongoing deeper well of allegations of police use of force and other forms of misconduct that many lament happen with impunity in far less headline-grabbing ways.

Justice for victims of violence understandably looks different to different individuals; however, one of the most common features is the need for assurance that the pain they've experienced will not be repeated, for them or anybody else. For victims of police violence this often is uniquely out of reach.

Black people are three times more likely to be killed by police.<sup>1</sup> Across the country, police are charged in less than 2% of fatal shootings, and convicted in less than a third of those cases.<sup>2</sup> Notwithstanding numerous "reforms" and infusion of resources since the murder of George Floyd, deaths resulting from police interactions have not abated. Of the nearly 1,200 people killed by police in 2022, criminal charges were subsequently filed against only nine officers.

Even though not all police shootings are unjustified, various experts across the field agree this number is incredibly low.<sup>3</sup> Furthermore, consequences beyond criminal prosecution are also exceedingly rare, with departments rarely disciplining officers.<sup>4</sup> Why is accountability, especially through prosecution, so rare?

- **Even with solid evidence, which is often unavailable, cases against police officers are often very difficult to prove.** Police violence often occurs in a legally complicated context, making it difficult to prove in the face of an officer's unique protections and defenses.<sup>5</sup> If the person killed or harmed was alleged to have a weapon, or if the officer can otherwise posit they feared for their life based on truthful or untruthful<sup>6</sup> assertions, it often makes trying the case highly unlikely to

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<sup>1</sup> <https://mappingpoliceviolence.us/>.

<sup>2</sup> <https://mappingpoliceviolence.us/>;

<https://www.theatlantic.com/ideas/archive/2023/01/police-misconduct-consequences-qualified-immunity/672899/>.

<sup>3</sup> <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>;

<https://www.vox.com/21497089/derek-chauvin-george-floyd-trial-police-prosecutions-black-lives-matter>.

<sup>4</sup> <https://www.chicagotribune.com/news/ct-chicago-police-misconduct-settlements-met-20160129-story.html>;

<https://www.audacy.com/wcbs880/articles/nypd-paid-nearly-69-million-in-settlements-in-2019>.

<sup>5</sup> Though policies and procedures in some agencies have tightened up on use of force, such as BPD's in the aftermath of the consent decree, the law gives officers wide latitude to use force. Under the legal standards set by the Supreme Court, police officers can be legally justified in using force if they merely perceive a threat, regardless of whether that threat was there. The legal question comes down to whether the officer acted reasonably as other officers would in similar situations. This can be interpreted easily by judges, prosecutors, members of the jury and general public toward excusing the force even when it was not warranted; even when someone needlessly killed.

<sup>6</sup> Lying by officers is a disturbingly pervasive phenomenon, as documented in the extensive independent investigation surrounding the origins, causes and consequences of Baltimore's Gun Trace Task Force. Regarding the prevalence of disregard for truth, the report notes, *"It should be obvious that the integrity of our criminal justice system relies on the honesty and integrity of police officers. Providing false or misleading information to BPD, prosecutors, or courts for whatever purpose undermines one of the central pillars of our system of criminal justice. And yet our investigation revealed that for many officers, the practice of submitting false, incomplete, or misleading information in police reports, in applications for search warrants, and in court testimony began early in their careers. According to the witnesses we interviewed, this has been a widespread problem. We have no reliable way to measure the extent to which it remains."*

result in conviction.<sup>7</sup> That context is exacerbated by reluctance of fellow witnessing officers to provide incriminating or any substantial information in the course of investigation (sometimes referred to as “the blue wall of silence”<sup>8</sup>), and the reluctance of certain members of the public, who often end up on juries, to doubt the credibility or split second decision-making of officers.<sup>9</sup>

- **Numerous other protections uniquely available to officers.** Another set of factors and doctrines, beyond the wide latitude officers have to employ force, such as qualified immunity, have created the perception - and often reality - that police are untouchable, even for the most grievous of harms.<sup>10</sup>
- **Conflict of interest.** The actor currently responsible for bringing these charges in Maryland and in many states, the local prosecutor, works closely with their local police department, creating an inherent tension and reluctance to jeopardize the relationships they depend on in the course of their daily responsibilities investigating, charging and trying cases.<sup>11</sup> These tensions are not theoretical, and can exist in highly problematic ways at both the individual and organizational level. In the relatively rare examples of local prosecutors choosing to pursue these cases nationally, some have spoken out about the barriers and repercussions they faced.<sup>12</sup>

These tensions are familiar in Maryland, including within the painful recent memory of the death of Freddie Gray in police custody, and the mass protests and turbulent legal saga that unfolded in the aftermath.<sup>13</sup>

### **SB 290 and the need for change**

Two very serious problems with the status quo in Maryland are 1) lack of accountability for unjustified police violence; and 2) lack of legitimacy of the criminal legal system and broader government in the eyes of impacted families, communities, and indeed, growing swaths of the public at large.

The first is of utmost importance, especially in responding to the trauma and devastation these events cause to the victims' families and communities. Both challenges are inextricably linked.

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<https://static1.squarespace.com/static/5e25f215b3dbd6661a25b79d/t/61dfb04407c9d81f367972d8/1642049639956/GTTF+Report-c2-c2-c2.pdf>

<sup>7</sup> <https://harvardlawreview.org/2017/06/why-do-courts-defer-to-cops/>;

<https://www.nytimes.com/2017/05/31/us/police-shootings-trial-jury.html>.

<sup>8</sup> <https://www.nytimes.com/1985/06/16/weekinreview/the-unwritten-code-that-stops-police-from-speaking.html>.

<sup>9</sup> <https://www.vox.com/2014/11/25/7173695/ferguson-police-officer-prosecution>.

<sup>10</sup> <https://columbialawreview.org/content/police-suspects/>.

<sup>11</sup> At Arm's Length: Improving Criminal Investigations of Police Shootings, Stanford Law School Center for Criminal Justice (2016), <https://law.stanford.edu/wp-content/uploads/2016/09/At-Arms-Length-Oct-2016.pdf>.

<sup>12</sup> <https://www.mprnews.org/story/2018/03/22/rights-protections-at-heart-of-spat-between-prosecutors-police>.

<sup>13</sup> With a national spotlight, then State's Attorney Marilyn Mosby when deciding to drop the charges her office initially brought against members of BPD stated: “After much thought and prayer, it has become clear that without being able to work with an independent investigatory agency from the very start, without having a say in the election of whether cases proceed in front of a judge or jury, without communal oversight of police in this community, without substantive reforms to the current criminal justice system, we could try this case 100 times just like it and we would still end up with the same result.”



**The importance of legitimacy and trust in the system in order for that system to function cannot be overstated.** Currently in Maryland, not only is systemic legitimacy eroded through a structure that makes pursuit of these cases highly unlikely,<sup>14</sup> but depending on the county, fosters a sense of “justice by geography,” informed more by the individual State’s Attorney’s positioning than the facts of the case, and promoting negative public sentiment that prosecutors and law enforcement protect each other. When police violence occurs, communities rightfully want to know who is protecting them.

As in many states, the individuals heading these offices and making ultimate charging decisions are elected officials, adding another politically fraught dynamic. These conflicts of interest, real and perceived, contribute to the contempt community members feel towards the criminal legal system.

The legitimacy of the system in the eyes of many Marylanders, especially Black, brown and low income residents living in highly policed communities, who are statistically far more likely to be victims of police violence, is already in crisis. Trust and collaboration between community members and those investigating and trying cases is frayed, as demonstrated in part by abysmally low clearance rates in Baltimore and other jurisdictions throughout the state.<sup>15</sup>

SB 290, a natural extension of prior reforms, takes another step in the right direction in addressing these challenges, especially the irrefutable conflicts of interest currently impeding processes to hold officers accountable for criminal behavior. Although giving prosecutorial powers to the Attorney General’s Independent Investigations Division is not a cure all for police accountability, or the many complex challenges surrounding these incidents, the benefits of moving charging decisions to an independent actor is itself meaningful change, and aligned with growing awareness of national best practices.

As stated by the U.S. Commission on Civil Rights, “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.”<sup>16</sup> Also made clear by Fair and Just Prosecution are the following recommendations:

“(1) creating independent and transparent investigatory and charging procedures following police-involved critical incidents, and (2) overhauling or standing up dedicated public integrity or civil rights units. In addition, another critical police accountability measure is revising discovery policies and

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<sup>14</sup> In the first year of the Independent Investigations Division (IID)’s existence, local prosecutors made their charging decisions in 11 cases which IID investigated, all of which were declinations to prosecute. Independent Investigations Division First Annual Report, [https://www.marylandattorneygeneral.gov/Reports/IID\\_First\\_Annual\\_Report.pdf](https://www.marylandattorneygeneral.gov/Reports/IID_First_Annual_Report.pdf).

<sup>15</sup> BPD homicide clearance rates dropped again in 2022, down to 36%, from 42% the previous year, and is even lower for nonfatal shootings. This includes cases where any arrest was made or the case was “cleared by other means” like the suspect is subsequently murdered.

<sup>16</sup> Police Use of Force: An Examination of Modern Policing Practices, US Commission on Civil Rights, November 2018, <https://www.usccr.gov/files/pubs/2018/11-15-Police-Force.pdf>.



procedures, including a “feedback loop” to identify police officers who routinely engage in misconduct.”<sup>17</sup>

With SB 290, Maryland has an opportunity to move toward these practices alongside a growing number of states.<sup>18</sup> To be clear, independent prosecution authority is not the end all and be all; and in fact, it is imperative that the legislature and other elected officials continue to pursue more meaningful tools of accountability beyond the criminal legal system. There is a great deal of work to do across the state beyond SB 290 focused on prevention and needed culture change surrounding policing overall. Even a more fair, transparent process, and increase in warranted prosecutions and convictions of officers who commit murder or other serious harm does not heal those who have been victimized, and it never will. But it is an important piece of what we owe the citizens of this state, and what the legitimacy of our institutions require.

For these reasons, we urge a favorable report.

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<sup>17</sup> Promoting Independent Police Accountability Mechanism, Fair and Just Prosecution (2017), <https://fairandjustprosecution.org/wp-content/uploads/2017/09/FJPBrief.Police-Accountability.9.25.pdf>.

<sup>18</sup> At least 8 states have some form of independent prosecution authority: CA, DE, ME, NJ, NY, RI, VT, WA.

**SB%200290.pdf.pdf**

Uploaded by: Hilary Hellerbach

Position: FAV

SB0290-Office of Attorney General – Independent Investigations Division-Authority to Prosecute  
Stance: Favorable

Testimony: My name is Hilary Hellerbach and I reside in the 45th District of Baltimore City. I am writing to lend my support for Senate Bill-SB0290. As a white woman who has been privileged not to have to worry that I may be treated unfairly by police due to the color of my skin, but who has been keenly aware of the disproportionate targeting and abuse by police of people who don't look like me, followed by the clear lack of prosecution by States Attorneys of officers when they brutalize community members, I am strongly in favor of this Bill passing as it is written. It is widely known in this country that prosecutors are unlikely to charge or prosecute officers for misconduct. Many states, including Maryland, have a history of legislation that protects officers from prosecution. The culture of policing in this country supports the idea that using violence to control others will decrease crime, yet statistics on crime plainly show this not to be true. In order to change this culture of police violence I believe that we need to hold police accountable for the harm they have caused in the name of policing. The IID was formed in Maryland because victims' families were crying out for accountability where there was none. For the first full year that the IID was in charge of investigating cases, they investigated 23 cases of police brutality that resulted in harm or death of a civilian. Approximately half of these, 11, were referred to the State's Attorney in the jurisdiction where the event occurred as having probable cause for potential prosecution of one or more officers. Not ONE of these were taken on for prosecution by ANY of the State's Attorneys in MD. This is why many civilians believe that there continues to be an unwritten understanding between the various State's Attorneys Offices, the Police Departments, and the F.O.P. to not prosecute police. This maintains a culture of accepting violence that is hurting our communities. When young people see that police brutality can happen without consequences, it teaches them that violence is acceptable. This is not okay. If the Attorney General performs a comprehensive investigation and finds probable cause to prosecute an officer, then this prosecution should take place. Since the various State's Attorneys refuse to do so, it only makes sense to keep these cases within the Attorney General's Office and provide them with the resources, authority and jurisdiction to prosecute. It is hoped that since the Attorney General's Office is less involved in day to day criminal prosecution utilizing local police departments, that they may be more objective and equitable in their prosecution of police misconduct. Police officers who utilize excessive force for any reason have made a choice that should result in them being investigated, prosecuted, and incarcerated. This Bill can facilitate a greater degree of fairness in prosecution of wrong doing, thus proving that no one is above the law. It will allow victims of police brutality and their families to realize some level of accountability so that they may begin the process of grieving and healing. This jurisdictional change needs to happen now if we are to decrease the violence in our state. We can be in the forefront of seeking true accountability if we are brave enough to make a systemic change that will send a clear message that violence, control, and excessive force is not an effective way to keep our communities safe.

# **Policing Project Testimony on SB0290 2-13-23.pdf**

Uploaded by: Josh Parker

Position: FAV

**SENATE JUDICIAL PROCEEDINGS COMMITTEE****HEARING:**

Feb. 14, 2023 Hearing on SB0290

**DATE OF TESTIMONY:**

Feb. 13, 2023

**TESTIMONY OF THE POLICING PROJECT AT NEW YORK UNIVERSITY  
SCHOOL OF LAW IN SUPPORT OF SB0290**

Chair Smith and members of the Judicial Proceedings Committee, this testimony is on behalf of the Policing Project at NYU Law, an organization dedicated to promoting democratic policing. At the Policing Project, we have worked with police departments and elected officials in more than a dozen jurisdictions, including New Jersey, New York, Washington, New Mexico, and California. We also have drafted model state-level legislation on a variety of policing issues, including use of force investigations. The work we have done is in part the basis for our testimony in support of SB0290.

SB0290 expands the jurisdiction of the Independent Investigation Division of the Office of the Attorney General to investigate additional incidents of police misconduct and provides authority to the Attorney General to prosecute offenses investigated under Section 6-602. Enacting SB0290 would bring Maryland in line with California, Colorado, Illinois, Maine, Massachusetts, New York, Washington, and other states that have enacted similar legislation, empowering their Attorney General's office or another neutral entity to conduct independent investigations of police misconduct.

State Attorneys General play an important role in addressing police misconduct, and this bill would give explicit statutory authority to investigate and prosecute incidents where police seriously injure or kill Marylanders. Just a year ago, eighteen-year-old Donnell Rochester was killed by Baltimore City police officers serving a warrant. The Independent Investigations Division handed over their findings to Baltimore prosecutors who chose to take no action, despite the Investigative Unit's finding that criminal charges were possible since the officer fired the fourth fatal shot when Rochester was no longer a threat to anyone.

SB0290 ensures that investigations *and* prosecutions are independent. Police and prosecutors work closely together, which can create a conflict of interest when local prosecutors are tasked with prosecuting police.<sup>1</sup> An independent review and prosecution by the Attorney General ensures fair decision making and transparency, and can improve community trust as well.

Additionally, statutory authority to investigate and prosecute misconduct might lead to two additional benefits. First, it would likely result in the State Attorney General more aggressively overseeing local police departments and serious incidents that occur—because they would clearly have the authority to do so.<sup>2</sup> Second, it would streamline the investigation-to-prosecution process as the same body would complete both.

Maryland has already passed comprehensive use of force reform, and also made small tweaks to this section last year. But SB0290 will ensure that the law truly possesses an effective mechanism to secure justice for Marylanders who are seriously harmed by the police. For this and other reasons, we support advancing SB0290.

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<sup>1</sup> For many years, scholars have recognized that local prosecutors cannot serve as “an effective instrument for controlling police violence” because of their “hopeless conflict of interest.” Jason Mazzone, Stephen Rushin, *State Attorneys General As Agents of Police Reform*, 69 Duke L.J. 999, 1019 (2020), citing Louis B. Schwartz, *Complaints Against the Police: Experience of the Community Rights Division of the Philadelphia District Attorney's Office*, 118 U. PA. L. REV. 1023, 1023-24 (1970).

<sup>2</sup> In contrast, in states where there is not clear statutory authority, state attorneys general might obtain equitable relief against a local police department under the *parens patriae* doctrine, which can raise numerous policy concerns. See Jason Mazzone, Stephen Rushin, *State Attorneys General As Agents of Police Reform*, 69 Duke L.J. 999, 1000 (2020).

# **SB290\_PRP\_Rosenthal\_FAV.pdf**

Uploaded by: Josh Rosenthal

Position: FAV





February 13, 2023

Sen. William C. Smith, Jr.  
Chair, Judicial Proceedings  
Maryland Senate

**SB 290: Office of the Attorney General – Independent Investigations Division – Authority to Prosecute [SUPPORT]**

Dear Chair Smith, Vice Chair Waldstreicher, and members of the Senate Judicial Proceedings Committee:

Thank you for the opportunity to present written testimony in support of Senate Bill 290, Office of the Attorney General – Independent Investigations Division – Authority to Prosecute. The Public Rights Project is a nonprofit organization dedicated to closing the gap between the promise of our laws and the lived reality of marginalized communities. We work hand in hand with local, state, and tribal governments across the United States to equitably enforce laws that protect people's civil and human rights. In partnerships with more than 150 government offices across 39 states, we provide technical assistance, training, and legal representation in support of meaningful enforcement of the laws that protect the rights of everyone in our communities.

By empowering the Maryland Attorney General to prosecute deaths and serious injuries caused by the police, Senate Bill 290 takes an important step to ensure meaningful protection of civil rights and to cultivate public trust in law enforcement. Placing responsibility for these prosecutions with the Attorney General addresses two significant challenges: first, it protects against actual and perceived conflicts of interest; and second, it consolidates the specialized expertise necessary for effective prosecution of police officers.

SB 290 addresses the potential conflicts of interest that arise when State's Attorneys prosecute a member of the police force with which they partner in other criminal prosecutions. State's Attorneys rely on police officers to investigate and testify in criminal prosecutions. Accordingly, it may be challenging for local prosecutors to fully recognize wrongdoing in the officers who are their partners in law enforcement. Even with the most zealous local prosecution, these relationships create an unavoidable perception of bias on the part of the public.



With the creation of the Independent Investigation Division in 2021, this Legislature recognized the importance of independent fact finding after a police encounter leads to death or serious injury. That independence is no less important in the context of prosecution.

Moreover, the SB 290 approach promotes effective coordination and communication between the initial investigation team and the team that may ultimately prosecute. This ensures that the investigation is tailored to uncovering the information that may be necessary for a prosecution and that the prosecuting team understands the nature of the investigation. It sensibly allows for the types of interactions that are common in cases handled by a state attorney general, where investigation and enforcement go hand-in-hand..

This bill further supports effective prosecution of police-involved deaths by establishing a dedicated statewide team for these cases. Civil rights prosecutions involve distinct questions of both law and fact. An effective civil rights prosecution must address the complex legal regime governing use of force. Prosecutors must often address recurring evidentiary questions regarding commonly used firearms, stun guns, and other equipment, as well as expert testimony regarding police tactics, training, and practices. Consolidating these prosecutions across the state will help develop a corps with the specialized expertise and litigation experience to pursue these cases to successful completion.

SB 290 would align Maryland's enforcement regime with those of other states committed to protecting the rights of their residents, such as California, Connecticut, New Jersey, and New York.<sup>1</sup> Even where state law does not yet explicitly provide for independent prosecution of police homicides, leaders have recognized its importance. For example, in Minnesota, following the murder of George Floyd, Governor Tim Walz appointed Attorney General Keith Ellison to lead the prosecution of Derek Chauvin and the other officers involved in Floyd's murder.

For these reasons, the Public Rights Project urges this committee to report SB 290 favorably,

Sincerely,  
/s Joshua Rosenthal  
Joshua Rosenthal  
Legal Director

josh@publicrightsproject.org  
330-607-0730

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<sup>1</sup> See Cal. Gov't Code § 12525.3; Conn. Gen. Stat. § 51-277(a), (b); N.J. Stat. 52:17B-107; Executive Order [Cuomo] No. 147 [9 CRR-NY 8.147].

## **SB 290 expansion of auth of ag.pdf**

Uploaded by: Kenneth Phelps, Jr.

Position: FAV



**TESTIMONY IN SUPPORT OF SB 0290:**

Office of the Attorney General - Independent Investigations Division  
- Authority to Prosecute

**\*\*FAVORABLE\*\***

**TO:** Senator William C. Smith, Chair, Senator Jeff Waldstreicher, Vice Chair and the members of the Senate Judicial Proceedings Committee

**FROM:** Rev. Linda K. Boyd, Co-Chair, Maryland Episcopal Public Policy Network, Diocese of Maryland

**DATE:** February 14, 2023

This bill, in part, expands the investigative jurisdiction of the Independent Investigations Division of the Office of the Attorney General to include a police-involved incident resulting in death or an injury to an individual that is not otherwise within the jurisdiction of the Division. Public trust in law enforcement is better served if serious incidents involving law enforcement officers are subject to not just outside scrutiny but also are left to outside prosecutors to decide whether criminal charges should follow.

A local State's Attorney's office too often has local ties to its respective police agency that may prevent it from being objective and impartial in an investigation that involves an injury or death. Everyone, the police agency, the State's Attorney's office, and most important, the community, would be better served if such potential local bias were eliminated in a serious investigation. Such objectivity would result in increased faith in the legal system by the average citizen.

We respectfully request a favorable report.



THE EPISCOPAL DIOCESE  
OF MARYLAND

The Maryland Episcopal  
Public Policy  
Network

## **SB290\_Parker\_FAV.pdf**

Uploaded by: Kristy Parker

Position: FAV

## **Testimony of Kristy Parker in support of SB290**

This statement is submitted in support of passing SB290. From September 2002 through October 2017, I was a prosecutor in the Criminal Section of the Civil Rights Division of the United States Department of Justice. From 2010 until the end of my tenure, I was a Deputy Chief. In these roles, I investigated, prosecuted, and supervised hundreds of police excessive force cases under 18 U.S.C. § 242, the federal statute that prohibits deprivations of rights by persons acting under color of law, and other related federal laws. As a result, I gained extensive experience in evaluating the efficacy of both federal and state efforts to hold law enforcement officers accountable for violating the rights of people in their custody. Doing so successfully is a critical component of a functioning democracy and necessary for the safety of citizens and police officers.

Based on that experience, I strongly support SB290, which would grant the Office of the Attorney General independent prosecution authority in officer-involved fatalities through its Independent Investigations Division. Allegations of unlawful uses of force by police officers are notoriously difficult to prosecute as crimes, especially when prosecutors are called upon to sit in judgment of colleagues they work with every day. In addition, gathering the evidence necessary to prove criminal conduct by police officers, which includes eliciting truthful testimony from often reluctant law enforcement witnesses, requires significant investigative resources that are often unavailable to local prosecutors. These challenges combine to undermine public confidence when local prosecutors decline to seek charges in police excessive force cases, even when those decisions are warranted by the facts and the law. Independent investigative bodies are therefore vital to ensuring that

allegations of unlawful deadly force by police officers are reviewed objectively in a manner that the public views as credible.

In my experience at the federal level, prosecutors who come from outside the community or agency where an allegation of excessive force arises are better able to conduct investigations of law enforcement officers at arms length without damaging the relationships necessary to carrying on the local prosecutor's larger law enforcement mission. They are also better able to analyze evidence, interview witnesses, and take standard investigative steps free from any bias or concern for feelings that might come from past associations with witnesses, subjects, and their supervisors.

At the same time, independent prosecutors who have specialized knowledge of the law governing police uses of force, as well as police training and use-of-force techniques, bring important resources to the table. Successful investigations of police misconduct generally require such specialized knowledge. They also often require the use of investigative grand juries as a mechanism for securing and memorializing the testimony of witnesses who are reluctant to testify against their fellow officers or civilians who are fearful of testifying against police officers. It was not uncommon for the investigations I worked on and oversaw to require weeks and months to complete. Independent prosecutors can devote the necessary resources to law enforcement investigations while freeing local prosecutors to do their critical work. They are also a safeguard against pushing forward cases that merit prosecution without taking all the steps necessary to ensure the best chance of success at trial.

Finally, independent investigations and prosecutions of uses of deadly force are an important tool in gaining the public's trust. It was apparent to me throughout my career



that many communities in our country justifiably lack faith in the willingness or ability of our legal system to hold police officers accountable for violating the law. This, in turn, undermines the belief that we live in a society that is governed by the rule of law, which endangers citizens and police officers alike. While there are many complex issues that must be addressed to solve this problem, it is imperative in the first instance that investigations of police misconduct be as free as possible from any suggestion that the relevant decisionmaker has a conflict of interest.

For all of these reasons, passage of SB290 will be an important step forward to ensure respect for the constitutional rights of the people of Maryland and to improve the functioning of its law enforcement agencies.

## **SB 290 Office of the Attorney General - Independen**

Uploaded by: Nancy Soreng

Position: FAV



## TESTIMONY TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

**Position: Favorable**

**SB 290 Office of the Attorney General - Independent Investigations Division - Authority to Prosecute**

**By: Nancy Soreng, President**

**Date: February 14, 2023**

The League of Women Voters supports a criminal justice system that is just, effective, equitable, transparent, and that fosters public trust at all stages.

We support SB 290 because it addresses a major problem resulting from the good intentions of SB 600 when it was passed in 2021. Chapter 132 of 2021 established the Independent Investigative Unit within the Office of the Attorney General (OAG) to investigate all alleged or potential police-involved deaths of civilians. However, that law said that after completing an investigation, the unit must transmit a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter.

According testimony presented by the Attorney General's office on SB 896 which came before you in 2022 *"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."*

Of the 6 cases referred to OAG in 2021 where they forwarded the results of their investigation to the State's Attorney all declined to prosecute. Of the cases that were referred to the State's Attorney in 2022, 9 were still ongoing so the prosecution decision was available. Two investigations have been completed and referred but the decision on whether to prosecute has not been made public. 8 other cases were referred to the State's Attorney and all were declined for prosecution. It is hard to accept that NONE of the 14 cases referred to the State's Attorney merited prosecution.

We also note that of the 21 witnesses who testified on SB 896 in 2022, all of the 12 unfavorable witnesses were from law enforcement or local State's Attorneys. We know that our system is not working and those who are fighting reform are part of the problem.

SB 290 can remedy this situation and we urge a favorable report.

# **SUPPORT SB290.docx.pdf**

Uploaded by: Philip Caroom

Position: FAV

## SUPPORT SB 290 – independent prosecution for police misconduct



To: Chair Will Smith and Senate Judicial Proceedings Committee  
From: MAJR Executive Committee  
Date: February 14, 2023

Md. Alliance for Justice Reform (MAJR-[www.ma4jr.org](http://www.ma4jr.org)) strongly supports SB 290 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: Under current Maryland law, even though an Independent Investigations Unit may find misconduct is found, current law still relies on local prosecutors to decide a) the sufficiency of potential evidence, b) whether they should do a prosecution themselves—and on what specific charges, and c) whether to seek an outside special prosecutor.

However, the local prosecutors themselves are conflicted because they work with the very same police officers 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 a former prosecutor and participant in police disciplinary boards, the undersigned can attest to the factors of peer pressure and team loyalty that can 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.

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

Notably, in other jurisdictions, independent civilian oversight has 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.

SB290 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.

Please give a favorable report to SB 290, a very valuable bill. -Phil Caroom

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

# **SB290\_NAACP.docx.pdf**

Uploaded by: Willie Flowers

Position: FAV



# **NAACP**

## *Maryland*

### STATE CONFERENCE

**CHAIRMAN; WILL SMITH  
JUDICIAL PROCEEDINGS COMMITTEE  
TESTIMONY IN SUPPORT OF SB-290  
FEBRUARY 14, 2023 \**

**WILLIE FLOWERS; PRESIDENT  
NAACP MARYLAND STATE CONFERENCE**

**MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I WANT TO THANK FOR THE OPPORTUNITY TO SPEAK. MY NAME IS WILLIE FLOWERS PRESIDENT OF THE NAACP MARYLAND STATE CONFERENCE.**

**I WOULD LIKE TO ACKNOWLEDGE THE COMMITTEE AND THE WORK OF BOTH THE HOUSE AND THE SENATE IN 2021 WHEN THEY RESPONDED TO THE COUNTRY WITH POLICE REFORM PACKAGE IN THE AFTERMATH OF THE MURDER OF THE LATE MR. GEORGE FLOYD. THIS REFORM PACKAGE STILL STANDS AS AN EXAMPLE OF WHAT THE GENERAL CAN DO IN RESPONSE TO A CRISIS OF THE MAGNITUDE OF WHAT WE SAW WITH NATIONAL DEMONSTRATIONS AND A CRY FOR REFORM.**

**AS WE KNOW, THERE WERE MANY PIECES OF THE REFORM PACKAGE BUT THE ONE PIECE THAT WAS LEFT OUT WAS THE ABILITY OF THE AG OFFICE TO THE INVESTIGATE POLICE AT THE LOCAL LEVEL AND THAT MUST BE CORRECTED WITH SENATE BILL 290.**

**SENATE BILL 290 SIMPLY EXPANDS THE INVESTIGATIVE JURISDICTION OF THE INDEPENDENT INVESTIGATIONS DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL TO INCLUDE POLICE-INVOLVED INCIDENTS WHERE A PERSON IS KILLED OR INJURED. SB 290 GIVES THE AG'S OFFICE THE POWER TO NOT JUST INVESTIGATE BUT TO CHARGE OFFICERS WHO WHEN EVIDENCE REQUIRES PRECAUTION.**

**THE LEGISLATION IS IMPORTANT FOR THE COMMUNITY AND FOR THE STATES ATTORNEY'S IN ALL COUNTIES IN THE STATE AND BALTIMORE CITY. IN GIVE AN INDEPENDENT 3RD PARTY THE POWER TO NOT JUST INVESTIGATE BUT TO CONTINUE STEPS TO COMPLETE A PROCESS THAT COULD BRING MISUNDERSTANDING BETWEEN THE COMMUNITY, POLICE AND STATE'S ATTORNEYS WHEN THERE IS INJURY OR DEATH AT THE HANDS OF THE POLICE. OVERALL, AN OUTSIDE AGENCY WOULD HAVE TO REDUCE DIVISION WITHIN THE COMMUNITY.**

**FOR THOSE WHO DON'T KNOW, THE MONTGOMERY COUNTY STATE'S ATTORNEY OFFICE AND THE HOWARD COUNTY STATE'S ATTORNEY OFFICE CREATED AT SYSTEM THAT INVOLVES ONE COUNTY INVESTIGATING THE OTHER IN THE CASE OF INCIDENTS OF POLICE FATALITIES AND INJURIES. UNTIL THIS DAY THERE HAS NEVER BEEN A POLICE OFFICER CHARGED OR PROSECUTED. HOWEVER, THERE HAS ALWAYS BEEN CONTROVERSY ABOUT THE DECISION NOT TO PROSECUTE. I SHOULD ADD HERE THAT UNLIKE THE IID REPORT FROM OCTOBER 2021 - SEPTEMBER 2022 WE HAVE NEVER SEEN A PUBLIC REPORT OF ANY OF THE INCIDENTS OF POLICE KILLINGS OF RESIDENTS IN EITHER MONTGOMERY COUNTY OR HOWARD COUNTY. THE BEST AND MOST THOROUGH REPORTING OF INCIDENTS HAS BEEN THE IID REPORT OF 2022. IT STANDS AS THE MOST IMPORTANT DOCUMENT TO MOVING FORWARD FROM AN AGENCY THAT COMMUNITIES AND CAN HOPE FOR THE BEST RESULT THEY JUST NEED THE POWER TO DO THEIR JOBS.**

**I HAVE TO ADD HERE THERE IS A RACIAL DYNAMIC TO THE POLICE KILLINGS BECAUSE THE MAJORITY OF PEOPLE KILLED WERE BLACK AND BROWN AT THE HANDS OF WHITE OFFICERS. THIS IS THE TREND IN MARYLAND AS LONG AS THAT IS THE CASE AND THERE IS NO PROSECUTION OF OFFICERS THERE WILL NOT BE ANY TRUST.**

**IN 2014, FREDDIE GRAY DIED AT THE HANDS OF THE POLICE. IT WAS A CLEAR CASE OF POLICE BRUTALITY WHERE AN UNARMED CITIZEN WAS TAKEN INTO CUSTODY AND KILLED BY BALTIMORE CITY POLICE. THE CITY WAS INFLAMES AND STOOD AS AN EXAMPLE TO THE ENTIRE WORLD ABOUT WHAT HAPPENS TO AFRICAN AMERICAN MEN AT THE HANDS OF POLICE. WE KNEW IT**



**BECAUSE PARTS OF THIS MISTREATMENT THAT LED TO FREDDIE GRAY'S MURDER WAS FILMED.**

**THE COMMUNITY THOUGHT IT WAS AN OPEN AND SHUT CASE WHEN THE STATE'S ATTORNEY AT THE TIME MARILYN MOSBY CHARGED THE OFFICERS INVOLVED FOR MURDERING AND UNARMED PEDESTRIAN. SADLY, THE OFFICERS WERE NOT CONVICTED AND COMMUNITY MIS-TRUST OF LAW ENFORCEMENT CONTINUES.**

**THE OTHER SIDE OF THE STORY IS THAT A BRAVE PROSECUTOR TOOK A STEP THAT WAS NEEDED AT THE TIME. WHILE HER OFFICE WAS NOT SUCCESSFUL IN WINNING A CONVICTION SHE WAS FOREVER VILIFIED FOR DOING RIGHT THING FOR THE COMMUNITY. HAD THE POLICE REFORM BILL BEEN IN PLACE AT THAT TIME THERE WOULD HAVE BEEN A STATE FUNDED INVESTIGATION. HAD THE AG'S OFFICE HAD THE POWER TO PROSECUTE THE STATE'S ATTORNEY WOULD HAVE NOT BEEN VILIFIED.**

**SINCE THEN THE POLICE REFORM PACKAGE HAS BECOME LAW. REPEALING THIS CERTAIN PART OF THE REFORM PACKAGE TO EMPOWER THE ATTORNEY GENERAL'S INDEPENDENT INVESTIGATIVE UNIT IS NOT JUST THE RIGHT THING FOR THE COMMUNITY BUT THE BEST THING FOR THE STATE'S ATTORNEY'S OFFICES AROUND THE STATE AS WELL.**

**I MOVE FOR FAVORABLE REPORT OF SB-290.**

# **Robert Veiga-SSJC Testimony SB 290 Favorable With**

Uploaded by: Robert Veiga

Position: FWA



**TESTIMONY IN SUPPORT OF SB 290**  
**Senate Judicial Proceedings Committee, February 14, 2023**

**My name is Dr. Robert Veiga. I am a resident of Silver Spring, in District 20, and I am testifying as co-chair of the Silver Spring Justice Coalition in support of SB 290, with amendments.**

The Silver Spring Justice Coalition is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing. In furtherance of this goal, we support giving the Attorney General's Independent Investigations Division the authority to prosecute police-involved killings and injuries likely to result in death. Our current system of accountability for police violence, particularly violence against Black men, is not working, and a structural change is needed.

We all know how rare it is for a police officer to be prosecuted for harming a member of our community. The Mapping Police Violence project reports that less than 2% of all police killings from 2013-2020 resulted in prosecutions. In Montgomery County, police killed twelve people in the past five years and the only prosecution we've had was of an officer from a law enforcement agency outside of Montgomery County who killed two people when he was off-duty and acting in a private capacity. Unfortunately, the formation of the Independent Investigations Division hasn't changed a thing; since its formation in 2021, the IID has investigated 29 police-involved killings in Maryland and not a single one has resulted in a prosecution by a local state's attorney. Not surprisingly, over 60% of these killings have been of Black people, while they make up just over 30% of our population.

While we have no illusions that the IID's power to prosecute police will suddenly reverse this shameful history, we believe that an independent office whose sole job is to investigate and prosecute these cases will be more likely to bring justice to our communities than we receive under the current system.

That said, we still believe the local state's attorney should be allowed to prosecute a case if the IID decides not to, and we ask the Sponsor to amend the bill to add this critical backstop. Given

◆ silverspringjustice.wordpress.com ◆ Facebook: ssjusticecoalition ◆ Twitter: @SilverCoalition ◆  
◆ silverspringjustice@gmail.com ◆

the complete absence of justice in cases of police violence, it is essential that every option remain available to make the community whole. This is a fundamental matter of racial equity and public safety for all of us. .

For these reasons I respectfully urge you to issue a favorable report, with our requested amendment.

# **SENATE BILL 290 IID - Unfavorable.pdf**

Uploaded by: Alison Healey

Position: UNF

## SENATE BILL 290

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

**POSITION: UNFAVORABLE FOR SB 290**

February 9, 2023

My name is Alison Healey. I am the State's Attorney for Harford County and a board member of the Maryland State's Attorney's Association (hereinafter MSAA). I am here today to offer my opposition to Senate Bill 290, as agreed upon by 23 out of 24 State's Attorneys in the State of Maryland.

The legislative intent of the applicable statute included a separation of the agency involved in the incident, the investigative body for the incident, and the prosecutorial determination in a case. Support of Senate Bill 290 flies directly in the face of that intention, as it would pair the investigation and the prosecution to the same agency.

In addition, as State's Attorney's, the citizens elected me, and the other State's Attorneys in Maryland, to spearhead the prosecution of crimes in our respective counties. That is because we are the most experienced individuals across the State to evaluate and handle these crimes, and our elections confirm that we are the most qualified individuals to maintain prosecutorial authority of all incidents and potential crimes which occur in our counties, including officer involved death and serious injury investigations. The State's Attorneys of Maryland have tried countless homicide and attempted homicide cases, which far exceeds the experience in these types of cases held by the individuals of the Independent Investigations Division of the Attorney General's Office. By passing this law, we would be doing a great disservice to our citizens in having less experienced individuals make charging decisions in these cases and further potentially prosecuting these cases, individuals who are far less knowledgeable about the wide variety of laws that affect these cases. In addition, by divesting State's Attorneys of their prosecutorial authority in these investigations, we are equally divesting our citizens and voters of the rights instilled to them by the great democracy we maintain here in our country. We do not propose bills which take away the ability for you, as legislators, to make laws that impact your job duties, as our citizens have elected you to do so, and likewise, it would be

inappropriate to divest State's Attorney's of the authority they are granted by their voters.

When we took office, we took an oath to support the Constitution and laws of this State and to do so without partiality or prejudice. There is no merit to claims that prosecutors are unable to evaluate and hold accountable law enforcement officers within our jurisdictions. To assert that we, as the elected State's Attorneys, would be biased and either incapable or unwilling to prosecute law enforcement officers in these cases under the appropriate circumstances is not founded in any facts. We, very often, in our normal duties have occasion to take actions against the interest of our law enforcement, which includes declination of prosecution of cases they seek to be charged, dismissal of cases they have already charged, initiating disciplinary actions against an officer who engages in inappropriate actions, and much more. The fact that the incident happens to be a police-involved investigation does not change our analysis of the case or the oath that we swore to uphold when we took office.

Moreover, State's Attorneys are still bound as attorneys by the Maryland Rules of Professional Conduct. We, on occasion, must obtain a special prosecutor from another jurisdiction on cases where a conflict exists. Examples of this include individuals who are related to employees of our office or defendants who have been represented by the State's Attorney in private practice before taking office. Due to my private practice prior to taking office, in just a short month and a half, I have already obtain a special prosecutor on several cases, demonstrating my ability to maintain my ethical responsibilities. I firmly maintain that every State's Attorney across this State maintains the same high standards of professional conduct. This would likewise apply to the cases in question in this bill. These mechanisms are already in place to address the issue to allow for the fair and just administration of justice, as that is and always will be our first priority as State's Attorney.

If this bill is enacted into law, we eliminate the voice of communities impacted by police involved deaths or serious injury cases. The Attorney General is a state-wide elected position whereas State's Attorneys are directly elected by the communities they serve, where these incidents transpire and have a tremendous impact. Every four years the impacted community gets an opportunity to affirm or reject the elected State's Attorney's actions while in

office, while the local communities have little to no access or voice as to the entity who would be handling these cases if prosecutorial authority were assigned to the Attorney General's Office.

Finally, police involved deaths are some of most complex investigations and prosecutions within the realm of criminal justice. Because, as previously stated, The Attorney General's Office does not have within its ranks the skilled experienced prosecutors to handle these cases, there is widespread concern by the State's Attorneys across the State that they would address that issue by poaching prosecutors from the same offices that are alleged to have a bias. Not only will this be to the extreme detriment to our public safety across the State by diminishing our State's Attorney's Offices of quality, experienced prosecutors, the sole fact that a prosecutor would now work for the Attorney General's Office does not change whatever bias is professed they have. They are still the same prosecutor. The detriment to the public safety of our communities by the depletion of our State's Attorney's Offices' resources would far outweigh any benefits, if any although I see none, that there are to Bill..

For these reasons, **I respectfully request an unfavorable report for Senate Bill 290.**



# **MCPA-MSA-SB 290-AG Investigation \_Authority to Pro**

Uploaded by: Andrea Mansfield

Position: UNF



# Maryland Chiefs of Police Association

## Maryland Sheriffs' Association



### MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and  
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee  
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 14, 2023

RE: **SB 290 Office of the Attorney General – Independent Investigations Division  
– Authority to Prosecute**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) OPPOSE SB 290. This bill greatly expands the types of law enforcement related incidents that may be investigated by the Office of the Attorney General and provides for the exclusive authority of the Attorney General to prosecute these incidents should the investigation provide sufficient grounds.

Two years ago the Attorney General's Office was given the authority to investigate those law enforcement involved incidents resulting in death or injuries likely to result in death. While MCPA and MSA opposed the legislation because it erodes the authority of the law enforcement agency, we've been able to work closely with the Independent Investigative Division (IID) to establish protocols that have been adopted statewide by all law enforcement agencies. MCPA and MSA see absolutely no reason to broaden the IID's investigative or prosecutorial authority. Further the manner specified does not appear to be based on the factual results of a prior investigations and would not be a sound justification for doing so.

Under current operational practices, law enforcement agencies may seek the assistance of outside agencies to investigate officer involved shootings. Many smaller agencies routinely seek the assistance of the Maryland State Police or other large policing agencies. This discretion allows an agency to determine the most effective approach for these additional investigations and to discuss matters of process, both administrative and criminal, as appropriate with the investigative agency. MCPA and MSA strongly oppose any legislation that further diminishes the responsibility of the Chief or Sheriff by expanding the investigative authority of the IID and limits their ability to hold officers accountable in the circumstances outlined in the bill.

For these reasons, MCPA and MSA OPPOSE SB 290 and urge an UNFAVORABLE Committee Report.

## **Senate Bill 290 - acl.pdf**

Uploaded by: Anne Colt Leitess

Position: UNF

SENATE BILL 290  
ANNE COLT LEITESS, ANNE ARUNDEL COUNTY STATE'S ATTORNEY  
**POSITION: UNFAVORABLE FOR SB 290**

February 10, 2023

My name is Anne Colt Leites and I am the elected State's Attorney for Anne Arundel County and served as a prosecutor for more than 34 years in both Anne Arundel County and Baltimore City. I am writing today to offer my opposition to Senate Bill 290 because it is a solution looking for a problem that was already solved by last year's legislation. This bill is not only unnecessary, but it will result in the further loss of experienced local prosecutors who will be hired to fill positions this legislation will generate.

Last year, the Maryland General Assembly passed legislation to have the Attorney General's Office (AG) investigate all on duty, police-involved deaths. The idea was that police agencies shouldn't investigate their own officers and that there should be an independent investigation to protect against possible bias. I understand and respect the need for independent investigations.

However, Senate Bill 290 now wrongfully assumes that the 24 elected State's Attorneys in Maryland cannot and should not be trusted to prosecute police officers when appropriate, and that power should reside in only one elected official—the AG. Historically, the AG has never prosecuted homicides and doesn't have the experienced staff to take on this type of nuanced and complex litigation. That has been the province of the local elected State's Attorneys. Homicide prosecution is a field that requires highly skilled attorneys who have many years of trial experience and training. In my county, and throughout the State of Maryland, police investigate crimes and State's Attorneys review their work, and if appropriate, prosecute those crimes. These are separate and distinct roles with different ethical considerations. It is a system of checks and balances that ensures that people are only charged with crimes, especially homicides, when there is clear evidence supporting that a crime was indeed committed. The irony of this proposed legislation is that, if passed, the AG would now investigate *and* prosecute these matters making them no longer an independent agency. They would now wear the hats of both police and prosecutor.

I have held police officers accountable for crimes as a line prosecutor and as the elected State's Attorney. If there is a true conflict of interest in prosecuting a particular person who has close ties or a relationship with the office, that case is paneled to another State's Attorney's office. Rarely do those paneled cases involve police officers, and my office is able to prosecute the local police when there is evidence of a crime. Likewise, the other State's Attorneys in Maryland prosecute police officers for a myriad of wrongdoing in their own counties. There is simply no compelling need to create a shadow prosecutor's office and separate system of justice for matters involving police where the AG becomes the 25<sup>th</sup> State's Attorney. Our local citizens elected their State's Attorneys to do a job and will remove us from office if we fail to do it. That is the check and balance needed for holding police accountable in our counties.

Since I was elected in 2019, and during the last four years, my attorneys have or are prosecuting police officers for the following cases:

- (1) Murder
- (2) Automobile Manslaughter
- (3) Sexual Assault and Second Degree Assault
- (4) Burglary and Trespass (Domestic Violence)
- (5) Theft Scheme and Misconduct in Office
- (6) Theft and Misconduct in Office
- (7) Misconduct in Office- False Statements and Failure to Investigate
- (8) Driving Under the Influence of Alcohol
- (9) Leaving the Scene of an Accident
- (10) First Degree Assault, pointing a handgun at a motorist
- (11) Interference with Airport Security
- (12) Reckless driving and traffic offenses

Reviewing the actions of the police is a part of our daily routine. We analyze their actions when we review their reports, body worn camera footage, witness statements and other evidence. We judge if they made a lawful arrest. We decide if they have the right suspect, and whether the law and facts fairly support the charges they seek. In the end, it is the State's Attorneys who have the final say in whether the police got it right or wrong. We also evaluate whether an officer committed wrong doing and should be held accountable at the criminal level.

This proposed legislation suggests that the State's Attorneys can no longer be relied upon to review the actions of the police in one specific category: in custody serious injuries or deaths. I disagree that the Attorney General's Office should be the sole arbiter to determine whether an officer committed a crime or the actions were lawful, necessary, or justified. There is no foundation for a claim that, simply because the matter involves a police officer, the State's Attorneys cannot be trusted to be fair and unbiased.

Finally, the impact of this bill on local State's Attorney's offices will be swift and drain local prosecutors' offices of experienced attorneys. Last year, the Governor of Maryland secured funding to fight crime in Baltimore and the result was that the Attorney General recruited 20 *temporary contractual* prosecutors they detailed to work at the United States Attorney's Office. The result was that the majority of those hires were local prosecutors who were paid up to \$20,000 more in salary to handle low level matters for a year or two. Local prosecutors' offices cannot compete with State or Federal budgets for staff and will lose experienced attorneys if the Attorney General is given this wide jurisdictional authority and the funding to pay for it. Currently, the State of Maryland has an employee vacancy rate of 16%. The AG doesn't need more funding or attorney positions and it doesn't need to fill the role of the local prosecutor.

We do just fine on our own.

For these reasons, **I respectfully request an unfavorable report for Senate Bill 290.**

# **SB290\_OppositionTestimony.pdf**

Uploaded by: Haven Shoemaker

Position: UNF

HAVEN N. SHOEMAKER, JR.  
STATE'S ATTORNEY



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## **SENATE BILL 290 (UNFAV)**

February 14, 2023

Maryland Senate  
Senate Judicial Proceedings Committee

RE: SB290 - Office of the Attorney General – Independent Investigations Division –  
Authority to Prosecute – Testimony in Opposition

Dear Chair Smith and Members of the Committee:

I write and testify in opposition to Senate Bill 290 (SB290). I request an unfavorable report because SB290 represents a complete usurpation of the authority granted under the Maryland Constitution to duly-elected local State's Attorneys when it comes to the investigation and decision to charge or not, of police-involved incidents that result in the death of individual or injuries that are likely to result in the death of an individual. *See*, Art. V, Sec. 1 -6 of the Md. Const. & Art. V, Sec. 7 -12 of the Md. Const.

Stripping locally-elected State's Attorneys in Maryland's twenty-three counties and Baltimore City of the power of investigation and charging in police-involved fatal and near-fatal incidents and handing it to the Attorney General is an affront to the division of labor contemplated by the Maryland Constitution and the voters in each of these jurisdictions. Moreover, walling off local prosecutors from those in law enforcement who will investigate these incidents is a corrosive recipe for alienation and distrust between sworn officers and local prosecutors who must continue to workday-in and day-out, hand-in-hand on investigations prosecutions in each county and Baltimore City.

The long-standing constitutional requirement that the top local prosecutor in each jurisdiction in Maryland be picked by the voters is an important check on the conduct of the person who is essentially the top law enforcement officer in that jurisdiction and ensures investigations and charging decisions are reviewed not only by the local judiciary, but the voters who live in that jurisdiction.

The decision to charge or not to charge is one that requires the exercise of considerable discretion and is best left to the State's Attorney in each jurisdiction. Whether you decide to pass SB290 into law or not, the Maryland Constitution shall still require local a State's Attorney make his or her own independent determination on whether an officer-involved incident resulting in a fatality or near fatality warrants charging or not.

The bottom line is that police-involved incidents should be investigated by the front-line prosecutors in each jurisdiction, and any charging decision resulting therefrom, should fall to the discretion of the locally-elected State's Attorney to ensure justice is done. Diverting these investigations to the Attorney General has the potential for a "one-size-fits-all" approach driven by political optics and pressure, rather than rooted firmly in the facts and circumstances surrounding each incident.

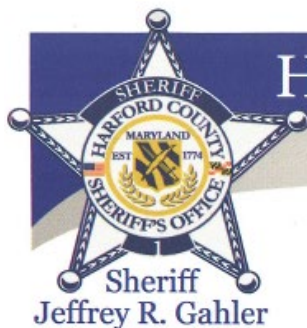
Accordingly, the Carroll County State's Attorney's Office joins the Maryland State's Attorneys' Association in requesting that this Committee give SB290 an unfavorable report.



# **SB 290 Attorney General IID FINAL.pdf**

Uploaded by: Melissa Lambert

Position: UNF



# HARFORD COUNTY SHERIFF'S OFFICE

COURAGE HONOR INTEGRITY

## Senate Bill 290 - Oppose

### Office of the Attorney General – Independent Investigations Division- Authority to Prosecute

#### Letter of opposition to the Senate Judicial Proceedings Committee

February 14, 2023

Mr. Chairman and Members of the Senate Judicial Proceedings Committee, I am pleased to submit my written testimony in opposition to Senate Bill 290.

Two years ago, this body passed Senate Bill 600. This law requires the Office of the Attorney General to conduct an investigation when the death of a civilian occurs and there is potential police involvement. As implemented by the Office of the Attorney General, it is their goal to completely eliminate local law enforcement from any role in these cases. As you are likely aware, it remains the position of the Sheriff of Harford County that this process lacks transparency, erodes public confidence as the duties of the elected Sheriff is to investigate potential criminal actions, and is counter to any concept of best practices related to timely crime scene processing and timely investigative actions.

This session, the Office of the Attorney General seeks to go one step further and subvert the Constitutional duties of elected State's Attorneys across the State. The Attorney General seeks prosecutorial authority in these cases, where their Office is also conducting the investigation.

In the last two years, this body has heard calls from some members of the public and constituency groups for "Police Reform," transparency and accountability. Senate Bill 290 sets up a process where the same office investigating the incident is the office that will have the authority to prosecute. Setting up a process where one elected official's office oversees the entire process, with no checks and balances, is counter to the



fundamental necessity of the original legislation. It also invites the political philosophy of the elected official holding that office to trump the facts, fairness, and independence of a specific case.

During the first 23 years of my career as a Deputy Attorney General in Delaware and Assistant States Attorney in Harford County Maryland I was able to see firsthand the importance of the separation of powers between the police agency that investigates criminal incidents and the prosecutorial office that reviews the findings. It is crucial that this review be made by an office that has not been actively involved with the case from its inception. That separation allows for a “fresh set of eyes” to review the case and analyze the facts as it relates to the law for a proper check and balance before final charging occurs. To take that layer of review away removes a necessary check every individual deserves prior to being charged with a crime that could affect their liberty. Additionally, my 8 years as the County Attorney in Harford County also gave me the insight to understand the civil liability repercussions of improper legal action without necessary checks and balances.

Even progressive Police Reform Groups such as Campaign Zero, do not advocate for giving all the power to investigate and to prosecute to a singular office held by an elected official. On the Policy Page of their website, the group mentions a special prosecutor handling the prosecution and gives the policy solution of choosing a police agency from the “Ten Largest” in the state to handle the investigation.

The citizens of the county where the incident occurred and where any potential prosecution will occur have elected a state’s attorney to prosecute crimes in their jurisdictions; taking this right away from them erodes the ability of citizens to hold them accountable for their actions and decisions. This is contrary to the goals of a fair, transparent and accountable process for all involved. Citizens of that jurisdiction have very limited ability to hold the Maryland Attorney General accountable for the results and handling of these investigations.

I ask the members of the committee for an unfavorable report on SB 290.

Melissa Lambert, Esq.

Director,

Harford County Sheriff’s Office – Office of Legal Affairs

# **SB 0290\_HoCoState'sAttorney\_Unfav\_OAG\_IID\_Authorit**

Uploaded by: Rich Gibson

Position: UNF



## SENATE BILL 0290

Office of Attorney General-Independent Investigations Division-Authority to  
Prosecute

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

**POSITION: UNFAVORABLE**

February 13, 2023

My name is Rich Gibson. I am the State's Attorney for Howard County and the President of the Maryland State's Attorneys Association (hereinafter MSAA). I am writing today to offer my opposition to Senate Bill 0290. It should be noted that the MSAA is a politically diverse group comprised of the elected prosecutors throughout the State; while not unanimous, the overwhelming majority of our membership opposes this bill (23 of the 24 elected State's Attorneys voted to oppose this bill).

We oppose this bill for several reasons. First, we reject the premise that prosecutors are unable to evaluate and hold accountable law enforcement officers within our jurisdictions. It is an unsubstantiated assumption that prosecutors will, by default, show bias toward local law enforcement officers. In fact, prosecutors routinely, on an everyday basis, scrutinize the actions of law enforcement. Every case provided to us by law enforcement is reviewed and if we see issues with the case, we take corrective action (which can include but is not limited to: educating the officers as to what errors we see in their approach or conduct, referring the case to the officer's supervisors for administrative action, or in the most extreme cases initiating a prosecution against that officer for their criminally wrongful conduct.) The fact that the incident happens to be a police-involved death does not change our critical analysis of their actions.

Moreover, if an actual bias exists that would impact the case, prosecutors currently have the ability to request the assistance of a neighboring jurisdiction in handling the matter. This trading of cases in the presence of *real* bias happens

consistently in matters where a person who works for our office or a relative is the victim of a crime or is accused of a crime. In the presence of actual bias, rather than presumed bias, we have mechanisms in place to address the issue to allow for the fair and just administration of justice.

Additionally, this bill, if enacted into law, would dilute the voice of communities impacted by police-involved shootings. The Attorney General is a state-wide elected position, whereas State's Attorneys are directly elected by the communities they serve. Maryland has approximately (6) six million people. Police involved deaths have tremendous local impact. Every four years the impacted community gets an opportunity to affirm or reject the elected State's Attorney's values, judgments, and policies - the way in which they have administered the laws. Due to the fact the position of Attorney General is not as connected to the individual communities, this bill, if enacted, would mean concerned parties would have less access, and less of a voice, with the entity tasked with handling these cases.

Finally, police involved deaths are some of most complex investigations and prosecutions within the realm of criminal justice. The Attorney General's Office does not have, within its ranks, the skilled experienced prosecutors to handle these cases. Where will they get individuals with the requisite experience? By pillaging the same local offices that this bill suggests are too biased to handle the cases. The assumed bias that is the premise undergirding this bill does not miraculously evaporate due to the individual attorney leaving a local prosecutor's office and joining the Attorney General's office. This process will, of course, deplete the resources of local prosecutor's offices, negatively impacting public safety in our communities.

For these reasons, **I respectfully request an unfavorable report for Senate Bill 0290.**

## **SB 290 Office of Attorney General - Independent In**

Uploaded by: Scott Shellenberger

Position: UNF

**Bill Number: SB 290**

**Scott D. Shellenberger, State's Attorney for Baltimore County**

**Opposed**

**WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,**  
**STATE'S ATTORNEY FOR BALTIMORE COUNTY,**  
**IN OPPOSITION OF SENATE BILL 290**  
**OFFICE OF THE ATTORNEY GENERAL – INDEPENDENT INVESTIGATIONS**  
**DIVISION – AUTHORITY TO PROSECUTE**

I write in opposition to Senate Bill 290 that will take the power to prosecute police involved incidents that result in death or serious injury away from local prosecutors and place it in the hands of the Attorney General's Office.

In 2021, the Legislature passed legislation to form the Independent Investigation Division of the Attorney General Office to investigate police involved incidents that result in death or injury likely to result in death. During the hearings and during the discussions leading up to the passage of the Bill, there were many discussions about who should bear the ultimate responsibility of prosecution. Just two short years ago the decision was made by this committee to leave the power to prosecute in the hands of the local prosecutors. That is what the people elected the prosecutor to do: make prosecutorial decisions. Handing this power to the Attorney General and taking it away from the local prosecutors runs against hundreds of years of history.

The State's Attorney elected in each jurisdiction has been entrusted by their voters to make these decisions and prosecute charged offenders.

Please leave this power in the hands of those elected to have it.  
I ask for an unfavorable report.



## **Testimony of WKH on 290.pdf**

Uploaded by: WANDA HEARD

Position: UNF

## Opposition to Senate Bill 290

Good afternoon Senators of the Maryland legislature, invited guests, ladies and gentlemen, my name is Wanda Keyes Heard. I have practiced law for 40 years and retired in December, 2019 as Chief Judge of the 8th Judicial Circuit of Maryland (Baltimore City). I rise from retirement today to speak in opposition to Senate Bill 290.

I served as a Judge on the Circuit Court for Baltimore City for 21 years trying civil and criminal cases. Prior to becoming a circuit court judge I served as an Assistant United States Attorney and Criminal Division Chief, Assistant Attorney General for Maryland, an Assistant State's Attorney and Division Chief for Baltimore City, and an Assistant Federal Public Defender for Maryland.

- I believe I am uniquely qualified to speak about the impact of expanding or extending the role of the Maryland Attorney General (herein referred to as "AG") from purely an investigative role to a prosecutorial role as it relates to criminal cases between law enforcement resulting in death of civilians. This bill, if passed, will place charging decisions and the prosecution of certain very crucial criminal cases in untrained hands. It is essential to understand that the citizens of the various jurisdictions around the State of Maryland have elected

- have chosen individual states attorneys as their representatives to prosecute the criminal cases in their communities. Each duly elected State's Attorney is the chief prosecutor of his or her jurisdiction, swearing an oath to protect the citizens, prosecute violators of the laws of the State of Maryland in accordance with the Maryland Constitution and the Constitution of the United States. It is not nor should it be the role of the Maryland Attorney General to undermine or usurp the responsibility of the individual states attorneys granted to them by the communities they serve but rather work as a team to assist in gathering information and investigating. In Maryland, the elected States Attorneys are charged with the duty to enforce the law, make charging decisions & decide to prosecute “their” criminal cases and when necessary, request support & assistance from the Maryland Attorney General.
- The Maryland Attorney General's Office has a stellar reputation nationally for the many outstanding civil cases it has spearheaded. As you know, the role of the Maryland Attorney General (AG) is a statewide elected position and its attorneys practice primarily civil law and engage in fraud litigation for the State of Maryland. They provide legal counsel to various Maryland statewide agencies, handle criminal appeals and have other statutory duties. Since many of these duties are statewide issues, the AG is in the best position to

gather cross jurisdictional information, records and documents from around the State. Further, the AG's cross jurisdictional authority allows them to easily conduct investigation of cases and/or incidents between law enforcement agencies and members of the community where the death of a civilian has occurred. Consequently, the current law makes sound administrative and procedural sense where the AG is statutorily charged to investigate and compile an investigative report in instances involving law enforcement and civilian death. During the collection of information, it allows the AG to further its duty to investigate civil rights violations and police misconduct. However, the Attorney General oversteps its responsibility, expertise and authority when it seeks to force or direct the prosecution of criminal cases or effectively manage the criminal prosecution(s) of certain serious criminal cases. In fact, the expertise needed to weigh and analyze whether to pursue criminal prosecutions resulting in death is more than mere legal analysis. A serious and rather complex analysis involves the jurisdiction itself. Baltimore City, AA County, Howard County, Calvert County etc. or any other county or subdivision, require a knowledge of the most effective way to present a criminal case. An experienced trial prosecutor knows that, in addition to legal knowledge and their trial experience, knowledge

of the jurisdiction and its people who serve as jurors is essential to every prosecution. Hence, in Maryland we have individual jurisdictionally elected prosecutors and judges who must live in the jurisdiction they serve.

- It is beyond the expertise of the Maryland Attorney General as a statewide “law firm” making necessary, all-encompassing criminal case analysis in these very important cases - It is simply outside of their wheelhouse.
- The current structure of the Maryland Attorney General’s office, suits investigatory gathering of information, documents, testimony and reports for determination on the prosecution of civil rights and other civil matters statewide which may affect the rights of the citizens of Maryland. In appropriate circumstances, collaboration occurs with other AGs in other states or referrals are made to the US Attorney’s Office or divisions of the Department of Justice. The Maryland Attorney General (AG) is uniquely capable of conducting these cross jurisdictional investigations and referrals forwarding reports to the appropriate entity or handing in-house civil rights cases which may be developed. However, any analysis of any serious criminal matter for prosecution and the determination of what or who is to be charged in any jurisdiction should be analyzed and determined by the individual

states attorneys elected to handle those criminal prosecutions in those jurisdictions.

A criminal investigation and the collection of data is crucial to any criminal case analysis but there are other factors that are considered to determine whether a criminal prosecution is legally viable, and may reasonably result in a conviction. Even within SAOs there are divisions and prosecutors with certain areas of expertise - not all attorneys are fungible. With time and experience prosecutors become skilled in case analysis prosecution. In many serious and complex criminal prosecutions teams of experienced prosecutors pool their combined knowledge of trial work to analyze criminal case filed and make charging decisions. It is totally inappropriate to leave the decision whether to prosecute a case or not in the hands of individuals lacking the criminal trial experience and technical ability to make such an assessment in a criminal case resulting in death, and even more so to prosecute successfully those cases.

The AG should ONLY collect the information and conduct a fact finding mission, drawing no conclusions and making no determinations but insuring a thorough completely transparent and objective investigation is done.

What the Maryland Attorney General seeks to do is to not only investigate but draw conclusions on the success of a

criminal prosecution, dictate the charges, remove local prosecutors from their role to prosecute serious criminal cases, become criminal prosecutors in death cases and fully undermine states attorneys across the state.

I believe if Senate Bill 290 is passed, it will be hurtful to the citizens of Maryland. It will not bolster trust and justice but will be detrimental to the confidence we seek to grow with our citizens in our system of justice. I believe this bill will undermine the trusted role of our elected states attorneys to represent the citizens who elected them and to exercise their immense discretion to prosecute criminal matters involving death of civilian's.

I believe Senate bill 290 extends the role of the Maryland Attorney General unnecessarily and in an improper fashion outside of its area of expertise.

**I urge you to vote “NO” on Senate bill 290.**

**THE HON. WANDA KEYES**  
**WKHeard@gmail.com**

After serving the citizens of Baltimore City for 21 years, Chief Judge Heard retired from the Circuit Court for Baltimore City. However, before retirement she set a judicial milestone by becoming the first woman to hold the position of Chief Judge of the 8th Judicial Circuit of Maryland. During her judicial career, she handled many high profile criminal and civil trials with a variety of other judicial assignments which included, but were not limited to; Discovery Judge for civil and criminal cases, Chambers Judge, Non-Hearing Motions Judge, Drug Treatment Court, Electronic Surveillance (Wiretap) Duty, Chair of the Sentencing Review Panel and Technology Oversight Committee. Over her years of service, Chief Judge Heard taught seminars to judges and lawyers on Fourth Amendment Search & Seizure, pitfalls of Civil Discovery at the courthouse, law schools and as an instructor at the National Judicial College in Reno, Nevada, and the Maryland Judicial Institute. She has organized lectures on legal historical and civil rights issues as a member of the Board of the Library Company of the Baltimore City Bar.

As a lawyer, Chief Judge Heard was admitted to the Federal Trial Bar for the United States District Court for Maryland in 1987, admitted to practice before the Supreme Court of the United States in 1989 and has litigated cases in the District and Circuit Courts of Maryland. She served as an Assistant Attorney General for Maryland and Assistant Federal Defender. While an Assistant United States Attorney she was admitted to practice in United States District Court for the Middle District of Florida, United States Court for the Division of the Virgin Islands, United States Courts of Appeals for the 3<sup>rd</sup>, 4<sup>th</sup> and 11<sup>th</sup> Circuits. During her years as a federal prosecutor in the United States Attorney's Office, she distinguished herself as a Criminal Chief, Organized Crime Drug Task Force Attorney and Executive Assistant U.S. Attorney. Prior to appointment to the bench, Judge Heard was detailed to the Department of Justice, Office of Justice Programs in Washington, D.C., where she helped implement the Justice Department's Weed & Seed initiative by educating and training U.S. Attorneys Offices and federal agencies in the strategy of building "drug fighting" partnerships and coalitions with community groups, local prosecutors and local law enforcement agencies on behalf of Attorney General Janet Reno. As an attorney, Chief Judge Heard received numerous awards and professional recognition including special recognition from; the Executive Office of U.S. Attorneys, DEA, U.S. Customs, U.S. Secret Service and the Executive Office of Weed & Seed.

Most recently, Judge Heard was honored with; the 2023 Civil Rights Trailblazer Award by the Baltimore Chapters of the NAACP & the Urban League, the Daily Record's 2019 ICON Success and Leadership Award and their 2017 Maryland's Top 100 Women; the Baltimore Chapter of the NAACP's Thurgood Marshall Award for Judicial Excellence; and the 2018 Outstanding Alumna for Social Sciences from UMBC. She has earned with many other honors and awards throughout her 21 year judicial career.

She is a graduate of the University of Maryland King Carey School of Law ('82) and the University of Maryland Baltimore County ('79).