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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

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 "A.G. 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