

## **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).