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March 7, 2023

The Honorable Luke Clippinger
Chairman
Maryland State House
Judiciary Committee
Room 101
House Office Building
Annapolis, Maryland 21401

Re: House Bill 0857 – Office of the Attorney General – Independent Investigations
Division Authority to Prosecute: **Support with Amendments**

Dear Chairman Clippinger:

The Office of the Attorney General (“OAG”) urges the Judiciary Committee to report House Bill 857 favorable with amendments to mirror those adopted in the Senate to SB 290. 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.

House Bill 857 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, 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 criminal prosecutors and investigators who specialize in these types of cases.

Second, HB 857 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. House Bill 857 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. House Bill 857 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 the Judiciary Committee to adopt the Senate amendments (below) and to issue a favorable report of HB 857. Thank you.

Very respectfully,

A handwritten signature in black ink, appearing to read "AG Brown", written in a cursive style.

Anthony G. Brown

cc: Committee Members

AMENDMENTS TO HOUSE BILL 857
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 7, after “time;” insert “requiring the Division to annually submit a certain report on its activities to the Governor and General Assembly;”.

AMENDMENT NO. 2

On page 3, in line 23, after “IN” insert “**SERIOUS BODILY**”.

AMENDMENT NO. 3

On page 4, after line 15, insert:

**“(F) ON OR BEFORE JANUARY 31 EACH YEAR, THE DIVISION SHALL
SUBMIT A REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF
THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE
ACTIVITIES OF THE DIVISION IN THE PRIOR CALENDAR YEAR, INCLUDING:
(1) THE NUMBER OF INVESTIGATIONS THAT WERE CONDUCTED BY
THE DIVISION; AND
(2) THE NUMBER OF PROSECUTIONS THAT WERE INITIATED AS A
RESULT OF AN INVESTIGATION BY OR A REFERRAL TO THE DIVISION.”;**

in line 16, strike the brackets; and in the same line, strike “(F)”.