



March 3, 2023

Delegate Luke Clippinger
Chair, Judiciary Committee
Maryland House of Delegates

HB 857: Office of the Attorney General – Independent Investigations Division – Authority to Prosecute [SUPPORT]

Dear Chair Clippinger, Vice Chair Moon, and members of the House Judiciary Committee:

Thank you for the opportunity to present written testimony in support of House Bill 857, 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, House Bill 857 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.

HB 857 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 HB 857 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.

HB 857 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.¹ 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 HB 857 favorably,

Sincerely,
/s Joshua Rosenthal
Joshua Rosenthal
Legal Director

josh@publicrightsproject.org
330-607-0730

¹ 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].