



SENATE BILL 0540

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

POSITION: UNFAVORABLE FOR SB 0540

February 27, 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 MSA). I have been a prosecutor for nineteen years and I am writing today to request an unfavorable report for Senate Bill 0540.

The framers of the Constitution of Maryland understood the need for prosecutorial independence. They wisely created a system that placed the power over the local prosecutor directly and exclusively into the hands of the communities they serve. This bill if enacted has the potential to undermine the voice of the local impacted community with regard to their elected State's Attorney. From our perspective, the problematic language is contained within section G on page 2 – "Law Enforcement Agency has the meaning stated in §3-201 of the Public Safety Article."

Public Safety Article § 3-201 defines law enforcement agency as:

"(d) (1) "Law enforcement agency" means a governmental police force, sheriff's office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State."

While not explicitly included, this language is generic enough to allow for an interested party to interpret it to include the local State's Attorneys. This concern is not contrived. Currently in Missouri, the State Attorney General has initiated an action for the removal of the St. Louis Circuit Attorney, Kim Gardner (the equivalent position of a State Attorney in Maryland) on the basis of a "pattern of failure in the discharge of her duties." Kim Gardner contends that she is enforcing the law consistent with the values of her local community. We don't have to go to nearly a thousand miles to the west to see the potential harm this

bill would expose us to in Maryland. Within the last year, our former Governor, Larry Hogan, publicly voiced his concern with the way in which former Baltimore City State's Attorney, Marilyn Mosby, exercised her discretion via a pattern of not pursuing certain cases. Fortunately, we have never in Maryland had a situation where prosecutorial independence was jeopardized precisely because there was no legal mechanism that would allow it. This is at the heart of why we oppose this bill; its enactment would create a potential pathway for a motivated actor for political or other purposes to undermine prosecutorial independence and the will of the voters.

Additionally, prior to creating new powers within a government entity, it is important to examine what, if any, other entities have that same power, and if other entities have that power, are they fulfilling that role in this space? The Civil Rights Division of the Department of Justice has pattern and practice prosecution authority under § 14141 of the Violent Crime Control and Law Enforcement Act of 1994. They have used that power in Maryland to address issues where evidence suggested the practices of the offending organization were depriving people of civil rights guaranteed in the Constitution. Specifically, this power was used recently in both Baltimore City (2016) and Prince George's County (2004). What evidence exists that the Department of Justice is not fulfilling its obligations to the people of Maryland?

Finally, for purposes of clarity, we wish to state emphatically and directly that prosecutors of this State are committed to the equal and fair administration of our laws. There should be no safe space for bigotry, or the mistreatment of people based upon race, religion, gender, national origin, or any other superficial division, used by some to separate one human being from another. Furthermore, we welcome government oversight to ensure those protected rights are not infringed. Our issue is not with this power, but rather is focused on what entities have this power and potential for misuse by those entities. This bill, if enacted into law, will bestow tremendous power upon whomever is in the role of Attorney General not just today but into the future. Similar power has been used to oppress (political and racial) minority voices in the community. Communities who have elected local prosecutors, because their positions and values mirror their own, only to have a State governmental entity disagree with the pattern in how those local prosecutors exercise their authority. Governor Desantis and

State Attorney Andrew Warren of Hillsborough County, Florida (Tampa) and Missouri Attorney General Andrew Bailey and St. Louis Circuit Attorney Kim Gardner are two current examples of circumstances we wish to avoid in Maryland.

For these reasons, **the members of the Maryland State's Attorneys' Association respectfully request an unfavorable report for Senate Bill 0540.**