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February 4, 2025

TO: The Honorable Luke H. Clippinger
Chair, Judiciary Committee

FROM: *Allison V. Green*
Chief, Independent Investigations Division, Office of the Attorney General

RE: HB366 – *Juvenile Law - Police Record Concerning a Child - Confidentiality Exception* - **SUPPORT**

The Office of the Attorney General (OAG) urges the Judiciary Committee to favorably report **House Bill 366**, Juvenile Law - Police Record Concerning a Child - Confidentiality Exception, sponsored by Delegate Elizabeth Embry.

The OAG's Independent Investigations Division (IID) was created by the General Assembly in 2021. It expanded the following two legislative sessions to investigate and prosecute when appropriate police-involved incidents that result in the death or injuries likely to result in the death of an individual. The IID was one of several police reform initiatives enacted into law over the last few years as the General Assembly has worked to increase transparency and accountability in police misconduct cases. **House Bill 366** is consistent with these prior legislative enactments and the IID's practice of publicly releasing its findings.

If enacted, **House Bill 366** would allow the OAG to publicly release limited information when a child under 18 years of age is killed or seriously injured as a result of a police-involved incident, subject to the express consent of the child's parent or guardian.

Under Md. Code, Courts & Judicial Proceedings § 3-8A-27(a), the contents of a "police record concerning a child" must remain confidential and are not generally subject to public release. While this law exists to protect juvenile privacy, it has the potential to severely restrict what information, if any, the OAG could make public in cases handled by the IID when the seriously injured or deceased person at the center of an investigation is a juvenile. Relevant investigatory information is exclusively contained in "protected" police records. There are nuances related to this statute, which, based on the

incident facts, may make the decision of whether the information is protected unclear. For instance, in a plain reading of the statute, § 3-8A-27(a) does not apply to records identifying a child as a victim or witness. However, it is not as clear regarding records that, while focused on conduct by the officer, also identify a potentially delinquent child.

Although § 3-8A-27(a) is the primary statute for consideration, other law sources enacted after § 3-8A-27(a) should be considered, as some lean in favor of greater disclosure. The Public Information Act expresses a general legislative intent that the public should have access to government records. Md. Code, General Provisions § 4-103. Further, with the creation of the IID and passing of Anton's Law (which authorized the disclosure of certain police internal affairs records that were previously confidential), 2021 Md. Laws, ch. 62, the General Assembly expressed a legislative intent in favor of greater public disclosure and accountability for police misconduct.

House Bill 366 would remedy this issue by providing a clear and narrowly tailored exception to the existing confidentiality requirement.

House Bill 366 limits the disclosures in three important ways:

1. The exception applies in cases that are under active investigation by the IID, which fall within the division's statutory authority pursuant to Md Code, State Gov't § 6-602 (c)(1) and § 6-604 (a)(1).
2. Disclosure is only permitted if the child's parent or guardian expressly consents to the disclosure.
3. **House Bill 366** only permits disclosure of records related to the injured or deceased child that prompted the IID investigation. It would not apply to another juvenile who may be involved in the police interaction under investigation.

House Bill 366 is a targeted measure that balances juvenile privacy with the IID's mandate for transparency and will act to support greater police accountability in Maryland. In IID cases involving a seriously injured or deceased child, the bill would permit the OAG to publicly release the name and age of the child, just as the IID does in cases involving adult decedents. As with juvenile witnesses, the IID would redact images and portions of video recordings containing identifying information of the juvenile decedent.

The name and age information would generally be disclosed at two points. The first disclosure is within the OAG's names disclosure press release, which is generally issued within two days of the IID assuming an investigation, and the second – at the end of the investigation, in either the declination report or in relation to the prosecution. Of the sixty-six death investigations that the IID has assumed since 2021, five involved juvenile decedents who were 14, 16, or 17 years old. Their deaths occurred in Anne Arundel County, Baltimore City, Montgomery County, and Charles County.

House Bill 366 does not circumvent or override Md Code, State Gov't § 6-602 (c)(1) or § 6-604 (a)(1). The concern of others who are not parents or custodial guardians of the juvenile decedents should not override or outweigh the position and perspective of a parent or custodial guardian. Families deserve to have the option not to have their child remain as a nameless victim in any incident – as they would if their child was a victim in incidents that are not police involved.

For the foregoing reasons, the OAG urges the Committee to give **House Bill 366** a favorable report.