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SUPPORT FOR HB 238

Mr. Chairman and Members of the Judiciary Committee:

We are writing to express the support of the Office of the State Prosecutor for House Bill 238. The Office of the State Prosecutor is tasked with enforcing political corruption and police misconduct cases throughout Maryland and believes that this legislation will help ensure that police misconduct throughout the State of Maryland can be properly investigated and, where appropriate, prosecuted.

The Office of the State Prosecutor

The Office of the State Prosecutor is an independent agency within the Executive Branch of government. The Office is tasked with ensuring the honesty and integrity of State government and elections by conducting thorough, independent investigations and, when appropriate, prosecutions of criminal conduct affecting the integrity of our State and local government institutions, officials, employees, and elections.

HB 238 - Staying Administrative Investigations During a Criminal Investigation

HB 238 allows for police misconduct that is the subject of a criminal investigation to be investigated criminally before the administrative proceedings begin. This helps protect a criminal investigation from legal challenges derived from different investigative procedures that guide criminal and administrative investigations. While it is important that administrative proceedings against police take place quickly and efficiently, it is also important to preserve the ability to prosecute individuals who commit crimes, whoever they are.

Criminal investigations, especially those against police officers, take time. Though the Office of the State Prosecutor has in-house investigators, we must rely on already overburdened law enforcement agencies to extract and process electronic evidence. Even if the crime is reported quickly, an investigation often requires at least one phone extraction as well as other electronic forensics. The extraction and review of electronics can take months. Quite often, the behavior in our cases has taken place over the course of years, and victims' phones, targets' phones, and witness's phones all need to be reviewed, in addition to other electronics.

In addition, cases with allegations of police misconduct also involve interviews with other members of the target's police department. If there is an administrative investigation, the

department has the ability to compel a police officer's statement, including the target's, which means the statement does not have 5th Amendment protections. That statement, or anything derived from it, cannot be used in a criminal investigation or prosecution, meaning that any police officer exposed to that statement cannot even be interviewed by criminal prosecutors and investigators.

The Office of the State Prosecutor recently created a unit to address Official Misconduct involving special victims. When so many of our cases started involving special victims, we sought a specialized prosecutor and investigator to handle the complexities of prosecuting cases involving people using their positions to exploit victims.

This is another area that is important to consider when allowing internal investigations to be stayed during the criminal investigation. Every subsequent interview with a victim creates an element of re-victimization. In addition, often those who conduct administrative investigations don't have specialized SVU training, which can introduce complexities in a criminal investigation and additional hardship for the victim, as well as difficulties in any potential prosecution or trial.

This situation arose last year during a prosecution of a police officer who was charged, and eventually convicted, of misconduct in office for having sexual relationships with teenage girls while he was on duty. The police department where the officer worked was cooperative and supportive throughout the investigation but had to commence administrative procedures before the case was prosecuted. Thanks to heightened measures taken by the department to isolate individuals who were involved in the administrative process from the criminal proceeding, we were able to manage the challenges that come with compelling a statement before a prosecution. However, this ran the risk of us having to tell our young victims that we could not try the case because evidence was tainted through no fault of theirs. That risk is unacceptable.

We believe this is important legislation to ensure justice for victims throughout the State and encourage this Committee to issue a favorable report on HB 238.

Sincerely,

CHARLTON T. HOWARD, III
STATE PROSECUTOR