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TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: The Office of the Attorney General

RE: HB 1046 – Vehicle Laws - Policies and Prohibition Against Discriminatory Traffic
Stops – **Letter of Concern**

The Office of the Attorney General does not have a position on HB 1046. The Office, however, is submitting this letter of concern to provide information for the Committee's consideration.

The Office supports HB 1046's intent to mandate a statewide policy against discriminatory traffic stops. As set forth in the Office's guidance memorandum addressing discriminatory profiling in Maryland, no traffic stops (or law enforcement stops of any kind, for that matter) should be made based on race, national origin, religion, gender identity, or sexual orientation.

House Bill 1046, however, contains a reporting requirement that concerns the Office. The bill would require a law enforcement officer who conducts a traffic stop to file a report that includes the driver's race, national origin, religion, gender identity, and sexual orientation.¹ This demographic information ordinarily will not be known by the officer, and therefore could only be reported if the officer questions the driver about it or, instead, simply bases the report on the officer's perceptions and assumptions. Asking every detained driver for this information would unduly invade driver privacy and may raise concerns of the very discriminatory enforcement the bill seeks to combat. A reporting requirement based on the officer's perceptions or assumptions might have value, but inevitably would not report the driver's accurate information but instead

¹ See H.B. 1046, at 4:11–20, 2021 Leg., 422d Sess. (Md. 2021).

would report a guess based on the officer’s implicit and unconscious biases. These features of the bill as proposed are concerning to the Office.²

cc: Members of the Judiciary Committee

² California has enacted somewhat similar legislation. *See* A.B. 953, 2015–16 Leg. Sess. (Cal. 2015). The California legislation differs from HB 1046 in several ways, including that (a) it applies to all law enforcement stops, not only traffic stops; (b) it requires reporting only of “race or ethnicity, gender, and approximate age,” not the longer list of arguably-less-outwardly-perceivable demographic characteristics in H.B. 1046; and, perhaps most importantly, (c) it mandates explicitly that an officer’s reporting of these demographic characteristics “shall be based on the observation and perception of the peace officer making the stop, and the information shall not be requested from the person stopped.”