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To: Del. Luke Clippinger
Chair, Judiciary Committee

From: Brian E. Frosh
Attorney General

Re: HB 638 – State Government – Attorney General – Independent Investigations Division –
Support

The Office of Attorney General urges this Committee to report HB 638 favorably. If passed, the bill would accomplish several important goals. First, it would grant the Office of the Attorney General the ability to conduct independent prosecutions of officer-involved fatalities—a nationwide best practice—while still allowing State's Attorneys to prosecute if the Attorney General declines. Second, it would clarify certain text in the original bill ([SB 600](#) (2021)) that has been questioned by several law enforcement agencies. Third, it would make clear that the OAG has direct subpoena power to carry out the mission that has been assigned to it.

This bill grants OAG the power to prosecute officer-involved fatalities without removing that power from State's Attorneys. As demonstrated by the legislature's creation of an Independent Investigations Division last year, there is robust agreement across the state of Maryland on the benefit of independent investigations of officer-involved fatalities. The benefit of independent prosecution stems from the same calculus: giving confidence to the public that prosecution decisions are being made in a disinterested way, by people who do not work together or rely on each other professionally or personally. As the U.S. Commission on Civil Rights explained, "Investigation and prosecution of use of force cases should be made as independent and public as possible. The agencies investigating and determining whether to move forward with prosecution should not have an ongoing relationship with the department." *Police Use of Force: An Examination of Modern Policing Practices*, Nov. 15, 2018.

This bill also fixes several narrower problems. It clarifies the language in the current statute that the IID "shall investigate all alleged or potential police-involved deaths of civilians" in order to remove any confusion as to whether the statute permits the Attorney General to begin investigating before a civilian actually dies or permits the Attorney General to complete an

investigation if an individual who appeared likely to die then survives. Similar, this bill provides a mechanism for resolving disputes between the Independent Investigations Division and another law-enforcement agency that might wish to conduct a competing investigation that could harm the independence of the investigation guaranteed under the existing bill.

This bill fixes a procedural problem with the OAG's subpoena process by bringing it in line with the subpoena authority already granted to the Office of the Special Prosecutor and the State's Attorneys. Currently, the OAG must use grand-jury subpoenas, which are not otherwise used in many courts and can be cumbersome. This change to allow for direct subpoenas does not add any substantive rights; it only lowers procedural burdens.

And finally, the Independent Investigations Division is currently underfunded, which can lead to significant delays in both responding to crime scenes and completing investigations. This bill guarantees that the investigations provided for under this bill cannot be stymied by a lack of funding.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of House Bill 638.

cc: Committee Members