

Office of the AG - Support

Uploaded by: Brian Frosh

Position: FAV

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OFFICE OF THE ATTORNEY GENERAL

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March 1, 2022

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

MTA Unfavorable HB 638 3-1-22.pdf

Uploaded by: Jenna Massoni

Position: UNF



M a r y l a n d Troopers Association



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March 1, 2022

The Honorable Luke Clippinger, Chair and Members of the Judiciary Committee

RE: HB 638 – State Government – Attorney General – Independent Investigations Division

POSITION: OPPOSE

The MTA opposes HB 638 which allows the Attorney General to issue a subpoena under certain circumstances.

The provisions of this bill that would allow the Attorney General to have subpoena power would violate due process and the constitutional rights of law enforcement officers. Law enforcement officers cannot be compelled to testify or give statements, even if subpoenaed.

We request an unfavorable report of HB 638.

Brian Blubaugh
President
Maryland Troopers Association

Member of National Troopers Coalition

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MCPA-MSA Opposition to HB 638 - AG Independent Inv

Uploaded by: Mike Lewis

Position: UNF



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chair and
Members of the Judiciary Committee

FROM: Chief Russ Hamill, 1st Vice President, MCPA
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: March 1, 2022

RE: **HB 638 – Attorney General - Independent Investigations Division**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE HB 638**. This bill would (a) greatly expand the category of newly enacted notifications required to be made to the Attorney General (AG) to include all police involved incidents with civilian *injuries* likely to result in death; (b) require the physical transfer of evidence from pending police criminal investigations to the AG; (c) authorize the AG to obtain virtually unrestricted injunctive relief without factual justification; and (d) preempt current prosecutorial authority from a local State's Attorney in all police involved incidents (undefined) that result in civilian deaths or injuries likely to result in deaths.

As originally created by the Legislature effective October 1, 2021, the AG's Independent Investigations Division (IID) investigates all alleged or potential police-involved deaths of civilians. After investigation, the IID sends its report containing detailed findings and analysis to the State's Attorney of the county with jurisdiction over the incident. The IID does not decide whether to prosecute an involved officer and does not bring criminal charges. Rather, the local State's Attorney retains their customary prosecutorial authority and accountability.

Criminal procedure changes proposed by HB 638 have the potential to complicate and interfere with orderly local criminal investigations and prosecutions, loss of chain of custody of evidence, and resulting in the disruption of critical enforcement activities against serious criminal perpetrators.

For these reasons, MCPA and MSA **OPPOSE HB 638** and urge an **UNFAVORABLE** report.

HB638 Attorney General Independent Investigations

Uploaded by: Sheriff Jeff Gahler

Position: UNF



HARFORD COUNTY SHERIFF'S OFFICE

COURAGE HONOR INTEGRITY

House Bill 638 - Oppose

State Government – Attorney General – Independent Investigations Division

Letter of opposition to the House Judiciary Committee

March 1, 2022

Mr. Chairman and Members of the Committee, I am pleased to submit my written testimony in opposition to House Bill 638.

During the 2021 legislative session this body passed Senate Bill 600, legislation I supported with amendments. The bill that this body enacted, established a process in which the Office of the Attorney General (OAG) will conduct an independent investigation whenever there is an incident that involves the death of a civilian and there is potential police involvement. The actions of the Independent Investigative Unit (IIU) since enactment are an extreme overreach and an attempt to subvert the initial intent of the legislation.

The legislative framework provides that “the Independent Investigative Unit shall investigate all alleged or potential police involved deaths of civilians.” The passing of this law last year allows for the intended oversight and transparency expected by our citizens through separate and/or parallel investigations; similar to that of the U.S Department of Justice in a civil rights investigation. It also provides the oversight in a fiscally responsible manner, as the bill passed did not require the creation of an additional police agency within the OAG. The current law, as passed, did not usurp the responsibilities of local law enforcement and government to serve their community and, if properly implemented by the OAG, as originally intended, we would not have the State Police investigating their own members and other police officers as part of the independent investigation.



Since the bill was passed by this body and enacted into law, the OAG has taken a broader interpretation of the law, and by simple fiat, assumed legislative function to issue written protocols outside the framework of the statute. Nothing in the current law precludes or absolves responsibility of police departments or sheriff's offices from performing their duties to conduct criminal investigations in their jurisdictions as they historically have done. Unfortunately, the protocols put in place by the OAG seek to prohibit local investigations, interfere with the timely collection of evidence, and the investigation of criminal activities that lead to the police involved death of a civilian.

A clear example of this is the use of the Maryland State Police forensics lab in the evidence collection portion of the investigations. The current law (resulting from SB 600) allows the Maryland State Police to detail one or more **sworn** members to the IIU; however, nowhere in the Law does it permit the OAG to detail non-sworn employees to take part in the investigation, which has occurred routinely. That is except for reportedly those cases which have occurred in Baltimore City, where the local police has collected and processed the evidence as well as conducted its own investigation, all consisted with law.

While there are changes that should be made to the language from last year's Senate Bill 600, the changes proposed in House Bill 638 only serve to further complicate the process and provide less transparency, less accountability, and ineffective investigative practices that do not ensure a fair and impartial investigation is conducted. For example, since the current law went into effect, my Office has notified the OAG's IIU 25 times and there has been no, zero, responses by the IIU to civilian deaths that have occurred during police related activities (as the law requires). These were not use of force situations, so the IIU's "phone call investigation" and deferral falls short of the law should there be an allegation of impropriety on the part of law enforcement related to these police involved deaths.

This is also an area where I would offer an amendment to the data collection and annual reporting from the IIU to the Legislative Policy Committee, the number of declined responses to notifications to the IIU. As presently written, the data required begins with "the number of cases referred to the Division." I believe it is as equally important to collect the data (as my Agency currently does) on those cases requiring notification per the statute that are declined by the IIU.

As I have stated many times when testifying on various versions of this legislation, as the elected sheriff, the citizens of Harford County have entrusted me with the duties of my Office. Those duties include these types of investigations when they unfortunately occur.

It is me, like each of you and our state's attorneys that the residents of our counties can hold accountable through the power of their vote. Citizens have very limited ability to hold the Maryland Attorney General accountable for the results and handling of these investigations, and no ability to hold accountable the Superintendent of the Maryland State Police, who, by defacto, are the true investigative body, not the OAG IIU. This, in my opinion, is in opposition to the intent of the current law, police investigating police and their own as a part of the independent investigation and is completely opposite to public interest.

That said, I also recognize the need to be transparent in these types of cases and that is why I have offered support in the past and today for independent parallel and collaborative investigations that the framework of last year's Senate Bill 600 provides. Not the further removal of local law enforcement from these investigations and the resulting fiscal irresponsibility that House Bill 638 seeks to accomplish. House Bill 638, and the continued efforts of the OAG to radically redefine what has been passed by this body represent a grave threat to the intent of the original law and law enforcement's ability to comply with it as written. By again attempting to alter the process, the OAG is replacing common sense and transparency for politics and fiefdom building.

I ask the members of the committee for an unfavorable report on House Bill 638.

HB 638 OAG-Independent Investigations Division (At

Uploaded by: Barbara Wilkins

Position: INFO



Maryland

DEPARTMENT OF BUDGET
AND MANAGEMENT

LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lieutenant Governor

DAVID R. BRINKLEY
Secretary

MARC L. NICOLE
Deputy Secretary

HOUSE BILL 638 State Government – Attorney General – Independent Investigations Division (Atterbeary)

STATEMENT OF INFORMATION

DATE: March 1, 2022

COMMITTEE: House Judiciary

SUMMARY OF BILL: HB 638 renames the Independent Investigative Unit in the Office of the Attorney General as the Independent Investigations Division, which is the primary investigative unit for police-involved incidents that result in the death of civilians or injuries likely to result in death; gives the Division the first opportunity to prosecute the police officer; and mandates a \$5 million appropriation in FY 2024 and each fiscal year thereafter, which may not supplant funding provided to the Division.

EXPLANATION: The Department of Budget and Management's focus is not on the underlying policy proposal being advanced by the legislation, but rather on the \$5 million annual mandated appropriation provision that impacts the FY 2024 and subsequent budgets. The FY 2023 Budget allocation provides \$1.9 million for the Independent Investigative Unit in the Office of Attorney General.

DBM has the responsibility of submitting a balanced budget to the General Assembly annually, which will require spending allocations for FY 2024 to be within the official revenues estimates approved by the Board of Revenue Estimates in December 2022.

Changes to the Maryland Constitution in 2020 provide the General Assembly with additional budgetary authority, beginning in the 2023 Session, to realign total spending by increasing and adding items to appropriations in the budget submitted by the Governor. The legislature's new budgetary power diminishes, if not negates, the need for mandated appropriation bills.

Fully funding the implementation of the Blueprint for Maryland's Future (Kirwan) will require fiscal discipline in the years ahead, if the State is to maintain the current projected structural budget surpluses. Mandated spending increases need to be reevaluated within the context of this education funding priority and the Governor's tax relief proposals.

Economic conditions remain precarious as a result of COVID-19. High rates of inflation and workforce shortages may be short lived or persist, thereby impacting the Maryland economy. While current budget forecasts project structural surpluses, the impact of the ongoing COVID-19 pandemic continues to present a significant budgetary vulnerability. The Department continues to urge the General Assembly to focus on maintaining the structural budget surplus.

For additional information, contact Barbara Wilkins at (410) 260-6371 or barbara.wilkins1@maryland.gov

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