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February 28, 2023

The Honorable William C. Smith, Jr.
Maryland Senate
2 East Miller Senate Office Building
Annapolis, Maryland 21401
Via email

Re: Senate Bill 658 and House Bill 771 – “Human Relations – Patterns and Practices of Civil Rights Violations - Remedies”

Dear Senator Smith:

You have inquired whether the prohibition in Senate Bill 658 and House Bill 771 against “a pattern or practice of conduct by any officials or employees of a *law enforcement agency*” that deprives an individual of federal or State constitutional or legal rights, applies to an official or employee of a State’s Attorney’s office. (Emphasis added). As the definition of “law enforcement agency” contained in the bill does not extend to an official or employee of a State’s Attorney’s office, in my view they are outside the scope of the prohibition in SB 658 and HB 771.

In pertinent part, proposed § 20-1041(a) of the State Government Article (“SG”) under the bills provides:

No governmental authority, or agent of a governmental authority, or person acting on behalf of a governmental authority, may engage in a pattern or practice of conduct by any officials or employees of a law enforcement agency, a State behavioral health facility, a correctional facility, an immigration detention facility, the Division of Correction, the Division of Parole and Probation, or the Department of Juvenile Services that deprives an individual of rights, privileges, or immunities secured or protected by the U.S. Constitution, the Maryland Constitution, or State or federal law.

Under the bills, “law enforcement agency” has the meaning “stated in § 3-201 of the Public Safety Article [“PS”].” See proposed new subsection SG § 20-1040(g). Under that existing provision, “law enforcement agency” is defined as “a governmental police force, sheriff’s office,

or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State.” PS § 3-201(d)(1). That term does not include members of the Maryland National Guard who are: (i) under the control and jurisdiction of the Military Department; (ii) are assigned to the military property designated as the Martin State Airport; and (iii) are charged with “exercising police powers” in and for the Martin State Airport. PS § 3-201(d)(2).

The phrasing of this definition of “law enforcement agency” suggests that the catch-all term “law enforcement organization” within the definition should be interpreted in light of the three more specific categories that precede it in the definitional provision of PS § 3-201(d)(1): “governmental police force, sheriff’s office, or security force.” “[W]hen general words in a statute follow the designation of particular things or classes of subjects or persons, the general words will usually be construed to include only those things or persons of the same class or general nature as those specifically mentioned.” *In re Wallace W.*, 333 Md. 186, 190 (1993) (discussing the *ejusdem generis* canon of statutory interpretation). Accordingly, the General Assembly likely intended to limit the definition of “law enforcement agency” in PS § 3-201 to agencies that are similar to police departments, with the primary function of, e.g., investigating crimes and making arrests. *See also 63 Opinions of the Attorney General* 502, 503-04 (1978) (concluding, under an earlier version of the police training statute, that parole and probation officers are not police officers and do not “enforc[e] the general criminal laws of [the] State,” even though they are part of the general criminal justice system, because they “have no statutory authority to enforce and preserve the public peace, detect and prevent the commission of crime, or to enforce the criminal laws and ordinances of [the] State, nor to apprehend and arrest criminals”); *cf. Prince George’s County v. State Comm’n on Human Relations*, 40 Md. App. 473, 483 n.13 (1978) (observing, in a different statutory context, that the ordinary meaning of “law enforcement agency” is an agency with “the power to make arrests”), *vacated and remanded on other grounds*, 285 Md. 205 (1979).

Other statutes and rules explicitly include State’s Attorneys within the category of law enforcement agencies. *See, e.g.*, Health Occupations Article § 8-509(a)(3) (establishing procedures for receipt of certain complaints against nurses); Md. Rule 4-502(f) (definition for purpose of criminal expungement rules); *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 520 (1975) (observing that the term “law enforcement agency” in the criminal injuries compensation statute included “prosecutors” as well as police). And other statutes refer separately to States Attorneys and law enforcement agencies, thus recognizing the two as separate categories. *See, e.g.*, Family Law Article § 14-305 (requiring local department of social services to send a certain report to “the local State’s Attorney and the appropriate local law enforcement agency”).

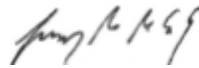
Ultimately, the meaning of “law enforcement agency” depends on the context of the particular statute at issue. *See Kaczorowski v. Mayor & City Council of Balt.*, 309 Md. 505, 514 (1987) (“The meaning of the plainest language is controlled by the context in which it

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appears.”). Where the General Assembly has intended to include States Attorneys within the meaning of “law enforcement agency,” it appears to have done so. Similarly, the absence of State’s Attorneys from the list of entities in PS § 3-201(d) supports the view that the defined term “law enforcement agency” was not intended to extend to officials or employees of the State’s Attorneys offices.

I hope this is responsive to your request. If you have any questions or need any additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy M. McCoy".

Jeremy M. McCoy
Assistant Attorney General