

# SUPPORT HB 638 / SB 896 – independent investigation and prosecution

MARYLAND ALLIANCE FOR JUSTICE REFORM  
Working to end unnecessary incarceration and build strong, safe communities



To: Chair Luke Clippinger and House Judiciary Committee

From: MAJR Executive Committee

Date: March 8, 2022

Md. Alliance for Justice Reform (MAJR-[www.ma4jr.org](http://www.ma4jr.org)) strongly supports HB 638 / SB 896 for its crucial improvement—adding prosecution and an investigatory toolkit to 2021’s legislation creating the independent investigations division (IID) for police-involved fatalities. While not identical, cross-filed bills, minor amendments of SB 896 can eliminate conflicts and produce the needed results.

Background: We should recall that, according to a recent survey, 85% of Marylanders survey support the concept of an independent prosecutor when police conduct is alleged. See Goucher College poll, October 2020. Similar support is shown by national surveys across the political spectrum. See Cato Inst.poll, January 2017.

The current gap in the independent investigation statute: Even when misconduct is found administratively, the 2021 statute still relies on local prosecutors to a) decide on the sufficiency of an IID investigation, b) decide whether they themselves have a conflict of interest, and c) seek an outside special prosecutor when needed.

In reality, local prosecutors themselves generally face a conflict of interest because they work with the very same police officers on a daily basis. Public prosecution of these colleagues may result in weakening and loss of pending and previous prosecutions in which suspected officers were involved as investigators and witnesses, as the undersigned can confirm based on personal experience as a local prosecutor.

Because the Attorney General’s relationship with local prosecutors and local police is limited, designating the independent investigation division presumptively to prosecute would provide sufficient independence for more reliable outcomes.

Both HB 638 and SB 896 also helpfully resolve a dilemma remaining in the current statute, providing that the IID may take jurisdiction in a case involving life-threatening injuries without waiting for a death to occur, as advanced medical techniques artificially may delay victim’s death and, in turn, delay important investigations.

Both bills also add important tools to permit the IID to issue subpoenas and obtain court orders prior to filing charges. These same reasonable steps are available to attorneys in private civil litigation and should be allowed in this area of greater public concern.

Amendments: SB 896, as originally drafted, provides local State’s Attorneys 45 days to elect whether to prosecute or not once an IID investigation is completed. HB 638 gives the first option for prosecution to IID prosecutors and, if they do not elect to go forward, then a local State’s Attorney may decide to do so. MAJR strongly prefers the House (HB 638) approach because a) it could avert a 6-week delay when public anxiety is high and b) it would avoid the likely conflict-of-interest dilemma that local prosecutors would face, as discussed above. HB 638 also is commendable in providing public reporting guidelines in cases found not sufficient for prosecution.

Conclusion: HB 638 / SB 896 will provide important improvements to the 2021-statute enabling independent investigation of police-caused fatalities. Please give a favorable report to HB 638/SB 896, a very valuable bill.

*Please note: Phil Caroom provides this testimony for MAJR and not for the Md. Judiciary.*