

HOUSE BILL 638

P1, E2

2lr1796

By: **Delegate Atterbeary**

Introduced and read first time: January 31, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Attorney General – Independent Investigations Division**

3 FOR the purpose of renaming the Independent Investigative Unit in the Office of the
4 Attorney General to be the Independent Investigations Division; authorizing the
5 Attorney General or certain individuals designated by the Attorney General to seek
6 certain injunctive relief or issue a certain subpoena under certain circumstances;
7 authorizing the Independent Investigations Division or a certain State’s Attorney to
8 prosecute a police officer under certain circumstances; requiring the Governor to
9 annually include certain funding in the State budget; and generally relating to the
10 Independent Investigations Division in the Office of the Attorney General.

11 BY repealing and reenacting, with amendments,
12 Article – Public Safety
13 Section 3–527
14 Annotated Code of Maryland
15 (2018 Replacement Volume and 2021 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – State Government
18 Section 6–106.2 to be under the new subtitle “Subtitle 6. Independent Investigations
19 Division”
20 Annotated Code of Maryland
21 (2021 Replacement Volume)

22 BY adding to
23 Article – State Government
24 Section 6–601 and 6–603 through 6–605
25 Annotated Code of Maryland
26 (2021 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Public Safety

3–527.

(a) (1) In this section the following words have the meanings indicated.

(2) “Law enforcement agency” has the meaning stated in § 3–201 of this title.

(3) “Police officer” has the meaning stated in § 3–201 of this title.

(b) A law enforcement agency shall notify the Independent [Investigative Unit] **INVESTIGATIONS DIVISION** within the Office of the Attorney General of any [alleged or potential police-involved death of a civilian] **POLICE-INVOLVED INCIDENT THAT RESULTS IN THE DEATH OF A CIVILIAN OR INJURIES THAT ARE LIKELY TO RESULT IN THE DEATH OF A CIVILIAN** as soon as the law enforcement agency becomes aware of the incident.

(c) (1) A law enforcement agency shall cooperate with **AND MAY NOT IMPEDE** the Independent [Investigative Unit] **INVESTIGATIONS DIVISION** in connection with the investigation **AND PROSECUTION** of a police-involved death of a civilian.

(2) **ON REQUEST OF THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL’S DESIGNEE, A LOCAL LAW ENFORCEMENT AGENCY SHALL PROVIDE ANY REQUESTED EVIDENCE TO THE INDEPENDENT INVESTIGATIONS DIVISION.**

(D) (1) **THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL’S DESIGNEE MAY SEEK TEMPORARY OR PERMANENT INJUNCTIVE RELIEF IN A COURT OF COMPETENT JURISDICTION IN ORDER TO FACILITATE AN INVESTIGATION OR TO PREVENT INTERFERENCE WITH AN INVESTIGATION.**

(2) **IN A REQUEST FOR INJUNCTIVE RELIEF BROUGHT UNDER THIS SUBSECTION, THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL’S DESIGNEE IS NOT REQUIRED TO:**

(I) **POST BOND;**

(II) **ALLEGE OR PROVE THAT AN ADEQUATE REMEDY AT LAW DOES NOT EXIST; OR**

(III) **ALLEGE OR PROVE THAT SUBSTANTIAL OR IRREPARABLE DAMAGE WOULD RESULT FROM ANY CONDUCT ALLEGED.**

1 **Article – State Government**

2 **SUBTITLE 6. INDEPENDENT INVESTIGATIONS DIVISION.**

3 **6–601.**

4 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
5 **INDICATED.**

6 **(B) “DIVISION” MEANS THE INDEPENDENT INVESTIGATIONS DIVISION IN**
7 **THE OFFICE OF THE ATTORNEY GENERAL.**

8 **(C) “POLICE OFFICER” HAS THE MEANING STATED IN § 3–201 OF THE**
9 **PUBLIC SAFETY ARTICLE.**

10 **[6–106.2.] 6–602.**

11 **(a) [In this section, “police officer” has the meaning stated in § 3–201 of the Public**
12 **Safety Article.**

13 **(b)] There is an Independent [Investigative Unit] INVESTIGATIONS DIVISION**
14 **within the Office of the Attorney General.**

15 **(B) (1) THE DIVISION IS THE PRIMARY INVESTIGATIVE UNIT FOR**
16 **POLICE–INVOLVED INCIDENTS THAT RESULT IN THE DEATH OF CIVILIANS OR**
17 **INJURIES LIKELY TO RESULT IN DEATH.**

18 **(2) THE OFFICE OF THE ATTORNEY GENERAL SHALL DETERMINE**
19 **WHETHER AN INCIDENT IS POLICE–INVOLVED AND WHETHER AN INJURY IS LIKELY**
20 **TO RESULT IN DEATH.**

21 **(c) [(1)] The [Independent Investigative Unit] DIVISION:**

22 **(1) shall investigate all [alleged or potential police–involved deaths of**
23 **civilians.] POLICE–INVOLVED INCIDENTS THAT RESULT IN THE DEATH OF A CIVILIAN**
24 **OR INJURIES THAT ARE LIKELY TO RESULT IN THE DEATH OF A CIVILIAN; AND**

25 **(2) [The Independent Investigative Unit] may investigate any other crimes**
26 **related to police misconduct that are discovered during an investigation under [paragraph]**
27 **ITEM (1) of this subsection.**

(d) In conducting an investigation under subsection (c) of this section, the [Independent Investigative Unit] **DIVISION** may act with the full powers, rights, privileges, and duties of a State's Attorney, including the use of a grand jury in any county.

(e) [(1) Within 15 days after completing an investigation required under subsection (c) of this section, the Independent Investigative Unit shall transmit a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter.

(2) Except as otherwise provided by law, the report under this subsection shall remain confidential through adjudication of any associated criminal case at the trial court level.

(f) To investigate and assist with the investigation of alleged criminal offenses committed by police officers, the [Independent Investigative Unit] **DIVISION** may:

(1) detail one or more police officers employed by the Department of State Police; and

(2) employ other civilian personnel as needed.

[(g) (1) The Governor annually shall include funding in the State budget sufficient to provide for the full and proper operation of the Independent Investigative Unit.

(2) Funds provided in accordance with this subsection shall supplement and may not supplant any other funding provided to the Independent Investigative Unit.]

6-603.

(A) (1) FOR THE LIMITED PURPOSE OF FURTHERING AN ONGOING CRIMINAL INVESTIGATION, THE ATTORNEY GENERAL OR A DEPUTY ATTORNEY GENERAL OR AN ASSISTANT ATTORNEY GENERAL DESIGNATED IN WRITING BY THE ATTORNEY GENERAL MAY ISSUE IN ANY COURT IN THE STATE A SUBPOENA TO A PERSON TO PRODUCE TELEPHONE, BUSINESS, GOVERNMENT, OR CORPORATE RECORDS OR DOCUMENTS.

(2) A SUBPOENA ISSUED UNDER THIS SUBSECTION MAY BE SERVED IN THE SAME MANNER AS A SUBPOENA ISSUED BY A CIRCUIT COURT.

(B) (1) A PERSON MAY HAVE AN ATTORNEY PRESENT DURING ANY CONTACT MADE UNDER SUBSECTION (A) OF THIS SECTION WITH THE ATTORNEY GENERAL OR AN AGENT OF THE ATTORNEY GENERAL.

(2) THE ATTORNEY GENERAL SHALL ADVISE A PERSON OF THE RIGHT TO COUNSEL WHEN THE SUBPOENA IS SERVED.

(C) (1) (I) IF A PERSON FAILS TO OBEY A LAWFULLY SERVED SUBPOENA UNDER SUBSECTION (A) OF THIS SECTION, THE ATTORNEY GENERAL MAY REPORT THE FAILURE TO OBEY THE SUBPOENA TO THE CIRCUIT COURT WITH JURISDICTION OVER THE MATTER.

(II) THE ATTORNEY GENERAL SHALL PROVIDE A COPY OF THE SUBPOENA AND PROOF OF SERVICE TO THE CIRCUIT COURT.

(2) AFTER CONDUCTING A HEARING AT WHICH THE PERSON THAT ALLEGEDLY FAILED TO COMPLY WITH A SUBPOENA ISSUED UNDER SUBSECTION (A) OF THIS SECTION HAS HAD AN OPPORTUNITY TO BE HEARD AND BE REPRESENTED BY COUNSEL, THE COURT MAY GRANT APPROPRIATE RELIEF.

(D) THIS SECTION DOES NOT ALLOW THE CONTRAVENTION, DENIAL, OR ABROGATION OF A PRIVILEGE OR RIGHT RECOGNIZED BY LAW.

6-604.

(A) IF AN INVESTIGATION CONDUCTED UNDER § 6-602 OF THIS SUBTITLE PROVIDES SUFFICIENT GROUNDS FOR THE PROSECUTION OF A POLICE OFFICER, THE DIVISION SHALL HAVE THE FIRST OPPORTUNITY TO PROSECUTE OR DECLINE TO PROSECUTE.

(B) (1) IF THE DIVISION DECLINES TO PROCEED WITH A PROSECUTION, IT SHALL TRANSMIT ALL MATERIALS RELATED TO THE CASE TO THE STATE'S ATTORNEY THAT HAS JURISDICTION TO PROSECUTE THE MATTER.

(2) A STATE'S ATTORNEY MAY PROCEED WITH A PROSECUTION AT THE DISCRETION OF THE STATE'S ATTORNEY.

(C) (1) FOLLOWING TRANSMISSION OF A CASE TO A STATE'S ATTORNEY UNDER SUBSECTION (B) OF THIS SECTION, THE DIVISION SHALL KEEP CONFIDENTIAL ITS DECISION NOT TO ISSUE CHARGES FOR 90 DAYS.

(2) IF AFTER 90 DAYS THE STATE'S ATTORNEY HAS NOT ISSUED CHARGES IN THE CASE, THE DIVISION MAY ISSUE A REPORT DISCLOSING ITS DECISION.

(D) ON OR BEFORE DECEMBER 1 EACH YEAR BEGINNING DECEMBER 1, 2023, THE DIVISION SHALL REPORT TO THE LEGISLATIVE POLICY COMMITTEE, IN ACCORDANCE WITH § 2-1257 OF THIS ARTICLE, ON:

(1) THE NUMBER OF CASES REFERRED TO THE DIVISION;

(2) THE NUMBER OF CASES PROSECUTED BY THE DIVISION;

(3) THE NUMBER OF CASES THAT THE DIVISION DECLINED TO PROSECUTE;

(4) THE NUMBER OF CASES THAT THE STATE'S ATTORNEY ELECTED TO PROSECUTE; AND

(5) THE OUTCOME FOR CASES PROSECUTED BY THE DIVISION.

6-605.

(A) FOR FISCAL YEAR 2024 AND EACH FISCAL YEAR THEREAFTER, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET BILL AN APPROPRIATION OF AT LEAST \$5,000,000 TO THE DIVISION.

(B) FUNDS PROVIDED IN ACCORDANCE WITH THIS SUBSECTION SHALL SUPPLEMENT AND MAY NOT SUPPLANT ANY OTHER FUNDING PROVIDED TO THE DIVISION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.