

HOUSE BILL 857

E4, E2

3lr2977
CF SB 290

By: **Delegates Clippinger, Atterbeary, and Moon**

Introduced and read first time: February 9, 2023

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Office of the Attorney General – Independent Investigations Division**
3 **– Authority to Prosecute**

4 FOR the purpose of expanding the investigative jurisdiction of the Independent
5 Investigations Division of the Office of the Attorney General; repealing a
6 requirement that the Division submit a certain report to a certain State's Attorney
7 at a certain time; authorizing the Attorney General to prosecute certain criminal
8 matters under certain circumstances; and generally relating to the Independent
9 Investigations Division.

10 BY repealing and reenacting, with amendments,
11 Article – Public Safety
12 Section 3–527
13 Annotated Code of Maryland
14 (2022 Replacement Volume)

15 BY repealing and reenacting, without amendments,
16 Article – State Government
17 Section 6–601
18 Annotated Code of Maryland
19 (2021 Replacement Volume and 2022 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – State Government
22 Section 6–602 and 6–603
23 Annotated Code of Maryland
24 (2021 Replacement Volume and 2022 Supplement)

25 BY adding to
26 Article – State Government
27 Section 6–604

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2021 Replacement Volume and 2022 Supplement)

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 Investigations Division within the Office of the Attorney General of any police-involved incident that results in the death of [a civilian] **AN INDIVIDUAL** or injuries that are likely to result in the death of [a civilian] **AN INDIVIDUAL** 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 Investigations Division in connection with [the] **AN** investigation [of a police-involved death of a civilian] **CONDUCTED UNDER § 6–602 OF THE STATE GOVERNMENT ARTICLE**.

(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.

Article – State Government

1 6–601.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) “Division” means the Independent Investigations Division in the Office of the
4 Attorney General.

5 (c) “Police officer” has the meaning stated in § 3–201 of the Public Safety Article.

6 6–602.

7 (a) There is an Independent Investigations Division within the Office of the
8 Attorney General.

9 (b) (1) The Division is the primary investigative unit for police–involved
10 incidents that result in the death of [civilians] **INDIVIDUALS** or injuries likely to result in
11 death.

12 (2) The Office of the Attorney General shall determine whether an incident
13 is police–involved and whether an injury is likely to result in death.

14 (c) **(1)** The Division[:

15 (1)] shall investigate all police–involved incidents that result in the death
16 of [a civilian] **AN INDIVIDUAL** or injuries that are likely to result in the death of [a civilian;
17 and

18 (2) may investigate any other crimes related to police misconduct that are
19 discovered during an investigation under item (1) of this subsection] **AN INDIVIDUAL**.

20 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A**
21 **STATE’S ATTORNEY MAY REFER FOR INVESTIGATION BY THE DIVISION A**
22 **POLICE–INVOLVED INCIDENT RESULTING IN INJURY TO AN INDIVIDUAL THAT IS NOT**
23 **OTHERWISE WITHIN THE JURISDICTION OF THE DIVISION UNDER PARAGRAPH (1)**
24 **OF THIS SUBSECTION.**

25 **(II) THE DIVISION MAY, IN ITS DISCRETION, DECLINE TO**
26 **INVESTIGATE AN INCIDENT REFERRED BY A STATE’S ATTORNEY UNDER**
27 **SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

28 **(3) THE DIVISION MAY INVESTIGATE ANY OTHER CRIME RELATED TO**
29 **POLICE MISCONDUCT THAT IS DISCOVERED DURING AN INVESTIGATION UNDER**
30 **PARAGRAPH (1) OR (2) OF THIS SUBSECTION.**

(d) In conducting an investigation under subsection (c) of this section, the 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 Division 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] **UNDER THIS SECTION** alleged criminal offenses committed by police officers, the 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)] **(F)** (1) The Governor annually shall include funding in the State budget sufficient to provide for the full and proper operation of the Division.

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

6-603.

(a) (1) For the limited purpose of furthering an ongoing criminal investigation **UNDER THIS SUBTITLE**, 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] **THE ATTORNEY GENERAL'S DESIGNEE**.

(2) The Attorney General **OR THE ATTORNEY GENERAL'S DESIGNEE** 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 **OR THE ATTORNEY GENERAL'S DESIGNEE** may report the failure to obey the subpoena to the circuit court with jurisdiction over the matter.

(ii) The Attorney General **OR THE ATTORNEY GENERAL'S DESIGNEE** 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) (1) **EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IF THE ATTORNEY GENERAL DETERMINES THAT AN INVESTIGATION CONDUCTED UNDER § 6-602 OF THIS SUBTITLE PROVIDES SUFFICIENT GROUNDS FOR THE PROSECUTION OF A CRIMINAL OFFENSE DISCOVERED IN THE COURSE OF THE INVESTIGATION, THE ATTORNEY GENERAL SHALL HAVE EXCLUSIVE AUTHORITY TO PROSECUTE THE OFFENSE.**

(2) **THE ATTORNEY GENERAL, IN THE ATTORNEY GENERAL'S DISCRETION, MAY PROSECUTE A POLICE-INVOLVED INCIDENT NOT OTHERWISE WITHIN THE INVESTIGATIVE JURISDICTION OF THE DIVISION UNDER § 6-602(C) OF THIS SUBTITLE IF THE INCIDENT IS REFERRED BY A STATE'S ATTORNEY TO THE ATTORNEY GENERAL FOR PROSECUTION.**

(B) **A STATE'S ATTORNEY MAY PROSECUTE A CRIMINAL OFFENSE DESCRIBED IN SUBSECTION (A)(1) OF THIS SECTION ONLY IF THE ATTORNEY GENERAL REQUESTS THAT THE STATE'S ATTORNEY PROSECUTE THE OFFENSE.**

SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act shall apply to any police-involved incident that results in the death of an individual or injury to an individual that occurs on or after the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.