

Monday, February 13, 2023

To: Maryland State Senator Will Smith

From: Gerard Hogan, Esq.

Re: Proposed Senate Bill 0290

Dear Senator Smith:

I am writing in favor of the pending bill to grant prosecution authority in police excessive force cases to the Independent Investigation Division of the State Attorney General's office. My support for this bill is based on 37 years as both a state and federal prosecutor, the first 7 as an Assistant State's Attorney in Howard County, the last 30 with the Criminal Section of DOJ's Civil Rights Division. In that former capacity I worked (and socialized) extensively with members of the Howard County Police Department and the Maryland State Police; in the latter role I investigated and prosecuted police excessive force cases in over thirty states and US territories. In retirement I have consulted and trained on these issues, and worked for six months as an Assistant Attorney General in Colorado, focusing on a high profile death in custody case. I've lived in Columbia for forty plus years.

We Howard County prosecutors had to rely, every day, on the good work of Howard County officers to do our job, whether prosecuting DWIs or misdemeanors in District Court, or serious felonies in Circuit Court. It is no exaggeration to say that we ASAs and the police were a team, often together in our office or at the police station, at crime scenes, or, just as often, at Shannon's Bar on Route 40 after work. Many of us became friends, and in a county the size of Howard, I knew most of the officers by name, knew many of their families, etc. Though the county has grown since I left that office in 1987, I know from friends still practicing that it remains a closeknit law enforcement community. This is even more true in counties smaller than Howard. Even in Maryland's larger counties, there is an interdependence that necessarily fosters loyalty and a strong bond. That is a good thing, a positive mind set, unless and until the actions of one's teammates are called into question.

Traveling and prosecuting excessive force cases all over this country, I quickly learned that Howard County and Maryland are not unique in this regard. Countless times in my three decades with DOJ's Criminal Section I encountered state prosecutors whose prosecutive decisions in police excessive force cases were colored by their working relationship with the departments or individuals they were asked to investigate. I am not judging; these decisions were often the product of an unconscious bias, as it is fundamentally unfair to ask people to make tough, life-altering determinations regarding organizations and individuals on whom they must depend and trust.

The flip side of the issue is that sometimes elected prosecutors are pressured to prosecute excessive force cases because of community outrage, without careful consideration of the evidence. This can—and has—resulted in prosecutions that are both fundamentally unfair to law enforcement and doomed to failure. An independent prosecutor's office is relatively insulated from these pressures, and, accordingly, can protect the rights of alleged victims as well as subject officers.

Finally, there is the question of expertise. When a local prosecutor is called upon to assess whether a police excessive force case should be prosecuted, it may be the first time she or he has had to make that call, and will not have the benefit of directing the investigation and weighing the evidence in the light of other similar cases. Police excessive force cases are simply not like other cases: they require a deep understanding of the applicable law, the appropriate investigative techniques that can lead to developing sufficient corroborative evidence, and use of expert testimony that can be the key to a successful outcome. An independent prosecutor will have the experience and the careful focus that is necessary in carefully preparing these difficult cases, and that is why I am in favor of the pending bill.

I hope these comments have been helpful. If you would like to discuss the issue further, I can be reached at 410 446 1697.

Sincerely,

Gerard Hogan, Esq.