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BRIAN E. FROSH, ATTORNEY GENERAL OF MARYLAND, 200 Saint Paul Place Baltimore, Maryland 21202, *Plaintiff,* v. JEFFREY R. GAHLER, SHERIFF FOR HARFORD COUNTY, 45 South Main Street Bel Air, Maryland 21014, *Defendant*.	*	IN THE CIRCUIT COURT FOR HARFORD COUNTY C-12-CV-22-000272 Civil Action No. _____

* * * * * * * * * * * *

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Plaintiff, Brian E. Frosh, Attorney General of Maryland, hereby sues defendant, Jeffrey R. Gahler, Sheriff of Harford County.

PARTIES

1. The Attorney General is Maryland's chief legal officer with general charge, supervision, and direction of the State's legal business. Md. Code Ann., State Gov't § 6-106 (LexisNexis Supp. 2021). The Attorney General's powers and duties include acting on behalf of the State and the people of Maryland on matters of public concern. Under Article V, § 3 of the Constitution, "[t]he Attorney General shall: Investigate, commence, and prosecute or defend any civil or criminal suit or action or category of such suits or actions in . . . any Court of this State, . . . on the part of the State or in which the

State may be interested, which the General Assembly by law or joint resolution, or the Governor, shall have directed or shall direct to be investigated, commenced and prosecuted or defended." Md. Const. art. V, § 3(a)(2).

2. Defendant Jeffrey R. Gahler is the elected Sheriff of Harford County, with an office located in Harford County.

VENUE

3. Venue is proper in this Court under Annotated Code of Maryland, Courts & Judicial Proceedings Article § 6-201(a) because defendant habitually engages in a vocation in Harford County, and the cause of action arose in Harford County.

FACTS

4. In 2021, the General Assembly created an independent investigative unit and placed it within the Office of the Attorney General. 2021 Md. Laws ch. 132, § 1 ("Senate Bill 600"). The Attorney General has named that unit the Independent Investigations Division.

5. Using mandatory language, the General Assembly commanded that the Independent Investigations Division "shall investigate all alleged or potential police-involved deaths of civilians." Md. Code Ann., State Gov't § 6-106.2(c)(1) (LexisNexis Supp. 2021).

6. To give effect to its charge that the Independent Investigations Division "shall investigate" any police-involved civilian death, the General Assembly conferred

upon the Independent Investigations Division "the full powers, rights, privileges, and duties of a State's Attorney, including the use of a grand jury in any county." State Gov't § 6-106.2(d).

7. The General Assembly also authorized the Independent Investigations Division to make use of the Maryland State Police and "employ civilian personnel as needed." State Gov't § 6-106.2(f).

8. In empowering the Independent Investigations Division, the General Assembly also placed certain obligations on other law enforcement agencies.

9. First, the General Assembly required that "[a] law enforcement agency shall notify the [Independent Investigations Division] of any alleged or potential police-involved death of a civilian as soon as the law enforcement agency becomes aware of the incident." Md. Code Ann., Public Safety § 3-527(b) (LexisNexis Supp. 2021).

10. Pertinent to this matter, the General Assembly, again using mandatory language, commanded that "[a] law enforcement agency shall cooperate with the [Independent Investigations Division] in connection with the investigation of a police-involved death of a civilian." Public Safety § 3-527(c).

11. On Saturday, April 23, 2022, at 4:49 p.m., the Independent Investigations Division received a brief voicemail message on its general, unmonitored telephone line from Harford County Sgt. Goodwin reporting a "deputy-involved incident, a shooting." No other details were provided in the voicemail message.

12. After leaving this message, Sgt. Goodwin contacted Anthony Schartner, Chief Investigator of the Independent Investigations Division, on Mr. Schartner's cellular phone.

13. On this and several subsequent calls with Chief Investigator Schartner, Sgt. Goodwin relayed basic facts of the incident as he was receiving them from officers on scene.

14. Sgt. Goodwin explained that the Harford County Sheriff's Office ("HCSO") had earlier in the day received a call for service for a person who was acting suicidal.

15. Sgt. Goodwin stated that sheriff's deputies had located the person in a shopping center in Forest Hill, Maryland and that, during the encounter, two sheriff's deputies discharged their service weapons, striking the subject.

16. Chief Investigator Schartner of the Independent Investigations Division was told deputies performed CPR on the subject and that he was transported to Upper Chesapeake Medical Center. However, the subject, later identified as John Raymond Fauver, died.

17. Chief Investigator Schartner told Sgt. Goodwin that Independent Investigations Division investigators along with the Maryland State Police ("MSP") homicide unit and forensic sciences unit were en route.

18. Independent Investigations Division and MSP personnel promptly arrived on scene, beginning at approximately 5:31 p.m.

19. Despite MSP and the Independent Investigations Division's presence on scene, HCSO personnel informed the Independent Investigations Division that MSP would not be allowed to process the scene and/or collect any evidence.

20. In addition, at approximately 6:40 p.m., in a telephone conversation between Independent Investigations Division Chief Dana Mulhauser and Sheriff Jeffrey Gahler, Sheriff Gahler stated unequivocally that he was refusing to allow MSP to collect evidence.

21. At the time that the HCSO began collecting evidence, the MSP forensic sciences unit was on scene and was available to do so.

22. Since the HCSO collected physical evidence at the scene on April 23, it has not responded to the Independent Investigations Division's request that it be given access to that physical evidence.

23. After Sheriff Gahler denied MSP the ability to collect evidence, Independent Investigations Division personnel requested electronic copies of body-worn camera footage of all responding officers and patrol car dash-cam video of all patrol vehicles on scene, as well as copies of at least two non-law-enforcement videos that the HCSO had collected.

24. Harford County State's Attorney Albert Peisinger advised that while the Independent Investigations Division could watch the footage in a mobile HCSO command center, the HCSO would not provide electronic copies of the requested material to the Independent Investigations Division.

25. Despite the mandatory language of the relevant statutes, Sheriff Gahler has previously and unequivocally expressed an intent not to allow the Independent Investigations Division to take custody of evidence or otherwise conduct an unimpeded investigation.

26. Under the auspices of exercising the sheriff's traditional authority in investigating crimes that occur within the county, Sheriff Gahler and Harford County officials have claimed that Senate Bill 600 "does not give the [Independent Investigations Division] the authority to interfere with HCSO investigations and does not allow the [Independent Investigations Division] to usurp the authority of HCSO to investigate violations of the general criminal laws of the State."

27. Although Sheriff Gahler indicated that he would allow "access" to the evidence the HCSO secures during its own investigations, he stated in a November 16, 2021 letter to Attorney General Frosh that he "will not stand down," will not "cede [his] own responsibility to investigate," and will instead "continue with [his] investigation."

28. In a December 28, 2021, letter intended to be the final word on the matter, Sheriff Gahler's attorney plainly stated that the sheriff "will not follow the protocols issued by" the Independent Investigations Division.

29. The protocols promulgated by Sheriff Gahler confirm his intent not to fully cooperate with the Independent Investigations Division. *See* Harford County Sheriff's Office Operations Policy, Response to Police-Involved Deaths, Oct. 1, 2021, attached as Exhibit A.

30. These protocols state that the HCSO will conduct its own investigation into a police-involved civilian death, and that the HCSO investigation will be given primacy over that of the Independent Investigations Division.

31. For example, notwithstanding a policy to "share" evidence with the Independent Investigations Division, the protocols nonetheless require the HCSO to retain custody of such evidence.

32. Although, under the protocols, the Independent Investigations Division may make "an official request for the transfer of the evidence" (i.e., the HCSO will accept only one made by the Independent Investigations Division chief in writing), that request must be approved by the HCSO Chief of the Investigative Services Bureau and may not be granted if, in the HCSO's discretion, it would "prejudice an HCSO investigation or potential prosecution." Exhibit A at 3-4.

33. Similarly, while the protocols demonstrate an intent to "permit" Independent Investigations Division personnel to participate in on-scene interviews of civilian witnesses, the HCSO may deny this permission if Independent Investigations Division involvement is not "practical [or] in the best interests of the [HCSO] investigation." Exhibit A at 3.

COUNT I

Declaratory Judgment

34. The allegations contained in paragraphs 1 through 33 of this Complaint are incorporated by reference herein.

35. Despite mandatory statutory language stating (1) that the Independent Investigations Division "shall investigate" and (2) that the HCSO "shall cooperate," the HCSO is refusing to cooperate with the Independent Investigations Division in violation of the statutory scheme.

36. There exists an actual controversy of a justiciable issue between the Attorney General and the Sheriff of Harford County within the jurisdiction of this Court concerning the interpretation of Senate Bill 600.

37. In accordance with Courts & Judicial Proceedings § 3-409, the controversy concerning the respective roles of the Independent Investigations Division and the local law enforcement agency in alleged or potential police-involved deaths of civilians can be terminated by a declaration that the Independent Investigations Division is to have primary responsibility over any investigation into a police-involved civilian death.

COUNT II
Injunction

38. The allegations contained in paragraphs 1 through 33 of this Complaint are incorporated by reference herein.

39. The defendant is interfering with the statutorily mandated investigation by the Independent Investigations Division into the police-involved civilian death of John Fauver on April 23, 2022, and refusing to cooperate with the Independent Investigations Division by, among other things, declining to provide camera footage and refusing to provide access to physical evidence collected at the scene.

40. Because the language of Senate Bill 600, consistent with its underlying purpose and legislative history, demonstrates that the Independent Investigations Division is to have complete access to all evidence in an investigation into a police-involved civilian death, an injunction preventing interference with the Independent Investigations Division's investigation should be issued in this case.

41. The integrity of the investigation will suffer immediate, irreparable harm unless defendant is enjoined from interfering with the investigation by the Independent Investigations Division of a police-involved shooting by deputy sheriffs in defendant's employ.

42. Without an injunction, the damage sought to be prevented by Senate Bill 600—the loss of public confidence in law enforcement that inheres in an agency investigating one of its own—will have already been done.

43. Consequently, any confidence in any investigation by the Independent Investigations Division will be significantly diminished if it must remain dependent on local law enforcement. Removing any interference from the HCSO is thus integral to fulfilling the General Assembly's important mandate.

WHEREFORE, Plaintiff requests that this Court order the following relief:

(1) Determine and adjudicate the rights and liabilities of the parties with respect to the roles of the Office of the Attorney General, Independent Investigations Division, and the Sheriff for Harford County in any

investigation into a police-involved civilian death, including that of John Fauver on April 23, 2022; and

(2) Issue a declaratory judgment that the Office of the Attorney General, Independent Investigations Division, is to have custody of all original evidence in a police-involved civilian death without interference from any other law enforcement agency; and

(3) Issue a declaratory judgment that defendant is legally required to cooperate in the investigation by the Office of the Attorney General, Independent Investigations Division; and

(4) Issue an injunction restraining defendant from interfering with the statutorily mandated investigation by the Office of the Attorney General, Independent Investigations Division into the death of John Fauver and refusing to cooperate with the Independent Investigations Division by, among other things, declining to provide electronic copies of camera footage and physical evidence; and

(5) Award Plaintiff such other and further relief as may be appropriate.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland
Attorney No. 7201010066

/s/ Robert A. Scott
_____
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Attorneys for Plaintiff

April 25, 2022

BRIAN E. FROSH, ATTORNEY GENERAL OF MARYLAND, *Plaintiff*,	*	IN THE
	*	CIRCUIT COURT
v.	*	FOR
JEFFREY R. GAHLER, SHERIFF FOR HARFORD COUNTY, *Defendant*.	*	HARFORD COUNTY
	*	Civil Action No. C-12-CV-22-000272

* * * * * * * * * * * * * * * *

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND REQUEST FOR HEARING

Plaintiff, Brian E. Frosh, the Attorney General of Maryland, hereby moves pursuant to Maryland Rules 15-504 and 15-505 for a temporary restraining order and preliminary injunction restraining and enjoining defendant from interfering with the statutorily-mandated investigation by the Independent Investigations Division of the Office of the Attorney General into the police-involved shooting death of a civilian, John Raymond Fauver.

As set forth more fully in the accompanying memorandum and exhibits, the Independent Investigations Division has a statutorily mandated duty to "investigate all alleged or potential police-involved deaths of civilians," Md. Code Ann, State Gov't § 6-106.2 (LexisNexis Supp. 2021), and a local law enforcement agency such as the Sheriff for Harford County has a duty to "cooperate with" the Independent Investigations Division in conducting that investigation, Md. Code Ann., Pub. Safety § 3-527(c) (LexisNexis Supp. 2021).

On Saturday, April 23, 2022, at approximately 4:50 p.m., the IID was informed that Mr. Fauver, a civilian, had been shot by members of the Harford County Sheriff's Office. He was later pronounced dead.

As shown in the accompanying memorandum, despite the General Assembly's clear command that the Independent Investigations Division is to be the governmental agency primarily responsible for the investigation of police-involved civilian deaths, defendant has interfered with that investigation.

Specifically, defendant has refused to allow the Maryland State Police to secure and take custody of evidence that is material to the Independent Investigations Division's statutorily-mandated investigation and has failed to transmit to the Independent Investigations Division copies of body-worn camera footage of responding officers, the patrol car dash-cam video of patrol vehicles on scene, and other civilian camera footage.

Because of these existing instances of interference, the Independent Investigations Division also has a strong basis for concern that the defendant will fail to transmit other necessary information as the investigation continues. Defendant's refusal to cooperate with the Independent Investigations Division threatens to undermine the integrity of the Independent Investigations Division's investigation and undercut the very purpose for which the General Assembly created the Independent Investigations Division: to ensure that police-involved civilian deaths are investigated by an agency independent of the agency whose members were involved in that death.

The Attorney General therefore respectfully requests that this Court issue an order:

A. Granting a temporary restraining order and preliminary injunction restraining and enjoining defendant from interfering with, and refusing to cooperate with the Independent Investigations Division in connection with, the statutorily mandated investigation by the Independent Investigations Division into the death of John Raymond Fauver; and

B. requiring that defendant provide the Independent Investigations Division with all body-worn camera footage of responding officers, the patrol car dash-cam video of patrol vehicles on scene, and other civilian camera footage, all in their native formats, related to the events that led to Mr. Fauver's death; and

C. requiring that defendant transfer to the Maryland State Police Forensic Sciences Division all physical evidence collected concerning the events that led to Mr. Fauver's death; and

D. requiring that defendant provide to the Independent Investigations Division all documents enumerated in the April 24, 2022, letter from Independent Investigations Division Deputy Chief Investigator John Fernandez to the Harford County Sheriff's Office; and

E. requiring that defendant provide, on an ongoing basis, any new evidentiary information concerning the incident that led to Mr. Fauver's death immediately upon receipt of such evidence or upon request of the Independent Investigations Division; and

F. waiving the posting of a bond; and

G. Awarding such other and further relief as this Court may deem just and proper.

REQUEST FOR HEARING

Plaintiff requests a hearing on this emergency motion.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland
Attorney No. 7201010066

/s/ Robert A. Scott
_____
ROBERT A. SCOTT
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Attorneys for Plaintiff

April 25, 2022

BRIAN E. FROSH, ATTORNEY GENERAL OF MARYLAND,	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR
JEFFREY R. GAHLER, SHERIFF FOR HARFORD COUNTY,	*	HARFORD COUNTY
Defendant.	*	Civil Action No. C-12-CV-22-000272

* * * * * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

Brian E. Frosh, Attorney General of Maryland, hereby submits this memorandum in support of the motion for temporary restraining order.

INTRODUCTION

In 2021, in response to the inherent conflict of interest that exists when law enforcement agencies investigate the conduct of one of their own, the General Assembly enacted Senate Bill 600, which created the Independent Investigations Division[1] and placed it within the Office of the Attorney General. Using mandatory language, the General Assembly commanded that the Independent Investigations Division "shall investigate all alleged or potential police-involved deaths of civilians." Md. Code Ann., State Gov't § 6-

[1] The legislation that created this investigative entity in 2021 referred to it as an "Independent Investigative Unit." In order to accurately reflect the unit's principal, independent status within the Attorney General's Office, the Attorney General designated it the "Independent Investigations Division." Senate Bill 763, recently signed into law by Governor Hogan, concurs with that name and refers to it as the Independent Investigations Division. For simplicity's sake, we refer to it as the Independent Investigations Division throughout this document and other related ones.

106.2(c)(1) (LexisNexis Supp. 2021). To give effect to its charge that the Independent Investigations Division "shall investigate" any police-involved civilian death, the General Assembly conferred upon the Independent Investigations Division "the full powers, rights, privileges, and duties of a State's Attorney, including the use of a grand jury in any county." State Gov't § 6-106.2(d). The General Assembly also authorized the Independent Investigations Division to make use of the Maryland State Police and "employ civilian personnel as needed." State Gov't § 6-106.2(f).

In empowering the Independent Investigations Division, the General Assembly also placed certain obligations on other law enforcement agencies. First, the General Assembly requires that "[a] law enforcement agency shall notify the [Independent Investigations Division] of any alleged or potential police-involved death of a civilian as soon as the law enforcement agency becomes aware of the incident." Md. Code Ann., Pub. Safety § 3-527(b) (LexisNexis Supp. 2021). And pertinent to this matter, the General Assembly, again using mandatory language, commanded that "[a] law enforcement agency shall cooperate with the [Independent Investigations Division] in connection with the investigation of a police-involved death of a civilian." Pub. Safety § 3-527(c).

Despite the mandatory language stating (1) that the Independent Investigations Division "shall investigate" and (2) that the Harford County Sheriff's Office ("HCSO") "shall cooperate," the sheriff is taking the position that his office too may "investigate" a police-involved civilian death and, in doing so, refusing to cooperate with the Independent Investigations Division in violation of the statutory scheme. As demonstrated below, the clear intent of the General Assembly was that the Independent Investigations Division

would be the primary investigative unit for police-involved civilian deaths. A temporary restraining order is thus necessary to ensure the integrity of the investigation in this case.

FACTUAL BACKGROUND

On Saturday, April 23, 2022, at 4:49 p.m., the Independent Investigations Division received a brief voicemail message on its general, unmonitored telephone line from Harford County Sgt. Goodwin reporting a "deputy-involved incident, a shooting." *See* Affidavit of John Fernandez, Deputy Chief Investigator of the Independent Investigations Division, ¶ 4, attached as Exhibit A. No other details were provided in the voicemail message.

After leaving this message, Sgt. Goodwin contacted Anthony Schartner, Chief Investigator of the Independent Investigations Division, on Mr. Schartner's cellular phone. *See* Affidavit of Anthony Schartner, Chief Investigator of the Independent Investigations Division, ¶ 4, attached as Exhibit B. On this and several subsequent calls with Chief Investigator Schartner, Sgt. Goodwin relayed basic facts of the incident as he was receiving them from officers on scene. Exhibit B, ¶ 4. Sgt. Goodwin explained that the sheriff had earlier in the day received a call for service for a suicidal subject. Sgt. Goodwin indicated that sheriff's deputies had located that individual in a shopping center in Forest Hill, Maryland and that, during the encounter, two sheriff's deputies discharged their service weapons, striking the subject. Exhibit B, ¶ 5. Chief Investigator Schartner was told deputies performed CPR on the subject and that he was transported to Upper Chesapeake Medical Center. Chief Investigator Schartner was then told that the subject, later identified as John Raymond Fauver, was pronounced deceased. Exhibit B, ¶ 5.

During his communication with Sgt. Goodwin, Chief Investigator Schartner indicated that Independent Investigations Division investigators along with the Maryland State Police ("MSP") homicide unit and forensic sciences unit were en route to process the crime scene, collect evidence, and interview witnesses. Exhibit B, ¶ 6. Independent Investigations Division and MSP personnel then promptly arrived on scene, beginning at approximately 5:31 p.m. Exhibit A, ¶ 6-7. Despite MSP's presence on scene, HCSO personnel informed the Independent Investigations Division that MSP would not be allowed to process the scene and/or collect any evidence. Exhibit A, ¶ 8. Additionally, at approximately 6:40 p.m., in a telephone conversation between Independent Investigations Division Chief Dana Mulhauser and Harford County Sheriff Jeffrey Gahler, Sheriff Gahler stated unequivocally that he was refusing to allow MSP to collect evidence. Exhibit A, ¶ 9-10. At the time that the HCSO began collecting evidence, the MSP forensic sciences unit was on scene and would have been available to do so.

After Sheriff Gahler denied MSP the ability to collect evidence, Independent Investigations Division personnel requested electronic copies of body-worn camera footage of all responding officers and patrol car dash-cam video of all patrol vehicles on scene, as well as copies of non-law enforcement videos that the HCSO had collected. Exhibit A, ¶ 12. Harford County State's Attorney Albert Peisinger advised that while the Independent Investigations Division could watch the footage in a mobile HCSO command center, Harford County would not provide electronic copies of the requested material to the Independent Investigations Division. Exhibit A, ¶ 12.

That the sheriff's office would decline to cooperate was not unexpected. Despite the language of the relevant statutes, the sheriff has previously and unequivocally expressed an intent not to allow the Independent Investigations Division to take custody of evidence or otherwise conduct an unimpeded investigation. Under the auspices of exercising its traditional authority in investigating crimes that occur within its jurisdiction, the sheriff has claimed that Senate Bill 600 "does not give the [Independent Investigations Division] the authority to interfere with HCSO investigations and does not allow the [Independent Investigations Division] to usurp the authority of HCSO to investigate violations of the general criminal laws of the State." *See* Exhibit C, September 30, 2021, Letter from Harford County Attorney to Attorney General Frosh. Although the sheriff indicated that he would allow "access" to the evidence his office secures during its own investigation, the sheriff stated that his office "will not stand down," will not "cede its own responsibility to investigate," and will instead "continue with its investigation." *See* Exhibit D, November 16, 2021, Letter from Counsel for Harford County Sheriff Gahler to Attorney General Frosh. And in a December 28, 2021, letter intended to be the final word on the matter, the sheriff's attorney plainly stated that the office "will not follow the protocols issued by" the Independent Investigations Division. *See* Exhibit E, December 28, 2021, Letter from Counsel for Sheriff Gahler to Attorney General Frosh.

The protocols promulgated by the sheriff confirm his intent not to fully cooperate with the Independent Investigations Division. *See* Harford County Sheriff's Office Operations Policy, Response to Police-Involved Deaths, Oct. 1, 2021, attached as Exhibit F. These protocols state that the sheriff will conduct his own investigation into a police-

involved civilian death, and that the sheriff's investigation will be given primacy over that of the Independent Investigations Division. For example, notwithstanding a policy to "share" evidence with the Independent Investigations Division, the protocols nonetheless require the sheriff to retain custody of such evidence. Although, under the protocols, the Independent Investigations Division may make "an official request for the transfer of the evidence" (i.e., the sheriff will accept only one made by the Independent Investigations Division chief in writing), that request must be approved by the sheriff's Chief of the Investigative Services Bureau and may not be granted if, in the sheriff's discretion, it would "prejudice an HCSO investigation or potential prosecution." Exhibit F at 3-4. Similarly, while the protocols demonstrate an intent to "permit" Independent Investigations Division personnel to participate in on-scene interviews of civilian witnesses, the sheriff may deny this permission if Independent Investigations Division involvement is not "practical [or] in the best interests of the [HCSO] investigation." Exhibit F at 3.

LEGISLATIVE HISTORY OF SENATE BILL 600

As initially introduced, Senate Bill 600 created a scheme whereby the Maryland Attorney General would have both investigatory and prosecutorial authority of any police-involved civilian death. Under that initial scheme, (1) the Attorney General would be charged with investigating all police-involved civilian deaths (after being notified by the local law enforcement agency); (2) the Attorney General would then transmit a copy of its investigatory report, with recommendation whether to prosecute, to the local State's Attorney; and (3) if the local State's Attorney declined to prosecute the matter despite the Attorney General's recommendation to do so, the Attorney General would then be

authorized to prosecute the matter.[2] Invoking the high-profile case of Ahmaud Arbrery,[3] the sponsor of the bill (Senator William C. Smith, Jr.) stressed in his opening remarks before the Senate Judicial Proceedings Committee that this bill was necessary because it had "become abundantly clear that independence and transparency in cases of police misconduct are essential elements in restoring trust between law enforcement and the communities that they serve." S. Jud. Proc. Comm., Feb. 4, 2021, at 6:49:30.[4] Senate Bill 600 would thus create a marked departure from the status quo, under which local law enforcement would investigate any civilian death under their general investigative authority and the local State's Attorney would, if appropriate, prosecute any criminal activity that occurred.

During Senate committee hearings and voting sessions, certain concerns were raised with respect to the role of the Attorney General. First, some legislators and witnesses (such as certain State's Attorneys) were concerned that giving *prosecutorial* authority to the Attorney General would undermine the authority and legitimacy of the local State's Attorney who ordinarily would retain exclusive jurisdiction to prosecute. S. Jud. Proc. Comm., Feb. 4, 2021, at 6:56:01 (State's Attorney for Baltimore City Marilyn Mosby),

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[2] *See* Senate Bill 600 (First Reading, Jan. 29, 2021), available at https://mgaleg.maryland.gov/2021RS/bills/sb/sb0600f.pdf.

[3] *See* Hannah Knowles, *et al*., *Ahmaud Arbery's Killing in Georgia Puts an Unusually Bright Spotlight on Prosecutor Accountability*, Washington Post, Oct. 27, 2021, available at https://www.washingtonpost.com/nation/2021/10/27/ahmaud-arbery-prosecutors-georgia/?itid=ap_hannahknowles.

[4] A recording of the February 4, 2021 committee hearing is available at https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jpr&clip=JPR_2_4_2021_meeting_1&ys=2021rs.

6:59:02 (State's Attorney for Baltimore County Scott Shellenberger). Other witnesses, such as Troy Berry, Sheriff for Charles County, expressed concerns about ceding *investigatory* authority to the Attorney General. S. Jud. Proc. Comm., Feb. 4, 2021, at 7:09:53. In light of these concerns, the Senate committee overhauled the bill and removed the Attorney General from the prosecutorial role entirely. With regard to the *investigatory* role, these amendments (1) took away the Attorney General's authority to investigate police-involved civilian deaths (allowing that authority to remain with local law enforcement), and (2) created a task force charged with "develop[ing] a blueprint for the independent investigation of potential incidents involving the death of a person caused by a police officer" and "mak[ing] recommendations regarding the establishment of an independent agency responsible for investigating incidents involving the death of a person caused by a police officer in this State."[5] With regard to *prosecutorial* authority, the amendments retained the local State's Attorney's status as the primary agency authorized to prosecute a police-involved civilian death, but required that the local State's Attorney, in the event he or she had declined to prosecute such a matter, to transmit a copy of the investigatory file to the State Prosecutor (rather than the Attorney General), who would then be empowered to prosecute the matter (independent of the State's Attorney). This version of the bill[6] was passed unanimously by the full Senate.

[5] Amendments to Senate Bill 600, available at https://mgaleg.maryland.gov/2021RS/amds/bil_0000/SB0600_95807701.pdf.

[6] *See* Senate Bill 600, Third Reading, Feb. 18, 2021, available at https://mgaleg.maryland.gov/2021RS/bills/sb/sb0600t.pdf.

When the bill reached the House, it was referred to the Judiciary Committee. In hearings on the bill as passed by the Senate, Defendant Sheriff Gahler testified. H. Judiciary Comm., Mar. 25, 2021, at 4:48.[7] Sheriff Gahler generally supported the bill as passed by the Senate. Sheriff Gahler, however, took issue with the task force and the possible creation of an independent investigatory agency that would be responsible for investigating police-involved civilian deaths. Sheriff Gahler instead advocated for the inclusion of language that would allow "parallel and collaborative" investigations, whereby independent investigators from any to-be-formed state agency would be assigned "at the outset" to the local law enforcement agency but where responsibility for the investigation would nonetheless remain with the local agency. H. Judiciary Comm., Mar. 25, 2021, at 6:10. Sheriff Gahler insisted that this arrangement would further the goals of "ensuring thoroughness and transparency," as well as being more fiscally efficient. H. Judiciary Comm., Mar. 25, 2021, at 6:25. Sheriff Gahler stated that, if the committee believed that such an arrangement would not meet those goals, they should "address that concern." H. Judiciary Comm., Mar. 25, 2021, at 11:54.

The Judiciary Committee rejected Sheriff Gahler's recommendations. The Judiciary Committee instead amended the bill to reflect the general structure and features of the bill as originally introduced in the Senate, including the creation of an independent

[7] A recording of the March 25, 2021 committee hearing is available at https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jud&clip=JUD_3_25_2021_meeting_1&ys=2021rs.

investigatory agency (rather than simply a task force to study the issue).[8] There were, however, certain distinctions. Rather than vest investigatory authority with the Attorney General himself, the amendments created the Independent Investigations Division, housed it within the Office of the Attorney General, and mandated that the Independent Investigations Division "shall investigate" police-involved civilian deaths. And rather than allow the State Prosecutor (or the Attorney General) to prosecute a police-involved civilian death where the local State's Attorney had declined to do so, the amended bill vested the entire (and final) authority to prosecute such a matter in the local State's Attorney. Under this new structure, after the Independent Investigations Division completed its investigation, the Independent Investigations Division would send a report to the local State's Attorney with a recommendation whether to initiate a prosecution; there would then be no state agency authorized to initiate a prosecution in the event the local State's Attorney rejected the Independent Investigations Division's recommendation to prosecute. Most crucially, the modified bill rejected Sheriff Gahler's request that local law enforcement be permitted to conduct "parallel and collaborative" investigations.

When the bill reached the House floor, the floor leader (Delegate Luke Clippinger, Chair of the Judiciary Committee) explained at length why the language regarding an *independent* investigatory agency was so integral to the efficacy of the bill. Del. Clippinger

[8] Amendments to Senate Bill 600, available at: https://mgaleg.maryland.gov/2021RS/amds/bil_0000/SB0600_60281001.pdf

explained that, politics aside,[9] it was vitally important that, to restore trust and establish accountability, there be "a level of separation between" a local law enforcement agency and the investigation into a civilian death that occurred at the hands of that particular agency. H. Floor Proc., April 1, 2021, at 43:00.[10] This theme ran through Del. Clippinger's remarks during the floor session:

- "The issue that the committee heard over and over again, the committee sought to address in this area is that when you have these most serious cases that there is somebody independent to investigate it." H. Floor Proc., Apr. 1, 2021, at 40:28.

- "What the committee had heard many times and over the last several years and maybe even before was that it was important to have an independent investigation outside of the local jurisdiction to ensure that the investigation is carried out properly, particularly when it's dealing with one of their own who is involved in an incident that involved the death of a citizen." H. Floor Proc., Apr. 1, 2021, at 42:16.

- "You want to avoid the police officers from the jurisdiction investigating a police officer who killed somebody." H. Floor Proc., Apr. 1, 2021, at 42:40.

In a later House floor session, Del. Clippinger was pressed by his fellow legislators to explain the logistics of how an independent investigation would be conducted under Senate Bill 600 and at what point the Independent Investigations Division would become involved. His responses reflect an unmistakable intent that the Independent Investigations

[9] Much of the discussion throughout the legislative history related to issue of where any such independent investigatory agency would be housed and who would be responsible for its oversight. Several legislators objected to housing the agency within the Office of the Attorney General given the perceived "political" nature of the position.

[10] A recording of the April 1, 2021 House floor proceedings is available at https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-36-?year=2021RS.

Division would be the primary agency responsible for conducting the investigation. For example, in response to a question regarding what would happen in the critical moments after a police-involved civilian death occurred, Del. Clippinger stated:

> [The Independent Investigations Division] has to coordinate with the locals in the very beginning, *but then they take over the investigation* so that we can make sure that that investigation is done truly independently and so that it is beyond reproach, we need to make sure we do that so that people have confidence in that investigation.

H. Floor Proc., April 4, 2021, at 106:08[11] (emphasis added).

When pressed again on "the process," Del. Clippinger was steadfast:

> [T]he locals would begin the investigation in consultation with the Independent Investigations Unit and the investigators from that agency would then go and get to where the alleged incident happened *and then they'd take over the investigation*.

H. Floor Proc., Apr. 4, 2021, at 126:36 (emphasis added).

Later during the House floor debate, an amendment was proposed to eliminate the Independent Investigations Division and, as Sheriff Gahler had earlier advocated, retain the entire investigatory authority for police-involved civilian deaths with local law enforcement (in the words of the amendment's sponsor, "where it lies right now"). H. Floor Proc., Apr. 4, 2021, at 1:29:20. That amendment failed. H. Floor Proc., Apr. 4, 2021, at 1:45:25.

The full House passed the bill as amended by the Judiciary Committee.

[11]A recording of the April 4, 2021 House floor proceedings is available at https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/house-39-?year=2021RS.

When the bill as amended by the House arrived back on the Senate floor, Sen. Robert Cassilly—who had been part of the Senate Judicial Proceedings committee that had earlier considered the bill—spoke in opposition. S. Floor Proc., Apr. 7, 2021, at 2:25:26.[12] Sen. Cassilly recalled how his committee had approved a bill (one that would later be passed unanimously by the full Senate) that removed the investigatory authority from the Attorney General and retained that authority with local law enforcement (who could accept assistance from state law enforcement at local law enforcement's discretion). Sen. Cassilly then observed that Senate Bill 600 as amended by the House now created an arrangement whereby local law enforcement would "not [be] the investigators" and would not "have the authority" to conduct their own investigation into a police-involved civilian death. He described this arrangement as a "really bad way to go" and urged his colleagues to reject the bill. Another Senator, who had a favorable view of the version previously passed by the full Senate, rose to ask the bill's sponsor if he could "just explain why [the House] changed it." S. Floor Proc., Apr. 7, 2021, at 2:32:30. In response, the bill's sponsor (Sen. Smith) explained that, regardless of whether authority would be vested in the Office of the Attorney General or the Office of the State Prosecutor, the "actual purpose of having an independent investigation for these officer-involved deaths was the most important part." S. Floor Proc., Apr. 7, 2021, at 2:32:55. The full Senate subsequently voted to concur in the bill as amended, and Senate Bill 600 became law. 2021 Md. Laws, ch. 132.

[12]A recording of the April 7, 2021 Senate floor proceedings is available at: https://mgaleg.maryland.gov/mgawebsite/FloorActions/Media/senate-42-?year=2021RS.

After the bill became law, Sheriff Gahler sent the series of letters described in pages 4 and 5, *supra*, announcing his intention not to comply with it. The General Assembly, recognizing the grave nature of such obstruction, enacted legislation to offer greater protections in the event that such interference occurred. Senate Bill 763, signed into law by Governor Hogan on April 21, 2022, makes explicit that the Independent Investigations Division is "the primary investigative unit for police-involved incidents that result in the death of civilians. The statute, which goes into effect July 1, 2022, also provides the Attorney General with the additional ability—on top of existing law—to "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."

ARGUMENT

I. LEGAL STANDARD

Maryland Rule 15-504 governs the issuance of temporary restraining orders:

> A temporary restraining order may be granted only if (1) it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the party seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction, and (2) the court examines and makes appropriate findings regarding:
>
> (A) the likelihood that the moving party will succeed on the merits;
>
> (B) the balance of harm to each party if relief is or is not granted;
>
> (C) whether the moving party will suffer irreparable injury unless the order is granted; and
>
> (D) a determination that granting the order is not contrary to the public interest.

Md. Rule 15-504(a); *see Schisler v. State*, 394 Md. 519, 534 (2006).

Where, as here, the matter involves the meaning of statutory language, "[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." *Henriquez v. Henriquez,* 413 Md. 287, 297 (2010) (citation omitted); *see Ingram v. State*, 461 Md. 650, 663 (2018) ("[O]ur goal in statutory construction analysis is to discern and carry out the intent of the Legislature."); *Blue v. Prince George's County*, 434 Md. 681, 689 (2013) ("Legislative purpose, either apparent from the text or gathered from external sources, often informs, if not controls, our reading of the statute."). "When conducting a statutory construction analysis, [this Court] begin[s] 'with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology.'" *Blackstone v. Sharma*, 461 Md. 87, 113 (2018) (citation omitted). The "plain meaning" rule, however, "is not a complete, all-sufficient rule for ascertaining legislative intention[,]" nor does it requires a court "to read legislative provisions in rote fashion or in isolation." *Kaczorowski v. City of Baltimore,* 309 Md. 505, 514 (1987) (citation omitted); *see also Baltimore County Coalition Against Unfair Taxes v. Baltimore County*, 321 Md. 184, 203 (1989) ("[W]ords in a statute must be read in a way that advances the legislative policy involved."). "The 'meaning of the plainest language' is controlled by the context in which it appears." *Kaczorowski,* 309 Md. at 514. A court "may and often must consider other 'external manifestations' or 'persuasive evidence,' including a bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which

becomes the context within which we read the particular language before [this Court] in a given case." *Id*. at 515.

II. INJUNCTIVE RELIEF IS WARRANTED AND NECESSARY TO PREVENT INTERFERENCE WITH THE INVESTIGATION INTO THE HARFORD COUNTY POLICE-INVOLVED SHOOTING DEATH OF MR. FAUVER.

As set forth above, the sheriff has interfered with the Independent Investigations Division investigation by refusing to allow MSP to secure and take custody of evidence that is material to the Independent Investigations Division's statutorily mandated investigation and by failing to transmit to the Independent Investigations Division copies of body-worn camera footage of responding officers, the patrol car dash-cam video of patrol vehicles on scene, and other civilian camera footage. Because of those two existing instances of interference, the Independent Investigations Division also has a strong basis for concern that the sheriff will fail to transmit other necessary information as the investigation continues.

Because the language of Senate Bill 600, consistent with its underlying purpose and legislative history, demonstrates that the Independent Investigations Division is to have primary responsibility over any investigation into a police-involved civilian death, a temporary restraining order preventing interference with the Independent Investigations Division's investigation should be issued in this case.

A. The Attorney General is Likely to Succeed on the Merits

A review of the plain language of Senate Bill 600, as well as an examination of the underlying purposes for which it was enacted, fully support the Attorney General's position. First, by using the mandatory phrase "shall investigate," State Gov't § 6-106.2,

the General Assembly made clear that the Independent Investigations Division would have primary authority over any investigation involving a police-involved civilian death. *See, e.g.*, *Uthus v. Valley Mill Camp, Inc*., 472 Md. 378, 394 (2021) ("[T]his Court has also long held that the term 'shall' in a statute indicates the legislative intent that the statute be mandatory."). To give effect to its charge that the Independent Investigations Division "shall investigate" any police-involved civilian death, the General Assembly conferred upon the Independent Investigations Division "the full powers, rights, privileges, and duties of a State's Attorney, including the use of a grand jury in any county." State Gov't § 6-106.2(d).

Although, in the abstract, compelling one actor to take a particular action does not necessarily preclude that same act by another, that principle is not applicable here in the context of a potential criminal investigation. Indeed, any investigation into a death will necessarily involve unique physical evidence (i.e., bullet casings, weapons, etc.), and it is integral that the agency specifically charged with conducting the investigation maintain custody of such evidence. This is true even if another agency offers "full access" to that evidence that it nonetheless retains. In such a case, the Independent Investigations Division would, at the very least, be hampered in its investigation, as it would be at the mercy of the other agency as to when the evidence would be made available and under what conditions. More importantly, in such cases the Independent Investigations Division would have no ability to ensure the chain of custody of such evidence or otherwise prevent tampering or manipulation. This is especially troubling, given that, as detailed earlier, the express purpose of enacting Senate Bill 600 and placing the authority to investigate in an

"independent" agency was to eliminate the ability (or perceived ability) of a local law enforcement agency to influence an investigation relating to a member of its own force.

Similarly, any proper criminal investigation must be based on a calculated and deliberate strategy. Permitting there to be two parallel investigations is thus not only impractical and inefficient, but has the potential for each investigation to disrupt or compromise the other. For example, different agencies may interview witnesses in different orders, thus tipping off those witnesses as to the status of an investigation or otherwise causing witnesses to be more guarded in a second interview or refuse to cooperate entirely with another investigation.

Moreover, foreclosing any investigation by the sheriff , despite its otherwise broad authority to do so, is consistent with the principle that "when two statutes, one general and one specific, are found to conflict, the specific statute will be regarded as an exception to the general statute." *Maryland-Nat'l Capital Park & Plan. Comm'n v. Anderson*, 395 Md. 172, 194 (2006). In other words, the sheriff 's generic authority to investigate criminal activity must yield to the explicit command of the General Assembly with regard to the narrow and specific circumstances set forth in Senate Bill 600, i.e., the police-involved death of a civilian.

There are other textual indications that the Independent Investigations Division is to have primacy in any investigation into a police-involved civilian death. Public Safety § 3-527(b) requires a law enforcement agency to notify the Independent Investigations Division of any police-involved civilian death as soon as that agency becomes aware of the incident. This immediacy evinces an intent that the Independent Investigations Division

should be present, as a practical matter, from the very beginning of any investigation, which in turn implies the primary role that the Independent Investigations Division is to take. Stated differently, and as articulated by Del. Clippinger, the intent of the statutory scheme is that, although the local law enforcement agency should begin the investigatory process through notifying the Independent Investigations Division, it must allow the Independent Investigations Division to "take over" once it arrives and begins its own investigation.

In addition, Public Safety § 3-527(c) provides that "[a] law enforcement agency *shall cooperate* with the [Independent Investigations Division] in connection with the investigation of a police-involved death of a civilian." (emphasis added). Indeed, when one party is compelled (whether by statute or contract) to "cooperate with" another party, courts have not hesitated to find that the first party is in a subordinate position to the latter. *See, e.g.*, *Allstate Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 363 Md. 106, 118-19 (2001) (noting that most automobile insurance policies require an insured to "cooperate with" the insurance company in any investigation of a claim made against the insured, thereby creating unilateral responsibilities on the part of the insured); *Forestville Park Ltd. P'ship v. State*, 50 Md. App. 570, 577 (1982) (concluding that statutory language requiring a state agency to "cooperate with" local elected officials with respect to the placement of a development project meant that the agency could not go forward with the project in a location that the local officials opposed); *cf. Solomon v. State Bd. of Physician Quality Assur.*, 155 Md. App. 687, 697-705 (2003) (affirming discipline for "fail[ing] to cooperate" with a lawful investigation where physician refused to comply with the board's subpoena for documents). This subordinate role is reflected on page four of the Fiscal and Policy

Note for Senate Bill 600, attached as Exhibit G, which contemplates two ways in which a local law enforcement's "cooperation" with the Independent Investigations Division might be manifested: where (1) "local law enforcement is still allowed to participate in the investigations" under supervision by the Independent Investigations Division, or (2) the Independent Investigations Division "is instead to solely assume *all* aspects of the investigations[.]" (emphasis in original). The inclusion of language commanding local law enforcement to "cooperate" with the Independent Investigations Division thus left no room for local law enforcement to assert any control over an investigation into a police-involved civilian death.

It is also notable that Public Safety § 3-527(c), when referring to the interrelationship between the Independent Investigations Division and the local law enforcement agency, speaks only of "the" investigation. In other words, Senate Bill 600's placement of authority in the Independent Investigations Division to conduct "the" investigation is premised on there being only one investigation into the police-involved death of a civilian. And that investigation is the one to be conducted by the Independent Investigations Division.

Finally, the conclusion that Senate Bill 600 places primary investigatory authority in the Independent Investigations Division is fully supported by its legislative history. As set forth at length above, the consistent theme and position of the bill's sponsors were that an investigatory agency that is independent and separate from the local law enforcement agency is necessary to fulfill the bill's purpose of ensuring police accountability, even going so far as to deem the independence of the investigating authority "the most important

part" of the statutory scheme. State of Sen. Will Smith, S. Floor Proc., Apr. 7, 2021, at 2:32:55. And although some legislators sought to retain investigatory authority within the local law enforcement agencies such as the sheriff, those proposals were expressly rejected in light of that need for independence. H. Floor Proc., Apr. 4, 2021, at 1:29:20. Instead, the General Assembly enacted Senate Bill 600 with the clear understanding that, when a civilian death occurs at the hands of a local law enforcement agency, the Independent Investigations Division will "take over" the investigation as soon as practicable (i.e., the moment it arrives on the scene). H. Floor Proc., Apr. 4, 2021, at 106:08, 126:36.

Even assuming, arguendo, that the Independent Investigations Division and HSCO are co-equal participants in the investigation, HSCO still retains an unambiguous statutory duty to cooperate. Any definition of cooperation would require HSCO to provide the Independent Investigations Division with copies of the videos and other non-physical evidence in this case. HSCO's offer to allow the Independent Investigations Division to watch the videos in their offices is not sufficient to qualify as cooperation. It is not reasonable to require the Independent Investigations Division to be on HSCO premises, accompanied by HSCO personnel, using HSCO equipment in order to view the videos. Such a requirement compromises the independence and the quality of the Independent Investigations Division investigation. There are dozens of hours worth of videos, and Independent Investigations Division personnel must be able to analyze and discuss them in secure locations, using their own analytical tools. Thus, even if this court refused—incorrectly—to recognize the primacy of the Independent Investigations Division

investigation, HSCO should still be ordered to produce copies of all evidence as part of its duty to cooperate.

The sheriff's express refusal to yield to the Independent Investigations Division is contrary to both the plain text of Senate Bill 600 as well as its robust legislative history. The Attorney General is likely to succeed on his claim here.

B. The Other Factors Weigh Heavily in Favor of a Temporary Restraining Order.

For many of the reasons set forth above, a temporary restraining order in this case satisfies the other three factors required for the issuance of such relief. First, a temporary restraining order would not result in any cognizable injury to the sheriff. Although the sheriff might claim a general duty to investigate crimes committed within its jurisdiction, it has no specific interest (at least not one that is legitimate) in the investigation of a civilian who died at the hands of one of its own officers. On the other hand, motivated by important public policy concerns, Senate Bill 600 has specifically empowered the Independent Investigations Division to conduct such an investigation.

Moreover, a temporary restraining order would avoid irreparable harm to the integrity of the statutorily-mandated investigation by the Independent Investigations Division. Regardless of how (or how well) the sheriff might conduct his own investigation, in the absence of injunctive relief the damage sought to be prevented by Senate Bill 600—the loss of public confidence in law enforcement that inheres in an agency investigating one of its own—will have already been done. And, consequently, any confidence in any investigation by the Independent Investigations Division will be significantly diminished

if it must remain dependent on local law enforcement. Removing any interference from the sheriff is thus integral to fulfilling the General Assembly's important mandate.

For much those same reasons, a temporary restraining order is clearly in the public interest. As the General Assembly's mandate reflects, the public interest is served by ensuring that any investigation into a police-involved civilian death is conducted by a law enforcement agency that is independent of the agency whose members are being investigated.

CONCLUSION

For the reasons set forth above, the Attorney General of Maryland respectfully requests that his Emergency Motion for Temporary Restraining Order and Preliminary injunction be granted.

Respectfully submitted,

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