



1212 New York Ave. N.W.
Suite 900
Washington, D.C. 20005
202-525-5717

Free Markets. Real Solutions.
www.rstreet.org

Testimony from:
Jesse Kelley, Government Affairs Manager, Criminal Justice & Civil Liberties
R Street Institute

In SUPPORT of HB 1035, “State Government – Attorney General – Independent Law Enforcement
Prosecution Unit”

February 15, 2021

House Judiciary Committee

Chairman Clippinger, Vice-chair Atterbeary and members of the committee:

My name is Jesse Kelley, and I am a government affairs manager for the criminal justice and civil liberties team at the R Street Institute, a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including criminal justice reform, which is why HB 1035 is of special interest to us.

Many police officers undertake their public service with a sense of duty and responsibility. But even good policing can be dangerous, and for this reason, increasing accountability standards to reduce the impact of “bad apples” in departments should be a welcome change for those who serve with honor.

Police oversight can benefit members of the community, law enforcement departments and even elected officials. Therefore, empowering the Office of the Attorney General to act as an agent of police reform by establishing an Independent Law Enforcement Prosecution Unit, as HB 1035 does, can shift the landscape of policing and strengthen the mechanisms by which we hold officers accountable for misconduct. Indeed, an independent unit in the Office of the Attorney General may be less beholden to police unions than other governmental actors and is well positioned to identify and investigate violations of constitutional rights.

Oversight can work as an incentive for departments to further improve the quality of their internal investigations of alleged misconduct. If unions, chiefs and officers know that the Attorney General will step in—with the ability to prosecute—to investigate incidents that involve a police shooting or any use of physical force that results in death, internal investigations could become more thorough and could produce results that are geared toward equity and accountability. Moreover, by allowing the Attorney General to intervene and publish a public report with their findings, community members can be reassured that officer discipline is being appropriately imposed, while simultaneously increasing the transparency of the disciplinary process.

But, while allowing the Office of the Attorney General to prosecute officers for misconduct can increase accountability, we further encourage the establishment of civilian oversight boards, which must be included in the broader police reform conversation to ensure that communication between the community and police agency is open and ongoing. Indeed, research has shown that civilian oversight boards increase the public's understanding of law enforcement policies and procedures, which can help ease tensions.¹

When it comes to granting more authority to the Attorney General, Maryland would not be the first—nor would it be alone—in taking this step toward police accountability. On June 15, 2020, Iowa Governor Kim Reynolds signed a police reform bill into law that allows the Iowa Attorney General to investigate and prosecute officers for unlawful conduct, requires them to have bias training and prohibits officers with previous misconduct charges from joining other police departments.²

Indeed, the idea of more fully incorporating attorneys general into police accountability solutions has been studied and implemented for decades.³ For example, in 2000, California became the first state to statutorily authorize its Attorney General to address police misconduct. Over the years, California has launched investigations into law enforcement misconduct and negotiated improvement agreements that build trust and increase safety in local communities.

Accountability is a core pillar of good government because it builds trust between community members and the law enforcement officers dedicated to protecting and serving them. And while law enforcement is an extraordinarily difficult job, nobody—not even a police officer—is above the law and when proven misconduct occurs, they must be held accountable.

We therefore support passage of HB 1035 and thank you for your time and consideration.

Sincerely,

Jesse Kelley
R Street Institute

¹ See, e.g., Jason Mazzone and Stephen Rushin, “State Attorneys General as Agents of Police Reform,” *Duke Law Journal* 69:5 (February 2020). <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4012&context=dlj>.

² See: <https://www.legis.iowa.gov/perma/061120205211>.

³ Connor Maxwell and Danyelle Solomon, “Expanding the Authority of State Attorneys General to Combat Police Misconduct,” Center for American Progress, Dec. 12, 2018. <https://www.americanprogress.org/issues/race/reports/2018/12/12/464147/expanding-authority-state-attorneys-general-combat-police-misconduct>.