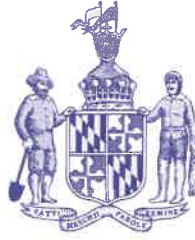


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Fiscal Year 2021 Operating Budget  
Response to Department of Legislative Services Budget Analysis

Senate Budget and Taxation Committee  
Public Safety, Transportation & Environment Subcommittee  
Senator Cory V. McCray  
February 20, 2020

House Appropriations Committee  
Public Safety & Administration Subcommittee  
Delegate Keith E. Haynes  
February 19, 2020

Thank you for the opportunity to respond to the Department of Legislative Services' Fiscal Year 2021 budget analysis. We appreciate DLS's recognition of the hundreds of millions of dollars in recoveries we have generated for the State and its citizens. We are proud of the accomplishments of our lawyers and staff, which they achieved even in the face of increasing caseloads and continued funding challenges.

For the first time in the last five years, DLS has recommended that the General Assembly cut OAG's budget, on top of the cuts proposed in the Governor's budget, and we respectfully request that you reject that recommendation.

**Funds for contractual positions should not be cut.**

DLS recommends that the General Assembly reduce funding for contractual positions by \$300,000. DLS acknowledges that OAG needs the additional staff due to increased responsibilities, but anticipates that we will continue to have difficulty in hiring for these positions. We respectfully request that you reject this recommendation.

We acknowledge that filling contractual positions remains a serious challenge. Attorneys often leave law school with significant debt and will not apply for

contractual positions if permanent positions are available. When we do hire contractual attorneys and staff, they continue to look for permanent, full time positions and leave as soon as they get one. This happens after we have devoted substantial time and resources toward their training. We would welcome permanent full-time positions instead of contractual positions.

We do not, however, have control over the nature of the positions we are provided, and we must continue to try to fill the positions we have. The law requires us to perform this work, and the work needs to get done. The money that DLS proposes to cut is funding for our Securities Division to protect seniors and vulnerable adults from financial exploitation. Despite the challenges we face, we intend to continue to try to hire contractual staff for those positions and to spend the money that has been allocated to us. We ask you not to cut this funding.

**Funding for the Baltimore City Violent Crime Prosecution Unit should be preserved.**

DLS also proposes to reduce funding to the Baltimore City Violent Crime Prosecution Unit by 25% (\$640,985), and to withhold an additional \$100,000 in funding until the OAG submits a report by January 1, 2021.

By way of background, the Office has, through the tenures of a long line of Attorneys General, staffed prosecutors to handle criminal matters. The Organized Crime Unit (“OCU”), created by Attorney General Frosh in 2015, handles complex investigations and prosecutions of criminal gang activities, firearms and narcotics trafficking, human trafficking, and other serious crimes. The OCU currently has eight Assistant Attorneys General and a Unit Chief with statewide enforcement responsibility.

The lawyers in the OCU work closely with law enforcement from the outset of the case. Unlike prosecutors in State’s Attorneys’ Offices, the AAGs in OCU are not responsible for a docket of cases charged by the police or via a court commissioner. The OCU, much like the U.S. Attorney’s Office, selects specific investigations to pursue. The AAGs in OCU are actively involved in every step of the investigation from the moment the case is referred to the Unit.

Since its inception, the OCU has charged over 230 defendants for crimes relating to violence, gang participation, drug trafficking, drug overdoses, witness intimidation, witness murder, obstruction of justice, prison corruption, human trafficking, commercial and serial robberies, carjackings, firearms offenses, and more. The cases in OCU are typically multi-defendant, multi-jurisdictional, and often involve complex conspiracies and/or evolving issues of Maryland law.

When investigating and prosecuting cases, the OCU has worked jointly with prosecutors from several State's Attorneys' Offices, including Baltimore City, as well as the U.S. Attorney's Office. The OCU has also worked closely with local police departments throughout Maryland, the Maryland State Police, as well as federal agencies including the ATF, DEA, and FBI.

In September 2019, Governor Hogan directed our Office to prosecute additional cases in Baltimore City. We responded that we could only do so with additional resources. As reflected throughout the DLS analysis, we cannot continue to take on more responsibilities without more resources. Governor Hogan proposed additional resources in his budget.

DLS proposes to cut 25% of the recommended funds by changing zero turnover expectancy to 25% turnover expectancy. According to the analyst, this reflects the standard 25% turnover rate typically applied to account for time to hire new staff.

There are two problems with DLS's proposed cut. First, OAG intends to advertise for the new positions as soon as the budget becomes law and does not intend to wait until the start of the fiscal year. Second, the proposed budget already contains unrealistic salary levels for the new attorneys and staff. Specifically, funding is budgeted at a grade 9 for attorney positions; the OAG must hire experienced attorneys at significantly higher grades. Similarly, funding for staff positions is budgeted at base level; the Office is not able to hire investigators or other support staff at base level. We will need to pay both attorneys and staff higher salary levels than are set forth in the proposed budget. Cutting 25% of the budget will mean that we will be able to hire even fewer lawyers and staff.

Finally, DLS recommends that the General Assembly withhold \$100,000 until the Office submits an extensive report on the new unit's activities six months after the new unit is created.

Our approach to the proposed unit will be to expand on the existing work of the OCU, and continue to focus on complex, multi-defendant cases involving Baltimore City. We plan to update the General Assembly on the activities of the unit that can be made public, as we do annually through the budget process for OCU. We respectfully request that we propose alternate language to the Committee that will allow us to update the General Assembly as to the activities of the unit without compromising investigations.

### **Chronic Underfunding in Core Operations.**

DLS notes that the proposed budget abolishes 6 more positions in the OAG central office. This is in addition to the 8 abolished positions last fiscal year. DLS requests

that OAG comment on “its vacant positions and whether increased funding in fiscal 2021 will allow it to address its personnel issues.”

When the 8 positions were abolished this fiscal year, it cost OAG more than \$500,000. Because almost all of our spending is on personnel costs, we told the Governor’s Office that we were going to need a deficiency appropriation to make up for these cuts. The proposed budget contains a deficiency appropriation in the amount of \$300,000, which will help, but may not make up for the entire shortfall. We continue to be fiscally responsible and are working to meet the demands of our FY2020 budget.

OAG appreciates that the proposed FY2021 budget contains additional funding to reduce our turnover number. Using a realistic turnover number is certainly a better practice than holding positions vacant for long periods of time to accrue cost savings, only to have those vacancies cut.

The additional funding does not, however, address the staffing needs of our core operations in the central office. There are a number of units that need additional staff. For example, DLS notes that in FY2011, the Juvenile Justice Monitoring Unit had 8 authorized positions; it now has 4. Due to budget cuts, we have lost positions in the Civil Division, the Antitrust Division, and the Advice and Opinions Division, among other divisions. Understaffing in the central office takes a serious toll on lawyers and staff who are already underpaid as compared to their peers in the local and federal government. We will continue to try to address these needs in future fiscal years.

### **Juvenile Justice Monitoring Unit**

DLS has requested that we comment on the size of the JJMU Unit and its ability to conduct adequate monitoring in the upcoming fiscal year. DLS noted that site visits dropped from FY2018 to FY19 and that the division lost one employee in fiscal 2019.

JJMU continues to have the same number of monitors (four) that it has had since FY2016. The employee who left was replaced with another monitor. The newly hired monitor travelled with another monitor to facilities for a period of time. All JJMU monitors are now able to visit sites independently, and we expect the number of visits to rebound in future fiscal years.

Thank you for your attention to these matters, and we look forward to continuing these discussions with you.