

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1251
 Judiciary

(Delegate Bartlett, *et al.*)

Criminal Procedure - Attorney General - Independent Investigation of Law Enforcement-Involved Death

This bill requires the Attorney General to conduct an independent investigation whenever a person’s death occurs during an encounter with a police officer acting in the officer’s official capacity or while the decedent is in the custody of a law enforcement agency. The bill establishes requirements related to the investigation of a police officer involved in a death. A prosecution against a police officer as specified in the bill must be brought in a county other than the county in which the death occurred. A law enforcement agency is not prohibited from conducting an internal review of an officer’s conduct for possible discipline, consistent with the Law Enforcement Officers’ Bill of Rights (LEOBR).

Fiscal Summary

State Effect: General fund expenditures increase by a minimum of \$271,300 in FY 2021. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	271,300	328,800	337,000	348,600	360,600
Net Effect	(\$271,300)	(\$328,800)	(\$337,000)	(\$348,600)	(\$360,600)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential minimal increase in local government expenditures to the extent that additional travel and overtime is needed for local law enforcement agencies. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: An investigation must be led by an investigator designated by the Attorney General who (1) has never been employed by a law enforcement agency in the county in which the death occurred and (2) has experience and expertise in conducting complex criminal investigations. The investigation must reach a conclusion as to whether any police officer or law enforcement agency involved in the person's death acted in a criminally culpable manner.

As specified, the Attorney General may issue a subpoena to any person who may have knowledge relating to the investigation. A person subject to a subpoena must be advised of the right to counsel when served and may have an attorney present during any contact made with the Attorney General's investigation team. If a person fails to obey a lawfully served subpoena under the bill's provisions, the Attorney General may immediately report the failure to the specified circuit court and must provide the court a copy of the subpoena and proof of service. The court may grant appropriate relief after conducting a hearing at which the person who allegedly failed to comply with a subpoena has an opportunity to be heard and represented by counsel.

The Attorney General must submit a final written report to the State's Attorney for the county in which the death occurred. If the State's Attorney declines to pursue a criminal prosecution against the officer, the report must be released to the public to the extent authorized by law.

Current Law/Background: A statement of charges for an offense allegedly committed in the course of executing the duties of a law enforcement officer, emergency services personnel, or an educator may not be filed against such a worker until the State's Attorney has investigated the circumstances of the matter and made recommendations to the District Court Commissioner.

If the State's Attorney recommends to a District Court Commissioner that a statement of charges be filed, the State's Attorney must also make a recommendation regarding whether a summons or warrant should be issued. The State's Attorney is not precluded from making a determination that an information should be filed or that a grand jury should be convened to determine whether an indictment should be filed.

The Attorney General does not have general authority to prosecute crimes or issue subpoenas in the absence of specific statutory authority or an executive order. Prosecutorial and subpoena issuing authority have been granted by statute in certain instances, including enforcement and regulation under the Maryland Securities Act and the Maryland Consumer Protection Act.

LEOBR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 26 specified State and local agencies but does not extend to any correctional officers in the State. LEOBR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. LEOBR requirements are much more restrictive and time consuming than general State personnel requirements under Title 11 of the State Personnel and Pensions Article. Specifically, LEOBR delineates who can do the investigation, what management must disclose to the employee, and when and where the meeting can take place; it also limits the duration of the meeting.

According to the Governor’s Office of Crime Control and Prevention’s 2018 [report](#), in calendar 2018, there were a total of 31 cases of civilian deaths involving law enforcement officers from 14 law enforcement agencies in Maryland. Of the 31 deaths, the Medical Examiner’s Office classified 14 as homicide by law enforcement, 7 as suicide, 8 as accidental, 1 as from natural causes, and 1 from overdose. All 14 homicides by law enforcement involved the fatal shooting of the individual.

State Expenditures: General fund expenditures for the Office of the Attorney General (OAG) increase by a minimum of \$271,338 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. Because OAG does not currently have homicide investigators or a team dedicated to the independent investigations of deaths in the State, this estimate assumes that at least one assistant attorney general and two investigators are required to conduct the required investigations, issue subpoenas as necessary, participate in hearings, and submit required reports. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3
Salaries and Fringe Benefits	\$255,239
Operating Expenses	<u>16,099</u>
Minimum FY 2021 State Expenditures	\$271,338

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. This estimate does not include expenditures for any vehicles or related expenses that may be necessary for the investigators and assistant attorney general to travel to locations for the investigation of a law enforcement involved death.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, and Worcester counties; Maryland Association of Counties; City of Westminster; Maryland Municipal League; Town of Leonardtown; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2020
mm/jkb

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510