

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1026

(The President, *et al.*) (By Request - Workgroup on
Public Safety and Policing)

Judicial Proceedings and Budget and Taxation

Public Safety and Policing Workgroup - Recommendations

This bill makes changes relating to public safety and policing consistent with the recommendations of the Public Safety and Policing Workgroup. Among other things, the bill (1) replaces the Police Training Commission (PTC) within the Department of Public Safety and Correctional Services (DPSCS) with an independent Maryland Police Training and Standards Commission (MPTSC); (2) makes changes to the Law Enforcement Officers' Bill of Rights (LEOBR); (3) details the procedures that must be followed for specified whistleblower protections; (4) establishes various requirements for law enforcement agencies; (5) establishes a Community Law Enforcement Program Fund within the Governor's Office of Crime Control and Prevention (GOCCP) to fund local "community law enforcement programs;" and (6) creates a State income tax subtraction modification for certain law enforcement officers. Beginning in FY 2018, the Governor must include in the annual budget bill an appropriation to the fund of \$500,000.

The bill's provisions relating to the State income tax subtraction modification take effect July 1, 2016, and are applicable to all taxable years beginning after December 31, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$6.2 million in FY 2017 for various State agencies to implement the bill; future years reflect ongoing costs and the bill's mandated appropriation. General fund revenues decrease by \$828,800 in FY 2017 due to subtraction modifications claimed against the personal income tax. Future year revenue decreases reflect 1% growth in eligible individuals. Special fund revenues and expenditures increase by \$500,000 annually beginning in FY 2018 due to the bill's mandated appropriation. **This bill establishes a mandated appropriation beginning in FY 2018.**

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	(\$828,800)	(\$837,000)	(\$845,400)	(\$853,900)	(\$862,400)
SF Revenue	\$0	\$500,000	\$500,000	\$500,000	\$500,000
GF Expenditure	\$6,237,800	\$6,055,900	\$6,253,600	\$6,459,200	\$6,673,000
SF Expenditure	\$0	\$500,000	\$500,000	\$500,000	\$500,000
Net Effect	(\$7,066,600)	(\$6,892,900)	(\$7,099,000)	(\$7,313,100)	(\$7,535,400)

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

Local Effect: Local grant revenues from the Community Law Enforcement Program Fund increase by a total of \$500,000 annually beginning in FY 2018; local expenditures to establish community law enforcement programs increase correspondingly. Although few local law enforcement agencies responded with information regarding the fiscal and operational impacts of the bill's other provisions, a significant increase in local expenditures is anticipated. Local income tax revenues decrease by \$540,900 in FY 2017 and by \$562,800 in FY 2021 due to subtraction modifications claimed against the personal income tax. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Maryland Police Training and Standards Commission: The bill repeals and replaces PTC from within DPSCS with an independent MPTSC in the Executive Department. The bill establishes provisions relating to membership, terms, and the election of a chair for MPTSC. MPTSC must appoint an executive director and must employ a staff necessary to carry out the bill.

MPTSC retains the same powers and duties as existed for PTC and, in addition, has the powers and duties to:

- require, for entrance-level police training and at least every two years for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special training, attention to, and study of the application of antidiscrimination and use of force de-escalation training;
- review the National Institute of Justice example use of force continuum and adopt, in regulation, a set of best practices and standards for use of force;

- evaluate and modernize recruitment standards and practices of law enforcement agencies to increase diversity within those law enforcement agencies and develop media strategies for recruiting women and African American, Hispanic or Latino, and other minority candidates; and
- develop standards for (1) the mandatory psychological evaluation of a law enforcement officer who has been involved in a traumatic incident or has returned from combat deployment and (2) the periodic psychological evaluation of all law enforcement officers.

In addition, MPTSC must:

- develop a system for and require annual reporting to the commission by each law enforcement agency on the number of serious officer-involved incidents, the number of officers disciplined, and the type of discipline that was administered that MPTSC must summarize, post to a website maintained by MPTSC, and submit to the General Assembly;
- in consultation with the Department of Health and Mental Hygiene, establish a confidential hotline that is available for law enforcement personnel to contact to speak to a trained peer law enforcement officer or a mental health professional who can assist with initial counseling advice and confidential referral to appropriate programs;
- establish a Police Complaint Mediation Program in which a nonviolent complaint made against a police officer is referred out of the standard complaint process and to voluntary mediation to be conducted by an independent mediation service;
- develop best practices for the establishment and implementation of a community policing program in each jurisdiction (each law enforcement agency must adopt such a program, post specified information online, and annually file a detailed description of the agency's community policing program with MPTSC, and MPTSC must review each program and offer comments to the jurisdiction); and
- develop a public complaint process in each jurisdiction that is uniform throughout the State as specified (which must be adopted by each law enforcement agency).

In addition, the requirements for certification as a police officer are expanded to include the submission to a psychological evaluation by a psychologist approved by MPTSC. If MPTSC has previously certified an individual as a police officer, a law enforcement agency may not require the individual to undergo additional entrance-level police training.

Law Enforcement Officers' Bill of Rights: The bill makes a number of changes to the complaint process under LEOBR to:

- remove the requirement for notarization of a complaint against a law enforcement officer alleging excessive force and instead require that a complaint be signed by the complainant under the penalty of perjury;
- allow a complaint to come from an individual with firsthand knowledge obtained because the individual has a video recordings of the incident; and
- extend, from 90 days to 366 days, the complaint filing deadline triggering the requirement that disciplinary action be undertaken by a law enforcement agency.

For a law enforcement officer under investigation, the time period for retaining an attorney for the internal investigation and disciplinary process is reduced from 10 to 5 days. Within the 5-day period, the chief, for good cause shown, may extend the period for obtaining representation.

For an administrative hearing board, the bill expands the potential membership of a hearing board to allow a citizen who has received training through MPTSC on LEOBR to sit as a member of the board. MPTSC must develop and administer a training program on LEOBR for citizens who intend to qualify to participate as a member of a hearing board. In addition, for use-of-force incidents, the hearing board must consist of three members, as specified. The members must be selected from a pool of police officers who are not from the affected law enforcement officer's jurisdiction. The hearing must be open to the public.

Use of Force Reports: Each law enforcement agency must require a law enforcement officer who was involved in a use-of-force incident in the line of duty to file an incident report regarding the use of force by the end of the shift unless the officer is disabled.

Official Policy Posting: All official law enforcement policies, including public complaint procedures and collective bargaining agreements, must be available online for each law enforcement agency, as specified.

Early Intervention Policy: Each law enforcement agency must establish a confidential and nonpunitive early intervention policy for counseling officers who receive three or more citizen complaints within a 12-month period. Such a policy may not prevent the investigation of or imposition of discipline for a particular complaint.

Serious Officer-involved Incidents: Each law enforcement agency must annually report, as specified, to MPTSC on the number of serious officer-involved incidents, the number of officers disciplined, and the type of discipline that was administered to each officer who was disciplined.

Community Law Enforcement Program Fund: The bill establishes a Community Law Enforcement Program Fund as a special, nonlapsing fund administered by the Executive Director of the Governor's Office of Crime Control and Prevention. The stated purpose of

the fund is to assist local law enforcement agencies in establishing community law enforcement programs. The fund consists of (1) money appropriated in the State budget to the fund; (2) investment earnings of the fund; and (3) money from any other source accepted for the benefit of the fund. For fiscal 2018 and each fiscal year thereafter, the Governor must include in the annual budget bill an appropriation to the fund of \$500,000.

The fund may be used only to fund grants, as specified, and may not be used for administrative expenses. By September 1 of each year, the Executive Director must report to the Governor and the General Assembly on the distribution of money from the fund.

“Community law enforcement program” means a program that is established and sponsored by a local law enforcement agency to (1) provide recreational or athletic opportunities for members of the community; (2) improve relations between citizens and law enforcement; or (3) otherwise benefit or improve the community.

Whistleblower Protections: A supervisor, an appointing authority, or the head of a law enforcement agency is prohibited from threatening or taking a “retaliatory action” against a “law enforcement officer” who discloses specified information or, following such a disclosure, seeks a remedy under the bill’s provisions or any other law or policy governing the law enforcement agency.

The bill provides that a disclosure that is otherwise prohibited by law or is confidential by law is protected only if the disclosure is made exclusively to the Attorney General, in writing, and contains specified information.

A “retaliatory action” includes:

- termination, demotion, suspension, or reprimand;
- involuntary transfer, reassignment, or detail to an assignment that a reasonable law enforcement officer would find less favorable;
- failure to promote, hire, or take other favorable personnel action;
- engaging in any conduct that would dissuade a reasonable law enforcement officer from engaging in activities protected under this subtitle; or
- retaliation in any other manner against a law enforcement officer because the law enforcement officer makes a disclosure protected under these whistleblower protections.

A law enforcement agency must provide a copy of the bill’s provisions to a law enforcement officer who requests a copy or alleges that a retaliatory action has occurred.

A law enforcement officer aggrieved by a violation of the bill's proceedings may bring a civil action against the law enforcement agency for equitable relief or damages. In such an action, if the law enforcement officer demonstrates by a preponderance of the evidence that the disclosure of information was a contributing factor in the alleged retaliatory action, the law enforcement agency has the burden of proving by clear and convincing evidence that the personnel action would have occurred for legitimate reasons even if the officer had not made the disclosure. In the civil action, the officer may seek, instead of reinstatement and back pay, statutory damages of at least \$5,000 for each instance of retaliatory action. The trier of fact, in awarding statutory damages, must consider the severity of the prohibited retaliatory action and the purposes of the bill's whistleblower provisions.

The bill details options for the court when a determination is made that an officer is entitled to equitable relief or damages in a civil action, including the award of compensation for all lost remuneration and reasonable attorney's fees and costs. In addition, the court must issue an injunction against the law enforcement agency if violations of the bill's provisions continue. If the court determines that a civil action was brought by a law enforcement officer in bad faith or without substantial justification, the court may award reasonable attorney's fees and other litigation expenses to the law enforcement agency.

The bill's provisions may not be construed to diminish the rights, privileges, or remedies of a law enforcement officer provided under any federal, State, or local law or under a collective bargaining agreement.

The Attorney General must (1) designate an assistant Attorney General to receive from law enforcement officers any information the disclosure of which is otherwise protected by law; (2) investigate each allegation of illegality or impropriety; and (3) take appropriate legal action.

The bill's provisions relating to whistleblower protections are applied prospectively only.

Income Tax Subtraction Modification: The bill exempts, beginning in tax year 2016, up to \$5,000 of the income earned by a "law enforcement officer" if (1) the officer resides in the political subdivision in which the officer is employed and (2) the crime rate in the political subdivision exceeds the State's crime rate. A "law enforcement officer" under these provisions is an individual who (1) in an official capacity is authorized by law to make arrests and (2) is a member of a law enforcement agency, including a law enforcement officer who serves in a probationary status or at the pleasure of the appointing authority of a county or municipal corporation.

By September 1, 2016, and every three years thereafter, MPTSC must certify to the Comptroller the political subdivisions that have crime rates exceeding the State's crime rate.

General Provisions: Any transaction affected by or flowing from any statute amended, repealed, or transferred and validly entered into before the effective date of the bill, and every right, duty, or interest flowing from it, remain valid after the effective date and may be terminated, completed, consummated, or enforced pursuant to law.

Any rules and regulations, standards, guidelines, orders and other directives, forms, plans, memberships, funds, appropriations, contracts, properties, administrative and judicial proceedings, rights to sue and be sued, and other duties and responsibilities associated with those functions affected by this bill must continue in effect until completed, withdrawn, canceled, modified, or otherwise changed in accordance with law.

Any person or school issued a certificate by PTC is considered for all purposes to be continued under the bill for the duration of the term for which the certificate was issued unless otherwise provided by law.

Current Law:

Police Training Commission

PTC, within DPSCS, was created in 1966 and is chaired by the Superintendent of State Police. It operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

PTC certifies persons as police officers who have met commission standards. An individual who is not satisfactorily trained in the 12-month probationary period may not be employed as a police officer, and a police officer may not serve after certification has been revoked, suspended, or allowed to lapse.

PTC requires, for entrance-level police training and at least every three years for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special training, attention to, and study of the application and enforcement of (1) the criminal laws concerning rape and sexual offenses, including the sexual abuse and exploitation of children and related evidentiary procedures; (2) the contact with and treatment of victims of crimes and delinquent acts; (3) the notices, services, support, and rights available to victims and victims' representatives under State law; and (4) the notification of victims of identity fraud and related crimes of their rights under federal law. PTC also requires, for entrance-level police training and annually for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special training in the proper use of electronic control

devices for specified police officers, consistent with established law enforcement standards and constitutional provisions.

PTC further requires, for entrance-level police training and, as determined by PTC, for in-service level training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include, consistent with established law enforcement standards and federal and State constitutional provisions (1) training in lifesaving techniques, including cardiopulmonary resuscitation; (2) training in the proper level and use of force; (3) training regarding sensitivity to cultural and gender diversity; and (4) training regarding individuals with physical, intellectual, developmental, and psychiatric disabilities.

PTC is responsible for the development of (1) a uniform identity fraud reporting form with the cooperation of the Office of the Attorney General, GOCCP, and the Federal Trade Commission and (2) a uniform missing person report form with the cooperation of the Office of the Chief Medical Examiner and the Federal Bureau of Investigation.

Law Enforcement Officers' Bill of Rights

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. It does not grant collective bargaining rights. The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal must be conducted in accordance with LEOBR.

Unless a law enforcement agency files administrative charges against a law enforcement officer within one year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official, administrative charges may not be initiated. The one-year limitation does not apply to charges that relate to criminal activity or excessive force.

The investigating officer or interrogating officer must be a sworn law enforcement officer or, if requested by the Governor, the Attorney General or a designee of the Attorney General. A complaint against a law enforcement officer alleging brutality in the execution of the officer's duties may not be investigated unless the complaint is sworn to, before an official authorized to administer oaths, by (1) the aggrieved individual; (2) a member of the aggrieved individual's immediate family; (3) an individual with firsthand knowledge obtained because the individual was present at and observed the alleged incident; or (4) if the alleged incident involves a minor child, the parent or guardian of the child.

Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action for brutality may not be initiated, and an action may not be taken. The law enforcement officer under investigation must be informed of the name, rank, and command of the law enforcement officer in charge of the investigation, the interrogating officer, and each individual present during an interrogation. Before an interrogation, the law enforcement officer under investigation must be informed in writing of the nature of the investigation. If the officer is under arrest or is likely to be placed under arrest as a result of the interrogation, the officer must be informed completely of all of the officer's rights before the interrogation begins.

Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation must be conducted at a reasonable hour, preferably when the officer is on duty. The interrogation is required to take place (1) at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer or (2) at another reasonable and appropriate place. The officer under investigation may waive the right to have the interrogation take place at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer.

All questions directed to the officer under interrogation must be asked by and through one interrogating officer during any one session of interrogation. This requirement must be consistent with a requirement that each interrogation session be for a reasonable period, allowing for personal necessities and rest periods as reasonably necessary.

The officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action. On request, the officer under interrogation has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who must be present and available for consultation at all times during the interrogation. The interrogation must be suspended for a period of up to 10 days until representation is obtained. Within that 10-day period, the chief, for good cause shown, may extend the period for obtaining representation. The officer may waive this right to counsel. During the interrogation, the officer's counsel or representative may (1) request a recess at any time to consult with the officer; (2) object to any question posed; and (3) state on the record outside the presence of the law enforcement officer the reason for the objection.

A complete record must be kept of the entire interrogation, including all recess periods, of the law enforcement officer. This record may be written, taped, or transcribed. Upon completion of the investigation, and on request of the officer under investigation or the officer's counsel or representative, a copy of the record of the interrogation must be made available at least 10 days before a hearing.

The law enforcement agency may order the officer under investigation to submit to blood alcohol tests; blood, breath, or urine tests for controlled dangerous substances; polygraph examinations; or interrogations that specifically relate to the subject matter of the investigation. If the law enforcement agency orders the officer to submit to a test, examination, or interrogation and the officer refuses to do so, the agency may commence an action that may lead to a punitive measure as a result of the refusal. If the law enforcement agency orders the officer to submit to a test, examination, or interrogation, the results are not admissible or discoverable in a criminal proceeding against the law enforcement officer.

If the law enforcement agency orders the officer to submit to a polygraph examination, the results of the examination may not be used as evidence in an administrative hearing unless the agency and the officer agree to the admission of the results. The officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner if (1) the questions to be asked are reviewed with the counsel or representative before the administration of the examination; (2) the counsel or representative is allowed to observe the administration of the examination; and (3) a copy of the final report of the examination by the examiner is made available to the officer or the counsel or representative within a reasonable time, up to 10 days, after completion of the examination.

Upon completion of an investigation and at least 10 days before a hearing, the officer under investigation must be (1) notified of the name of each witness and of each charge and specification against the officer and (2) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer. The law enforcement officer must pay a reasonable charge for the cost of reproducing the material.

The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer (1) the identity of confidential sources; (2) nonexculpatory information; and (3) recommendations as to charges, disposition, or punishment. The agency may not insert adverse material into a file of the officer, except the file of the internal investigation or the intelligence division, unless the officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material. The law enforcement officer may waive this right.

If the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on

the issues by a hearing board to contest the law enforcement agency's action. The hearing board process is bifurcated. First, the board meets to determine guilt. If the officer is found guilty of the charges, a second hearing is held to determine the level of discipline. A law enforcement officer who has been convicted of a felony is not entitled to a hearing.

The law enforcement agency must give notice to the law enforcement officer of the right to a hearing by a hearing board, which includes the time and place of the hearing and the issues involved.

Hearing boards for LEOBR purposes must consist of at least three members who (1) are appointed by the chief of the law enforcement agency and chosen from law enforcement officers within that law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency, and (2) have had no part in the investigation or interrogation of the law enforcement officer. At least one member of the hearing board must be of the same rank as the law enforcement officer against whom the complaint is filed.

If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State must function as the law enforcement officer of the same rank on the hearing board. If the chief of a State law enforcement agency is under investigation, the Governor must appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board. If the chief of a law enforcement agency of a county or municipality is under investigation, the official authorized to appoint the chief's successor must appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board. If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipality is under investigation, the official authorized to appoint the chief's successor, or that official's designee, must function as the chief for LEOBR purposes.

A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board.

The hearing board must give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved. Each party may be represented by counsel, has the right to cross-examine witnesses who testify, and may submit rebuttal evidence.

Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and must be given probative effect. The hearing board must give effect to the rules of privilege recognized by law and must

exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. An official record, including testimony and exhibits, must be kept of each hearing. Each record or document that a party desires to use must be offered and made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The hearing board may take notice of judicially cognizable facts and general, technical, or scientific facts within its specialized knowledge.

The decision, order, or action taken as a result of a hearing must be in writing and accompanied by findings of fact, including a concise statement on each issue in the case. A copy of the decision/order, findings of fact, conclusions, and written recommendations for action must be promptly mailed to the law enforcement officer or the officer's counsel/representative and the chief of the law enforcement agency.

The decision of the hearing board as to finding of fact and any penalty is final if (1) a chief is an eyewitness to the incident or (2) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final. The decision of the hearing board may then be appealed. Within 30 days after receipt of the recommendations of the hearing board, the chief must review the findings, conclusions, and recommendations of the hearing board and issue a final order. The final order may be appealed.

On written request, a law enforcement officer may have expunged from any file the record of a formal complaint under specified conditions.

If a law enforcement officer is charged with a *felony*, the chief may impose an emergency suspension of police powers without pay. A law enforcement officer who is suspended is entitled to a prompt hearing.

A law enforcement officer who is denied a right granted by LEOBR may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause why the right should not be granted. The officer may apply for the show cause order (1) either individually or through the officer's certified or recognized employee organization and (2) at any time prior to the beginning of a hearing by the hearing board. The court must grant appropriate relief if the court finds that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by LEOBR. Chapter 165 of 2014 shifted primary responsibility for remedying investigative violations under LEOBR from the administrative hearing officer to the circuit court.

Whistleblower Protections

In general, under provisions of the State Personnel and Pensions Article, an employee, contractor, or grantee who has experienced retaliation may file a civil action against the retaliator and may seek any relief necessary to make the employee whole, including reinstatement, two times the amount of back pay, interest on back pay, and compensation for other damages, including litigation costs, reasonable attorney's fees, and punitive damages. These protections are extended only to the Executive Branch of State government, including a unit with an independent personnel system.

Under these provisions, the Attorney General is required to (1) designate an assistant Attorney General to receive from applicants and employees any information the disclosure of which is otherwise protected by law; (2) investigate each allegation of illegality or impropriety; (3) take appropriate legal action; and (4) if the investigation concerns an allegation of illegality or impropriety in the Executive Branch, submit a confidential report to the Governor that describes the content of the disclosure.

If the Secretary of Budget and Management, the Secretary's designee, or the Governor's designee determines that a violation has not occurred, the Secretary or Governor's designee must dismiss the complaint. If it is determined that a violation has occurred, the Secretary or designee must take appropriate remedial action, which may include ordering the removal of any related detrimental information from the complainant's State personnel records and requiring the head of the principal unit to:

- hire, promote, or reinstate the complainant or end the complainant's suspension from employment;
- award the complainant back pay to the day of the violation;
- grant the complainant leave or seniority;
- take appropriate disciplinary action against any individual who caused the violation; and
- take any other remedial action consistent with the purposes of Maryland's whistleblower provisions.

Appeals from these decisions may be made by the complainant to the Office of Administrative hearings.

Background: In May 2015, the Senate President and House Speaker created the joint legislative Public Safety and Policing Workgroup for the purpose of examining police training resources, recruiting and hiring practices, and community engagement policies; considering a statewide oversight panel for certain kinds of investigations; and reviewing LEOBR and its application and practice by law enforcement agencies across the State.

The workgroup scheduled a total of eight public meetings during the 2015 interim during which it heard from more than 85 witnesses from advocacy groups, community organizations, members of law enforcement, and the public to inform its decision making on recommendations for the 2016 legislative session. Meetings included [presentations](#) on topics such as police training and certification, the recruitment and training of law enforcement officers, LEOBR, data collection pertaining to law enforcement, best practices in law enforcement, and community policing. The workgroup issued its [final report](#) in January 2016, which set forth 23 recommendations, including changes to LEOBR, PTC, and whistleblower protections.

State Fiscal Effect: General fund expenditures increase by *at least* \$6,237,831 in fiscal 2017 for various State agencies to implement the bill; future year expenditures, which total more than \$6.0 million annually, reflect ongoing costs and the bill’s mandated appropriation. General fund revenues decrease by \$828,800 in fiscal 2017 as a result of the bill’s income tax subtraction modification for certain law enforcement officers; future year revenue decreases reflect a 1% growth in eligible individuals. Special fund revenues and expenditures increase by \$500,000 annually beginning in fiscal 2018 due to the bill’s mandated appropriation. These impacts are described by agency/provision below.

Department of State Police

General fund expenditures for the Department of State Police (DSP) increase by \$3,380,667 in fiscal 2017 to implement the bill’s requirements relating to community policing programs and psychological evaluations. This estimate reflects the cost of hiring 20 employees to implement the community policing program. DSP advises that in order to implement such a program, it must create a new statewide unit with experienced officers in each jurisdiction (except the 10 jurisdictions in which DSP is not the primary law enforcement agency). The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including costs to conduct psychological evaluations for 300 sworn law enforcement officers annually at a cost of \$240 per examination.

Positions	20
Salaries and Fringe Benefits	\$2,325,727
Vehicles	777,784
Equipment/Uniforms	182,260
Psychological Exams	72,000
Other Operating Expenses	<u>22,896</u>
Total FY 2017 DSP Expenditures	\$3,380,667

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Although several of the bill's provisions apply to law enforcement agencies generally (including State law enforcement agencies), for purposes of this analysis, it is assumed that DSP is the only State law enforcement agency that must implement a community policing program and conduct psychological evaluations. To the extent other State agencies with law enforcement units (such as the University System of Maryland and the Department of Natural Resources, among others) must also comply with those provisions, State expenditures increase accordingly.

Department of Public Safety and Correctional Services and Maryland Police Training and Standards Commission

The Police and Correctional Training Commissions (PCTC) within DPSCS provide staffing and administrative services to two separate and distinct commissions – PTC and the Correctional Training Commission (CTC). CTC prescribes minimum selection and training standards for community supervision, juvenile justice, and correctional personnel serving in state and county agencies. Both commissions also train police and correctional officers for the State, county, and municipal agencies. PCTC also provides firearm safety, crime prevention, and drug resistance education programs to State businesses, schools, and citizens and has been given a supporting role in the statewide study of race-based traffic stops. In addition, PCTC also operates the Public Safety Education and Training Center (PSETC), a facility designed to enhance the efforts of certified academies and in-service training programs (for both State and local public safety officers) by providing specialized training resources and curricula.

The Governor's proposed fiscal 2017 budget includes 94.80 regular positions and 20.51 contractual positions within PCTC. Although the bill does not specify, it is assumed that approximately 51.72 of those regular positions transfer to MPTSC under the bill and that 17.72 of those positions need to be replaced within DPSCS, as they currently serve dual purposes within PCTC. For purposes of this fiscal and policy note, it is assumed that the transfer of the employees from DPSCS to MPTSC has no net effect on State finances and that the allowance associated with those positions is transferred from DPSCS to the Executive Department, where MPTSC is to be housed.

According to DPSCS, CTC lacks the capacity to absorb additional responsibilities currently provided by dual function staff within its existing resources. In short, the creation of a new independent commission carries with it the loss of certain economies of scale.

Thus, general fund expenditures increase by \$1,083,099 in fiscal 2017 for DPSCS to hire additional staff for CTC to replace the dual function staff transferred from PCTC to MPTSC. General fund expenditures increase by *at least* another \$1,193,866 in fiscal 2017 for MPTSC to hire additional staff (in addition to those that are transferred under the bill) to administer the functions required by the bill that are not currently required of PCTC.

These estimates include salaries, fringe benefits, one-time start-up costs (including a new computer tracking system for MPTSC), and known ongoing operating expenses, including office space rental for MPTSC.

CTC

Positions	17.72
Salaries and Fringe Benefits	\$996,564
Equipment/Operating Expenses	<u>86,535</u>
Total FY 2017 DPSCS Expenditures	\$1,083,099

MPTSC

Positions	8
Salaries and Fringe Benefits	\$522,272
Computer Tracking System	500,000
Office Space (Rent)	132,330
Other Equipment	30,541
Other Operating Expenses	<u>8,723</u>
Minimum FY 2017 MPTSC Expenditures	\$1,193,866

The Department of Legislative Services (DLS) notes that costs for MPTSC are likely higher, as this analysis does not factor in additional staff that may be needed for MPTSC for other functions currently provided by DPSCS, including human resources, information technology, and other routine staffing activities. In addition, this analysis assumes that DPSCS continues to be responsible for the operation and maintenance of PSETC but does not reflect the payment of rental fees by MPTSC to CTC for use of the training facility.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Governor's Office of Crime Control and Prevention

General fund expenditures for GOCCP increase by \$26,540 in fiscal 2017. This estimate reflects the cost of hiring one contractual grant manager, effective January 1, 2017, to handle the administration of grants under the Community Law Enforcement Program Fund established by the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$21,876
Equipment/Operating Expenses	<u>4,664</u>
Total FY 2017 GOCCP Expenditures	\$26,540

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Beginning in fiscal 2018, GOCCP’s general fund expenditures also reflect the bill’s mandated appropriation of \$500,000 annually to capitalize the new special fund. As a result of that mandated appropriation, special fund revenues to the new fund increase by \$500,000 annually beginning in fiscal 2018. For purposes of this analysis, it is assumed that special fund expenditures increase correspondingly for each year beginning in fiscal 2018, even though the total amount of grants made from the fund in any given year is unknown.

Income Tax Subtraction Modification/Comptroller

Subtraction modifications may be claimed beginning in tax year 2016. As a result, general fund revenues decrease by an estimated \$828,800 in fiscal 2017. **Exhibit 1** shows the estimated impact of the bill’s income tax subtraction modification provisions on State and local revenues.

Exhibit 1
State and Local Revenue Impacts
Fiscal 2017-2021

	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
State	(\$828,800)	(\$837,000)	(\$845,400)	(\$853,900)	(\$862,400)
Local	(540,900)	(546,900)	(551,700)	(557,300)	(562,800)
Total Revenues	(\$1,369,700)	(\$1,383,300)	(\$1,397,100)	(\$1,411,200)	(\$1,425,200)

This estimate is based on the following information and assumptions:

- in calendar 2014, there were a total of 15,893 State and local law enforcement officers;
- the crime rate in calendar 2013 and 2014 was higher than the State average in Allegany, Baltimore, Cecil, Dorchester, Prince George’s, Wicomico, and Worcester counties and Baltimore City;
- the crime rate in either 2013 or 2014 was higher than the State average in certain municipalities in Caroline, Carroll, Charles, Harford, Kent, Montgomery, Somerset, and Washington counties;

- a little more than one-third of law enforcement officers meet the residency requirement of the bill; and
- federal law enforcement officers do not qualify for the subtraction modification.

The Comptroller's Office incurs a one-time general fund expenditure of \$52,000 in fiscal 2017 to add the new subtraction modification. This amount includes data processing changes to the SMART income tax return processing and imaging systems and systems testing.

Whistleblower Protections

The number of law enforcement whistleblower complaints that may occur each year under the bill cannot be reliably predicted. As noted above, general whistleblower provisions already exist, and relatively few complaints are made each year. However, because current whistleblower protection remedies do not include provisions for statutory damages, this bill may lead to additional monetary awards being made to law enforcement officer complainants. While the number of additional civil case filings that may result from the bill annually is unknown, it is assumed to be minimal. The magnitude of damages awarded by courts in cases brought against State law enforcement agencies under the bill's provisions cannot be reliably predicted at this time.

Office of the Attorney General

The Office of the Attorney General (OAG) advises that it needs one additional assistant Attorney General and one additional investigator to fulfill its responsibilities relating to the bill's whistleblower provisions; however, it did not provide any additional information regarding how its estimate was derived. While DLS concurs that the bill may increase OAG's workload by requiring it to investigate and take legal actions in additional whistleblower cases, without reliable information regarding how many new potential cases OAG must handle each year, it is not possible to accurately predict any increase in staffing costs. *For illustrative purposes only*, hiring one additional assistant Attorney General and one additional investigator increases general fund expenditures by approximately \$192,400 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date, and by a minimum of \$241,600 annually thereafter. Assuming relatively few additional cases result from the bill, however, OAG can handle the bill's requirements with existing resources.

State Law Enforcement Agencies and the Judiciary

DLS assumes that implementation of the bill's whistleblower provisions applicable to State law enforcement agencies and the Judiciary can also be handled with existing budgeted resources because (1) law enforcement officers are already entitled to a hearing under LEOBR before any disciplinary action may be taken; (2) State law enforcement officers

are already eligible to make a whistleblower complaint under current provisions; and (3) few whistleblower complaints are made annually under the current relatively broad whistleblower provisions. The bill's whistleblower provisions are not expected to materially affect the caseload of the District Court. The extent to which additional monetary awards, including attorney costs, may occur through an increase in civil case filings cannot be reliably predicted or quantified.

Local Fiscal Effect: Local grant revenues from the Community Law Enforcement Program Fund increase by a total of \$500,000 annually beginning in fiscal 2018; local expenditures to establish community law enforcement programs increase correspondingly. Local income tax revenues decrease as a result of subtraction modifications claimed against the personal income tax; local revenues decrease by \$540,900 in fiscal 2017 and by \$562,800 in fiscal 2021, as shown above in Exhibit 1.

Although few local law enforcement agencies responded with information regarding the fiscal and operational impacts of the bill's other provisions, a significant increase in local expenditures is anticipated.

Training Requirements: Many local jurisdictions may incur additional costs to modify current training programs to meet the bill's requirements for additional entrance-level police training and additional in-service police training.

Reporting Requirements: Many local jurisdictions may incur additional costs to report in the required format to MPTSC regarding the number of serious officer-involved incidents each year, the number of officers disciplined each year, and the type of discipline administered to those officers.

Psychological Evaluations: Local jurisdictions may incur additional costs to pay for the required psychological evaluations by a psychologist approved by MPTSC for police officers.

Community Policing Programs: Although some local jurisdictions may already have a community policing program in practice, changes may be necessary to meet the bill's requirements for such a program. For local jurisdictions that do not currently have a community policing program in place, the bill likely results in additional expenditures to establish such a program.

Whistleblower Protections: Current State whistleblower protections cited above do not extend to local law enforcement officers. However, local jurisdictions may already have similar whistleblower provisions in place. Montgomery County reports that similar provisions are already in place. Accordingly, because similar local protections may already exist and because local law enforcement officers are already entitled to a hearing under

LEOBR before any disciplinary action may be taken, DLS assumes that the bill's whistleblower provisions can be handled with existing local resources. The magnitude of damages awarded by courts in cases brought against law enforcement agencies under the bill's provisions cannot be reliably predicted at this time. These provisions are not expected to materially affect the caseloads of the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery County; Maryland Association of Counties; cities of Bowie and Takoma Park; Maryland Municipal League; Office of the Attorney General; Governor's Office; Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; University System of Maryland; Baltimore City Community College; Department of Budget and Management; Department of General Services; Department of Health and Mental Hygiene; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Comptroller's Office; Department of Legislative Services

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