

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 1099

(Senator Ferguson, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

**Baltimore City Police Department – Commission to Restore Trust in Policing and
Audit Review**

This emergency bill establishes the Commission to Restore Trust in Policing staffed by the Department of Legislative Services (DLS). The commission must (1) review, investigate, and make recommendations relating to the Baltimore Police Department (BPD); (2) submit a preliminary report by December 31, 2018; and (3) submit a final report by December 31, 2019. Effective October 1, 2018, the bill also requires the Joint Audit Committee to (1) beginning with the 2018 audit, review BPD’s audit reports issued by the Baltimore City Comptroller and submit findings and recommendations to the General Assembly with respect to issues in audit reports and (2) review the audit process and procedures and provide comment and recommendations to the President of the Senate and the Speaker of the House, the Executive Director of DLS, and the Legislative Auditor. **The bill’s provisions regarding the Joint Audit Committee terminate September 30, 2023. The bill’s provisions regarding the commission terminate one year and eight months following enactment.**

Fiscal Summary

State Effect: Although DLS can generally implement the bill with existing budgeted resources, general fund expenditures may increase if consultants are necessary to support the work of the commission, as discussed below. Revenues are not affected.

Local Effect: Baltimore City and the circuit court can work with the commission to meet the bill’s requirements using existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The commission must:

- review the operation of the BPD Gun Trace Task Force, as specified;
- utilize various methods of investigation and information gathering, including reviewing of transcripts or other sworn testimony, collecting and analyzing documents, interviewing of witnesses through subpoena or other means, and any other reasonable means; and
- with consideration of the commission's findings and the 2017 federal consent decree between Baltimore City, BPD, and the U.S. Department of Justice (DOJ), make recommendations, as specified.

Generally, proceedings, testimony, and any other evidence before the commission are public information; however, on a vote of five or more members of the commission, proceedings, testimony, and any other evidence before the commission that are protected from disclosure under the Public Information Act (PIA) may be deemed confidential and privileged.

The commission is authorized to:

- conduct hearings;
- administer oaths and affirmations;
- issue process to compel the attendance of witnesses and the production of evidence; and
- require a person to testify and produce evidence.

A subpoena may be served in the same manner as one issued by a circuit court. The commission may immediately report the failure of a person to obey a lawfully served subpoena to the circuit court of the county having jurisdiction and must provide a copy of the subpoena and proof of service to the circuit court. 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 court may grant appropriate relief.

A person may have an attorney present during any contact with the commission, and the commission must advise a person of the right to counsel when a subpoena is served.

A member of the commission may not receive compensation but is entitled to reimbursement for expenses as provided in the State budget.

The commission must submit a preliminary report of its initial findings, conclusions, and recommendations to the Governor and the General Assembly by December 31, 2018. A final report is due by December 31, 2019.

Current Law:

Baltimore Police Department

Although BPD is a State agency, the State does not control the appointment or removal of the police commissioner and is not responsible for providing funding for the operations of the police department. However, the State retains the ability to amend the law relating to the department in order to implement policy changes.

Article V of the Baltimore City Charter requires that the City Auditor's Office conduct a performance audit of principal agencies of the city biennially. BPD is included within that requirement. According to the City Auditor, an audit of BPD is included within the office's calendar 2018 schedule.

Maryland's Public Information Act, Generally

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any *Public Information Act Manual* published by OAG.

Background: Following the death of Freddie Gray while in police custody and the subsequent civil unrest, the leadership of Baltimore City requested that DOJ's Civil Rights Division conduct an investigation of BPD. DOJ interviewed hundreds of individuals, including city leaders, community members, and current and former law enforcement personnel. DOJ also reviewed (1) hundreds of thousands of pages of documents, including all relevant policies and training materials used by BPD beginning in 2010; (2) BPD's database of internal affairs files from January 2010 through March 2016; (3) BPD's data on pedestrian stops, vehicle stops, and arrests from January 2010 to May 2015; (4) incident reports describing stops, searches, arrests, and officers' use of nondeadly force from 2010 to 2015; (5) all files on deadly force incidents since 2010 that BPD was able to produce through May 1, 2016; and (6) investigative files on sexual assault cases from 2013 to 2015.

On August 10, 2016, DOJ released the results of its investigation. DOJ determined that BPD engages in a pattern or practice of:

- making unconstitutional stops, searches, and arrests;
- using enforcement strategies that produce severe and unjustified disparities in the rates of stops, searches, and arrests of African Americans;
- using excessive force; and
- retaliating against people engaging in constitutionally protected expression.

DOJ concluded that this pattern or practice is at least partly the result of past zero tolerance policies and continues to be driven by systemic deficiencies in BPD's policies, training, supervision, and accountability structures that fail to equip officers with the tools they need to police effectively and within legal bounds.

Prior to the release of the report, DOJ and Baltimore City entered into an agreement in principle in an effort to avoid litigation against the city and to begin the process of instituting meaningful reforms to BPD. In the agreement, both parties committed to complete negotiations, with input from the community, for a court-enforceable consent decree by November 1, 2016. In late October 2016, Mayor Stephanie Rawlings-Blake announced that negotiations were continuing but would not be completed by the November 1 deadline. In January 2017, Baltimore City and DOJ announced that they reached an agreement on a court-enforceable consent decree. Among other things, the decree (1) requires observation of BPD by an independent federal monitor; (2) creates a community oversight task force; (3) requires more officer supervision and training of officers on the use of de-escalation tactics; and (4) requires specified procedural changes to officer interactions with the public.

Gun Trace Task Force

The Gun Trace Task Force was created in 2007 as an elite unit within BPD intended to pursue violent criminals and persons illegally possessing and using guns. In 2017, eight of the nine members of the task force were charged with crimes including racketeering, robbery, extortion, overtime pay fraud, and filing false paperwork. The officers allegedly pocketed hundreds of thousands of dollars discovered while searching the homes and cars of criminals and some innocent civilians. All eight members who were indicted either pled guilty or were convicted of several federal charges.

State Expenditures: Any expense reimbursements for commission members and staffing costs for DLS are assumed to be minimal and generally absorbable within existing budgeted resources. However, specialized staff may be necessary to do some of the functions required by the bill that are generally outside the scope of typical staffing duties for DLS. Among other specified duties, the bill requires the commission to utilize various methods of investigation and information gathering, including reviewing of transcripts or other sworn testimony and interviewing of witnesses through subpoena or other means. To

the extent that consultants are necessary to meet the bill's requirements, general fund expenditures increase.

The Joint Audit Committee, which is also staffed by DLS, can handle the bill's requirements with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 561 (Delegate McCray, *et al.*) - Appropriations.

Information Source(s): Baltimore City; Department of Legislative Services

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