

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

Senate Bill 600

(Senator Smith)

Judicial Proceedings

Judiciary

Maryland Police Accountability Act of 2021 - Surplus Military Equipment and Investigation of Deaths Caused by Police Officers

This bill establishes an independent investigative unit within the Office of the Attorney General (OAG) to investigate all alleged or potential police-involved deaths of civilians. A law enforcement agency must notify the independent investigative unit of any alleged or potential police-involved death of a civilian as soon as the agency becomes aware of the incident and cooperate with the unit in connection with the investigation. The Governor must annually include funding in the State budget sufficient to provide for the full and proper operation of the unit. Funds provided in accordance with this requirement must supplement and may not supplant any other funding provided to the unit. The bill also prohibits a law enforcement agency from receiving specified equipment from a surplus program operated by the federal government.

Fiscal Summary

**State Effect:** General fund expenditures increase by a *minimum* of \$968,700 in FY 2022. Future years reflect annualization and *minimum* ongoing costs, as discussed below. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	968,700	1,174,700	1,212,200	1,254,600	1,298,400
Net Effect	(\$968,700)	(\$1,174,700)	(\$1,212,200)	(\$1,254,600)	(\$1,298,400)

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

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** In addition to investigating all alleged or potential police-involved deaths of civilians, the independent investigative unit may investigate any other crimes related to police misconduct that are discovered during such investigations. In conducting investigations, the unit may act with the full powers, rights, privileges, and duties of a State's Attorney, including the use of a grand jury in any county. To investigate and assist with the investigation of alleged criminal offenses committed by police officers, the independent unit may (1) detail one or more police officers employed by the Department of State Police (DSP) and (2) employ other civilian personnel as needed.

Within 15 days after completing an investigation, the unit must transmit a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter. Except as otherwise provided by law, the report must remain confidential through adjudication of any associated criminal case at the trial court level.

The bill also prohibits a law enforcement agency from receiving the following equipment from a surplus program operated by the federal government: (1) a weaponized aircraft, drone, or vehicle; (2) a "destructive device"; (3) a "firearm silencer"; or (4) a grenade launcher.

### **Current Law:**

#### *Selected Definitions*

The Criminal Law Article defines "destructive device" as explosive material, incendiary material, or toxic material that is (1) combined with a delivery or detonating apparatus so as to be capable of inflicting injury to persons or damage to property or (2) deliberately modified, containerized, or otherwise equipped with a special delivery, activation, or detonation component that gives the material destructive characteristics of a military ordinance. "Destructive device" includes a bomb, grenade, mine, shell, missile, flamethrower, poison gas, Molotov cocktail, pipe bomb, and petroleum-soaked ammonium nitrate.

The Criminal Law Article defines "firearm silencer" as a device that is designed for silencing, muffling, or diminishing the report of a firearm. "Firearm silencer" includes a combination of parts designed, redesigned, or intended for use in assembling or fabricating a firearm silencer or muffler.

### *Report on the Acquisition of Equipment by Law Enforcement Agencies*

DSP, by February 1 each year, must report to the Governor and the General Assembly on the acquisition of equipment by law enforcement agencies through surplus programs within the preceding calendar year. DSP must include in a prominent location on its public website a link to the Defense Logistics Agency's report listing excess Department of Defense (DOD) property transfers to law enforcement agencies through the Law Enforcement Support Office.

### *Prohibition on the Procurement of Specified Military Equipment – Johns Hopkins University Police Department*

Chapter 25 of 2019, among other things, authorizes Johns Hopkins University to create a police department and to set forth related requirements. If the university establishes a police department, the police department may not acquire any military grade vehicles or military grade hardware, including (1) an armored *or weaponized aircraft, drone, or vehicle* or (2) a weapon designated as a Title II weapon under the National Firearms Act. Generally, Title II weapons include machine guns, silencers, short barreled-rifles, short barreled-shotguns, and destructive devices. In addition, the police department may not accept any of the specified items from a program operated by the federal government for the transfer of surplus military equipment to a law enforcement agency. However, if the specified armored or weaponized vehicles are available for commercial sale in the State, Johns Hopkins University, at its own expense, may purchase the items for the police department.

### *The 1033 Program*

The National Defense Authorization Act (NDAA) specifies the budget and expenditures of DOD. The authorization bill determines the agencies responsible for defense, establishes funding levels, and sets the policies under which money will be spent. In the NDAA for federal fiscal 1990 and 1991, the U.S. Congress authorized the transfer, without charge, of excess DOD personal property to federal and state agencies for use in counter-drug activities. The U.S. Congress later passed the NDAA for federal fiscal 1997, in which Section 1033 granted permanent authorization for all law enforcement agencies to acquire property for bona fide law enforcement purposes, especially counter-drug and counter-terrorism activities. The program is commonly referred to as the 1033 Program. The program has allowed law enforcement agencies to acquire vehicles (land, air, and sea), weapons, computer equipment, fingerprint equipment, night-vision equipment, radios and televisions, first-aid equipment, tents and sleeping bags, and photographic equipment, among other items.

**State/Local Fiscal Effect:** General fund expenditures for the unit increase by a *minimum* of \$968,662 in fiscal 2022, which reflects the bill's October 1, 2021 effective date, as discussed below. Future year expenditures are annualized and reflect *minimum* ongoing costs, under the assumptions discussed below.

### *Independent Investigative Unit*

Although it is not possible to comprehensively predict potential caseload in advance, according to a 2020 [report](#) from the Governor's Office of Crime Prevention, Youth, and Victim Services, in calendar 2019, there were a total of 31 civilian deaths involving a law enforcement officer in Maryland. Of the 31 deaths, the Medical Examiner's Office classified 18 as homicide by law enforcement, 5 as suicide, 7 as accidental, and 1 from overdose. All 18 homicides by law enforcement involved the fatal shooting of the individual. According to the prior year's [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.

OAG estimates that the bill necessitates 22 additional staff (3 chief/lead investigators, 12 administrators/investigators, 3 assistant attorneys general, 1 principal counsel, and 3 support related positions). General fund expenditures for OAG associated with these positions are estimated at more than \$2.4 million in fiscal 2022, increasing to more than \$3.0 million by fiscal 2026. However, because the bill authorizes the unit to detail one or more police officers employed by DSP, OAG also advises that its estimated number of investigators is reduced by the number of investigators it receives from DSP. OAG did not provide additional details regarding how it derived its estimate.

DSP advises that its understanding is that DSP will have a significant role in the work of the independent unit, and that DSP officers are expected to be specially detailed to the unit (as authorized under the bill) to provide the primary staffing for the unit's investigatory responsibilities. DSP further notes that expenditures associated with its role in the investigations depend on how the unit is ultimately used to meet its mandate to investigate all alleged/potential police-involved deaths of civilians, and specifically the extent to which local law enforcement agencies, who are required to cooperate in connection with the investigations, remain involved. If local law enforcement is still allowed to participate in the investigations (under the supervision/direction of the investigative unit), such as by interviewing witnesses and processing evidence, the need for dedicated DSP staff is mitigated, and DSP anticipates needing only five or six additional staff. However, if the investigative unit is instead to solely assume *all* aspects of the investigations, with minimal if any assistance from local law enforcement, then estimated expenditures are significantly higher. In this scenario, DSP anticipates needing at least 24 new staff, which would include

both sworn officers (18) to investigate the deaths as well as civilian staff (6) to further process the crime scene and analyze evidence, at a cost of *at least* several million dollars annually. This estimate would account for creating multiple units and deploying staff on a regional basis, in part to allow for a more timely response when the need for investigations arises.

As noted above, if case trends remain consistent, approximately 30 cases annually will be investigated. The Department of Legislative Services (DLS) notes that the relatively limited case volume of applicable cases presents its own challenges from a budgetary and administrative standpoint. For example, the unit (with the assumed assistance from dedicated DSP staff) will be investigating cases statewide, and case trends each year, the circumstances/complexity of the cases, and actual experience under the bill, as ultimately implemented (*i.e.*, the extent to which local law enforcement remains available for assistance) will impact expenditures in a way that cannot be comprehensively estimated beforehand. Furthermore, even though the local State’s Attorneys will remain responsible for prosecuting any cases, OAG/DSP will still need to ensure that staffing resources are sufficient so that unit personnel who participate in the investigations are available for any resulting trials. If the unit is assumed to have the *sole* responsibility for investigating cases (without assistance from local law enforcement), in some years, the unit may be “overstaffed” for the resulting case volume, while in other years, resources may be stretched. Although DLS is unable to independently verify the staffing estimates provided by DSP and OAG, it agrees with the overall assessment that the cases to be investigated under the bill are complex and require significant resources in order to ensure that cases can be investigated appropriately.

Accordingly, for purposes of this fiscal and policy note, DLS advises that *at a minimum*, the unit requires two attorneys (including one designated as the unit director), five investigators (assumed to be employed by DSP), and a support/administrative position, with associated expenditures for fiscal 2022 as shown below.

*Office of the Attorney General*

Positions	3.0
Salaries and Fringe Benefits	\$319,518
Operating Expenses	<u>16,744</u>
<b>Minimum FY 2022 OAG Expenditures</b>	<b>\$336,262</b>

*Department of State Police*

Positions	5.0
Salaries and Fringe Benefits	\$604,494
Operating Expenses	<u>27,906</u>
<b>Minimum FY 2022 DSP Expenditures</b>	<b>\$632,400</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and minimal ongoing operating expenses, such as those associated with standard office equipment, communications, and supplies. This estimate does not include expenditures for any vehicles or related expenses that are necessary for the investigators and other OAG staff to travel to locations for the investigation/prosecution of a law enforcement-involved death. The estimate also does not include expenditures related to training.

As indicated above, this estimate assumes that while police-involved deaths are investigated and managed by the newly created independent unit, significant assistance from local law enforcement remains available. To the extent that the bill is instead implemented to require the unit to function without meaningful assistance from local law enforcement, general fund expenditures and personnel needs are *significantly* higher.

The provisions regarding the independent investigative unit are not anticipated to materially affect local government operations or finances.

#### *Surplus Military Equipment*

DSP advises that federal regulations prohibit the transfer of weaponized vehicles to state and local law enforcement agencies. DSP further advises that State and local law enforcement agencies in Maryland do not currently acquire destructive devices, firearm silencers, or grenade launchers from federal surplus programs. Accordingly, these provisions of the bill are not anticipated to materially affect State or local government expenditures.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Washington and Worcester counties; towns of Bel Air and Leonardtown; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; University System of Maryland; Morgan State University; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; State Prosecutor's Office; Governor's Office of Crime Prevention, Youth, and Victim Services; Department of Legislative Services

**Fiscal Note History:**  
an/lgc

First Reader - February 3, 2021

Third Reader - March 23, 2021

Revised - Amendment(s) - March 23, 2021

Enrolled - May 7, 2021

Revised - Amendment(s) - May 7, 2021

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