

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 482 (Senator Carter)
 Judicial Proceedings

Public Safety - Law Enforcement Officers - Whistleblower Protections

This bill prohibits a supervisor, an appointing authority, or the head of a law enforcement agency 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. A law enforcement officer aggrieved by a violation of the bill’s prohibitions may bring a civil action against the law enforcement agency for equitable relief or damages. The Attorney General must (1) designate an assistant Attorney General to receive, from law enforcement officers, any information that is otherwise protected by law from disclosure; (2) investigate each allegation of illegality or impropriety; and (3) take appropriate legal action.

Fiscal Summary

State Effect: General fund expenditures increase by \$155,300 in FY 2022 to adjudicate an increase in whistleblower claims and cases; out-year expenditures reflect annualization and ongoing costs. The bill has no material effect on State law enforcement agencies, as the protections provided already exist in current law. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	155,300	184,300	190,000	196,700	203,700
Net Effect	(\$155,300)	(\$184,300)	(\$190,000)	(\$196,700)	(\$203,700)

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

Local Effect: To the extent that local law enforcement agencies are parties in whistleblower complaints, local expenditures for legal fees may increase to respond to those complaints. No effect on revenues.

Small Business Effect: None.

Analysis

Bill Summary: The bill's protections apply to a disclosure of information that a law enforcement officer reasonably believes demonstrates (1) an abuse of authority, gross mismanagement, or gross waste of money; (2) a substantial and specific danger to public health or safety; or (3) a violation of law. A disclosure by a law enforcement officer 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 any recommended, threatened, or actual adverse employment action, including:

- 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 the bill; or
- any other retaliation against a law enforcement officer because the law enforcement officer makes a disclosure protected under the bill's 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. In a civil action brought in accordance with the bill's provisions, an aggrieved law enforcement officer may be awarded damages of \$5,000 for each violation of this requirement.

Civil Actions and Remedies

In a civil action brought under the bill, 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 protections.

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 for any continuing violations of the bill's provisions. 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 does not preclude an action for defamation or invasion of privacy. 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. Further, the bill applies prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before its October 1, 2021 effective date.

Current Law: The Maryland Whistleblower Law includes protections for Executive Branch employees, including law enforcement officers employed by the State, that are substantively similar to those required by the bill. It protects State Executive Branch employees who disclose information believed to evidence abuse of authority, gross mismanagement or waste of money, a substantial and specific danger to public health or safety, and/or a violation of the law.

The Whistleblower Law prohibits reprisal against an employee who, after making a disclosure, seeks a remedy provided by any law or policy. A complaint under this statute must be brought within six months after the complainant first knew of, or reasonably should have known of, the violation of the whistleblower protection. The Secretary of Budget and Management, or a designee thereof, is required to conduct an investigation and determine whether a violation occurred within 60 days. After reviewing a final decision under the Whistleblower Law, the court may award costs of litigation and reasonable attorney's fees to a prevailing complainant.

State Expenditures: Although the bill has no effect on State law enforcement agencies and officers, it extends whistleblower protections to all local law enforcement agencies in the State. This is likely to result in an increase in whistleblower claims and cases referred to the Office of the Attorney General (OAG). The bill requires OAG to designate one attorney to receive, investigate, and adjudicate those claims.

Therefore, general fund expenditures increase by \$155,269 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring one assistant Attorney General and one investigator to investigate and adjudicate new whistleblower cases involving local law enforcement officers and agencies. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$144,106
Operating Expenses	11,163
Total FY 2022 State Expenditures	\$155,269

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

Any increase in the Judiciary's caseload is expected to be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Talbot and Wicomico counties; Department of Budget and Management; Department of General Services; Department of Natural Resources; Department of State Police; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Department of Legislative Services

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