

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

Senate Bill 763

(Senator Sydnor)

Judicial Proceedings

Judiciary

Public Safety and Criminal Justice - Transparency and Accountability

This bill generally makes numerous changes to statutory provisions relating to public safety and criminal justice, including those concerning the disciplinary process for police officers and the Independent Investigative Unit within the Office of the Attorney General (OAG). The bill also establishes numerous reporting requirements, expands the definition of “student data” that may be collected for specified research purposes, and creates the Task Force to Study Transparency Standards for State’s Attorneys. **The provisions regarding police discipline take effect upon the effective date of Section 3 of Chapter 59 of 2021 (which, unless otherwise amended, is July 1, 2022); numerous other provisions, including those concerning the task force, take effect July 1, 2022. The provisions regarding the task force terminate June 30, 2024; additional provisions regarding reporting requirements and enhanced data access terminate September 30, 2025.**

Fiscal Summary

State Effect: General fund expenditures for the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) increase by \$95,400 in FY 2023. Future years reflect annualization, inflation, ongoing costs, and the termination of a contractual position in FY 2026. In addition, the FY 2023 budget provides for a transfer of \$600,000 in general funds from the Dedicated Purpose Account to the Administrative Office of the Courts (AOC) for prosecutorial transparency reporting, contingent upon the enactment of this bill. General fund expenditures therefore also increase by \$600,000 in FY 2023 to reflect this funding.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	695,400	87,400	90,100	31,100	0
Net Effect	(\$695,400)	(\$87,400)	(\$90,100)	(\$31,100)	\$0

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 finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Maryland State Commission on Criminal Sentencing Policy – Reporting Requirements (Provisions Take Effect October 1, 2022, and terminate September 30, 2025)

MSCCSP must include in its annual report the following information for sentences involving a crime of violence (as defined under § 14-101 of the Criminal Law Article), disaggregated by circuit:

- the number and percentage of sentencing events in each disposition category, as indicated on the sentencing guidelines worksheet;
- the number and percentage of sentencing events that resulted in a departure from the sentencing guidelines; and
- for sentencing events that resulted in a departure from the sentencing guidelines, the departure reasons cited and the number and percentage of events in which each reason was cited.

MSCCSP must also include in its annual report the following information for sentencing events involving a crime of violence, disaggregated by circuit and crime:

- the average total sentence;
- the average nonsuspended sentence; and
- for sentences in which a portion of the sentence was suspended, the average percentage of the total sentence suspended.

The bill also requires MSCCSP to conspicuously post the information listed above in a data dashboard on its public website.

Disciplinary Process for Police Officers (Provisions Take Effect on the Effective Date of Section 3 of Chapter 59 of 2021)

The bill requires that upon completion of an investigation of a complaint of police misconduct involving a member of the public and a police officer, *regardless of whether*

the complaint originated from within the law enforcement agency or from an external source, the law enforcement agency must forward to the appropriate administrative charging committee the investigatory files for the matter.

The bill requires each law enforcement agency to adopt the uniform State disciplinary matrix *for all matters that may result in discipline of a police officer.*

The bill specifies that each law enforcement agency must generally establish a trial board process to adjudicate *all* matters for which a police officer is subject to discipline. The bill also modifies the composition of a trial board for a statewide or bi-county law enforcement agency, except for the Baltimore Police Department, and modifies the duties and requirements for specified members of a trial board. Specifically, the bill requires a trial board for a statewide or bi-county law enforcement agency to be composed of (1) an actively serving or retired administrative law judge appointed by the Chief Administrative Law Judge of the Maryland Office of Administrative Hearings; (2) a civilian who is not a member of an administrative charging committee or the Maryland Police Training and Standards Commission (MPTSC), as specified; and (3) a police officer of equal rank to the police officer who is accused of misconduct appointed by the head of the law enforcement agency.

The actively serving or retired administrative law judge – or the retired judge of the District Court or a circuit court (under current law, these judges may serve on trial boards that are not statewide or bi-county) – who serves on a trial board must (1) be the chair of the trial board; (2) be responsible for ruling on all motions before the trial board; and (3) prepare the written decision of the trial board, as specified.

The bill requires a trial board to issue a written decision reflecting the findings, conclusions, and recommendations of a majority of the trial board within 45 days after the final hearing by the trial board. The bill authorizes the decision of a trial board for a bi-county law enforcement agency to be appealed by the police officer to a circuit court in a county in which the incident that gave rise to the disciplinary proceeding occurred.

The bill also prohibits the use of collective bargaining to establish or alter any aspect of the disciplinary process for police officers.

Office of the Attorney General's Independent Investigations Division (Provisions Take Effect July 1, 2022)

The bill renames the existing Independent Investigative Unit within OAG the “Independent Investigations Division” (IID) and specifies that it is the primary investigative unit for police-involved incidents that result in the death of civilians or injuries likely to result in death. The bill requires OAG to determine whether an incident is police-involved and whether an injury is likely to result in death. IID must investigate all police-involved

incidents that result in the death of a civilian or injuries that are likely to result in the death of a civilian.

A law enforcement agency must notify IID of any police-involved incident that results in the death of a civilian or injuries that are likely to result in the death of a civilian as soon as the law enforcement agency becomes aware of the incident. A law enforcement agency must cooperate with and may not impede IID in connection with the investigation of a police-involved death of a civilian. On request of the Attorney General or the Attorney General's designee, a local law enforcement agency must provide any requested evidence to IID.

The Attorney General or the Attorney General's designee may seek temporary or permanent injunctive relief to facilitate an investigation or prevent interference with an investigation, and to do so is not required to (1) post bond; (2) allege or prove that an adequate remedy at law does not exist; or (3) allege or prove that substantial or irreparable damage would result from any conduct alleged.

For the limited purpose of furthering an ongoing criminal investigation, the Attorney General (or a deputy Attorney General or assistant Attorney General, as specified) may issue in any court in the State a subpoena to a person to produce telephone, business, government, or corporate records or documents. A subpoena issued under the bill may be served in the same manner as a subpoena issued by a circuit court; the bill further specifies requirements relating to a person's right to counsel in connection with a subpoena issued under the bill. The Attorney General may report a person's failure to obey a lawfully served subpoena to the circuit court with jurisdiction over the matter, and after a hearing with an opportunity to be heard and represented by counsel, the court may grant appropriate relief. The bill's subpoena provisions do not allow the contravention, denial, or abrogation of a privilege or right recognized by law.

Task Force to Study Transparency Standards for State's Attorneys (Provisions Take Effect July 1, 2022, and Terminate June 30, 2024)

The task force, which is to be staffed by the Department of Legislative Services (DLS), must study the possibility of establishing minimum transparency standards for State's Attorneys. In conducting its study, the task force must (1) develop processes by which prosecutors can collect information and determine what information should be made public and what information may be kept private and (2) examine any existing policies of State's Attorneys' offices across the State relating to the transparency of data, the charging of crimes, and sentencing. By December 31, 2023, the task force must report its findings and recommendations to the Senate Judicial Proceedings Committee and the House Judiciary Committee.

Task force members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations.

Reporting Requirement for the Division of Parole and Probation (Provisions Take Effect October 1, 2022, and Terminate September 30, 2025)

By December 1, 2022, and annually thereafter, the Division of Parole and Probation (DPP) must report to the Senate Judicial Proceedings Committee and the House Judiciary Committee on (1) measures it will take to improve oversight of offenders under DPP supervision who are involved in homicides and (2) the number of offenders supervised by DPP that were shooting victims, homicide victims, or charged with specified crimes.

Student Data in the Maryland Longitudinal Data System (Provisions Take Effect October 1, 2022, and Terminate September 30, 2025)

The bill eliminates from § 24-701 of the Education Article the specification that “student data,” with respect to the Maryland Longitudinal Data System (MLDS), does *not* include criminal and children in need of assistance (CINA) records.

Miscellaneous (Takes Effect July 1, 2022)

The bill contains a severability clause.

Current Law:

Maryland State Commission on Criminal Sentencing Policy

Sentencing Guidelines: MSCCSP was created to oversee sentencing policy in Maryland and is primarily responsible for maintaining and monitoring the State’s *voluntary* sentencing guidelines, which are intended to promote fair and proportional sentencing while eliminating sentencing disparity. The guidelines apply to most circuit court cases.

MSCCSP is responsible for the adoption of sentencing guidelines to be considered by courts when determining the appropriate sentence for a criminal defendant, as well as the collection and automation of sentencing guidelines data. The sentencing guidelines are advisory, and judges may, at their discretion, impose a sentence outside the guidelines. However, judges are asked to document the reasons for sentencing outside of the guidelines.

Annual Report: MSCCSP is required to conduct an annual review of sentencing policy and practice and submit a report to the General Assembly by January 31 of each year. The report must (1) include any changes to the sentencing guidelines made during the preceding year; (2) review judicial compliance with the sentencing guidelines, including compliance

by crime and by judicial circuit; (3) review reductions or increases in original sentences that have occurred because of reconsiderations of mandatory sentences for crimes of violence; and (4) categorize information on these reconsiderations of sentences by offense and by judicial circuit.

Crime of Violence

Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Disciplinary Process for Police Officers

Chapter 59 of 2021 repealed the Law Enforcement Officers’ Bill of Rights in its entirety and established new provisions relating to police accountability and discipline, some of which are discussed below. A law enforcement agency may not negate or alter any of the requirements relating to specified police officer accountability and discipline through collective bargaining. Provisions relating to the accountability and discipline process and administrative charging committees apply prospectively and may not be applied or interpreted to have any effect or application to (1) any *bona fide* collective bargaining agreement entered into by June 30, 2022, for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original contract or (2) a disciplinary matter against a law enforcement officer based on alleged misconduct occurring before July 1, 2022.

Investigation of Citizen Complaints: An individual may file a complaint of police misconduct with a police accountability board or the law enforcement agency that employs the police officer who is the subject of the complaint. A complaint of police misconduct filed with a police accountability board or the law enforcement agency must include specified information but need not be notarized. If filed with a police accountability board, the complaint must be forwarded to the appropriate law enforcement agency within three days of receipt, and each such complaint by a member of the public must be immediately reviewed by the investigating unit of the law enforcement agency.

On completion of an investigation, the law enforcement agency must forward the investigatory files for the complaint to the appropriate administrative charging committee. The administrative charging committee must review and make a determination or ask for further review within 30 days after completion of the investigating unit's review. The process for review by the investigating unit through disposition by the administrative charging committee must be completed within one year and one day after the filing of a complaint by a citizen.

Disciplinary Matrix: MPTSC must develop and adopt, by regulation, a model uniform disciplinary matrix for use by each law enforcement agency in the State, and each law enforcement agency must adopt the matrix.

Within 15 days after an administrative charging committee issues an administrative charge against a police officer, the chief of the law enforcement agency must offer discipline to the police officer who has been administratively charged in accordance with the disciplinary matrix. The chief may offer the same discipline that was recommended by the administrative charging committee or a higher degree of discipline within the applicable range of the disciplinary matrix but may not deviate below the discipline recommended by the administrative charging committee. If the police officer accepts the chief's offer of discipline, the offered discipline must be imposed. However, if the police officer does not accept the chief's offer of discipline, the matter must be referred to a trial board. At least 30 days before a trial board proceeding begins, the police officer must be provided a copy of the investigatory record and notified of the charges against the police officer and the recommended disciplinary action.

Trial Board Process: Each law enforcement agency must establish a trial board process to adjudicate matters for which a police officer is subject to discipline; however, a small law enforcement agency may use the trial board process of another law enforcement agency by mutual agreement. An individual, before serving as a member of a trial board, must receive training on matters relating to police procedures from MPTSC.

A trial board must be composed of (1) an actively serving or retired administrative law judge or a retired judge of the District Court or a circuit court, appointed by the chief executive officer of the county; (2) a civilian who is not a member of an administrative charging committee, appointed by the county's police accountability board; and (3) a police officer of equal rank to the police officer who is accused of misconduct, appointed by the head of the law enforcement agency.

With specified exceptions, proceedings of a trial board must be open to the public. A trial board may administer oaths and issue subpoenas as necessary to complete its work. A complainant has the right to be notified of a trial board hearing and, with specified exceptions, the right to attend a trial board hearing. A police officer may be disciplined

only for cause; with specified exceptions, a law enforcement agency has the burden of proof by a preponderance of the evidence.

Within 30 days after the date of issuance of a decision of a trial board, the decision may be appealed by the employee, as specified. An appeal taken from a trial board decision must be on the record, and a trial board decision that is not appealed is final.

Office of the Attorney General's Independent Investigative Unit

Chapter 132 of 2021 established the Independent Investigative Unit within 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. In addition to investigating all alleged or potential police-involved deaths of civilians, the 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 unit may (1) detail one or more police officers employed by the Department of State Police 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 Governor must annually include funding in the State budget sufficient to provide for the full and proper operation of the unit. Funds provided must supplement and may not supplant any other funding provided to the unit.

Reporting Procedures for State's Attorneys

Under § 15-302 of the Criminal Procedure Article, the State's Attorneys' Coordinator, with the approval of the State's Attorneys' Coordination Council, must establish and implement uniform reporting procedures for State's Attorneys and professional staffs of State's Attorneys to maintain and provide statistical data and information relating to prosecutorial functions and standards of the office of State's Attorney.

Maryland Longitudinal Data System

Chapter 190 of 2010 established MLDS to contain individual-level student data and workforce data from all levels of education and the State's workforce. The MLDS Center
SB 763/ Page 8

is administratively housed within the Maryland State Department of Education. The purpose of the data system is to facilitate and enable the exchange of student data among agencies and institutions within the State as well as generate timely and accurate information about student achievement that can be used to improve the State's education system and guide decision makers at all levels. The MLDS Center may only use de-identified data in the analysis, research, and reporting conducted by the center. The center may only use aggregate data in the release of data in reports and in response to data requests.

Student data collected by MLDS includes State and national assessments; course taking and completion; grade point average; remediation; retention; degree, diploma, or credential attainment; enrollment; demographic data; juvenile delinquency records; and elementary and secondary school disciplinary records. Criminal records, CINA records, and medical and health records are specifically excluded from the types of data that MLDS may collect.

State Expenditures:

Administrative Office of the Courts

The fiscal 2023 budget transfers \$600,000 in general funds from the Dedicated Purpose Account to AOC to support prosecutorial transparency reporting, contingent upon the enactment of this bill. DLS notes, however, that under the bill, AOC is not responsible for any specific requirements relating to prosecutorial transparency reporting (other than having one representative serve on the task force). Although this analysis reflects the \$600,000 appropriation to AOC as provided in the fiscal 2023 budget, it does not assume how AOC may utilize these funds.

Maryland State Commission on Criminal Sentencing Policy

MSCCSP advises that given current staff workloads, an additional full-time research analyst/database manager is needed for the commission to meet the projected additional workload under the bill. The additional responsibilities include data management and data analysis for approximately 2,700 crime of violence convictions each year; preparation of additional content for the annual report; and maintenance of a data dashboard. Accordingly, general fund expenditures increase by \$95,435 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date (for the provisions regarding MSCCSP). This estimate reflects the cost of hiring one contractual research analyst/database manager to assist MSCCSP in meeting its expanded responsibilities under the bill, one-time computer programming costs, and ongoing expenditures related to data hosting and software. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$61,532
One-time Computer Programming	17,500
Data Hosting Services and Software	9,060
Other Operating Expenses	<u>7,343</u>
Total FY 2023 MSCCSP Expenditures	\$95,435

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. The contractual position terminates September 30, 2025.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Office of the Attorney General

The Independent Investigative Unit is currently operating with nine staff; from October 2021 through January 2022, the unit was responsible for 10 investigations. The fiscal 2023 budget includes \$2.6 million for the unit, including funding for an additional six positions to support the unit’s caseload. Although the bill expands the operations of the unit, DLS estimates that these budgeted resources are sufficient to enable the unit to fulfill the bill’s additional requirements. Furthermore, current law requires the Governor to annually include funding in the State budget sufficient to provide for the full and proper operation of the unit. For purposes of this fiscal and policy note, it is assumed that similar funding is provided to IID in the State budget in future years, and that the resources provided annually continue to be sufficient to enable OAG to fulfill its obligations under the bill.

The bill’s operational impact on other law enforcement agencies – whether through cooperating with IID investigations and complying with requests (or subpoenas) to turn over evidence to OAG, or potentially achieving operational efficiencies through the bill’s specification that IID is the primary investigative unit in police-involved incidents – is expected to be minimal.

Maryland Longitudinal Data System Center

The MLDS Center does not anticipate any specific costs associated with the bill’s changes to § 24-701 of the Education Article (*i.e.*, eliminating the specification that student data does not include criminal or CINA records, for the purposes of MLDS). The MLDS Center advises that removing the reference to CINA records is clarifying in nature, as § 24-701 also specifies that student data *does* include child welfare data. The MLDS Center further

advises that removing criminal records from the statutory exclusion allows the MLDS Center to incorporate criminal history records as needed to study educational outcomes.

Additional Impacts

The Department of Public Safety and Correctional Services advises that DPP expects to handle the bill's requirements with existing resources.

DLS can staff the task force with existing resources. Any expense reimbursements for task force members are likewise assumed to be minimal and absorbable within existing resources.

Finally, the bill's modifications to the disciplinary process for police officers are not anticipated to materially affect State finances.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1429 (Delegate Crutchfield) - Rules and Executive Nominations.

Information Source(s): Anne Arundel, Carroll, Cecil, Dorchester, Harford, Montgomery, and Prince George's counties; Office of the Attorney General; Department of Public Safety and Correctional Services; Department of State Police; Maryland Longitudinal Data System Center; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Legislative Services

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