

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 638 (Delegate Atterbeary)  
 Judiciary

State Government - Attorney General - Independent Investigations Division

This bill (1) renames the Independent Investigative Unit within the Office of the Attorney General (OAG) the “Independent Investigations Division” (IID); (2) 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; and (3) amends its duties and powers relating to the investigation of police-involved incidents. The bill requires IID to have the first opportunity to prosecute a police-involved incident, and if IID declines to proceed with a prosecution, a State’s Attorney with jurisdiction over the matter may proceed with a prosecution. Beginning in fiscal 2024, the Governor must include an appropriation of at least \$5.0 million in the annual budget bill to IID. **The bill takes effect July 1, 2022.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$222,400 in FY 2023. Beginning in FY 2024, general fund expenditures increase by up to \$5.0 million annually, reflecting the full mandated appropriation, as discussed below. Revenues are not affected. **This bill establishes a mandated appropriation beginning in FY 2024.**

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	222,400	5,000,000	5,000,000	5,000,000	5,000,000
Net Effect	(\$222,400)	(\$5,000,000)	(\$5,000,000)	(\$5,000,000)	(\$5,000,000)

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

**Local Effect:** The bill does not materially affect local government finances or operations.

**Small Business Effect:** None.

## Analysis

### Bill Summary:

#### *Investigations of Police-involved Incidents*

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 and prosecution 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.

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.

#### *Subpoena Power*

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.

#### *Prosecuting Police-involved Incidents*

If an investigation provides sufficient grounds for the prosecution of a police officer, IID must have the first opportunity to prosecute or decline to prosecute. If IID declines to proceed with a prosecution, it must transmit all materials related to the case to the

State's Attorney that has jurisdiction to prosecute the matter. A State's Attorney may proceed with a prosecution at the discretion of the State's Attorney.

Following transmission of a case to a State's Attorney, IID must keep confidential its decision not to issue charges for 90 days. If after 90 days the State's Attorney has not issued charges in the case, IID may issue a report disclosing its decision.

### *Reporting Requirements*

By December 1 each year, beginning December 1, 2023, IID must report to the Legislative Policy Committee on (1) the number of cases referred to IID; (2) the number of cases prosecuted by IID; (3) the number of cases that IID declined to prosecute; (4) the number of cases that the State's Attorney elected to prosecute; and (5) the outcome for cases prosecuted by IID.

### *Mandated Appropriation*

For fiscal 2024 and each fiscal year thereafter, the bill requires the Governor to include in the annual budget bill an appropriation of at least \$5.0 million to IID. Funds provided in accordance with this requirement must supplement and may not supplant any other funding provided to IID.

**Current Law:** 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 (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 eliminates these provisions).

**State Fiscal Effect:** The Governor's proposed fiscal 2023 budget includes \$1.8 million for the Independent Investigative Unit. The unit is currently operating with nine staff. From October 2021 through January 2022, the unit was responsible for 10 investigations.

OAG advises that it currently does not have the resources necessary to fulfill the bill’s additional requirements to investigate and have the first opportunity to prosecute such police-involved incidents (including injuries to a civilian that are likely to result in death). The Department of Legislative Services estimates that two additional staff are likely required to meet the expanded responsibilities of the bill beginning in fiscal 2023 (prior to the mandated appropriation). Accordingly, general fund expenditures for OAG increase by \$222,365 in fiscal 2023, which accounts for a 90-day startup delay from the bill’s July 1, 2022 effective date. This estimate reflects the cost of hiring one investigator (to reflect an increased workload for investigations of incidents involving injury to a civilian that is likely to result in death) and one assistant Attorney General to prosecute cases (that the Attorney General has the first opportunity to prosecute). This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$207,679
Operating Expenses	<u>14,686</u>
<b>Total FY 2023 State Expenditures</b>	<b>\$222,365</b>

Although future year expenditures reflect the mandated appropriation of \$5.0 million annually beginning in fiscal 2024, it is assumed that some level of funding would have been provided to IID even in the absence of the mandated appropriation, thereby likely mitigating the expenditure increases shown in fiscal 2024 and beyond. However, any such impact has not been specifically accounted for in this analysis. For purposes of this fiscal and policy note, it is assumed that OAG continues to hire staff and fulfill its obligations under the bill to the full extent that can be covered by the mandated appropriation.

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. To the extent OAG hires more investigators in future years due to the bill’s mandated appropriation, OAG may rely less upon police officers employed by DSP for investigative work.

In addition, given that IID has the first opportunity to prosecute cases under the bill, State’s Attorneys’ offices may achieve operational efficiencies if fewer cases are transmitted to State’s Attorneys to prosecute. Nonetheless, any potential operational efficiencies are not expected to have a material impact on State’s Attorneys’ offices.

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### Additional Information

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Baltimore and Garrett counties; cities of Greenbelt and Laurel; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Budget and Management; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2022

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