

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 112 (Delegate Conaway)
Judiciary

Criminal Procedure - Police-Involved Death - State Prosecutor

This bill authorizes the State Prosecutor to investigate the death of an individual that results directly from an action or an omission of a law enforcement officer of the State or of a political subdivision of the State while the officer is on duty or while the officer is off duty but performing activities that are within the scope of the officer’s duties. The State Prosecutor may investigate the death if, after initial review, the State’s Attorney for the jurisdiction in which the death occurred does not file an information or seek a grand jury indictment in the case.

The bill applies prospectively only.

Fiscal Summary

State Effect: The Office of the State Prosecutor (OSP) can handle any additional investigations using existing budgeted resources. The bill does not materially impact the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit court.

Small Business Effect: None.

Analysis

Current Law: Each county has an elected State’s Attorney who is responsible for the prosecution of crimes within the jurisdiction. An information is a method of charging an individual for a crime that may be filed by a State’s Attorney. Any offense within the jurisdiction of the District Court may be tried on an information. Offenses may also be tried by information in a circuit court in specified circumstances, such as when the offense

is a felony that is within the concurrent jurisdiction of the circuit court and the District Court, or in any felony case if the defendant requests or consents in writing to be charged by information.

Rather than filing an information, a State's Attorney may seek to have the accused charged by grand jury indictment when the charge is a felony. The circuit court files an indictment returned by a grand jury. A grand jury may subpoena evidence and witnesses that may be difficult for a law enforcement agency or the State's Attorney to obtain through regular investigation. All witnesses must testify under oath without an attorney present, and the proceedings are confidential.

OSP is an independent Executive Branch agency. The State Prosecutor investigates and prosecutes specified criminal offenses committed by public officials. OSP conducts these investigations on its own initiative or at the request of the Governor, the Attorney General, the General Assembly, the State Ethics Commission, or a State's Attorney. OSP investigates the following types of cases: (1) criminal offenses under the State election and public ethics laws; (2) violations of the State bribery laws in which a public official or employee was offered or solicited a bribe; (3) criminal malfeasance, misfeasance, or nonfeasance in office committed by a public officer or employee; and (4) violations of State obstruction of justice, perjury, and extortion laws. Nominated by the State Prosecutor Selection and Disabilities Commission, the State Prosecutor is appointed to a six-year term by the Governor with the advice and consent of the Senate.

Background: Recent high-profile deaths involving law enforcement officers along with subsequent grand jury decisions not to indict the officers has drawn increased attention to police-involved fatalities. According to the National Conference of State Legislatures (NCSL), two states have laws requiring specific investigatory procedures for police-involved deaths. Connecticut requires the state Division of Criminal Justice to investigate any use of deadly physical force by law enforcement. As part of the investigation, the state's chief attorney is empowered to appoint a special prosecutor. In Wisconsin, officer-involved deaths must be investigated by two investigators who are not employed by the same agency that employs the officer who committed the killing. The investigators must provide a report to the district attorney. If the district attorney determines there is no basis for prosecution, the investigators must release their report to the public. NCSL also reports that at least nine states in 2015 have measures under consideration which address the appointment of special prosecutors for, or provide independent investigation in, officer-involved deaths.

Additional Information

Prior Introductions: None.

Cross File: SB 653 (Senator Muse) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); State Prosecutor's Office; State's Attorneys' Association; Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; National Conference of State Legislatures; Department of Legislative Services

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