

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 365
Judiciary

(Delegate Anderson, *et al.*)

Criminal Procedure - Felony Prosecution of Law Enforcement Officer - Attorney
General

This bill requires the State's Attorney, on the filing of a statement of charges or an information against a law enforcement officer for a felony offense allegedly committed in the course of executing the officer's duties, to immediately forward the case, including any charges related to the felony, to the Office of the Attorney General (OAG) for prosecution.

The bill applies prospectively only.

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, beginning in FY 2016 for the Attorney General to hire staff to handle additional prosecutions. The bill does not materially impact the workload of the Judiciary. Revenues are not affected.

Local Effect: The bill does not materially impact the workload of the circuit courts or the State's Attorneys.

Small Business Effect: None.

Analysis

Bill Summary: In exercising its authority, the Attorney General has all the powers and duties of a State's Attorney to prosecute the violation, including the use of the grand jury in the county. In circumstances in which the violations are alleged to have been committed in more than one county, the respective State's Attorney of each county and the Attorney General must join the causes of action into a single complaint. In addition to State and local law enforcement officers, the bill's provisions apply to federal law enforcement

officers who are exercising powers within the State, such as making arrests and executing warrants, as authorized by statute in specified circumstances.

Current Law: Each county has an elected State's Attorney who is responsible for the prosecution of crimes within the jurisdiction. A statement of charges is a charging document which may be used for offenses that may be prosecuted in the District Court. 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.

Background: Although this bill extends to all felonies and not just those involving fatalities, 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.

State Expenditures: OAG advises that it needs 10 additional staff (3 investigators and 7 assistant attorney generals) to implement the bill; however, it did not provide any additional information regarding how its estimate was derived. While the Department of Legislative Services concurs that the bill increases OAG's workload by requiring it to prosecute additional felony cases, and that this workload is not absorbable within existing resources, without reliable information regarding how many new potential cases OAG

must handle each year it is not possible to accurately predict staffing costs. *For illustrative purposes only*, hiring 1 additional assistant attorney general increases general fund expenditures by approximately \$103,000 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date, and by a minimum of \$133,000 annually thereafter. For one additional investigator, general fund expenditures increase by approximately \$72,000 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date, and by a minimum of \$91,000 annually thereafter.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General, Judiciary (Administrative Office of the Courts), Department of State Police, State's Attorneys' Association, National Conference of State Legislatures, Department of Legislative Services

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md/kdm

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