

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 338 (Delegate Carter, *et al.*)
 Judiciary

Public Safety - SWAT Team - Deployment and Reporting

This bill limits the circumstances under which a law enforcement agency may deploy a SWAT team. The bill also establishes reporting requirements relating to activations and deployments of SWAT teams.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by \$37,500 in FY 2016 for the Governor’s Office of Crime Control and Prevention (GOCCP). Future year expenditures reflect annualization and inflation. Revenues are not affected. The bill’s limitations on SWAT team deployments is not expected to significantly affect State law enforcement efforts.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	37,500	42,000	43,900	45,800	47,800
Net Effect	(\$37,500)	(\$42,000)	(\$43,900)	(\$45,800)	(\$47,800)

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

Local Effect: The bill’s requirements can be handled with the existing budgeted resources of local law enforcement agencies with SWAT teams. The bill’s limitations on SWAT team deployments is not expected to significantly affect local law enforcement efforts.

Small Business Effect: None.

Analysis

Bill Summary: A law enforcement agency may deploy a SWAT team only if the agency reasonably believes that (1) there is a significant imminent threat to human life, welfare, and safety and (2) the use of regular patrol officers will be insufficient to meet the threat. Except when doing so would substantially endanger the lives or well-being of civilians or police personnel, before a SWAT team deployment, a law enforcement agency must include in a written report approved by a supervisory law enforcement officer:

- a detailed account of the facts supporting the reasonable belief that there is a significant threat to human life, welfare, and safety;
- an explanation of why the use of regular law enforcement officers is insufficient to meet the threat; and
- whether pregnant women, children, or elderly individuals are suspected to be present at a scene of deployment.

Beginning January 1, 2016, and every six months thereafter, a law enforcement agency that maintains a SWAT team must report the following information to GOCCP using a specified format:

- the number of times the SWAT team was activated and deployed by the agency in the previous six months;
- the name of the county and/or municipality and zip code of the location where the team was deployed for each activation;
- the reason for each activation and deployment, as specified;
- the legal authority, including type of warrant, if any, for each activation and deployment; and
- the result of each activation and deployment, including (1) the age, gender, and race of any individual encountered; (2) the number of arrests made, if any, and for what charges; (3) a list of any controlled substances, weapons, contraband, or evidence of crime found; (4) whether the SWAT team was deployed to the correct address; (5) whether the SWAT team announced its presence and requested entry; (6) whether a forcible entry was made and in what manner; (7) whether a weapon was discharged by a SWAT team member; (8) whether a civilian used or threatened to use a weapon against a law enforcement officer; and (9) whether a person or domestic animal was injured or killed by a SWAT team member.

The Police Training Commission (PTC), in consultation with GOCCP, must develop a standardized format that each law enforcement agency must use in reporting data to GOCCP under the bill. A law enforcement agency must:

- compile data for each six-month period as a report in the format required; and
- submit the report to GOCCP and specified local law enforcement agencies within a specified timeframe.

GOCCP must analyze and summarize the SWAT team reports and submit a report of the analyses and summaries of the reports to the Governor, the General Assembly, and each law enforcement agency by September 1 of each year. Each report must include the total number of search warrants executed by each law enforcement agency in comparison to those executed by the agency's SWAT team and whether the intelligence underlying each deployment was substantiated.

If a law enforcement agency fails to comply with the reporting provisions, GOCCP must report the noncompliance to PTC. Upon receipt of a noncompliance report, PTC must contact the law enforcement agency and request that the agency comply with the reporting requirements. If the agency fails to comply within 30 days after such a request, GOCCP and PTC must jointly report the noncompliance to the Governor and the Legislative Policy Committee.

Current Law/Background:

Previous SWAT Team Reporting Requirements

Chapters 542 and 543 of 2009 required a law enforcement agency that maintains a SWAT team to report the following information to GOCCP and the appropriate county or municipality, on a biannual basis:

- the number of times the team was activated and deployed by the law enforcement agency in the previous six months;
- the name of the county and/or municipality and zip code of the location where the team was deployed for each activation;
- the reason for each activation and deployment;
- the legal authority, including type of warrant, if any, for each activation and deployment; and
- the result of each activation and deployment, including (1) the number of arrests made, if any; (2) whether property was seized; (3) whether a forcible entry was made; (4) whether a weapon was discharged by a SWAT team member; and (5) whether a person or domestic animal was injured or killed by a team member.

PTC, in consultation with GOCCP, developed a standardized format for the reports. GOCCP analyzed and summarized the biannual reports and submitted a report of the analyses and summaries to the Governor, the General Assembly, and each law enforcement agency by September 1 of each year.

The provisions of Chapters 542 and 543 terminated June 30, 2014. Several bills to extend the termination date failed during the 2013 session.

According to the *Fiscal Year 2014 SWAT Team Data Analysis* report, which was the final report issued by GOCCP pursuant to Chapters 542 and 543, during fiscal 2014, a total of 1,689 SWAT deployments were activated in Maryland, an increase of 2.4% from fiscal 2013. In fiscal 2014, SWAT deployments occurred in all 24 of Maryland's jurisdictions. A total of 35 police departments reported at least one SWAT deployment and activation. Six additional agencies had an active SWAT team but did not make a deployment during the reported period. All of the remaining law enforcement agencies in Maryland were excluded from the 2014 report because they do not have a SWAT team.

General Police Authority

Under §§ 2-102 and 2-103 of the Criminal Procedure Article, a police officer may make arrests, conduct investigations, and otherwise enforce the laws of the State throughout the State without limitations as to jurisdiction. A police officer may exercise these powers when:

- participating in a joint investigation with officials from another state, federal, or local law enforcement unit, at least one of which has local jurisdiction;
- the officer is rendering assistance to another police officer;
- the officer is acting at the request of another police officer or a State Police officer; or
- an emergency exists.

When exercising these powers, the police officer must act in accordance with regulations adopted by the officer's employing unit and must notify the following persons of an investigation or enforcement action:

- the chief of police, if any, or chief's designee, of Baltimore City, a county, a municipality, a sheriff, or other specified entities, when in such a jurisdiction; and
- the Department of State Police (DSP) barrack commander or commander's designee, unless there is an agreement otherwise with DSP.

Controlled Dangerous Substances

Under §§ 5-801 and 5-802 of the Criminal Law Article, DSP or any law enforcement officer of the Maryland Transportation Authority Police (MDTA), a municipality, or a county may initiate investigations and enforce the State's controlled dangerous substances provisions throughout the State without regard to any limitation otherwise applicable to DSP's activities in any political subdivision, in accordance with regulations promulgated by DSP. If action is taken under this authority, notification of an investigation or enforcement action must be made:

- to the chief of police or designee of the chief of police of a county or municipality;
- in a county without a police department, to the sheriff or designee of the sheriff;
- in Baltimore City, to the police commissioner or the police commissioner's designee; and
- to the chief of police of MDTA or the chief's designee, when specified.

Immunity from Liability, Search Warrants, and Warrantless Arrests

A police officer acting under any of these authorities has all the immunities from liability and exemptions as a State Police officer in addition to any other immunities and exemptions to which the police officer is otherwise entitled.

A judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within jurisdiction of the judge or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing. An application for a search warrant must be in (1) writing; (2) signed and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause. State law does not specifically allow "no-knock" warrants.

A police officer may make a warrantless arrest if the officer has probable cause to believe that the person has committed one of several enumerated crimes and, that unless the person is arrested immediately, the person may not be apprehended, may cause physical injury or property damage to another, or may tamper with, dispose of, or destroy evidence.

State Expenditures: GOCCP advises that the bill significantly expands the data collection and analyses previously required under Chapters 542 and 543 of 2009.

Accordingly, general fund expenditures increase by \$37,535 in fiscal 2016, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one full-time contractual data analyst to develop procedures, ensure data collection, interpret/analyze collected data, and write the required annual reports. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position(s)	1
Salary and Fringe Benefits	\$32,811
Additional Equipment	4,285
Other Operating Expenses	<u>439</u>
Total FY 2016 State Expenditures	\$37,535

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

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.

PTC, DSP, and other State law enforcement agencies advise that the bill’s requirements can be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: SB 173 (Senator Gladden) - Judicial Proceedings.

Information Source(s): Frederick and Montgomery counties, City of Rockville, Governor’s Office of Crime Control and Prevention, Department of State Police, Department of Public Safety and Correctional Services, Maryland Department of Transportation, Department of Legislative Services

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