

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 438
Judiciary

(Delegate Rosenberg)

Criminal Procedure - State Prosecutor - Use of Force by Law Enforcement
Officer

This bill authorizes the State Prosecutor to investigate a death or serious bodily injury caused by the use of force by a State or local law enforcement officer.

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 courts.

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.

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.

The incidents have also resulted in increased debate on the appropriate use of police force. In *Tennessee v. Garner*, 471 U.S. 1 (1985), the Supreme Court held that officers may not use *deadly* force unless it is necessary to prevent the escape of a fleeing felon and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court held that all claims alleging an officer's use of excessive force, whether deadly or not, must be analyzed under the reasonableness standard of the Fourth Amendment, which prohibits unreasonable seizures (*e.g.*, arrests or investigatory stops). The Court further indicated that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and not from the perspective of one having the benefit of hindsight. The Court acknowledged that officers are often forced to make split-second judgments about the amount of force that is necessary, and that because the test of reasonableness is not capable of precise definition, an analysis of its proper application requires careful attention to the facts and circumstances of each particular case.

The Bureau of Justice Statistics within the U.S. Department of Justice publishes a report, *Contacts Between Police and the Public*, which is based on results from its Police-Public Contact Survey that is conducted every three years. According to the most recent report (2011), an estimated 1.4% of the approximately 60,000 individuals surveyed said that police used or threatened to use force against them during their most recent contact with police. A majority (74%) of the people who said that police used or threatened force

against them said they felt it was excessive. Approximately 19% of persons who experienced the use or threat of force by police reported being injured during the incident.

State Fiscal Effect: Because the bill *authorizes*, and does not require, OSP to investigate cases involving serious bodily injury or death resulting from the use of force, for purposes of this analysis, it is assumed that OSP does not investigate every applicable case and that OSP can handle any additional cases it elects to investigate using existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Howard and Montgomery counties, Baltimore City, cities of Bowie and Takoma Park, Judiciary (Administrative Office of the Courts), Department of State Police, State Prosecutor's Office, State's Attorneys' Association, National Conference of State Legislatures, U.S. Department of Justice, Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2015
md/kdm

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