

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 874
Judiciary

(Delegate Carter)

Criminal Procedure - Homicide Investigations - Procedures (Joseph's Law)

This bill requires each law enforcement agency in the State to adopt a written policy establishing procedures for homicide investigations with specified requirements.

Fiscal Summary

State Effect: State law enforcement agencies can handle the adoption of a written policy under the bill's provisions with existing resources. Revenues are not affected.

Local Effect: Local law enforcement agencies can handle the adoption of a written policy under the bill's provisions with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires that the written policy for homicide investigations include requirements that:

- the scene of a homicide be protected from outside disturbance until the investigation is complete;
- all relevant forensic evidence be collected and analyzed;
- the lead investigator provide all relevant evidence and reports to the Office of the Chief Medical Examiner (OCME), including all crime scene photos, notes, and witness statements;

- the lead investigator consider the reports and findings of OCME before closing an investigation;
- the family of the homicide victim be timely notified about the status of an investigation; and
- after an investigation is closed and on request, the lead investigator provide the family of the homicide victim with all reports or other information that is eligible for disclosure under the Maryland Public Information Act.

Current Law:

Homicide Investigations: OCME is the statewide agency designated by law to investigate deaths from injury, homicide, suicide, under unusual or suspicious circumstances, or when a person is not attended by a physician.

If an OCME case occurs, the police or sheriff must immediately notify OCME and the State's Attorney for the county where the body is found and give the known facts concerning the time, place, manner, and circumstances of the death.

Immediately on notification that an OCME case has occurred, the medical examiner or an investigator of the medical examiner must go to and take charge of the body. The medical examiner or the investigator must investigate fully the essential facts concerning the medical cause of death and, before leaving the premises, reduce these facts and the names and addresses of witnesses to writing, which must be filed in OCME.

The medical examiner or the investigator must take possession of and deliver to the State's Attorney or the State's Attorney's designee any object or article that, in the opinion of the medical examiner or the investigator, may be useful in establishing the cause of death.

If an autopsy is considered necessary and performed, the individual performing the autopsy must prepare detailed written findings during the progress of the autopsy. OCME must promptly deliver to the State's Attorney for the county where a body was found a copy of each record that relates to a death for which the medical examiner considers further investigation advisable. A State's Attorney may obtain from OCME a copy of any record or other information that the State's Attorney considers necessary.

Access to Public Records: Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any Public Information Act Manual published by OAG.

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time.

A custodian has to deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, personnel records, certain hospital and school records, records of certain State agencies, certain recorded and surveillance images, and captured plate data collected by automatic license plate reader systems. Denial of inspection is required for information in a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. Permissible denials include information relating to documents that would not be available through discovery in a lawsuit, certain information about publicly administered tests, research projects conducted by an institution of the State or a political subdivision, real estate appraisals of property to be acquired by the State prior to its acquisition, certain information on inventions owned by State public higher educational institutions, and trade secrets or confidential information owned by the Maryland Technology Development Corporation.

The Office of the Public Access Ombudsman reviews and resolves disputes between applicants and custodians over requests for public records, including disputes over (1) the custodian's application of an exemption; (2) redactions of information in the public record; (3) the custodian's failure to timely produce a public record or to disclose all records relevant to the request; (4) overly broad requests for public records; (5) the amount of time a custodian needs, given available staff and resources, to produce public records; (6) requests for or denials of fee waivers; and (7) repetitive or redundant applicant requests.

State Expenditures: State law enforcement agencies can implement the bill with existing budgeted resources. For example, the Maryland Transportation Authority (MDTA) advises that MDTA Police already has a policy in place regarding homicide investigations. Any additional requirements stemming from the bill can be met with existing resources.

The Natural Resources Police (NRP) within the Department of Natural Resources indicates that homicide investigations by NRP are rare. According to NRP, with the exception of providing a final report to the family, the bill's requirements codify existing practice. While NRP does not have a written policy, it can develop and adopt one with existing resources.

Additional Comments: The Department of State Police (DSP) notes that the bill's provision requiring that the written policy include a requirement that the scene of a homicide be protected from outside disturbance until the investigation is complete may be problematic. DSP advises that an investigation can take months or even years; thus, this requirement may not be feasible if the scene is a public place or a home in which an individual resides.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Frederick and Montgomery counties, Comptroller's Office, Department of General Services, Department of Health and Mental Hygiene, Department of Natural Resources, Department of Public Safety and Correctional Services, Department of State Police, Maryland Department of Transportation, Department of Legislative Services

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