

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 760
 Judiciary

(Delegate Washington, *et al.*)

Criminal Procedure - Criminal Citations - Reporting

This bill establishes a data collection and reporting program related to race-based issuance of criminal citations. The bill requires each law enforcement agency in the State to collect specified data on all citations issued and to adopt a policy against race-based issuance of citations. Related requirements are established for the Maryland Police Training and Standards Commission (MPTSC), the Maryland Statistical Analysis Center (MSAC), and the Administrative Office of the Courts (AOC).

Fiscal Summary

State Effect: General fund expenditures increase by at least \$520,300 in FY 2020. Future year expenditures are annualized and reflect ongoing costs. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	520,300	10,600	10,900	11,300	11,700
Net Effect	(\$520,300)	(\$10,600)	(\$10,900)	(\$11,300)	(\$11,700)

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

Local Effect: Potential minimal increase in local expenditures to meet the bill’s data collection and reporting requirements. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires a law enforcement officer to record specified information in connection with each citation issued, including the offender's race and ethnicity and whether or not a citation was issued in lieu of making an arrest or if an arrest was made.

A law enforcement agency must adopt a policy against race-based issuance of citations that is to be used (1) as a management tool to promote nondiscriminatory law enforcement and (2) in the training and counseling of officers. The policy must:

- prohibit the practice of using an individual's race or ethnicity as the sole justification to issue a citation;
- make clear that it may not be construed to alter the authority of a law enforcement officer to make an arrest, conduct a search or seizure, or otherwise fulfil the officer's law enforcement obligations; and
- provide for the law enforcement agency to periodically review the data collected and to review the annual report of MSAC to promote nondiscriminatory law enforcement and use in the training and counseling of its officers.

By December 31, 2019, MPTSC, in consultation with MSAC, must develop (1) guidelines that each law enforcement agency may use as a management tool to evaluate specified data collected for use in counseling and improved training and (2) a model policy against the race-based issuance of a citation that a law enforcement agency can use in developing its own policy. MPTSC and MSAC, in consultation with AOC, must develop a format for the efficient recording of the required issuance of citations data. In addition, by December 31, 2019, MPTSC and MSAC, in consultation with AOC, must develop a procedure for (1) the compilation of the required data for the calendar year as a report in the developed format and (2) the submission of the report to MSAC not later than March 1 of the following calendar year, beginning March 1, 2021.

MSAC is charged with analyzing the submitted reports based on a methodology developed in consultation with MPTSC. By September 1 of each year, beginning September 1, 2021, MSAC must submit a report of the findings, disaggregated by jurisdiction and law enforcement agency, to the Governor and the General Assembly as well as to each law enforcement agency.

Current Law: There are no statutory provisions governing the use or study of racial profiling in connection with the issuance of citations in the State.

A police officer must issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the

maximum penalty of imprisonment is 90 days or less, except for (1) failure to comply with a peace order or protective order; (2) violation of a condition of pretrial or posttrial release while charged with a sexual crime against a minor; (3) possession of an electronic control device after conviction of a drug felony or a crime of violence; (4) violation of an out-of-state domestic violence order; or (5) abuse or neglect of an animal. A police officer may also charge by citation, as specified, for (1) the sale of an alcoholic beverage to an underage drinker or intoxicated person; (2) malicious destruction of property valued at less than \$500; and (3) misdemeanor theft of property or services valued at less than \$1,000.

A police officer may charge a defendant by citation only if (1) the officer is satisfied with the defendant's evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

Background: In 2001, Chapter 343 required the State's law enforcement agencies to adopt a policy against race-based traffic stops that is to be used as a management tool to promote nondiscriminatory law enforcement practices. Chapter 343 phased in the effective date for law enforcement agencies over a three-year period: January 2002 for agencies with 100 or more officers; January 2003 for agencies with 50 or more officers; and January 2004 for all other agencies. Data collection was originally required for a five-year period (until December 31, 2006) with a final report due by August 31, 2007.

Provisions under Chapter 343 were statutorily extended in 2006 and 2007. Chapter 25 of 2006 extended the termination date for these requirements until December 31, 2007, and required the final report on traffic stop data from MSAC to be submitted by August 31, 2008, rather than August 31, 2007. Under Chapter 25, the termination date of Chapter 343 was extended to August 31, 2008, from August 31, 2007. Chapter 220 of 2007 extended the requirements until December 31, 2009, and required a final report from MSAC to be submitted by August 31, 2010.

Chapter 173 of 2011 reconstituted the data collection and reporting program related to race-based traffic stops. The reporting and data collection requirements took effect July 1, 2011, and terminated June 30, 2014. Since July 1, 2014, only the requirements for law enforcement agencies to maintain nondiscriminatory policies continue.

State Expenditures: There are approximately 155 law enforcement agencies in the State that may be subject to the bill's reporting requirements. Thus, the overall fiscal effect on

the State is unclear. Based on the information gleaned from various State agencies, however, general fund expenditures increase by at least \$520,333 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date.

Administrative Office of the Courts

AOC advises that there were approximately 25,270 criminal citations filed in the District Court in fiscal 2018. Due to the reporting requirements, AOC must update the Judiciary case management systems. As a result, general fund expenditures for AOC increase by \$317,928 in fiscal 2020 only. This estimate includes \$293,928 for programing changes and \$24,000 for updating and reprinting of citation books.

Maryland Police Training and Standards Commission

General fund expenditures for MPTSC increase by \$9,081 in fiscal 2020 only. This estimate reflects the cost of hiring a part-time contractor for nine months to assist with developing a format, guidelines, and a model policy prohibiting the race-based issuance of citations. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. It 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.

Department of State Police

General fund expenditures for the Department of State Police (DSP) increase by \$180,000 in fiscal 2020 only, for programing changes to DSP's electronic citation system.

Maryland Statistical Analysis Center

MSAC did not provide information regarding its estimated costs to assist with the development of procedures, analyze the submitted reports, and complete the required reports. However, based on prior race-based traffic stop legislation, this analysis estimates that general fund expenditures for MSAC increase by at least \$13,324 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring one part-time, contractual statistical analyst to receive data from all law enforcement agencies in the State, compile and analyze the data, and write the required reports. It includes a contractual salary, fringe benefits, and minimal ongoing operating expenses.

Contractual Position	0.5
Salary and Fringe Benefits	\$8,199
Operating Expenses	<u>5,125</u>
Total FY 2020 State Expenditures	\$13,324

Future year expenditures reflect a full salary with annual increases and employee turnover and 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.

State Law Enforcement Agencies

The bill requires State law enforcement agencies to collect and compile specific data relating to the issuance of criminal citations. Actual reporting costs, if any, for the affected law enforcement agencies cannot be specifically enumerated until the reporting forms and formats are developed and put into place. However, the Department of General Services, Maryland Transportation Authority, and Department of Natural Resources all report that the bill does not affect their finances. The Maryland Transit Administration Police Force advises that the bill has minimal impact on the agency. Towson University reports that the requirements under the bill likely require an additional 30 to 40 hours of work annually.

Local Expenditures: The bill also requires local law enforcement agencies to collect and compile specific data relating to the issuance of criminal citations. Similar to State law enforcement agencies, actual reporting costs, if any, for the affected law enforcement agencies cannot be specifically enumerated until the reporting forms and formats are developed and put into place. However, Harford and Montgomery counties, the City of College Park, and the Maryland Association of Counties report minimal or no fiscal impacts as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 566 (Senator Lee) - Judicial Proceedings.

Information Source(s): Harford and Montgomery counties; Maryland Association of Counties; City of College Park; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Department of General Services; 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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