

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 502 (Delegate Crutchfield)
 Judiciary

Office of the State’s Attorney – Collection and Publication of Prosecutorial Information

This bill requires each State’s Attorney to collect and disclose to the Governor’s Office of Crime Prevention, Youth, and Victim Services (GOCPYVS) specified information related to each prosecuted case. GOCPYVS must determine an implementation schedule for the disclosure of information and begin publishing the data online by May 1, 2023. The bill also requires a State’s Attorney to collect and publish on its own website specified information about office policies and office personnel by April 1, 2022.

Fiscal Summary

State Effect: General fund expenditures increase by \$105,300 in FY 2022. Future years reflect annualization. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	105,300	167,000	131,000	135,600	140,400
Net Effect	(\$105,300)	(\$167,000)	(\$131,000)	(\$135,600)	(\$140,400)

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

Local Effect: Significant increase in expenditures for State’s Attorneys’ Offices beginning in FY 2022. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Requirement to Collect and Disclose to the Governor's Office of Crime Prevention, Youth, and Victim Services Information Related to Prosecutions

Each State's Attorney must collect and disclose to GOCPYVS specified information for each case prosecuted, including (1) the case, indictment, and docket numbers; (2) the defendant's race, gender, and disability status, if any; (3) the dates of the incident and arrest; (4) the primary arresting agency and the charges listed on the arresting agency's paperwork; (5) the reason the State's Attorney declined to prosecute the arrest, if applicable; (6) the charges brought by the State's Attorney and the prosecutor who brought the charge; (7) whether the defendant was determined eligible for court-appointed counsel, and the proceeding where the determination was made; (8) whether and how diversion was offered, as specified; (9) the prosecutor's recommendation on bail or bond, including release conditions, and other information regarding bail, bond, and release conditions; (10) the date range of any pretrial detention and information related to whether a risk assessment or other algorithm-based or quantitative tool was used in determining pretrial detention, bail, or bond, as specified; (11) specified information regarding plea offers and discovery; (12) the presiding judge at various stages of the case; and (13) information regarding the disposition, sentence, supervision terms, and any applicable fines or fees.

Each State's Attorney must record and maintain the information described above for at least 10 years.

Requirement to Collect and Publish Online Information Related to Office Policies and Personnel

Each State's Attorney must collect and publish on its own website all office policies related to specified items, including (1) charging and charge dismissal; (2) bail, sentencing, and plea bargains; (3) grand jury practices; (4) witness treatment, including when and how to procure a material witness warrant; (5) how a decision is made to prosecute a minor as an adult; (6) how fines and fees are assessed and criminal and civil forfeiture practices; (7) mental health and substance abuse screenings; (8) domestic violence survivors; (9) diversion practices and policies; (10) human resources, including hiring, evaluating, promoting, and rotation among divisions or units and internal discipline policies and procedures; (11) victim services; and (12) practices involving tracking and responding to an inmate application for parole and resentencing. If a State's Attorney does not maintain a policy related to these topics, the State's Attorney must affirmatively disclose that fact. A "policy" includes a procedure, guideline, manual, training material, direction, instruction, or any other piece of information.

Each State's Attorney must collect and publish on its website the age, gender, race, date hired, title, and disciplinary history of each attorney employed. The names and other personally identifying information collected and published in accordance with this requirement must be redacted or replaced with an anonymizing identifier.

Each State's Attorney must also collect and publish on its website the number of (1) attorneys on staff; (2) cases handled each year for each attorney; (3) attorneys who worked in the office in a temporary or contractual capacity during the immediate preceding calendar year; (4) paralegals and administrative staff employed by the office; (5) investigators utilized during the immediate preceding calendar year; (6) experts utilized during the immediate preceding calendar year, as specified; and (7) police or detectives who work directly for the office.

Beginning April 1, 2022, each State's Attorney must begin making publicly available all of the information relating to office policies and personnel by (1) publishing the information on the State's Attorney's website and (2) providing the information to any person who requests it directly from the State's Attorney. The State's Attorney must include with the information the effective date of the policy or the date the information was gathered. Additionally, each State's Attorney must publish revised, updated, or newly drafted policies or newly collected information on a timely basis at least once each year.

Governor's Office of Crime Prevention, Youth, and Victim Services

GOCPYVS must determine an implementation schedule and plan by which State's Attorneys must disclose all information collected relating to prosecutions by October 1, 2024. GOCPYVS must ensure the disclosure of information is performed in a uniform and consistent manner, but GOCPYVS's implementation schedule and plan may include implementation on a rolling basis that starts by prioritizing a subset of the data collected or that prioritizes disclosure from larger State's Attorney offices.

By October 1, 2022, and in accordance with the aforementioned implementation schedule and plan, each State's Attorney must begin disclosing data, as specified, about any person arrested or prosecuted to GOCPYVS for the immediately preceding calendar year. The State's Attorney must complete this required disclosure by January 31, 2023. By May 1, 2023, and annually thereafter, GOCPYVS must begin publishing online the data collected relating to prosecutions in a modern, open, electronic format, as specified. Data published may not contain individualized or identifying personal information about any person arrested or prosecuted.

By September 1, 2023, GOCPYVS must report on the data received from the State's Attorneys, comparing and contrasting the practices and trends among and between the State's Attorneys and identifying State's Attorneys that are not in compliance with the

bill. At least twice per year, GOCPYVS must publish issue-specific reports that provide in-depth analysis of one or more areas of prosecutorial decision making, and at least one report must focus on racial disparities.

Maryland Public Information Act Requests

A State’s Attorney may satisfy a Public Information Act request by referring the requesting party to the GOCPYVS website containing the data if the State’s Attorney is in compliance with the bill and, in good faith, reasonably believes that the request can be satisfied by reference to the data made publicly available under the bill. If an information request can be satisfied in this manner, the State’s Attorney need not affirmatively collect or disclose the particular information being requested. The requesting party may seek judicial review, as specified, to compel disclosure if the requesting party does not believe that the request can be satisfied in this manner and the State’s Attorney refuses to disclose the information being requested.

Miscellaneous

The bill contains a severability clause.

Current Law: Under § 15-302 of the Criminal Procedure Article, the State’s Attorneys’ Coordinator, with the approval of the State’s Attorneys’ Coordination Council, must establish and implement uniform reporting procedures for State’s Attorneys and professional staffs of State’s Attorneys to maintain and provide statistical data and information relating to prosecutorial functions and standards of the office of State’s Attorney.

State Expenditures: General fund expenditures for GOCPYVS increase by \$105,311 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one database administrator to build a data system and oversee data submissions from local State’s Attorney’s offices. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$99,730
Operating Expenses	<u>5,581</u>
Total FY 2022 State Expenditures	\$105,311

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses. In fiscal 2023, the estimate includes additional one-time database software costs of \$40,000.

Local Expenditures: Expenditures for each State's Attorneys' office increase significantly, reflecting costs for additional personnel, website and/or case management system upgrades, other technological costs, and, in some counties, office space for new personnel. Specific expenditures in the initial years depend to some extent on the implementation schedule developed by GOCPYVS for certain reporting requirements. However, the information below, as provided by State's Attorneys in numerous jurisdictions, illustrate the magnitude of anticipated costs to meet the bill's requirements once fully implemented. The estimated salary expenditures shown below do not account for fringe benefits. One-time and ongoing operating expenses typically associated with new employees, such as computer equipment, furniture, office supplies, *etc.*, are also not reflected.

- *Anne Arundel County:* Salary expenditures of more than \$500,000 annually to hire 11 case coordinators and 1 data analyst and estimated expenditures of \$20,000 annually to acquire office space.
- *Baltimore County:* Salary expenditures of more than \$695,000 annually to hire 5 assistant State's Attorneys and 6 paralegals and additional costs to create and maintain a database.
- *Calvert County:* Salary expenditures of more than \$194,000 annually to hire 1 assistant State's Attorney and 2 office assistants.
- *Caroline County:* Salary expenditures of more than \$160,000 annually to hire 2 data entry personnel and 1 quality control personnel.
- *Carroll County:* Salary expenditures of more than \$290,000 annually to hire 1 attorney, 2 senior paralegal level support staff, and 1 statistician/information technology (IT) professional, technology-related costs of approximately \$300,000 on a one-time basis, and \$100,000 annually in ongoing operating costs.
- *Cecil County:* Salary expenditures of more than \$610,000 annually to hire 6 attorneys, 3 paralegals, 1 statistician, and 1 IT specialist, capital expenditures of an estimated \$4.2 million to acquire or renovate office space, and additional costs of \$115,000 annually for website and case management upgrades.
- *Dorchester County:* Salary expenditures of more than \$140,000 annually to hire 1 assistant State's Attorney, 1 paralegal, and 1 administrative staff.

- *Frederick County*: Salary expenditures of more than \$448,000 annually to hire 4 assistant State's Attorneys, 3 legal office associates, and 1 statistician/IT analyst, one-time expenditures of an estimated \$300,000 for database development, and \$50,000 annually in ongoing costs for database maintenance.
- *Harford County*: Salary expenditures of more than \$736,000 annually to hire 7 assistant State's Attorneys, 3 paralegals, 1 data manager, and 1 computer engineer, and one-time expenditures of approximately \$350,000 for start-up supplies and materials.
- *Howard County*: Salary expenditures of more than \$1.1 million annually to hire 10 assistant State's Attorneys, 5 paralegals, 2 statisticians, and 1 IT specialist, and additional expenditures for website and case management upgrades.
- *Montgomery County*: Salary expenditures of approximately \$1.3 million annually to hire 1 assistant State's Attorney, 2 IT specialists, and 26 IT technicians, and one-time contractual costs of more than \$300,000 to hire temporary contractual workers (1 business analyst, 1 programmer, and 1 tester).
- *Washington County*: Salary expenditures of more than \$767,000 annually to hire 7 assistant State's Attorneys, 6 paralegals, 1 statistician, and 1 senior office associate, and expenditures of an estimated \$25,000 annually for contractual work related to website and case management upgrades.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 456 (Senator Sydnor) - Judicial Proceedings.

Information Source(s): Office of the Attorney General; Governor's Office of Crime Prevention, Youth, and Victim Services; Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association (State's Attorneys for Anne Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, and Washington counties); Department of Legislative Services

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