

**Department of Legislative Services**  
Maryland General Assembly  
2021 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 365  
Judiciary

(Delegate W. Fisher)

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**Criminal Procedure - Office of the Attorney General - Prosecution of Police Officer**

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This bill authorizes the Attorney General to prosecute a criminal case involving serious bodily injury or death allegedly caused by a police officer.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase, potentially significantly, for the Office of the Attorney General (OAG), as discussed below. Revenues are not affected.

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances, as discussed below.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** The Attorney General does not have general authority to prosecute crimes or issue subpoenas in the absence of specific statutory authority or an executive order. Prosecutorial and subpoena issuing authority have been granted by statute in certain instances, including enforcement and regulation under the Maryland Securities Act and the Maryland Consumer Protection Act.

**State Fiscal Effect:** OAG estimates that the bill necessitates as many as 57 additional staff (3 chief/lead investigators, 22 administrators/investigators, 24 assistant attorneys general, 2 principal counsels, 1 division director, 1 victim witness coordinator, and 4 support-related positions). General fund expenditures associated with these positions are estimated at

approximately \$6.3 million in fiscal 2022, increasing to approximately \$8.3 million by fiscal 2026.

OAG advises that its estimate is based on the assumption that although the language in the bill is only authorizing in nature, considering the high profile nature of police shootings, there will be an expectation for OAG to prosecute all cases involving serious bodily injury or death. However, the Department of Legislative Services (DLS) notes that the bill's grant of authority does not *require* additional prosecutions or mandate specific obligations that require increased expenditures. Because the bill is silent regarding any procedure by which OAG will exercise its authority to prosecute such cases, it is unclear how often it will happen. For purposes of this analysis, it is assumed that OAG will prosecute cases at the request of a State's Attorney and may also elect to prosecute cases that the State's Attorney has chosen not to prosecute.

DLS notes that based on available information, it is unclear whether staffing levels of the magnitude provided by OAG are warranted even if every case eligible for prosecution by OAG (serious bodily injury or death allegedly caused by an officer) would be referred to or otherwise prosecuted by OAG. For instance, according to a 2020 [report](#) from the Governor's Office of Crime Prevention, Youth, and Victim Services, in calendar 2019, there were a total of 31 civilian deaths involving a law enforcement officer in Maryland. Of the 31 deaths, the Medical Examiner's Office classified 18 as homicide by law enforcement, 5 as suicide, 7 as accidental, and 1 from overdose. All 18 homicides by law enforcement involved the fatal shooting of the individual. Assuming that such numbers remain relatively constant, fewer than 20 cases per year involving death allegedly caused by an officer would likely even be potentially eligible for OAG prosecution. Furthermore, according to a 2020 [report](#) from the Maryland Police Training and Standards Commission, there were 49 incidents in 2019 in which direct officer contact resulted in serious injury *or* death of the officer or person.

DLS acknowledges that the cases that *may* be prosecuted under the bill by OAG are complex and require significant resources by the prosecuting entity. DLS also assumes that although the bill's provisions are authorizing in nature, OAG will prosecute cases if requested to do so by a local State's Attorney and will not be able to do so using existing resources. Furthermore, OAG may elect to prosecute other cases that local State's Attorneys have declined to prosecute. However, without actual experience under the bill (*i.e.*, whether and how often State's Attorneys will request OAG to prosecute cases or OAG will otherwise elect to prosecute cases), a reliable fiscal estimate of the bill's provisions cannot be provided beforehand. *For illustrative purposes only*, general fund expenditures associated with hiring one assistant attorney general and one investigator are approximately \$250,000 annually.

**Local Fiscal Effect:** Although some cases that would otherwise be prosecuted by local State's Attorneys' offices may instead be prosecuted by OAG, it is assumed that such impact does not materially affect local government finances or operations.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Charles, Frederick, and Montgomery counties; City of Havre de Grace; Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2021  
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