

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1035 (Delegate Atterbeary)
 Judiciary

State Government – Attorney General – Independent Law Enforcement
 Prosecution Unit

This bill establishes an Independent Law Enforcement Prosecution Unit in the Office of the Attorney General (OAG). The unit’s purpose is to (1) investigate each incident involving a shooting by a police officer or other use of physical force by a police officer that results in death and (2) if sufficient grounds exist for the prosecution of criminal conduct, prosecute the police officer involved. Beginning in fiscal 2023, the Governor must include an appropriation of at least \$5.0 million annually in the budget bill for the unit. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by a minimum of \$843,600 in FY 2022; future years reflect the bill’s minimum mandated appropriation. Revenues are not affected. **This bill establishes a mandated appropriation beginning in FY 2023.**

(\$ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0.8	5.0	5.0	5.0	5.0
Net Effect	(\$0.8)	(\$5.0)	(\$5.0)	(\$5.0)	(\$5.0)

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

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary:

Independent Law Enforcement Prosecution Unit

A law enforcement agency must notify the unit of any shooting involving a police officer or other incident involving the use of physical force by a police officer that results in death as soon as the law enforcement agency becomes aware of the incident. The unit must investigate each such shooting and incident, and a law enforcement agency must cooperate with the investigation. On completion of an investigation, the unit must issue a public report of its findings.

Following an investigation, the unit must also provide a copy of the investigation's results to the State's Attorney for the jurisdiction in which the officer-involved incident occurred. The unit has the first opportunity to prosecute or decline to prosecute a police officer involved in an incident; if the unit declines to proceed with a prosecution, the State's Attorney may proceed with a prosecution at the discretion of the State's Attorney.

The bill establishes a mandated appropriation of at least \$5.0 million annually for the unit beginning in fiscal 2023. In cooperation with the Secretary of Budget and Management, the Attorney General must set minimum salaries, qualifications, and standards of training and experience for positions within the unit.

The Attorney General may adopt regulations necessary to carry out the bill.

Other Reporting Requirements

Beginning December 1, 2022, and each year thereafter, the unit must report to the Legislative Policy Committee (LPC) on the number of cases referred to the unit, the number of cases prosecuted by the unit, the number of cases that the unit declined to prosecute, the number of cases that the State's Attorney elected to prosecute, and the outcome for cases prosecuted by the unit.

By December 1, 2021, the unit must report to LPC on resources needed for the unit to investigate each shooting or other incident involving the use of physical force by a police officer that results in serious bodily injury.

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 Expenditures: General fund expenditures for OAG increase by a minimum of \$843,639 in fiscal 2022, as discussed below. Beginning in fiscal 2023, general fund expenditures increase by \$5.0 million annually, which reflects the minimum mandated appropriation established in the bill.

OAG estimates that the bill necessitates 26 additional staff (3 chief/lead investigators, 12 administrators/investigators, 6 assistant attorneys general, 1 principal counsel, 1 division director (assumed to be an attorney), and 3 support-related positions). General fund expenditures associated with these positions are estimated at approximately \$2.8 million in fiscal 2022 (which accounts for a 90-day start-up delay), increasing to almost \$3.7 million in fiscal 2026. As such, beginning in fiscal 2023, OAG's estimated expenditures would be covered by the bill's mandated appropriation of at least \$5.0 million annually.

The Department of Legislative Services (DLS) advises, however, that the volume of cases anticipated under the bill is unlikely to require staffing of the magnitude reported 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. According to the prior year's [report](#), in calendar 2018, there were a total of 31 cases of civilian deaths involving law enforcement officers from 14 law enforcement agencies in Maryland. Of the 31 deaths, the medical examiner's office classified 14 as homicide by law enforcement, 7 as suicide, 8 as accidental, 1 as from natural causes, and 1 from overdose. All 14 homicides by law enforcement involved the fatal shooting of the individual.

Assuming that these numbers remain relatively constant, fewer than 30 cases would be investigated by OAG each year. The report cited above captures all officer-involved deaths, some of which do not involve a shooting or any use of physical force by an officer and would therefore not be affected by the new procedures set forth in the bill. The staffing estimate provided by OAG, which included 15 investigator-related positions, would therefore equate to each investigator/administrator handling fewer than 2 to 3 cases per year, with 3 senior investigators also available to assist. Although information regarding average caseloads for similar positions in law enforcement agencies/State's Attorneys' offices is not readily available, for purposes of this analysis it is assumed that the average investigator handles more than 2 or 3 cases per year in these offices.

Although the bill requires OAG to investigate all shooting/use of force cases that result in death, it is unlikely that all of the cases investigated will result in prosecution. Consistent with case trends in prior years, it is likely that some of the deaths investigated will be determined to be the result of something other than criminal conduct for which sufficient grounds exist for prosecution. As evidenced in the reports cited above, fewer than 20 cases investigated in each of the years were deemed to be a homicide. Even if approximately 20 cases investigated per year result in a prosecution by OAG, DLS advises that eight attorneys are not required to prosecute 20 homicide cases annually (and/or provide legal support for the investigations).

DLS acknowledges that the cases to be investigated and potentially prosecuted under the bill by OAG are complex and require significant resources. Furthermore, the limited case volume and the continued authority for local State's Attorneys to potentially prosecute the cases present their own challenges from a budgetary and administrative standpoint. For example, OAG will be responsible for investigating (and authorized to prosecute) cases statewide, potentially causing operational difficulties in appropriately directing resources around the State in the manner necessary to facilitate prompt investigations when incidents occur and ensuring availability for potential prosecutions resulting from the investigations. Accordingly, while DLS does not agree that staffing of the magnitude estimated by OAG is necessary, it does recognize these challenges along with the fact that case trends each year, the circumstances of the cases, and actual experience under the structure envisioned by the bill will impact expenditures in a way that cannot be comprehensively estimated beforehand. However, even based upon OAG's own estimate, and an assumption that OAG will generally use the opportunity it is afforded and prosecute all appropriate cases, the bill's minimum mandated appropriation of \$5.0 million annually beginning in fiscal 2023 is sufficient to cover anticipated expenditures.

Because the bill takes effect prior to the mandated funding, DLS advises that at a minimum, costs are incurred in fiscal 2022 for OAG to hire three attorneys (including one designated as the division director), four investigators, and a support/administrative position. Accordingly, general fund expenditures increase by a minimum of \$843,639 in fiscal 2022, which reflects a 90-day start-up delay. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Because the bill takes effect July 1, 2021, to the extent that positions are filled sooner, costs increase accordingly.

Positions	8.0
Salaries and Fringe Benefits	\$785,864
Operating Expenses	<u>57,775</u>
Minimum FY 2022 State Expenditures	\$843,639

This estimate does not include expenditures for any vehicles or related expenses that may be necessary for staff to travel to locations for the investigation/prosecution of a law enforcement-involved death.

Future year expenditures reflect the minimum mandated appropriation (\$5.0 million annually), which is sufficient to cover the full salaries (with annual increases and employee turnover) and ongoing operating expenses of the staff hired in fiscal 2022 as well as any additional staff that may be necessary.

Additional Comments: Although OAG did submit an *alternate* estimate for fewer investigators (3 total, instead of 15) if assistance from the Department of State Police (DSP) was available, for purposes of this analysis it is assumed that staff within OAG is primarily responsible for all investigations (with cooperation from the reporting law enforcement agency), particularly since OAG could conceivably have to investigate cases involving DSP. Therefore, this analysis is focused on OAG's estimate that did not factor in additional help from DSP.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Morgan State University; Comptroller's Office; Department of Budget and Management; Department of Natural Resources; Department of Public Safety and Correctional Services; Maryland Department of Health; Maryland Department of Transportation; Prince George's County; City of Bowie; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2021
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