

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1373
Judiciary

(Delegates Acevero and Lehman)

Attorney General and State's Attorney - Law Enforcement - Conflict of Interest

This bill prohibits the Attorney General or a State's Attorney from being involved in any decision related to an investigation, charge, or prosecution of a police officer for alleged criminal conduct while on duty if a conflict of interest exists, as specified.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, under the assumption discussed below.

Local Effect: The bill is not expected to materially affect local finances or operations, under the assumption discussed below.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that a conflict of interest exists when (1) the Attorney General (or a State's Attorney) investigating, charging, or prosecuting a police officer for alleged criminal conduct while on duty has received a monetary benefit, at any time, from a formal legal member organization or association representing a law enforcement agency or a police officer, as specified, and (2) the formal legal member organization or association representing the law enforcement agency or police officer provides legal representation to the police officer under criminal investigation for alleged criminal conduct that occurred while on duty. "Monetary benefit" means any financial benefit, including a direct financial campaign contribution.

If a conflict of interest exists for a State's Attorney under the bill, the Attorney General must assume responsibility for investigating, charging, or prosecuting the police officer. However, if the Attorney General investigating, charging, or prosecuting a police officer has a conflict of interest, the bill requires the court to appoint a special prosecutor to investigate, charge, or prosecute the police officer.

Current Law: Section 15-102 of the Criminal Procedure Article specifies that a State's Attorney generally must, in the county served by the State's Attorney, prosecute and defend on the part of the State all cases in which the State may be interested.

Chapter 132 of 2021 created an Independent Investigative Unit within the Office of the Attorney General (OAG) that is required to *investigate* all alleged or potential police-involved deaths of a civilian and may investigate any other crimes related to police misconduct that are discovered during an investigation.

State/Local Fiscal Effect: For the purposes of this fiscal and policy note, it is assumed that the bill's prohibition against the involvement of the Attorney General or a State's Attorney in decisions relating to the investigation, charging, and prosecution of police officers under certain circumstances – *i.e.*, when a conflict of interest exists due to the receipt of monetary benefits, including a direct financial campaign contribution from a certain organization or association – applies to the titular, elected heads of those offices, and not to staff attorneys (assistant Attorneys General, assistant State's Attorneys, *etc.*) who do not stand for election and therefore do not ordinarily receive campaign contributions. Assuming that under the bill, these staff attorneys remain eligible to carry on the work relating to the investigation, charging, and prosecution of police officers under the circumstances specified in the bill (and that the affected offices have the available resources to do so without any involvement from the conflicted Attorney General or State's Attorney), the operations of OAG and State's Attorneys' offices are not materially impacted.

However, if the bill is instead interpreted to prohibit the entire office from involvement in a case, the work of OAG and State's Attorney's offices is likely significantly impacted, depending on the volume of cases for which the conflict of interest will apply. Under that interpretation, it is assumed that general fund expenditures for OAG would increase, potentially significantly, to handle any such cases that local State's Attorneys' offices would no longer be eligible to handle. Similarly, expenditures would increase for scenarios under the bill that require a court-appointed special prosecutor, although the bill does not specify who would pay for the work performed by a special prosecutor.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery County; Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; University System of Maryland; Department of General Services; Maryland Department of Health; 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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