

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 866

(Senator McCray)(By Request - Baltimore City
Administration)

Judicial Proceedings

Baltimore Police Department - Consent Decree - Exceptions to State Law

This bill establishes that if the U.S. District Court for the District of Maryland determines that statutory requirements (specifically regarding investigations of alleged or potential police-involved deaths of civilians by the Independent Investigative Unit of the Office of the Attorney General (OAG) or police accountability and discipline provisions under Title 3 of the Public Safety Article) is in conflict or otherwise inconsistent with a provision or requirement of the consent decree (1) the inconsistent provision or requirement has no force or effect unless authorized by the court and (2) unless otherwise ordered by the court, Baltimore City and the Baltimore Police Department (BPD) must comply with the provision or requirement of the consent decree that is inconsistent with the statutory provisions. **The provisions of the bill that apply to police accountability and discipline take effect on the taking effect of Chapter 59 of 2021; that Act takes effect July 1, 2022. The remaining provisions take effect June 1, 2022, and remain in effect until the U.S. District Court for the District of Maryland terminates jurisdiction over the consent decree.**

Fiscal Summary

State Effect: The bill does not affect State operations or finances. Even though BPD is a State agency, funding for BPD is the responsibility of Baltimore City.

Local Effect: Although Baltimore City did not respond to requests for information about the potential fiscal effect of the bill, the bill is not anticipated to materially affect Baltimore City finances.

Small Business Effect: None.

Analysis

Bill Summary: “Consent decree” means the consent decree entered by the court on April 7, 2017, by and between the United States of America, the Mayor and City Council of Baltimore, and BPD to ensure that Baltimore City and BPD protect individuals’ statutory and constitutional rights, treat individuals with dignity and respect, and promote public safety in a manner that is fiscally responsible and responsive to community priorities.

Current Law:

Police Discipline: Chapter 59 of 2021, which takes effect July 1, 2022, repeals the Law Enforcement Officers’ Bill of Rights and establishes provisions relating to a statewide accountability and discipline process for police officers.

Police Accountability Boards: Pursuant to Chapter 59, each county must have a police accountability board to (1) hold meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies and the county government to improve matters of policing; (2) appoint civilian members to charging committees and trial boards; (3) receive complaints of police misconduct filed by members of the public; (4) on a quarterly basis, review outcomes of disciplinary matters considered by charging committees; and (5) by December 31 each year, submit a report to the governing body of the county that identifies any trends in the disciplinary process of police officers in the county and makes recommendations on changes to policy that would improve police accountability in the county.

The local governing body must (1) establish the membership of and the budget and staff for a police accountability board; (2) appoint a chair for a police accountability board, as specified; and (3) establish the procedures for recordkeeping by a police accountability board. An active police officer may not be a member, and to the extent practicable, the membership must reflect the racial, gender, and cultural diversity of the county.

Administrative Charging Committees: Pursuant to Chapter 59, each county must have one administrative charging committee to serve countywide law enforcement agencies and local law enforcement agencies in the county, and there must be at least one statewide administrative charging committee to serve statewide and bi-county law enforcement agencies. An administrative charging committee must (1) review the findings of a law enforcement agency’s investigation; (2) make a determination as to whether or not to administratively charge the police officer who is the subject of the investigation; (3) if the police officer is charged, recommend discipline in accordance with the law enforcement agency’s disciplinary matrix, as specified; (4) review any body camera footage that may be relevant to the matters covered in the complaint of misconduct; (5) authorize a police officer called to appear before an administrative charging committee to be accompanied by

a representative; (6) issue a written opinion that describes in detail its findings, determinations, and recommendations; and (7) forward the written opinion to the chief of the law enforcement agency, the police officer, and the complainant. An administrative charging committee is authorized to request specified information and make specified determinations.

Independent Investigative Unit: Chapter 132 of 2021 created an Independent Investigative Unit within OAG that is required to investigate all alleged or potential police-involved deaths of a civilian. In addition, the unit may investigate any other crimes related to police misconduct that are discovered during such investigations. In conducting investigations, the unit may act with the full powers, rights, privileges, and duties of a State's Attorney, including the use of a grand jury in any county. To investigate and assist with the investigation of alleged criminal offenses committed by police officers, the unit may (1) detail one or more police officers employed by the Department of State Police and (2) employ other civilian personnel as needed.

Within 15 days after completing an investigation, the unit must transmit a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter. Except as otherwise provided by law, the report must remain confidential through adjudication of any associated criminal case at the trial court level.

Additional Comments: In January 2017, the U.S. Department of Justice (DOJ) reached agreement on a consent decree with Baltimore City and BPD to address systemic issues identified during a DOJ investigation of BPD. Among other things, the decree (1) requires observation of BPD by an independent federal monitor; (2) creates a community oversight task force; (3) requires more officer supervision and training of officers on the use of de-escalation tactics; and (4) requires specified procedural changes to officer interactions with the public. Provisions of Chapters 59 and 132 may present conflicts with requirements for Baltimore City and BPD under the [consent decree](#).

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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km/lgc

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