

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 290

(Senator Smith)

Judicial Proceedings

Judiciary

Office of the Attorney General - Independent Investigations Division - Authority to Prosecute

This bill expands the investigative jurisdiction of the Independent Investigations Division (IID) of the Office of the Attorney General (OAG) and makes corresponding changes. The bill also expands the prosecutorial authority of the Attorney General with respect to criminal offenses discovered during IID investigations and police-involved incidents referred to the Attorney General by State’s Attorneys. The bill’s provisions apply to any police-involved incident that results in the death of an individual or injury to an individual that occurs on or after October 1, 2023. By January 31 each year, IID must submit a report to the Governor and the General Assembly on IID’s activities during the prior calendar year, including the number of investigations IID conducted and the number of prosecutions that were initiated as a result of an investigation by or a referral to IID.

Fiscal Summary

State Effect: General fund expenditures for OAG increase by \$548,900 in FY 2024. Future years reflect annualization, inflation, and elimination of one-time costs. Revenues are not affected. The FY 2024 budget as passed by the General Assembly includes \$548,900 contingent on the passage of the bill.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	548,900	641,800	668,400	695,700	729,700
Net Effect	(\$548,900)	(\$641,800)	(\$668,400)	(\$695,700)	(\$729,700)

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

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

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Investigative Jurisdiction of IID: Under current law, IID is the primary investigative unit for police-involved incidents that result in the death of *civilians* or injuries likely to result in death. OAG must determine whether an incident is police-involved and whether an injury is likely to result in death. IID must investigate all police-involved incidents that result in the death of *a civilian* or injuries that are likely to result in the death of *a civilian*. IID may investigate any other crimes related to police misconduct that are discovered during an investigation of these incidents.

The bill expands IID's investigative jurisdiction. The bill specifies that IID is the primary investigative unit for police-involved incidents that result in the death of *individuals* or injuries likely to result in death. OAG is still required to determine whether an incident is police-involved and whether an injury is likely to result in death. However, under the bill, IID must investigate all police-involved incidents that result in the death of *an individual* or injuries that are likely to result in the death of *an individual*. A State's Attorney may refer for investigation by IID a police-involved incident resulting in serious bodily injury to an individual that is not otherwise within IID's jurisdiction; however, IID may decline to investigate the referred incident. The bill also authorizes IID to investigate any other crime related to police misconduct that is discovered during these investigations (*i.e.*, investigations under IID's main jurisdiction and investigations of police-involved incidents referred to IID by a State's Attorney). As under current law, when investigating the matters described above, IID may act with the full powers, rights, privileges, and duties of a State's Attorney, including use of a grand jury in any county. The bill makes corresponding changes to IID's authority to use officers from the Department of State Police and civilian personnel to reflect the expansion of its investigative jurisdiction described above.

Required Reports: Under current law, within 15 days after completing an investigation, IID must transmit containing detailed investigative findings to the State's Attorney of the county that has jurisdiction to prosecute the matter. The bill repeals this requirement.

Prosecutorial Authority of the Attorney General: Under the bill, if the Attorney General determines that an investigation described above provides sufficient grounds for the prosecution of a criminal offense discovered in the course of the investigation, the Attorney General must have exclusive authority to prosecute the offense. However, a State's Attorney may prosecute a criminal offense under this exclusive prosecutorial authority of the Attorney General only at the request of the Attorney General.

The bill further establishes that the Attorney General, in the Attorney General's discretion, may prosecute a police-involved incident not otherwise within IID's investigative

jurisdiction if the incident is referred by a State’s Attorney to the Attorney General for prosecution.

Corresponding and Clarifying Changes: Under current law, a law enforcement agency must notify IID of any police-involved incident that results in the death of a *civilian* or injuries that are likely to result in the death of a *civilian* as soon as the law enforcement agency becomes aware of the incident. A law enforcement agency must cooperate with and may not impede IID in connection with the investigation of a *police-involved death of a civilian*. As a reflection of IID’s expanded investigative jurisdiction, the bill changes references to “a civilian” to “an individual” and alters the reference to a “police-involved death of a civilian” to an investigation conducted within IID’s jurisdiction.

The bill also clarifies that existing provisions addressing the Attorney General’s subpoena authority only apply to criminal investigations under IID’s investigative jurisdiction.

State Expenditures: General fund expenditures increase by \$548,900 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring two attorneys, one investigator, and one paralegal to assist IID/OAG in performing its expanded responsibilities under the bill. It includes salaries, fringe benefits, a vehicle, contractual services for use of force experts, one-time start-up costs, and ongoing operating expenses. The fiscal 2024 budget, as passed by the General Assembly, includes \$548,900 contingent on passage of the bill.

Positions	4.0
Salaries and Fringe Benefits	\$450,538
Vehicle	30,000
Contractual Services – Use of Force Experts	30,000
Other Operating Expenses	<u>38,362</u>
Total FY 2024 State Expenditures	\$548,900

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

IID is currently staffed with six attorneys, eight investigators, and one paralegal. IID shares a Public Information Act officer and a victim-witness coordinator with another office. OAG advises, and the Department of Legislative Services concurs, that the staffing and resources described above are needed for the division to fulfill its responsibilities under the bill based on (1) existing IID workloads; (2) projected IID caseloads under the bill; (3) the nature of cases IID may prosecute under the bill; and (4) IID’s statewide operations and responsibilities.

Local Expenditures: While the bill may reduce local prosecutorial caseloads, this estimate assumes that State's Attorney's offices will retain and redirect any resources currently devoted to local cases that are diverted to IID/OAG under the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 857 (Delegate Clippinger, *et al.*) - Judiciary.

Information Source(s): Somerset County; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2023
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