

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

February 15, 2021

To: The Honorable Luke Clippinger
Chair, Judiciary Committee

From: Office of the Attorney General

Re: HB1035 – State Government – Attorney General – Independent Law Enforcement
Prosecution Unit – **Letter of Information**

House Bill 1035 seeks to have the Office of the Attorney General investigate incidents involving the death of a person caused by a police officer and requires the Governor to include \$5,000,000 in the annual State budget to fund the responsible unit.

If this bill were to become law, the Office generated the attached memorandum and projected costs. The estimate was developed based on varying scenarios in which the Office would be responsible for the investigation and prosecution of these cases. We've included four different scenarios, the least expensive of which involves only investigating police use of force that results in death *with* Maryland State Police Troopers supervised by our investigators:

SCOPE OF WORK	TOTAL COST IN FY22
Death Investigations w/MSP Assistance	\$1,651,845
Death Investigations w/out MSP Assistance	\$2,845,450If
Death & Serious Injuries w/MSP Assistance	\$4,469,526
Death & Serious Injuries w/out MSP Assistance	\$6,341,399

MEMORANDUM

TO: Carolyn Quattrocki, Deputy Attorney General
FROM: KC Murphy, Director, Criminal Division
DATE: January 6, 2021
RE: Police Use of Force Unit Staffing

You have asked for an assessment of staffing needs in the event that the Maryland General Assembly tasks the OAG with the investigation and prosecution of allegations of unlawful police use of force resulting in death, and also those resulting in serious bodily injury. I have attempted to make a reasonable estimate based on available data regarding the number of incidents statewide, combined with knowledge of the time and resources needed for typical death investigations, police integrity matters, and cases involving serious injury.

I. Estimate of police-involved deaths statewide

Chapter 134 of 2015 (House Bill 954) requires law enforcement agencies to provide information to the Governor's Office on Crime Control and Prevention (GOCCP) regarding officer-related deaths. Chapter 134 defines an officer-involved death as "the death of an individual resulting directly from an act or omission of a law enforcement officer while the officer is on duty or while the officer is off duty, but performing activities that are within the scope of the officer's official duties."

According to the Governor's Office of Crime Control and Prevention's 2019 report, from 2014 through 2019, the State averaged 32 cases annually of officer-involved deaths of civilians.¹ In 2019, there were 31 reported deaths: the Office of the Chief

¹ Per criteria set forth in Chapter 134 of 2015, the Implementation Group determined that Maryland law enforcement agencies were required to report all civilian deaths:

- Resulting from any use of force by State or local law enforcement personnel acting either on duty, or off duty in the capacity of a law enforcement officer;
- Caused by injuries sustained while attempting to elude State or local law enforcement personnel or injuries incurred after custody had been established;
- In cases of suicide, only when the suicide occurs while law enforcement is present at the scene;

Medical Examiner 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.

It is worth noting that a significant number of the 2019 cases involve vehicular accidents (4 deaths of suspects who were fleeing in vehicles, and 2 deaths of bystanders in the course of a pursuit). Such incidents can require highly specialized investigations, and if the legislature intends to include those in the cases reviewed by the OAG, we would want to ensure that we can adequately respond. For example, our office could partner with the Maryland State Police and their highly trained accident investigation team. We should also be mindful that, although a number of the 2019 incidents were ultimately determined to be accidents or suicides, we would not be able to assume that at the time of the incident, and would likely need to respond to and do some initial investigation regarding deaths that ultimately are not attributed to police action or omission. Therefore, it seems reasonable to assume that the OAG should be resourced to respond to and investigate around 30 deaths annually. The number of resulting prosecutions will likely be some small percentage of those.

There is no magic formula for determining a case load of this nature. The cases are often high profile but limited in duration and scope, and we should be resourced to investigate quickly but thoroughly. Ideally, prosecutors should not have more than five or six high-profile investigations at any given time (understanding that cases will be in various stages of investigation and/or prosecution). Given that the unit should have a supervisory attorney, whether or not that attorney carries a full caseload may impact the work of the other attorneys. Additionally, these estimates presume that the attorneys in this unit are highly skilled with experience in death investigations, therefore requiring higher salaries. If salaries are such that the unit is staffed by less experienced attorneys, the caseloads should be lower, thus requiring additional attorneys. Assuming that highly experienced attorneys will staff the unit, there should be a minimum of 6 – 8 attorneys, plus a supervisory attorney.

The number of civilian investigators will rely heavily on the number of sworn personnel devoted to these investigations, so that variable is hard to predict. If the OAG were asked to stand up an entirely independent unit, one could anticipate the need for a minimum of 15 qualified investigators with the ability to provide a timely response to any incident in the state. These investigators should be experienced in death investigations, and compensated at a level much higher than entry-level positions. In order to attract and retain the personnel needed for these cases, compensation should

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- In cases of deaths as a result of drug overdose or medical condition, only when the fatal alcohol or other drug intoxications or medical conditions (e.g., cardiac arrest) occurred while law enforcement was attempting to detain or arrest the subject;
 - Occurring during the process of arrest by, or in the custody of, State or local law enforcement personnel;
 - Occurring while the individual is in the custody of State or local law enforcement personnel who were responding to a medical or mental health assistance or welfare call; or
 - Of bystanders while law enforcement is present and/or as the result of a law enforcement action.

also include overtime earnings to reflect the likelihood of long and sometimes erratic hours.

If a law enforcement partner such as MSP is designated to work with the OAG unit and is adequately resourced, a minimum of 2-3 civilian investigators would be helpful to assist with information gathering and analysis, and coordination with sworn personnel.

It is critical that a victim specialist is included in the unit to assist families and provide an open line of communication. These estimates do not include additional costs for support staff, investigative hardware, software, expert witnesses, travel expenses and incidental costs normally associated with criminal investigations and prosecutions.

II. Estimate of incidents resulting in ‘serious bodily injury’

Currently, there is inconsistent data available regarding the number of incidents in Maryland and elsewhere that documents the extent to which police use of force results in the serious injury of a subject.

Another variable in the analysis is the definition of ‘serious injury.’ Public Safety § 3-207 does not define ‘serious bodily injury’ for purposes of that section. We should ensure that any legislation in this arena clearly delineates the scope of injuries to be included. For example, the definition of “serious physical injury” in the Criminal Law Article, as it pertains to assault, is:

(d) “Serious physical injury” means physical injury that:

- (1) creates a substantial risk of death; or
- (2) causes permanent or protracted serious:
 - (i) disfigurement;
 - (ii) loss of the function of any bodily member or organ; or
 - (iii) impairment of the function of any bodily member or organ.

In accordance with Public Safety Article §3-207(b) (1), the Maryland Police Training and Standards Commission (PTSC) developed a system by which law enforcement agencies report to the Commission, as required by law, the number of serious officer-involved incidents each year, the number of officers disciplined each year, and the type of discipline administered to those officers. The PTSC approved the following definition of “serious officer-involved incident” as those in which: (1) Criminal charges were filed against an officer; or (2) Complaints of criminal

misconduct have been investigated and sustained against an officer; or (3) Complaints of excessive force have been investigated and sustained against an officer where the force resulted in serious injury or death of a person; or (4) An officer/person contact directly results in the serious injury or death of a person.

This data comes from 139 reporting agencies. According to the Commission, an additional 19 agencies are not defined as law enforcement agencies under the relevant Public Safety Article section and are therefore not required to report. For our purposes, the most meaningful data is derived from (4), above, because not all use of force instances result in a complaint that would be reflected in (2) and (3), and it is unclear whether the criminal charges considered in (1) above are limited to use of force, or include other nonviolent misconduct. Data from 2017 appears to be incomplete, and therefore is not included here.

For 2019, the Commission reports 49 instances where officer contact resulted in serious injury or death of the officer or person; in 2018 there were 26 reported instances where officer contact resulted in serious injury or death of the officer or person.² Comparing these numbers to the GOCCP summary above for 2019, one could conclude that there were 17 incidents of serious injury that did not result in death (this assumes that the data in the two reports correspond, which may be a poor assumption).

However, data from the Maryland State Police presents a somewhat different picture. From 2016 through 2019, MSP reports that an average of 98 subjects were injured in use of force incidents annually; an average of 53 of those subjects were taken to a hospital each year. That figure represents close to 20% of reported uses of force. Of those 53, it is unclear if they would be deemed to involve serious injury, but it does suggest that the universe of cases involving ‘serious injury’ is higher than indicated in the Commission’s reports.

Looking elsewhere, one can find statistical reporting in various jurisdictions that may provide additional context. According to data from the Anne Arundel County Police Department, in 2019, the agency reports 135 uses of force; two suspects reported broken bones, one suspect reported a dislocated shoulder, and one suspect death occurred. Those four incidents equal around 3% of use of force incidents.

Howard County, for example, reports 269 uses of force in 2019. The data doesn’t specify how many of those incidents resulted in injury. Similarly, Baltimore County reports 270 uses of force.

² There is a discrepancy between the Commission’s reported 26 instances of death or serious bodily injury in 2018, compared to the GOCCP figure of 31 reported deaths involving an officer in 2018. This may be due to different terminology or a difference in reporting compliance – for now, this difference is noted here simply for fuller understanding.

The Charles County Sheriff's Office reports that, in the last five years, there were 4 departmental shootings, one of which resulted in a fatality. Of the 567 arrests in which officers had to use some type of force to safely affect the arrest, 197 involved noticeable or possible injuries ranging from minor abrasions to injuries sustained when an officer had to use less than lethal or lethal force, but there is no further delineation of the seriousness of the injuries.

Data from one of the largest jurisdictions, Baltimore City, is not vastly different. Baltimore City Police Department reports on its website that in 2019, there were 6 instances of hospitalizations of a civilian due to police use of force in their jurisdiction, compared with 1 instance in 2018.³

The New York Police Department makes available fairly detailed reporting for its use of force data. It distinguishes between uses of force resulting in "substantial" injuries, which generally require treatment at a hospital, and "serious" injuries, which generally require admission to a hospital. A third category captures minor physical injury. In 2019, the number of serious physical injuries represents around 4% of the 3,658 total uses of force citywide.

If we apply the 4% to the numbers of force incidents reported in Anne Arundel and Howard Counties, above, it translates to 5.4 and 10.7 cases, respectively. For the purposes of this memo, if we assume that the larger jurisdictions in the state have somewhere from a minimum of 4-15 serious injuries annually (Baltimore, Prince George's, Montgomery, Baltimore County, Anne Arundel, Howard), that could be as many as 90 cases. Even if the remaining jurisdictions combined report half that number, the universe of cases could easily exceed 130 incidents. MSP data adds potentially 30-60 additional cases (though it is likely, based on the NYPD data, that some number of these do not involve 'serious' injury).

It is also critical that we establish whether vehicular injuries/deaths should be included, as these account for a significant number of injuries statewide and can involve highly specialized investigations. In 2019, for example, Maryland State Police report that 18 vehicle pursuit incidents resulted in injuries to four involved citizens, and 2 resulted injuries to uninvolved citizens.

For purposes of this memo, let's assume 150 instances of serious injury due to police contact in a calendar year. Assuming these numbers reflect death investigations also, and we strive for a caseload of no more than five or six active investigations per prosecutor, this caseload translates (ideally) to around 25 prosecutors in the unit. Given that some number of those cases may be closed more quickly than others, the unit may

³ Interestingly, the report enumerated the number of civilians *transported* to the hospital as the result of police interaction in 2017 (as opposed to admission to a hospital); that number was 242.

be able to function with some smaller number, at least in its first year. It is also likely that some number of the non-fatal use of force cases will not be as complex, and therefore less time- and resource-intensive. Again, this presumes that the attorneys are well beyond entry level, and are compensated as such. The added workload could easily double the number of investigators described above (which could vary depending on available enforcement resources).

If vehicular injuries/fatalities are to be included in the work of the unit, that could easily add another 2-4 prosecutors, preferably those with experience in crash investigation and/or vehicular manslaughter cases.

III. Summary of recommendations

	Death Investigations	Death Investigations + Serious Injury
Attorneys	7	25
Supervising attorney	1	2
Investigators (civilian)	15/3*	25/6*
Victim/Witness	1	1
Support Staff	2	4

*distinguishes between fully independent unit, and unit with law enforcement partners. These numbers really could fluctuate, depending on the commitment of law enforcement resources.

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Sources:

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cc: Committee Members