

Subject: Action – Bill 1-19, Police – Officer Involved Death – Independent Investigation	
Purpose: Final action – vote expected	
Analyst: Robert H. Drummer, Senior Legislative Attorney	Committee: PS
Keywords: #LawEnforcementTransparency Other search terms: LETT Act, officer involved death, and police investigation	

EXPECTED ATTENDEES

Acting Police Chief Russell Hamill
Assistant Police Chief Dave Anderson
FOP President Torrie Cooke

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATIONS

1) The PS Committee:

- a. approved an amendment that would require the Executive to report to the Council on efforts to obtain an agreement with another law enforcement agency to perform an independent investigation and explain what attempts were made if the Executive is unsuccessful;
- b. approved an amendment to permit withholding the report from the public for the 7 reasons a custodian can withhold an investigatory report from a person in interest under the MPIA;
- c. approved an amendment clarifying that the County Police can perform routine police work at the scene and assist the independent investigators in a support role as necessary;
- d. rejected an amendment requested by the Police Department to include a sunset provision for part of the Bill; and
- e. approved an amendment to require the independent investigators to be sworn officers; and
- f. approved an amendment to require investigators to have homicide and law enforcement officer use of force investigation experience.

The Committee recommended (3-0) approval of the Bill with amendments.

DESCRIPTION/ISSUE

Bill 1-19 would:

- (1) require an independent investigation of an officer involved death;
- (2) establish qualifications for an independent investigator of an officer involved death;
- (3) require the independent investigators to submit a final written report to the State's Attorney; and
- (4) make the written report public under certain circumstances.

SUMMARY OF KEY DISCUSSION POINTS

- Qualifications of independent investigators.
- What happens if Executive cannot find another law enforcement agency to do the investigations?
- When should the investigation report be made public and what should be confidential?
- What role should the County police play in the investigation of an incident?

This report contains:

Staff Report to the Council

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MEMORANDUM

May 3, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 1-19, Police – Officer Involved Death – Independent Investigation

PURPOSE: Action – Roll call vote required

Public Safety Committee recommendation (3-0): approve the Bill with amendments.

Expected attendees:

Acting Police Chief Russell Hamill
Assistant Police Chief Dave Anderson
FOP President Torrie Cooke

Bill 1-19, Police – Officer Involved Death – Independent Investigation, sponsored by Lead Sponsor Councilmember Jawando and Co-Sponsors Councilmembers Rice, Riemer, Council President Navarro, and Councilmember Albornoz, Council Vice-President Katz and Councilmembers Friedson, Glass and Hucker, was introduced on January 15, 2019. A public hearing was held on March 5 with 20 speakers. The Public Safety Committee held worksessions on March 25 and April 12 and made several amendments to the Bill.

Bill 1-19 would:

- (1) require an independent investigation of an officer involved death;
- (2) establish qualifications for an independent investigator of an officer involved death;
- (3) require the independent investigators to submit a final written report to the State's Attorney; and
- (4) make the written report public under certain circumstances.¹

Background

Bill 1-19, as amended by the Public Safety Committee, would require the Executive to ensure that an independent investigation is performed of each officer involved death unless the Executive is unable to find another law enforcement agency to partner with. If the Executive is unable to find another law enforcement agency by January 1, 2020, the Executive must submit a report to the Council explaining the efforts to do so. The investigation must be performed by at least 2 independent investigators with experience and expertise in conducting homicide and law

¹ #LawEnforcementTransparency

Other search terms: LETT Act, officer involved death, and police investigation.

enforcement officer use of force investigations. The independent investigators must be employed by a local law enforcement agency located outside the County or a Federal or State law enforcement agency. These qualifications are important to ensure that the investigators have the necessary expertise and independence to adequately investigate the incident. Councilmember Jawando explained the goals of this Bill in a memorandum at ©5.

The investigators must submit a report to the State's Attorney. The report must be released to the public if no criminal charges are brought against the involved officer or officers or after the conclusion of the criminal case to the extent permitted by law with certain discretionary exceptions adopted from the Maryland Public Information Act. The Bill would not prevent the Police Department from conducting an internal investigation for possible discipline under the Law Enforcement Officers' Bill of Rights. The Bill would also not prohibit the Police Department from providing routine police duties at the scene of the incident or assisting the independent investigators during the investigation.

OMB was unable to estimate the fiscal impact of the Bill because the County does not currently have an agreement with an outside law enforcement agency to conduct these investigations that can be reviewed. Finance concluded that the Bill would not have an economic impact on the County. See ©7-10.

Public Hearing

The Council held a lively public hearing with 20 speakers. County Police Chief Tom Manger supported the Bill's goals of ensuring a thorough, accurate, and impartial investigation of each officer involved death. See ©11-12. However, Chief Manger also testified that the Bill, as introduced, may present some operational barriers to ensuring the desired transparency and accountability of the Police Department. Chief Manger pointed out that the Executive does not have the authority to require another jurisdiction's police department to investigate an officer involved death occurring in the County. Chief Manger was also concerned that another jurisdiction agreeing to conduct the investigation may not have the resources at any given moment to complete the task in a professional manner.

Delegate Emily Shetty, who introduced a similar State-wide Bill in the General Assembly this year, supported the Bill. See ©13-14. Several witnesses supported the Bill but requested amendments. Dr. Melissa A. Clark, representing Moms of Black Boys United for Social Change, supported the Bill, but requested that it be expanded to include serious bodily injury. See ©15-16. Laurel Hoa, representing Showing Up for Racial Justice, requested amendments to require the investigation be performed by impartial civilians and that all reports be made public. See ©17-18. Katie Stauss on behalf of Takoma Park Mobilization similarly requested the investigations be done by civilians, all reports be made public, and expansion to bodily injuries. See ©19. Mike Mage also requested civilian investigators and that de-escalation training and related materials be placed on the Department website. See ©20.

Hessie Harris, representing the County Federation of Republican Women, opposed the Bill. See ©21-22. Each of the other witnesses supported the Bill, including representatives of the County ACLU (©23-24), the County NAACP (©25-26), and the Montgomery County Young Democrats (©27-28). Nick Asante, a sophomore at Richard Montgomery High School, spoke

eloquently about his personal experiences with racial profiling and racial inequity (©29-31). Marvin Whitfield, a friend of the County resident who was shot and killed by a County police officer last year, Robert White, spoke favorably about Mr. White's character and supported the Bill.

March 25 Public Safety Committee Worksession

Councilmember Jawando, Police Chief Tom Manger, Assistant Police Chief Dave Anderson, FOP President Torrie Cooke, Ed Lattner, County Attorney's Office, Tony Holness, ACLU, Legislative Analyst Susan Farag, and Senior Legislative Attorney Robert Drummer participated in the discussion. Councilmember Jawando submitted a memorandum to the Committee attached at ©85-86.

The Committee discussed the Bill and the issues raised in the Council staff report. The Committee:

1. requested Council staff to develop options for amendments that would require the Executive to report to the Council on efforts to obtain an agreement with another law enforcement agency to perform an independent investigation and explain what attempts were made if the Executive is unsuccessful;
2. decided not to amend the Bill to require civilians to perform an independent investigation;
3. decided not to amend the Bill to include excessive force complaints;
4. amended the Bill to require the independent investigators to be sworn officers;
5. amended the Bill to permit withholding the report from the public for reasons permitted under the MPIA;
6. amended the Bill to require investigators to have homicide and law enforcement officer use of force investigation experience; and
7. requested Council staff to develop amendments clarifying that the County Police can assist the independent investigators in a support role as necessary.

April 12 Public Safety Committee Worksession

Councilmember Jawando, Acting Police Chief Russell Hamill, Assistant Police Chief Dave Anderson, FOP President Torrie Cooke, and Senior Legislative Attorney Robert Drummer participated in the discussion.

The Committee discussed the Bill and the issues raised in the Council staff report. The Committee (3-0):

1. approved an amendment that would require the Executive to report to the Council on efforts to obtain an agreement with another law enforcement agency to perform an independent investigation and explain what attempts were made if the Executive is unsuccessful;
2. approved an amendment to permit withholding the report from the public for the 7 reasons a custodian can withhold an investigatory report from a person in interest under the MPIA;

3. approved an amendment clarifying that the County Police can perform routine police work at the scene and assist the independent investigators in a support role as necessary; and
4. rejected an amendment requested by the Police Department to include a sunset provision for part of the Bill.

The Committee recommended (3-0) approval of the Bill with amendments.

Issues

1. Should the Bill require the Executive to enter into an agreement with another law enforcement agency to conduct these investigations?

Police Chief Tom Manger testified that the County does not have an agreement with another jurisdiction's law enforcement agency to conduct an independent investigation of a police officer involved death.² Chief Manger further pointed out that the Executive does not have the authority to require another jurisdiction to enter into such an agreement. This is correct. The Council can, through legislation, require the Executive to solicit an agreement with another jurisdiction, but cannot require the Executive to succeed because the other jurisdiction is free to refuse. The Bill states, on lines 12-13, that the "Executive must ensure that an independent investigation is performed for each officer involved death."

One could argue that since there is no penalty attached to the Executive's failure to find a willing outside law enforcement agency to conduct an independent investigation, the obligation is not absolute. The Bill's use of the term "must" is the equivalent of using "shall." Maryland courts have long held that "shall" can be interpreted as directory rather than mandatory where a statute does not impose a penalty for failure to act. See *Pope v. Secretary of Personnel*, 46 Md. App. 716 (1980) (Court upheld decision of agency despite failing to issue decision within the time required by statute).

However, the use of the term "must" to require the Executive to enter into an agreement with another jurisdiction that the County has no control over remains ambiguous. The Committee requested Council staff to prepare possible amendments to require the Executive to report to the Council on efforts to secure a partner for the independent investigations if the Executive was unable to do so. Council staff prepared 2 alternative amendments to accomplish this.

Amendment for Failure to Reach Agreement – Alternative 1 at ©73 would require the Executive to report to the Council on efforts to secure a partner on or before the effective date of the Act, January 1, 2020. This Amendment continues to require the Executive to "ensure" an independent investigation but would create an off-ramp if the Executive is unable to do so.

² The State's Attorney has an informal agreement to have the Howard County States Attorney review a County police investigation of a police officer involved death to determine if criminal charges against an officer is warranted. This agreement would not satisfy the independent investigation requirement of the Bill because the police investigation would not be conducted by Howard County Police.

Amendment for Failure to Reach Agreement – Alternative 2 at ©74 creates the same reporting requirements if the Executive fails to secure a partner and changes the requirement to “ensure” an independent investigation to “make good faith efforts to ensure.”

Committee recommendation (3-0): approve Alternative 1 because it is closer to the original intent of the Bill. See lines 63-71 of the Bill at ©4.

2. Should the investigation be performed by civilians?

Some of the speakers requested an amendment to require civilians to perform the investigation. Advocates for this change argue that only a civilian who is not affiliated with any law enforcement agency can truly produce an independent review of an officer involved death. While some people may have greater trust in the independence of a civilian, the investigation of an officer involved death is a complex homicide investigation that requires significant training, experience, and resources. A poorly performed investigation by a completely independent and objective person is unlikely to lead to the transparency and fairness that everyone deserves. **Committee recommendation (3-0):** do not amend the Bill to replace an outside law enforcement agency with civilians. At the request of the Police Department, the **Committee agreed (3-0)** to amend the Bill to require the investigators be sworn. See line 15-16 of the Bill at ©2.

3. Should the Bill be amended to include all excessive force complaints against police officers?

Some of the speakers requested an amendment to expand the universe beyond an officer involved death to any excessive force complaint against an officer. Although an independent and transparent investigation should be completed for each excessive force complaint, an officer involved death is an extraordinary event that is substantively different than an excessive force complaint. The loss of life demands more scrutiny. In an excessive force complaint without the loss of life, the complainant can press the claim and participate in the investigation and any civil lawsuit resulting from the claim. As a practical matter, it may be difficult for the Executive to find an outside law enforcement agency to perform the required independent investigation of an officer involved death. Adding all excessive force complaints may make the Executive’s task impossible. **Committee recommendation (3-0):** do not amend the Bill to include all excessive force complaints.

4. Should the release of the written investigation report to the public be limited?

The Bill would require the written investigation report be made public if no criminal charges are filed against a police officer. The Bill, as introduced, restricts the release by stating it must be released “to the extent permitted by law.” The Maryland Public Information Act, MD Code, General Provisions, § 4-351(a) at ©80, permits a custodian to deny inspection of an “investigatory file for a law enforcement purpose.” Section 4-351(b) at ©80-81, limits the discretionary denial of inspection of an investigatory file by a “person in interest” when inspection would:

- (1) interfere with a valid and proper law enforcement proceeding;

- (2) deprive another person of a right to a fair trial or an impartial adjudication;
- (3) constitute an unwarranted invasion of personal privacy;
- (4) disclose the identity of a confidential source;
- (5) disclose an investigative technique or procedure;
- (6) prejudice an investigation; or
- (7) endanger the life or physical safety of an individual.

MD Code, General Provisions, § 4-343 permits a custodian to deny inspection of a record if inspection “would be contrary to the public interest.” See ©83-84. The Court, in *Mayor and City Council of Baltimore v. Maryland Committee Against the Gun Ban*, 329 Md. 78 (1993) explained:

In other words, the seven circumstances listed in § 10-618(f)(2) that permit the custodian to deny records of a police investigation to a party in interest are illustrative of the concerns that would make disclosure contrary to the public interest. Those seven circumstances, however, are not exclusive of the public interest concerns that can justify a refusal to permit inspection under § 10-618(f)(1). (§10-618 has been recodified as §4-351)

In *Mayor and City Council of Baltimore v. Maryland Committee Against the Gun Ban*, the Court held that the City could withhold the report from an organization that was not a person in interest even though the City’s reason did not fit one of the 7 reasons for denial of a request from a person in interest. The City refused to disclose the internal affairs report because the custodian felt it was unfair to the officers involved who were exonerated and promising confidentiality was necessary to secure witnesses for these investigations.

Since this is a discretionary denial instead of a mandatory denial under the MPIA, a County law that mandates disclosure of the investigatory file could eliminate a County employee’s discretion to deny inspection of any part of an investigatory file. Council staff has drafted 2 alternative provisions related to public disclosure of the written investigatory report.

Amendment for Publication of Report – Alternative 1 at ©75 would require a custodian to release the written report if no charges are filed or after the conclusion of the criminal case but permit the custodian to hold back all or part of the report only for the 7 reasons a custodian can deny disclosure to a person in interest under the MPIA.

Amendment for Publication of Report – Alternative 2 at ©76-77 would require a custodian to release the written report if no charges are filed or after the conclusion of the criminal case, but permit the custodian to hold back all or part of the report if the custodian finds release would be contrary to the public interest including 1 of the 7 reasons a custodian can deny disclosure to a person in interest under the MPIA.

The obvious reasons to deny inspection of an investigatory report are listed for denial to the person in interest. It is difficult to imagine what other reasons might be contrary to the public interest, but the General Assembly must have assumed there are other reasons.³ Alternative 2 is a

³ The decision in *Mayor and City Council of Baltimore v. Maryland Committee Against the Gun Ban* is an example of an additional reason the Court approved.

restatement of the MPIA. Since one of the purposes of the Bill is to create additional transparency of the investigation, Alternative 1 would further this original intent of the Bill. It should be noted that both Alternatives would apply this disclosure standard even if the Executive is unable to find a partner to perform the independent investigation.

Committee recommendation (3-0): approve Alternative 1. See lines 35-49 of the Bill at ©3.

5. Should the Bill expand on the type of experience the independent investigators must possess?

The Bill requires the independent investigators to have “experience and expertise in conducting complex criminal investigations.” County police investigators who handle force related investigations receive several advanced training courses in addition to the training on general investigation, specialized homicide/death investigation, and interview/interrogation that all detectives complete. The specialized force related investigation training includes:

- "Force Science" Certification Course
- Specialized courses through the "Institute for the Prevention of In-Custody Deaths"
- Diagle Law Group, Use of Force Summit
- ECW (Electronic Control Weapon aka Taser) Training
- CIT (Crisis Intervention Team) Training

Complex criminal investigations could include investigating fraud and other white collar crimes. The Bill can be enhanced by recognizing this type of specialized training for use of force investigators. **Committee recommendation (3-0):** amend the Bill to require expertise in conducting homicide and law enforcement officer use of force investigations. See lines 18-20 of the Bill at ©2.

6. How would an investigation of an officer involved death be handled under the Bill?

The Bill, as introduced, recognizes that the County Police Department must continue to perform an internal administrative review under the Law Enforcement Officer's Bill of Rights to determine possible discipline against an involved officer. The independent investigation required by the Bill would be done to determine if criminal charges should be filed against the officer. However, the County police still need to be able to do their job. The County Police have a large response to any officer involved death. The response starts with patrol units protecting the crime scene along with Police management officials monitoring the personnel handling the scene. At least 4 detectives from the Force Investigative Team respond to interview witnesses. At least 1 or 2 members of the Forensic Services Team respond to search for, collect, and preserve evidence. Additional resources may also be used to respond to the scene.

The County Police are likely to be the first law enforcement officers available to respond to the scene. It may be unreasonable for the County to expect this type of response from an outside law enforcement agency. The independence required by the Bill may be achieved through expecting the outside agency to send 2 independent investigators to lead the investigation relying on the extensive available support from the County Police. The details of how an investigation would be handled under this Bill would need to be negotiated between the County and the outside

law enforcement agency. Although done by State law, Wisconsin has implemented this type of independent investigation of an officer involved death. The attached Wisconsin guidelines for the investigation is an example of the details that could be negotiated in an agreement with an outside agency. See ©32-72. In Wisconsin, the local police department may be used to support the State investigators.

The Committee requested Council staff to prepare alternative amendments to ensure that the County Police can continue to perform routine police work at the scene of the incident and be available to support the independent investigators as requested.

Police Assistance Amendment – Alternative 1, ©78, would permit the Department to respond to the crime scene to perform routine police duties to protect members of the public and members of the Department and permit the Department to assist the independent investigators as requested.

Police Assistance Amendment – Alternative 2, ©79, would also permit the Department to respond to the crime scene to perform routine police duties to protect members of the public and members of the Department and permit the Department to assist the independent investigators as requested. However, Alternative 2 would list some examples of the type of assistance the Department is likely to be asked to provide an independent investigator.

Committee recommendation (3-0): approve alternative 1. See lines 50-62 of the Bill at ©3-4.

7. Should the independent investigation requirement sunset if the Executive is unable to enter into an agreement with another law enforcement agency?

The Police Department requested an amendment to sunset the provisions requiring an independent investigation if the Executive is unable to find another law enforcement agency to partner with the Department. The Police Department believes all available avenues would be exhausted by January 1, 2021 and that continued reporting on their efforts would be repetitive and of little value. This could be accomplished by adding the following at the end of the Bill:

(g) *Sunset Date.* Subsections (b) and (f) of this Act are not effective after January 1, 2021 if, after making good faith efforts, the Executive is unable to enter into an agreement with another law enforcement agency to perform an independent investigation.

This amendment would automatically repeal the requirement to ensure an independent investigation or report on efforts to do so after January 1, 2021 without further action by the Council. The Council could, of course, enact a new law that would remove this sunset provision or extend the date any time before January 1, 2021.

Committee recommendation (3-0): do not add a sunset provision.

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Bill No. 1-19
Concerning: Police – Officer Involved
Death – Independent Investigation
Revised: April 12, 2019 Draft No. 7
Introduced: January 15, 2019
Expires: July 15, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Jawando
Co-Sponsors: Councilmembers Rice, Riemer, Council President Navarro, Councilmember Alborno, Council Vice President Katz, Councilmembers Friedson, Glass, and Hucker

AN ACT to:

- (1) require an independent investigation of an officer involved death;
- (2) establish qualifications for an independent investigation of an officer involved death;
- (3) require the independent investigators to submit a final written report to the State's Attorney;
- (4) make the written report public under certain circumstances; and
- (5) generally amend the law governing investigations of an officer involved death.

By amending

Montgomery County Code
Chapter 35, Police
Section 35-2

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 35-2 is amended as follows:**

2 **35-2. [Reserved] Law Enforcement Trust and Transparency Act.**

3 (a) Definitions. As used in this Section:

4 Department means the Montgomery County Department of Police.

5 Law enforcement agency means a government agency charged with
6 enforcing Federal, State, or County law.

7 Officer involved death means the death of an individual resulting from an
8 action by a police officer or while the individual is in police custody.

9 Police officer means a sworn officer employed by the County Department
10 of Police.

11 State's Attorney means the State's Attorney for Montgomery County.

12 (b) Independent investigation required. [[The]] Except as provided in
13 subsection (f), the Executive must ensure that an independent
14 investigation is performed for each officer involved death. The
15 independent investigation must be [[performed]] led by at least 2 sworn
16 independent investigators:

17 (1) who are not employed by the County or the State's Attorney;

18 (2) who have significant experience and expertise in conducting
19 [complex criminal] homicide and law enforcement officer use of
20 force investigations; and

21 (3) work for a:

22 (A) local law enforcement agency located outside of the
23 County;

24 (B) Federal law enforcement agency; or

25 (C) State law enforcement agency.

26 (c) Report. The independent investigators must submit a final written report
27 to the State's Attorney.

(d) Publication of the investigation report.

(1) [[If no criminal charges are filed against the police officer,]]

Except as provided in paragraph (2), the written report must be released to the public to the extent permitted by law:

(A) if no criminal charges are filed against the police officer; or

(B) after the conclusion of any criminal case against the police officer.

(2) The custodian of the report may deny inspection of any part of the written report if it would:

(A) interfere with a valid and proper law enforcement proceeding;

(B) deprive a person of a right to a fair trial or an impartial adjudication;

(C) constitute an unwarranted invasion of personal privacy;

(D) disclose the identity of a confidential source;

(E) disclose an investigative technique or procedure;

(F) prejudice an investigation; or

(G) endanger the life or physical safety of an individual.

(3) This subsection must apply to a written investigation report prepared by the independent investigators or a report prepared by the Department if the Executive is unable to obtain an independent investigation.

(e) Internal [[administrative review]] investigation. This Section must not be interpreted to prohibit:

(1) an internal administrative review of the incident by the Department for possible discipline of a police officer pursuant to the Law

Enforcement Officers' Bill of Rights, MD Public Safety Code,
§§3-101 to 3-113, as amended or;

(2) the Department from:

(A) responding to the crime scene to perform routine police
duties to protect members of the public and members of the
Department; or

(B) providing support and assistance to the independent
investigators leading the investigation as requested by the
independent investigators.

(f) Reporting. If, after making good faith efforts, the Executive is unable to
enter into an agreement with another law enforcement agency to perform
the required independent investigation, the Executive must submit:

(1) a report to the Council on or before January 1, 2020:

(A) explaining all efforts made to secure an agreement with
another law enforcement agency; and

(B) recommending changes to the law to support its goals; and

(2) updates to the Council every 90 days beginning on April 1, 2020
explaining continuing efforts to secure an agreement.

Sec. 2. Effective date.

This Act must take effect on January 1, 2020. The amendments in Section 1
 must apply to each officer involved death occurring after the Act takes effect.

Approved:

Nancy Navarro, President, County Council

Date

LEGISLATIVE REQUEST REPORT

Bill 1-19

Police – Officer Involved Death – Independent Investigation

DESCRIPTION: Bill 1-19 would require the Executive to ensure that an independent investigation is performed of each officer involved death. The investigation must be performed by at least 2 independent investigators with experience and expertise in conducting complex criminal investigations. The independent investigators must be employed by a local law enforcement agency located outside the County or a Federal or State law enforcement agency.

PROBLEM: A complete and independent investigation of an office involved death is necessary to retain the public confidence in the Police Department. Although this requirement is consistent with past practice in the County, this past practice is not required by law.

GOALS AND OBJECTIVES: The goal is to promote public confidence in the County Police Department.

COORDINATION: Police Chief, State's Attorney, County Attorney

FISCAL IMPACT: To be provided

ECONOMIC IMPACT: To be provided

EVALUATION: To be provided

EXPERIENCE ELSEWHERE: Wisconsin has a similar law.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: N/A

PENALTIES: N/A



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

WILL JAWANDO
COUNCILMEMBER
AT-LARGE

MEMORANDUM

TO: Councilmembers

FROM: Will Jawando, Councilmember *WJ*

DATE: January 10, 2019

SUBJECT: Introduction of legislation requiring independent investigations of officer involved deaths

On Tuesday, I will be introducing Bill 1-19, Police – Officer Involved Death – Independent Investigation. The bill will be referred to as the **Law Enforcement Trust and Transparency (LETT) Act**. This legislation requires that:

- 1) an independent investigation take place in the event of officer involved death;
- 2) a final written report is submitted to the Montgomery County State's Attorney and made available to the public if criminal charges are not filed.

The independent investigation would be triggered by the death of an individual resulting from an action by a police officer or while an individual is in police custody. Currently, the investigation of an officer involved death is handled by the Montgomery County Police Department (MCPD). The evidence collected by the MCPD is then turned over to the Howard County State's Attorney office who reviews the evidence and decides if there are sufficient grounds for prosecution.

While the issue of police involved deaths is a national issue, the impetus of the LETT Act stems from the tragic death of 41-year old Silver Spring resident Robert White, who was shot dead by a MCPD officer in a Silver Spring parking lot on June 11, 2018. The investigation into Mr. White's death was conducted by MCPD officers and the information was forwarded on to the Howard County State's Attorney who decided not to pursue criminal charges. No public report explaining the decision was made available.

The goal of this bill is to ensure investigations are independent, impartial, and transparent and to reduce the opportunity for conflicts of interest or the appearance of such conflicts, which can undermine public confidence in law enforcement. Indeed, President Obama's Taskforce on 21st Century Policing, released in 2015, highlights the importance of independent criminal investigations in order to restore and maintain trust between communities and law enforcement.

Generally, MCPD officers conduct themselves with the utmost professionalism; however, when the same department investigates an officer involved death for one of its own officers, it creates an opportunity for bias. Independent investigations will help eliminate the perception of bias that may exist in these types of cases.

The LETT Act also requires a written report be provided to the Montgomery County State's Attorney's Office and, if charges are not filed, be made public.

Currently, three states, Illinois, Utah and Wisconsin require that the personnel investigating an officer's use of force not be employed by the same department as the officer under review. I believe this legislation will help to strengthen trust between law enforcement and the community and establish a new, higher standard for transparency in these difficult cases.

If you have any questions or if you would like to co-sponsor the LETT Act, please contact Walton Harris in my office. Thanks in advance for your consideration.



ROCKVILLE, MARYLAND

MEMORANDUM

February 28, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno, Director, Office of Management and Budget *RSM*
Alexandre A. Espinosa, Director, Department of Finance *AE*

SUBJECT: Economic and Fiscal Impact Statement for Bill 1-19, Police-Officer Involved Death - Independent Investigation

Please find attached the economic and fiscal impact statement for Bill 1-19, Police-Officer Involved Death - Independent Investigation.

RSM:aaa

c: Marlene Michaelson, Executive Director, County Council
Glenn Orlin, Deputy Director, County Council
Debbie Spielberg, Special Assistant to the County Executive
Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Office of the County Executive
Ohene Gyapong, Acting Director, Public Information Office
Richard Harris, Office of Management and Budget
David Platt, Department of Finance
Dennis Hetman, Department of Finance

Fiscal Impact Statement
Bill 1-19 – Officer Involved Death- Independent Investigation

1. Legislative Summary

Bill 1-19 would require the Executive to ensure that an independent investigation is performed for each instance of a Montgomery County Police Department (MCPD) officer involved death. The bill requires that the investigation be performed by at least two independent investigators with experience and expertise in conducting criminal investigations, and that they be employed by either a local law enforcement agency located outside the County or a Federal or State law enforcement agency. The investigator's report would be sent to the State's Attorney (SAO) for review. If the SAO declines to prosecute, the report would be made available to the public under the Maryland Public Information Act to the extent permitted by law.

Howard County currently reviews MCPD's internal investigation for officer-involved deaths. Bill 1-19 would require the outside agency to perform the investigation.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Bill 1-19 will not have an impact on revenues. The bill's impact on expenditures is difficult to estimate absent an agreement between MCPD and an outside law enforcement agency detailing the terms of its work and costs, if any. The current agreement with Howard County does not have any cost associated with it. However, Bill 1-19 would be more labor and time intensive for an outside agency.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Bill 1-19 will not impact revenues over the next 6 years. The bill may impact expenditures depending on the final agreement between MCPD and the outside law enforcement agency. Absent an agreement, it is difficult to estimate the impact over the next 6 fiscal years.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Bill 1-19 does not affect retiree pensions or group insurance costs.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Bill 1-19 does not impact the County's IT or ERP systems.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill 1-19 does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

The staff time needed to implement Bill 1-19 would relate to the relevant staff's interaction with the outside law enforcement agency, but is expected to be absorbed within existing work hours.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Bill 1-19 would require the officers who were involved in a death to cooperate with an outside law enforcement agency's investigation of that death, but it is not expected to affect other work duties because it can be absorbed within their existing work hours.

9. An estimate of costs when an additional appropriation is needed.

Bill 1-19 will not require additional appropriation.

10. A description of any variable that could affect revenue and cost estimates.

Bill 1-19 will not have an impact revenue. The variable that could affect the cost estimates is the resulting agreement with an outside law enforcement agency and the cost to investigate each officer involved death. The relevant entity may request compensation at a flat or hourly rate, or agree to no cost if the agreement is with another local entity and MCPD reciprocates and investigates the outside agency's officer involved deaths.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

See #2.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

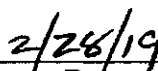
14. The following contributed to and concurred with this analysis:

Captain Nicholas R. Augustine, Montgomery County Police Department

Richard H. Harris, Office of Department Management and Budget



Richard S. Madaleno, Director
Office of Management and Budget



Date

**Economic Impact Statement
Bill 1-19, Police – Officer Involved Death – Independent Investigation**

Background:

Bill 1-19 would:

- (1) require an independent investigation of an officer involved death;
- (2) establish qualifications for an independent investigation of an officer involved death;
- (3) require the independent investigators to submit a final written report to the State's Attorney;
- (4) make the written report public under certain circumstances; and
- (5) generally amend the law governing investigations of an officer involved death.

1. The sources of information, assumptions, and methodologies used.

There were no sources of information, assumptions, or needed methodologies in the formulation of this economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

As noted in the fiscal impact statement, Bill 1-19 will not have an impact on revenues and the impact on expenditures is difficult to project absent an agreement with an outside law enforcement agency detailing the terms of its work and costs, if any. There are no variables that could affect economic impact estimates.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

The bill will have no impact on employment, spending, savings, investment, incomes, and property values in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

See number 2.

5. The following contributed to or concurred with this analysis:

David Platt and Dennis Hetman, Finance.


Alexandre A. Espinosa / Director
Department of Finance

2/28/19
Date

Police – Officer involved death – Independent Investigation

President Navarro, Vice President Katz and members of the County Council, thank you for the opportunity to discuss with you Bill 1-19 to increase transparency of our police department.

The County Executive and I share your view that our department should be as open and accessible as possible. The Executive and the police dept., look forward to working with you to craft legislation that will accomplish your goals.

Any officer-involved death is a tragic situation. Such incidents require a thorough, accurate, and impartial investigation. These investigations are complicated, time consuming, staff and resource intensive and deserve the utmost care and attention to detail. Anytime a police officer uses deadly force, the public has a compelling need to know if that use of force was lawful and justified and necessary.

The public wants certainty that an investigation has been done with the utmost integrity, and they want to know how the reviewing authority came to its conclusions regarding the lawfulness of the officer's actions. This bill mandates that the criminal investigations be made public. I should add here, that they already are.

I understand the public's desire to know there is an external review when there is an officer-involved death. The State's Attorney already has in place an agreement with Howard County that requires such a review.

For example, after the Officer involved death of Robert White on June 11, 2018, the Montgomery County Police Department conducted a thorough criminal investigation and turned that investigation over to the Howard County States Attorney's office. The Howard County State's Attorney reviewed the evidence collected in this case. That evidence included eyewitness statements, body-worn camera video and audio, information from the involved Officer's attorney, findings from the State Medical Examiner, ballistic evidence and other forensic evidence collected at the scene.

Once the Howard County State's Attorney's office completed their review of the case, they sent a letter informing me of their finding that the Officer's use of deadly force was lawful and justified.

We are committed to transparency and accountability. However, we are also committed to the best practices that ensure the highest quality investigation is done. The legislation as drafted may present some operational barriers to that end.

The legislation would require that the County Executive ensure an "independent investigation" by an outside law enforcements agency, of an officer-involved death. Simply put, the County Executive does not have that authority. He is being mandated to do something that he does

not have the authority to do. This could be fixed by amending the bill to state that the CE "may" seek an outside investigation.... This would give the CE the authority to work with another agency on a case by case basis, as needed. Not require him to do something that he cannot, in fact, control.

The current reality is that while the Montgomery County State's Attorney is working on an agreement with the Howard County State's attorney, there is no such agreement in place between the Executive branches of government between the two jurisdictions. At the very least, this legislation should not go into effect prior to some agreement being in place.

One of the challenges in Maryland is that we don't have a state investigative agency as do other states. Those agencies automatically take on, and are equipped to conduct, investigations of officer-involved deaths. Today's alternative would depend on a patchwork of agreements among jurisdictions that may or may not have the resources at any given moment to participate in the work required elsewhere. And I am certain that no one, not the Executive, not the Council, not the public wants an investigation of diminished quality and professionalism.

In conclusion, these are serious operational issues that deserve, and need serious attention. This Administration and police department are committed to working with you to make certain our actions are transparent and accountable to the public.

- Chief J. Thomas Manger
Montgomery County Police Department
March 5, 2019

EMILY SHETTY
Legislative District 18
Montgomery County
—
Judiciary Committee



2
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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Montgomery County Council Bill 1-19
SUPPORT

March 5, 2019

Council President Navarro and members of the county council:

Thank you for the opportunity to testify in support of Bill 1-19, the Law Enforcement Trust and Transparency Act. I respectfully request the council pass this important piece of legislation.

Bill 1-19 will require the County Executive ensure an investigation of any officer-involved death, requires specific parameters of that investigation, and requires that the report of that investigation be made public.

While I have great respect for the incredibly challenging job that our law enforcement officers do, there's no doubt in my mind that greater transparency over tragic incidents where a civilian is killed by a law enforcement official benefits everyone. Transparency enables greater community trust in our police force, among many other benefits.

In 2015, Maryland passed a law that required the Governor's Office of Crime Control and Prevention to provide the public with information regarding each officer-involved death in the line of duty. In the 2017 report for the prior calendar year, 32 cases state-wide of civilian deaths involving law enforcement were reported, with 13 classified as homicide by law enforcement, 9 as suicide, 9 as accidental death and 1 as undetermined.

I am pleased to be working with Councilmember Jawando on a state-wide version of this bill, HB983, and thank him for his hard work on this important issue. I am confident that Montgomery County will lead this effort and pilot this important transparency bill so that the state can follow with a statewide initiative.

On a more personal note, this bill is very important to me as the spouse of a person of color and as the parent of a child of color. Every single day members of our community are profiled, and in some

rare cases, these instances escalate. Providing transparency in the result of these interactions is critical.

I look forward to working with the County Council on this effort, and thank you for the opportunity to testify this evening.

Testimony of Melissa A Clark MD on behalf of Moms of Black Boys United for Social Change in favor of Montgomery County Council Bill 1-19, Law Enforcement Trust & Transparency Act

Good evening. I am Dr. Melissa Clark, here to testify in favor of Bill 1-19 on behalf of Moms of Black Boys United for Social Change and the Silver Spring Justice Coalition that formed after the death of unarmed Silver Spring resident Robert White. I have lived in Montgomery County for 9 years. My spouse and I chose Montgomery County for its diversity and school system. We have a daughter, who is a junior at Wheaton HS and a son who is in 7th grade at Silver Spring International MS. It is easy for the diversity we enjoy to cause many county residents to have a false sense of security and I have been told by other residents that I don't have to worry about the safety of my son who is Black because "our police aren't like that" and "our police are required to have college credit" --implying they are without internal biases or conduct issues.

Moms of Black Boys United and MOBB United for Social Change began as a Facebook group in the wake of the Philando Castile and other senseless killings of black men. It was started by a mom of black boys, one of whom is autistic, who wanted to provide a space for moms to share concerns, fears and propose solutions to their sons' challenges.

We are now over 185 thousand moms of black boys across the country. We have organized chapters of moms who are advocating for our sons. Our fight and our mission is simple, we want to ensure that our officers AND our sons get home safely each night.

As the mother of a Black boy, I have witnessed my son's experiences as he has grown. For example, he has been stereotyped and perceived as older than he is when playing on our neighborhood park playground, instead of being seen as a young boy able to explore freely and play with his friends. As parents, we have had to educate our son about the fact that society will perceive him as a threat rather than the funny, bright, outgoing and talented teenager he is.

We have all seen horrific video footage of incidents across the country where normal behavior is suspect and young black boys and black men are victimized. Adding insult to injury, in many of these situations instead of an objective and independent investigations into officer conduct, police departments often criminalize the victim and are loathe to hold themselves fully accountable. This stops now with this bill 1-19. Robert White was shot and killed by a Montgomery County Police Officer just a couple blocks away from where my son attends middle school on June 11, 2018 shortly before school let out. The LETT Act would increase law enforcement accountability and transparency by requiring an independent investigation by an outside law enforcement agency and public access to the results of that investigation. This bill would not only ensure fair due process in the wake of these horrific incidents, it would also potentially change behaviors so that these incidents do not happen as often.

As the mom of a black boy, this is a fight and an issue that is deeply personal to me. My son is very friendly and outgoing. He excels in dance. He and his friends have frequented the area next to their school where Robert White was killed. He's a regular kid but in his skin and at his age, the same rules do not apply. He can be perceived as aggressive while doing the most normal and benign activities.

I live with the very real fear that my son might be in an encounter from which he may be seriously injured or might not recover.

When my son was 9 years old, we were going to walk our dog at the park right next to our home. It was colder than I thought so I asked him to take the key back to the house & grab our jackets. There was a Montgomery County Police officer sitting in his car in the parking lot with a clear view of our house. My son protested that he did not want to do this task and when I pressed him about doing it he asked me, "what if the officer thinks I am breaking in?" My heart dropped. My son was afraid to walk to the front door of our home with the keys to get our coats because a police officer was sitting nearby.

I respectfully request that council members support and vote in favor of the LETT ACT with amendments to add cases of serious bodily injury and taking affect as soon as possible after passage.

Thank you, Council member Jawando for making one of your first actions as a county representative, taking action to ensure justice and accountability for our sons.

Testimony for Montgomery County Council Bill 1-19
Police – Officer involved death – Independent investigation
 March 5, 2019

My name is Laurel Hoa and I am testifying on behalf of the Montgomery County chapter of Showing Up for Racial Justice (SURJ MoCo). Thank you for your willingness to tackle this essential issue of public safety, racial justice, and disability justice. Our position on Bill 1-19 is oppose unless amended. We would like to see amendments added that would 1) add funding for mental health first responders; 2) allow investigations to be conducted by non-law enforcement personnel; 3) require the investigation to be made public regardless of charges filed.

We want Montgomery County to develop a program comparable to Eugene, Oregon where mental health experts, not police, are first responders to 911 calls that involve potential mental health issues.¹ When police respond to such calls, this increases the risk of violence and death because police are armed and are not adequately trained to deal with people with mental health issues. Eugene, Oregon developed a nonprofit called CAHOOTS (Crisis Assistance Helping Out On The Streets) 30 years ago, and trained crisis workers and medics handle almost a fifth of the 911 calls there. This has not only reduced the risk of violence to people with mental illness, but it is fiscally responsible since it is cheaper to send out crisis workers than police officers. In Eugene, the CAHOOTS program costs the city \$800,000 annually compared to their police budget of \$58 million.

We want language added to this bill that would allow investigations to be conducted by people who are not employed by law enforcement agencies. The office of the State Attorney General already has the power, experience, and capability of conducting criminal investigations of police misconduct. There are already precedents of attorneys tasked with investigating officer involved deaths, such as the Shooting Response Task Force in the New Jersey State Attorney General's office.² We understand that the Montgomery County Council cannot legislate at the state level, but we want to ensure that any legislation passed at the county level is compatible with future reforms at the state level. Ideally, these reforms would be much stronger and better if civilians were elected to a task force and trained to investigate officer-involved deaths. Montgomery County could lead the nation in this, and the language in the bill shouldn't preclude the possibility of elected investigators specifically for police misconduct. In the interim, we strongly prefer investigations be done by a state-level agency within the State Attorney General's office rather than language mandating law enforcement investigate other law enforcement.

We request the following specific modifications to Bill 1-19:

- Strike 35-2 (b) (1) and (3) and replace with "who are employed by the office of the State Attorney General or are civilians elected to a task force trained to investigate officer-involved deaths"

¹ <https://www.wsj.com/articles/when-mental-health-experts-not-police-are-the-first-responders-1543071600>

² <https://www.nj.com/politics/2019/01/murphy-will-sign-bill-taking-deadly-police-shooting-probes-away-from-local-prosecutors.html?fbclid=IwAR1Qd4xFlqnyizTgPEMjNihNhTjRrwni8kp9SPci5VycJyFy1XYPB9nLnw>

- Strike "if no criminal charges are filed against the police officer" from 35-2 (d) such that this point reads "the written report must be released to the public to the extent permitted by law"

Thank you for your thoughtful consideration of this serious matter.

Hearing on Law Enforcement Trust and Transparency (LETT) Act

Montgomery County Council Testimony, March 5, 2019

Katie Stauss, on behalf of Takoma Park Mobilization

My name is Katie Stauss. I'm representing Takoma Park Mobilization. We are proud to be part of the Silver Spring Justice Coalition. Thank you for hearing my testimony. We believe the LETT Act is a good initial step toward more accountable policing and support the bill with amendments. The amendments we request including: putting the bill into effect within three months, making the bill applicable to officer-involved deaths as well as serious bodily injury, making investigative reports public regardless of the charging decision, and creating an investigatory body that includes civilians to increase independence. These are small but still important steps as part of deeper, urgently needed transformative changes in mental healthcare, housing, education, community attitudes – and for sure, policing.

Robert White, who was killed last year by police, was originally stopped for having a rip in his clothes, and for making so-called furtive movements. Using "furtive movement" to identify people carrying guns is highly questionable, and I'd challenge any police department, including ours, to defend the practice with empirical evidence that it keeps communities safer. To the contrary, in 2012, New York City police stopped about 700,000 residents at the height of stop-and-frisk. More than half of them were stopped based on "furtive movements^[1]." About a tenth of one percent of people stopped for furtive movements had a gun; police could just as well stop people for wearing blue jeans and find the same number of guns. Stops based on "furtive movements" are arbitrary, have a sordid history as a form of racial profiling, and frequently result in use of force - for that, Robert White paid with his life.

Now, the public needs to know why someone meant to serve and protect us, thought he should pull up aggressively on one of us for a ripped shirt and furtive movement. Is this policy? Was this training? AND -- had Robert been stopped for no reason too many times in the past? Was he traumatized from harassment, or at the end of his rope? Did the officer recognize signs of mental distress or trauma? Did the officer try to de-escalate? Does the officer have a history of misjudgments and violence? We don't know any of this, because there was no truly independent investigation, and there has been no public report. It's been 9 months.

After the federal investigation into Michael Brown's killing in Ferguson, no charges were brought against police. Still, the Justice Department released an 86-page report. James Comey, who was then the director of the FBI, in discussing this case just yesterday, explained that "providing detailed information about a completed investigation of intense public interest has long been a part of Justice Department practice," and that, "justice department tradition recognizes that transparency is especially important where polarized politics... challenge law enforcement credibility."

Montgomery County residents deserve no less. Given the polarization and intense public interest that ensue after a police shooting, we appreciate the LETT bill, and respectfully ask that it be passed with amendments as described above. Thank you.

^[1] <https://www.prisonpolicy.org/reports/stopandfrisk.html>

March 5, 2019 Montgomery County Council Hearing.

The Law Enforcement Trust & Transparency (LETT) Act(Bill 1-19)

Mike Mage, Speaking for himself. SUPPORT with AMENDMENTS

Good evening,

Rather than repeat what others have said, let me emphasize the need for truly independent and transparent oversight and review of law enforcement and training of police officers in Montgomery County.

1. There is a Use-Of force policy, which was put on the police website in 2016. Nowhere in this policy can you find any mention of de-escalation or other techniques for avoiding use of force. When I mentioned this a month ago, at a meeting of the Latino Public Safety Working Group, it elicited a ten minute explanation from police brass about how de-escalation is central to everything they do. But it would be helpful to have it in writing, I suggest an amendment to put all deescalation techniques and related training materials on line on the police website. A related problem is the us-vs-them attitude which is made worse by group-think, peer-pressure, esprit-de-corps, or whatever you want to call it, This attitude gets in the way of rapport with the community. I suggest an amendment for civilian review of police training.

2. There have been at least 6 cases of deaths in custody following Taser use in MoCo. But the police are still not fully equipped with defibrillators (AEDs) to deal on the spot with cardiac collapse. I suggest an amendment to fully equip police vehicles with AEDs. Perhaps this might have saved Robert White's life.

3. Nobody has a monopoly in wisdom, so oversight from non-law enforcement is also needed. I suggest an amendment to include a Civilian Review System. We can build on the proposal of the Working Group that was submitted to contract negotiations between FOP Lodge 35 and the County around the year 2005.

In summary, if it provides truly independent oversight of police training, police actions, and police readiness to save lives, this bill will provide an opportunity for real progress.

4

OPPOSITION TO BILL 1-19 (LAW ENFORCEMENT AND TRUST AND TRANSPARENCY ACT)

The opposition to this bill is not to its goals but rather the method put forth for reaching them. Three factors are at issue discretion, accountability, and public safety.

A police officer must at times make split second decisions, and must have the discretion to do so. That is especially the case when the use of deadly force is at issue. When dealing with situations such as suicide by cop, a mass shooter, or a hostage taking, they cannot effectively do their job if they have to be concerned with whether in taking action they deem appropriate at the moment puts them at risk for incarceration.

At the same time, if an officer employs excessive force in a situation he must be held accountable. In both instances, the over-riding concern is for public safety.

That being the case this bill's requirement, that an independent investigative report be made public in cases where the police officer is not charged criminally as a result of an officer involved shooting, is not an effective way to address the problem. The requirement that the report be made public will have a chilling effect on the investigation. Witnesses will not be forthcoming with information if they are concerned that their statements will be disclosed publicly. Furthermore, releasing such a report means the investigation "will never end" as individuals and other entities, not privy to means and methods of investigation, may continue to have questions regarding the outcome and wish to weigh in with their thoughts and concerns indefinitely.

At the same time, the public does need to know "what happened and why." Therefore, the issuance summary report should meet that requirement. It should include a summary of the facts, a statement of the decision made and a detailed statement of the rationale for so doing.

While an officer involved shooting may not result in a criminal charge, it does not mean that the officer's actions are above reproach. Under the current system, where an officer is not charged criminally, his actions still might warrant

disciplinary action up to and including termination. It is rightfully considered a personnel matter. That would include intermediate sanctions such as letters of reprimand, suspension of a determined length, demotion and if warranted termination. In spite of extensive training and skill, there are instances where an officer's actions reveal lack of the requisite judgement or requisite skills for the job. The resulting situation may not warrant criminal sanction but it may be clear that person should not be employed as a police officer. It could be that person could be reassigned, offered other employment or terminated. There are several additional factors to consider in the making of that decision: age, health, length of service, previous record, etc.

If treated as a personnel matter, the question is whether the independent investigation will be the basis for decision, whether the police department conducts its own internal investigation before taking action, or whether the decision will be based on a combination of both investigations. That is among the things to be determined if you go back to the drawing board.

There are many stakeholders in this matter. On one side is the public seeking accountability, community organizations, interest groups, administrators and the county council. On the other side is the policeman whose job and goal is to protect and serve, his colleagues, the police union, the police administrators, and the public expecting and seeking protection and security. The two sides need to get together and come up with a system that satisfies the needs for discretion, accountability and public safety as discussed herein. Thank you.

Respectfully Submitted,
Hessie L. Harris



Maryland
Montgomery County
Chapter

**Statement of Support for HB #983 Law Enforcement Trust and Transparency Act (LETT)
(March 4, 2019)**

The ACLU of Montgomery County MD joins other local community groups to strongly support passage of the "Law Enforcement Trust and Transparency Act" sponsored by Delegate Emily Shetty.

Many in our community protest the lack of transparency of the investigation into the June 11, 2018, shooting of Robert White by an officer with the Montgomery County Police Department (MCPD). The provisions of the LETT Act will provide that future investigations are conducted in a fashion that will increase community trust in the police force.

While the Howard County State's Attorney found the killing of Mr. White justified, many in the community are still wondering why Mr. White was approached by the police officer in the first place. We believe Mr. White had a right to walk safely in his own neighborhood without being accosted by a Montgomery County police officer. The officer has stated he stopped Mr. White because he noticed a rip in his jacket, and that Mr. White moved his hand to the right side of his body.¹ This explanation has only further served to bolster the belief that racial profiling initiated the stop.

Further, many were dismayed to see a lack of mental health protocol displayed during the confrontation with Mr. White. According to the Public Safety Committee of the County Council, all police officers in Montgomery County have received de-escalation training, which, includes interacting with mentally ill or unstable persons. When it became clear that Mr. White was agitated, the officer can be heard on body camera footage saying "this may be a cop by suicide situation." We did not see the officer engaging any of his de-escalation training, but rather he continued to pursue Mr. White with gun drawn.

To date, we have not learned if the officer who killed Mr. White was subject to any form of internal discipline for initiating an unnecessary stop, speaking to Mr. White in derogatory language, and failing to assess the need for mental health intervention once the situation became confrontational. This episode highlights the need for much greater reform in policing, not only in Montgomery County, but in the state of Maryland. Community members have no way of knowing if this officer has a history of confronting members of the public, or a history of complaints for his conduct. Without this information, we cannot assess the quality of hiring decisions made by the police department. Sadly, we have now learned that the death of

19- year old Anton Black in Greensboro, MD, involved a police officer who was fired from his previous position in Dover, Delaware for assaulting a black man in his custody.ⁱⁱ

This is because vital information, that would protect the public from such abuses, is currently shielded by judicial interpretation of the Maryland Public Information Act and the Law Enforcement Officers Bill of Rights. This has to change. We encourage all members of the General Assembly to support HB #413 and HB #1011, as both bills would remove complaints against police officers and investigation details from the absolute shield of public scrutiny that is currently in place. More needs to be done.

The LETT Act is an important first step, but only a first step. Local police departments are responsible for setting their own use of force policies. In Montgomery County, the current use of force policy does not require officers to employ de-escalation tactics, utilizing mental health services is at the discretion of the officer, and there is no enforcement mandating that police officers report violations of policy and procedure to management.

The ACLU of Montgomery County encourages this body to:

1. Examine effective means to provide the community with information regarding the hiring of police officers, for example, what factors disqualify an officer from being hired by police departments?
2. Reform any current Maryland laws that serve to remove public accountability from our public servants, who are entrusted with the right to kill.
3. Mandate citizen involvement in the formulation and review of policing practices such as use of force policies, de-escalation requirements, mental health training, and creating an affirmative duty of officers to report violations of policy/procedures/conduct.

Respectfully submitted,

ACLU of Maryland, Montgomery County Chapter

ⁱ Montgomery County Police Department Press Release, dated August 1, 2018

ⁱⁱ <https://www.marylandmatters.org/2019/02/28/state-police-probing-whether-officer-in-anton-black-case-may-have-violated-his-agencys-guidelines-for-pursuing-suspects/>



**National Association for the Advancement of Colored People
Montgomery County Branch
Testimony- MC BILL 1-19 LAW ENFORCEMENT TRUST AND TRANSPARENCY ACT
Tuesday, March 5, 2019**

Good evening, Council President Navarro and Members of the County Council. Thank you for holding this hearing to receive comments on Council Bill 1-19, THE LAW ENFORCEMENT TRUST AND TRANSPARENCY ACT (LETT), introduced by Council member Jawando.

My name is Faith Blackburne. I am here on behalf of the Montgomery County Maryland Branch of the National Association for the Advancement of Colored People (NAACP). I am chair of the Political Action Committee for the branch.

For 110 years the NAACP has been in the forefront of securing racial equality and civil rights for all.

Here in Montgomery County Maryland, the NAACP has forged relationships with community and county leaders including with the county police chief and department, to protect and promote the civil rights of every resident of the county, particularly African Americans and communities of color.

Our interest in this bill and our support of its enactment is based on over 50 years of advocacy on behalf of people who are often marginalized in this county.

If enacted, The Law Enforcement Trust and Transparency Act, would require an independent investigation of all police involved shootings resulting in deaths. The LETT ACT will ensure a fair, independent, and impartial inquiry when these unfortunate events occur.

According to Montgomery County Police records, in 2017 Montgomery County Police documented 523 incidents of "use of force," which included use of force in one out of every 37 arrests. There were three uses of deadly force by police in 2017. Two-thirds of all "use of force" incidents in the county involved people of color.

Currently, Howard County law enforcement officials investigate and review Montgomery County incidents of an officer involved shooting. This process has led to community concerns regarding transparency and impartiality.

For instance, in the death of Silver Spring resident, Robert White, an unarmed African American man who was not committing any crime, the investigation by Howard County officials took over 3 months. The "report" released to the public was less than 2 pages and offered little explanation for its finding that the officer should not be criminally charged.



This outcome is difficult to reconcile with the limited video footage released. While we continue to await the outcome of the Montgomery County Police Department's Internal Affairs division concerning the officer involved, we are not hopeful that there will be justice for Robert White.

We believe that this bill will help the community have faith in the process used in determining whether a fair and transparent process has been pursued in these incidents. We know that the failure of a community to believe that fairness in its interactions with law enforcement are an integral part of building community trust and support. Without the trust and support of the community, legitimate law enforcement efforts to protect and serve are seriously undermined and fatally flawed.

We support this bill as a necessary step to restore community trust and urge the Council to pass this bill.

However, we know that this bill cannot be the only step taken.

We hope that this bill leads to culturally competent community focused policing, based on mutual respect in Montgomery County.

We seek additional training of police officers on implicit and explicit bias, de-escalation and engagement with residents who may have mental health issues.

The current existing tensions between residents and police are not at all consistent with the Mission of the Montgomery County Police "*... to safeguard life and property, preserve the peace, prevent and detect crime, enforce the law, and protect the rights of all citizen*".

As Montgomery County has become a majority-minority jurisdiction with four of the most diverse towns in the nation, the Montgomery County NAACP branch believes that the County must pursue a law enforcement ethic that embraces diversity and implements policies and practices that allow this County to be a safe and welcoming place for all its residents.

Thank you for this opportunity to testify. The Montgomery County Branch of the NAACP looks forward to working with you on this bill and I am happy to take your questions.



Montgomery County Young Democrats Testimony in Support of Bill 1-19, Police Officer Involved Death – Independent Investigation (Law Enforcement Trust and Transparency Act)

President Navarro, Vice President Katz, members of the County Council,

My name is Michael DeLong and I am the Treasurer of the Montgomery County Young Democrats (MCYD). Thank you for receiving our testimony this evening. We represent a number of Montgomery County Young Democrats between the ages of 14 and 35, and we are here to testify in support of Bill 1-19, Police Officer Involved Death – Independent Investigation, also known as the Law Enforcement Trust and Transparency (LEET) Act. This bill will help ensure that when a police officer is involved in the death of an individual, investigations into that officer's conduct are independent, impartial, and transparent.

Currently in this County, if there is an officer involved shooting, the Montgomery County Police Department (MCPD) conducts the initial criminal investigation of their own officers. The evidence collected from this investigation is then handed over to the Howard County State's Attorney office, which reviews the evidence and decides if it is enough for a prosecution.

This is a potential conflict of interest which this proposal will solve. Bill 1-19 will require the County Executive to ensure that an independent investigation is performed of each officer involved death, and that the investigation must be performed by at least two independent investigators with experience and expertise in conducting complex criminal investigations. Additionally, these investigators must be employed by a local law enforcement agency located outside Montgomery County or be employed by a Federal or State law enforcement agency.

Finally, the investigators will have to submit a report to the State's Attorney. If the State's Attorney decides not to prosecute the officers involved, the report must be released to the public. This bill would not prevent MCPD from conducting its own internal investigation.

The Law Enforcement Trust and Transparency Act will help improve public trust in law enforcement and make sure that investigations into police-involved deaths are fair. When there is a police shooting, our county needs open and unbiased inquiries into what happened. Without independent and sound investigations into police shootings or possible misconduct,

people tend to lose trust in law enforcement. If police officers do not have the trust of our communities, especially communities of color, they can't do their jobs. And if an officer acted wrongly, he or she must be held accountable for their actions.

We would also be remiss if we did not acknowledge that this act results from the tragic shooting of Mr. Robert White. He was shot and killed by an MCPD officer in a Silver Spring parking lot on June 11, 2018. MCPD conducted an investigation into his death and sent the information to the Howard County State's Attorney, who did not press charges and released no public report explaining their decision. This is unacceptable. Montgomery County citizens and residents should have access to that information.

We have the greatest respect for Montgomery County police officers and we thank them for their service to our County in keeping us safe. But we must acknowledge that police brutality is a problem in America. Hate has no place in Montgomery County and Bill 1-19 promotes transparency and accountability in all officer-involved shootings so that police brutality will not be a Montgomery County problem.

MCYD thanks Councilmember Jawando for introducing this bill and we also thank all cosponsors. We urge you to vote in its favor.

Sincerely,

Michelle Ngwafon
Teresa Woorman
Scott Brown
Steven Cennane
Michael DeLong

Good evening County Council President Navarro and members of the Montgomery County Council,

My name is Nick Asante and I'm a sophomore at Richard Montgomery High School. Throughout my whole life, I've been told that I'm a just black boy living in a white man's world. I've been told that for the rest of my life people are going to judge me without getting to know me, making assumptions based solely on my skin tone. Told that I'm going to have to work twice as hard to get half the recognition of my white peers.

For centuries, African Americans alike have been fighting for equality. Fighting to be treated as more than just second class citizens. And an extreme amount of progress has been made. But still, in 2019, we hear stories from all across the nation about police brutality aimed towards blacks. Stories about the unfair treatment of blacks, in the courtroom, in comparison to whites. Stories about how the media continues to antagonize African Americans, painting them in a negative light.

Montgomery County boasts some of the most diverse cities in our nation and is often regarded as one of the most diverse counties in our nation. And so you would expect that racial discrimination in an area so rich with cultural and ethnic diversity would be virtually non-existent. And yet you'd be wrong.

Personally, I've experienced racial profiling in almost all aspects of my life here in Montgomery County. Whether it's been in an elementary school classroom where most of my peers have been white and a teacher has called me out by name and repeated instructions to me in simpler terms because they felt as if I

wasn't able to comprehend instructions the same way as my non-black peers. Or when my friends and I have gone to 7/11 during our lunch period and the store owner has followed me around the store, watching my every move, making sure I don't steal something while my non-black friends get to roam about freely. Or even when my non-black friends have doubted my academic capabilities solely because of my race, time and time again. Racial profiling is undoubtedly prevalent in our county.

And on Monday, June 11, 2018, Robert Lawrence was shot by a police officer. Whether or not this incident was motivated by racial prejudices, it's fair to say that police brutality aimed towards blacks on the basis of race is a major issue. And I am absolutely bewildered and frightened that the Howard County State Attorney's Office decided not to pursue the investigation for reasons left unknown.

Councilmember Jawando, along with co sponsorship from four other council members, has proposed Bill 1-19, the Law Enforcement Trust and Transparency Act. This ensures that all incidents in which a civilian's death is caused by a police officer are thoroughly investigated in a transparent and nonbiased manner by a highly, 3rd party investigator. And I, a sixteen-year-old black student that has been racially profiled his *entire* life, wholeheartedly support this bill.

With only 3 other counties nationwide with policies of a similar nature, this bill would set the notion that Montgomery County does not support discrimination on the basis of race, that Montgomery County upholds our constitution's due process clause under the fourteenth amendment, and that Montgomery County

values justice for all of its residents. And so acclaimed members of the County Council, I urge you to support the Law Enforcement Trust and Transparency Act.

**General Investigative Guidelines
for
Officer-Involved Death Investigations**

INTRODUCTION

2013 Wisconsin Act 348 (hereinafter, “the Act”) relates to investigations of death involving law enforcement officers. The Act defines an “officer-involved death” as a death of an individual that results directly from an action or an omission of a law enforcement officer, while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of his or her law enforcement duties. *Wisconsin Statute §175.47(1)(c)*. *Wisconsin Legislative Council Act Memo: Melissa Schmidt, Senior Staff Attorney*.

Each law enforcement agency will implement a policy providing that at least two investigators, one of whom is the lead investigator and neither of whom is employed by the agency that employs the officer involved in the officer-involved death, will conduct the officer-involved death investigation. If the death is traffic-related, a state law enforcement agency may allow an investigation involving a law enforcement officer employed by that state agency to use a crash reconstruction unit from the same state agency. *Wisconsin Statute §175.47(2)* and *Wisconsin Statute §175.47(3) (a) and (b)*

When the Division of Criminal Investigation (DCI) serves as the lead agency, DCI provides a complete report to the prosecutor for review. If the prosecutor determines there is no basis for prosecution of the law enforcement officer, access to the report as required by §175.47(5)(b) will be provided by posting the report to the DOJ website, where any member of the public may access it. Because this is not a public records request under (Wis. Stat. §19.31-19.39), no one may be charged for receiving this report.

PURPOSE

The purpose of these general investigative guidelines is to explain the death investigation process, and to suggest possible procedures to use during officer-involved death (OID) investigations. These general investigative guidelines are neither mandatory nor exhaustive, and special agents investigating OID incidents must always be cognizant of unique circumstances that, in their discretion, warrant departure from these general investigative guidelines. The SIB Director shall be consulted for any substantial departure from the guidelines.

DEFINITIONS

- A. **Officer-Involved Death (OID):** An officer-involved death is defined by law as a death of an individual that results directly from an action or an omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are within the scope of his or her law enforcement duties. *Wis. Stat. §175.47(1)(c)*.

While not exhaustive, the following are examples of incidents where the death of an individual occurred due to an action or an omission of a law enforcement officer, and are therefore relevant to these general investigative guidelines.

1. Intentional or accidental use of deadly force.
 2. Use of force, other than deadly force that results in the death of an individual.
 3. Vehicular collisions resulting in death which resulted from:
 - a. Police gunfire directed at the suspect or suspect vehicle.
 - b. A police vehicle pursuit that resulted in a crash/death.
 - c. A police vehicle being used as a technique to apprehend a suspect (e.g., ramming, roadblock.)
 - d. Injuries suffered by a person who was a passenger in a police vehicle (e.g., ride-along, emergency transports.)
 4. Any custodial death, except those that occur while the prisoner is under a physician's treatment for a disease or other natural condition which has been diagnosed prior to death and which does not involve custodial trauma, custodial suicide or custodial ingestion of toxic substance.
- B. **Law Enforcement Agency:** A governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of detecting and preventing crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority, or the Marquette University Police Department, *Wis. Stat. §175.42 (2)(a) and §175.46(2)(a)*.
- C. **Law Enforcement Officer:** Any person employed by the state or by a city, village, town, county, or the Marquette University Police Department for the purpose of detecting and preventing crime and enforcing state laws or local ordinances, who is authorized to make arrests for violations of the laws or ordinances, who is authorized to make arrests for violations which he or she is employed to enforce. *Wis. Stat. §175.42 (1)(b) and §175.46*.
- D. **Involved Officer:** A police employee, whether on or off duty, who is involved in a critical incident as an actor, victim or custodial officer. When circumstances warrant, a witness officer may be deemed an involved officer for purposes of these general investigative guidelines (e.g., a shooting where one officer fires and the other does not.)
- E. **Coordinator:** A DCI Special Agent in Charge (SAC), or his or her designee, who leads all of the investigators during an OID investigation.
- F. **Lead Investigator:** The person in charge of the investigation, who plays a principal, guiding role.
- G. **Prosecutor:** District attorney or designee, or any special prosecutor.

INITIAL REQUEST FOR ASSISTANCE

- A. DCI is available to all law enforcement agencies in the State of Wisconsin and, with proper internal authorization, will lead the applicable investigation of any requesting agency.
- B. Requests for DCI's assistance will be made by the law enforcement agency that employs the involved officer. Once DCI begins an investigation, these general investigative guidelines should be reviewed.
- C. Requests for assistance are routed to the Director of the Special Investigations Bureau (SIB Director), or, if unavailable, to his or her designee.
 - 1. The SIB Director will then contact the regional Special Agent in Charge (SAC) who will serve as the coordinator for the incident.
 - 2. The SIB Director shall then notify the DCI Administrator and/or Deputy Administrator of the OID incident.
- D. The coordinator will contact the requesting agency(ies) for initial information and identify a local point of contact from the requesting agency (name, telephone number). The coordinator will attempt to:
 - 1. Obtain the address/location of the incident and ensure scene security.
 - 2. Identify any immediate safety concerns.
 - 3. Identify the command post location and safe entry route.
 - 4. Identify the status of the officer(s) involved, and their location.
 - 5. Identify the status of the subject(s) involved, and their location.
 - 6. Initiate a manhunt (if necessary).

INITIAL ACTIONS BY COORDINATOR

- A. The coordinator will assess the details of the incident, decide what personnel and equipment are needed for the investigation, and contact the necessary special agents with response instructions.
 - 1. Assign a lead special agent and determine his or her estimated time of arrival, brief the situation, and identify the requesting agency's point of contact.
 - 2. Call the SIB Director to brief him or her regarding the incident after receiving initial information from the requesting agency.

3. Initiate supportive resources and establish points of contact for each:
 - a. Wisconsin State Crime Lab (WSCL)
 - b. Wisconsin State Patrol Technical Reconstruction Unit (WSP/TRU)
 - c. Wisconsin Statewide Information Center (WSIC)
 - Analytical support
 - Technical Services Unit (TSU)
 - Mobile Support Unit (MSU)
 4. Determine if the involved agency is to take any photographs or video documentation of the scene prior to DCI/WSCL arrival.
 5. Contact the Digital Forensics Unit (DFU), if applicable.
 6. Respond to the scene.
 7. Collaborate with the sheriff/chief of the law enforcement agency involved.
 8. Provide the sheriff/chief with contact information for the DOJ Public Information Officer (DOJ PIO).
- B. As soon as possible after receiving the initial request from the law enforcement agency, the coordinator should send an email to the DCI Operations Group (*DOJ – DCI Operations Group or dcioperationsgroup.)
- C. Confirm notification of the prosecutor.
- D. Coordinate the following:
1. Consult with the lead agent and determine any need for additional resources.
 2. Officer-involved wellness assessment and collection of use-of-force tools, if applicable (e.g., firearm, baton, handcuffs, etc.)
 3. Interviews.
 4. Neighborhood canvass (including canvass of area businesses or places that may have video surveillance cameras.)
 5. Consult medical examiner or coroner to coordinate needed death notifications.
 6. Schedule autopsy(ies).
 7. Assign scene/evidence agents.
 8. Contact and communicate with the family of the deceased and any victim(s).
- E. The coordinator should attempt to attend a conference call twice a day for the first three days following an OID. The calls should take place around 9AM and 4PM, with times flexible based on investigative needs. These conference calls should involve the established OID group and any other agencies supporting the OID investigation(s), as deemed appropriate by the SIB Director. The SIB Director will decide when the conference calls are no longer needed.

Additionally, the SIB Director will facilitate a weekly conference call briefing the outstanding investigative activities. The lead agent or SAC for each open OID will provide an update on the investigation, followed by a discussion of any issues, problems, or concerns.

CRIMINAL INVESTIGATION

- A. The purpose of the criminal investigation is to aid the prosecutor in determining whether anyone committed a crime during the course of events leading up to and including the critical incident.

DCI will only investigate other potential crimes if specifically requested and agreed to, depending on the circumstances. Otherwise, the requesting agency will be responsible for investigation of any other potential crimes connected with the OID.

- B. The criminal investigation is separate from any administrative investigation that may be initiated into the incident. DCI agents should not receive any information related to the administrative investigation, so as not to interfere with the viability of any potential prosecution (pursuant to Garrity).
- C. Whether to conduct any type of administrative investigation into the incident is left solely to the involved agency.
- D. The involved agency will complete the Uniform Crime Reporting (UCR) for the incident.
- E. The involved agency is solely responsible for determining the duty status of the involved officer(s) and when the duty status should change.
- F. DCI agents will investigate and, whenever possible and when the investigation allows, will present fact-finding reports to the prosecutor within thirty days from the OID date. If the DCI reports are still pending after thirty days, the DCI lead investigator will communicate with the prosecutor and the involved agency regarding the status of the pending DCI reports.
1. If the thirty-day mark is approaching and outstanding reports from outside agencies remain pending, DCI will still provide DCI's investigative reports to the prosecutor.
 2. The cover sheet that documents in checklist format any outside agency records known to be pending will be included as the first page of the report packet provided to the prosecutor by DCI. This cover sheet indicates that the pending records will be supplied to the prosecutor once available.
- G. An investigative synopsis report will be completed.

- H. All OID reports will be sent to the regional SAC for review and the SAC will send them to the SIB Director, or his/her designee, for approval.
- I. The prosecutor should be consulted prior to any release of unredacted DCI investigative reports to the involved agency. The prosecutor should also be consulted prior to allowing viewing of video/audio (e.g., squad or dash camera video, surveillance or body-mounted camera device or downloads, etc.) by anyone employed by the involved agency.

DCI CRITICAL TASKS

DCI special agents, in conducting an OID investigation, must rely at all times on their sound professional judgment, independently assessing every case and exercising discretion as to when and how to perform critical tasks. The listed critical tasks are guidelines to assist special agents in conducting a thorough investigation, and should serve as notice to the involved law enforcement agency that DCI may assume responsibility for some or all of the listed tasks.

A. Crime Scene Management

- 1. Scene Security
 - a. Ensure requesting agency or mutual aid agencies are responsible for scene security and traffic control, including maintaining the scene log.
 - b. Coordinate with Crime Laboratory and/or Evidence Technician Team regarding scene processing.
- 2. Evidence Collection
 - a. Assign an evidence custodian to collect and document all evidence.
 - b. Collect any evidence safeguarded by the involved law enforcement agency prior to the arrival of the DCI agent.
 - c. Arrange for initial photographs and video documentation of scene, collaborating with WSCL Field Response Team and/or evidence team as necessary, to include:
 - Scene photos
 - Officers and their vehicles as they appeared at the time of incident
 - Lighting and weather conditions
 - Injuries of subject(s) before and after treatment
 - Injuries of officer(s) before and after treatment
 - d. Determine if the WSCL Field Response Team or an evidence team from another law enforcement agency needs to respond.
 - e. Determine if WSP/TRU needs to respond.

- f. Consult with the prosecutor regarding potential search warrant(s) and/or subpoena(s):
 - Crime scene(s)
 - Additional locations (suspect's residence, vehicle)
 - Blood draws (only as a matter of evidence to a crime)
 - Medical records
 - Cell track of cell phones and any other electronic devices.
 - Documents (including books, papers, records, recordings, tapes, photographs, films, or computer or electronic data stored on electronic devices, servers and social media sites)
- g. Determine what testing of evidence is needed, and the sequence/priority.

B. Family Notification

- 1. Notify DOJ's Office of Crime Victim Services.
- 2. Confirm that the family of the deceased has been notified.
 - a. Establish initial rapport, provide notification of services, and provide required documents regarding victim rights.
 - b. Establish the deceased's activities for the past 24 to 48 hours (at least).
 - c. Identify witnesses, suspects, evidence, or crimes.
 - d. Obtain the family's statements regarding the deceased.
- 3. Maintain communication with the family of the deceased throughout the process.

C. Coordination and Interview with Involved Officer(s)

- 1. Confirm removal of involved officer(s) from the scene.
 - a. Involved officer(s) should be transported separately, if possible, to a "safe place" or hospital, in accordance with the involved agency's policy or procedure.
 - b. If desired, officer(s) should be allowed to make contact with a spouse, significant other, peer support, union representative, and/or attorney.
- 2. Meet with the involved officer(s) as soon as possible after the incident.
- 3. After the involved officer(s) have made their chosen contacts, obtain a very limited walkthrough statement from the officer(s), if they agree to participate. The walkthrough provides an opportunity for the officer to recount the incident from his/her perspective while at the scene; to supplement, confirm and clarify interview information; and to resolve conflicts, confusion and any inconsistencies.

- a. The walkthrough will occur at or within view of the scene.
 - b. If possible, walkthroughs will be done during a similar time of day and/or lighting condition as the time of the incident.
 - c. Participation in a walkthrough will greatly increase the effectiveness of the overall investigation.
 - d. Involved officers cannot be forced to cooperate with the walkthrough.
4. Instruct involved officers that they are not to discuss details of the incident with anyone other than their attorney, mental health professional, spouse/significant other or clergy until after their formal interview has been completed.
 - a. Department debriefings should not be held until after the formal interviews of all involved officers are completed.
 - b. Involved officers should be reminded of the risks of presence on social media prior to completion of a formal interview.
 - c. Involved officers should be reminded that exposure to any community negativity through viewing of television and/or web-based postings may complicate post-incident thoughts and emotions.
5. Examine the weapons of ALL officers at the scene, whether or not they think they fired rounds.
6. Ensure photographs are taken of the weapons used by the involved officer(s), and determine which weapon(s) are to be taken into evidence.
7. Confirm replacement of the officers' weapons in conjunction with the involved agency's policy and procedures.

D. Obtaining Digital Evidence from Involved Agency

1. Assign an agent to coordinate obtaining of all digital evidence from the involved law enforcement agency, to include squad or dash camera video, surveillance or body-mounted camera devices, downloads, etc.
2. Those members of the agency involved in the OID who will be interviewed in connection with the incident should not review digital evidence prior to the interview.
3. Determine whether the digital evidence has been viewed, and, if so, by whom and when, and document that information in a report.

E. Autopsy

1. Attend the autopsy and ensure the following are completed:
 - a. Photographs
 - b. Evidence collection
 - c. Recording of basic victim information
 - d. Contact WSCL for assistance as needed.
2. Coordinate and work with the medical examiner, forensic pathologist or coroner's office.
3. Consult with the coordinator and the prosecutor to determine whether to release scene after the autopsy has been completed.

F. Witness Interviews

1. Arrange or conduct interviews with any persons who were victimized by the deceased, any witnesses to the incident, and any other witnesses developed during the investigation.
2. DCI agents should re-interview any critical witnesses whose statements were initially taken by the involved agency, to verify the information they provided and to document any additional information.
3. Witness interview reports should document the following information:
 - a. Location/vantage point at time of incident
 - b. Custodial circumstances
 - c. Chronology of interaction(s) with the subject
 - d. Observations regarding utterances, statements and demeanor of subject
 - e. Any injuries sustained (and medical status/prognosis)
 - f. Evidence collected from the witness (e.g., physical evidence, cell phone video/pictures, etc.)
4. Witness statements will be recorded whenever practicable and reasonable.

G. Neighborhood Canvass

1. Initial canvass(es) may be conducted by the involved agency to include motor vehicles.
2. Upon arrival, DCI will assign multiple interview teams to conduct neighborhood canvass interviews, to locate witnesses to prevent the loss of critical information.
3. The assigned teams will also identify any security cameras in the area of the incident and/or any cell phones in the possession of witnesses that may contain footage of the incident.

- H. Coordinate with the prosecutor, medical examiner/coroner and crime victim support services, attending meetings and providing reports as necessary.
- I. Communication with Involved Agency
 - 1. Updates regarding the status of the investigation (i.e., progress, timeline, things completed, things not yet completed) may be provided to the chief executive of the involved agency by the coordinator or his or her designee.
 - 2. Specific details regarding information obtained during formal interviews of the involved officer(s) may be shared with the employing agency after the completion of all formal interviews.
 - 3. If the initial assessment identifies any unique circumstances, the lead investigator and the coordinator will discuss the issues with the SIB Director and prosecutor.
- J. Knowledge of Involved Officers
 - 1. If any member of DCI is assigned to interview an involved officer(s), and has prior familiarity with that officer, that familiarity will be made known to the lead investigator and/or the coordinator.
 - 2. Casual knowledge of an officer, without having an actual relationship, is not a concern. Types of familiarity that should be made known to the lead investigator and/or the coordinator may include: former co-workers, current friends, colleagues working cases together, training partners, etc.
 - 3. Any questions should be discussed with the lead investigator and/or coordinator.
- K. Interviews of Involved Officer(s)
 - 1. Post-incident interviews are voluntary.
 - a. Officers may be allowed to go home to sleep and wait 24-72 hours after the incident to give a formal statement.
 - b. If possible, interviews will be held at a neutral venue agreed upon by the officer being interviewed and the interviewing DCI agents.
 - c. Interviews of involved officers will usually be completed last, because the interviewers first need to know as much as possible about the incident.

2. Recording of formal statement from involved officer(s).
 - a. It is DCI's preference that officer interviews be recorded. However, the officer cannot be forced to give a recorded statement. If the officer does not consent, the statement will not be recorded.
 - b. The prosecutor may request that the interview be recorded. Again, the officer cannot be forced to give a recorded statement. If the officer does not consent, the statement will not be recorded.
3. Limit those present during the interview.
 - a. Those present should be limited to the prosecutor, the criminal investigator, the officer and the officer's legal counsel.
 - b. DCI will discourage any waiver allowing a coworker to be present during the formal interview.
 - c. If the officer refuses to be interviewed because he/she wants a coworker in the interview, the prosecutor should be consulted. It is within the prosecutor's discretion to allow the coworker's presence.
4. Formal interviews of involved officer(s) should be conducted without the officer(s) having any prior review of related squad or dash camera video, surveillance or body-mounted camera video, electronic control device downloads, or other definitive forensic evidence.
 - a. If the officer refuses to be interviewed without the opportunity to review any of the above, the prosecutor should be consulted. It is within the prosecutor's discretion whether to allow the involved officer to view any of the above.
 - b. If the officer agrees to commence the formal interview without prior viewing of related definitive forensic evidence, the DCI agents will complete a detailed interview.
 - c. The officer will then be offered an opportunity to view digital evidence.
 - The officer may decline to view the digital evidence.
 - If the officer elects to view the digital evidence, DCI agents may remain present during viewing, or may leave for a minimal amount of time (to be determined based on the length of the recording in question) to allow the officer to consult with his/her representative.
 - d. Following the digital evidence review, the investigator(s) will complete the formal interview of the involved officer by documenting any additional statements made by the officer following the officer's review of the digital evidence.

5. DCI's documentation of the interview, whether or not it includes a recording of the interview, will serve as the officer's report.
6. The investigator may meet with the officer and the officer's legal counsel, after the interview report is prepared, to review the report and make any clarifications.

L. Media

1. Any information regarding the incident that is provided to the media should be coordinated with the DCI SAC, the sheriff/chief (or designee), the prosecutor and the DOJ PIO.
2. Agencies with employees involved in a critical incident (employing agency) have unique public information responsibilities, as do DCI and the prosecutor. Nothing precludes DCI or the prosecutor from relinquishing public information responsibilities to the employing agency.
3. When DCI is requested to serve as the lead investigating agency, and/or when a prosecutor asks that the Department of Justice (DOJ) complete the prosecutorial review, DOJ is responsible for public information dissemination.
4. In critical incidents involving multiple agencies, only the employing agency and the DOJ PIO should make statements to the media.
5. The employing agency is solely responsible for any release of the officer's name, photograph, biographical information, agency assignment, years of service, and other information not related to the facts of the investigation.
6. As a matter of mutual courtesy, the employing agency, the DCI SIB Director and the prosecutor will confer prior to the release of any public information.
7. Prior to any release of information to the media, the interests of the involved officer(s) and the family of the deceased should be taken into account. For example, a courtesy notice to these individuals prior to any media release may be appropriate.

REFERENCES

- Wisconsin Act 348, Wisconsin Statute § 175.47(1) (c) Review of deaths involving officers
- Wisconsin Public Records Law, Wisconsin Statute §19.31 to 19.39
- Wisconsin Legislative Council Act Memo – Melissa Schmidt, Senior Staff Attorney April 2014
- Wisconsin Department of Justice (DOJ) Division of Criminal Investigation (DCI) 2016 – Officer-involved Death Investigations, power point
- Wisconsin Department of Justice (DOJ) Division of Criminal Investigation (DCI) checklist for critical incident response, *DCI Policy 380, Appendix 1*
- City of Madison Police Department, Standard Operating Procedure for Officer-involved Critical Incidents – November 2013
- Pueblo County (Colorado) law enforcement, Officer – Involved Incident Protocol of the Tenth Judicial District.

CHECKLIST FOR CRITICAL INCIDENT RESPONSE

CALLOUT

- | | |
|---|--|
| <p>___ Contact agency for initial information</p> <p>___ SAC sends e-mail to DCI Operations Group (*DOJ – DCI Operations Group or <u>dcioptionsgroup@doj.state.wi.us</u>), making initial notification of request and agency-level response</p> <p>___ upon arriving at the scene, after making an assessment, and meeting with local LE officials, the SAC prepares and sends by e-mail the DCI Critical Incident Response Form (<u>X:\private\dc\DCI Forms\New Forms\DCI Critical Incident Response Form Word_09012015.docx</u>) to the DCI Operations Group.</p> <p>___ Prosecutor notified?</p> <p>___ Crime Lab and / or Evidence Tech Team notified?</p> <p>___ State Patrol notified (total station)?</p> <p>___ DCI TSU / Analysts needed?</p> <p>___ Cell phone tracking, preservation letters, emergency DNR?</p> <p>___ Social Media monitoring / preservation?</p> <p>___ Computer media analysis?</p> <p>___ Office of Crime Victims Services notified?</p> <p>___ Scene secured?</p> <p>___ Establish scene security with inner and outer perimeter</p> <p>___ Start scene log</p> <p>___ Status of officer involved?</p> | <p>___ Status of subject(s) involved?</p> <p>___ Coroner needed and notified?</p> <p>___ Search team for manhunt needed? (If so, establish separate Tactical Operations Center / command structure for this)</p> <p>___ Initial photo / video documentation of Scene:</p> <p>___ Agents / officers and their vehicles as they appeared at the time of the incident</p> <p>___ Lighting / WX conditions</p> <p>___ Injuries of subject(s) before treatment?</p> <p>___ Injuries of subject(s) after treatment?</p> <p>___ Injuries of officer before treatment?</p> <p>___ Injuries of officer after treatment?</p> <p>___ Photograph and Secure weapons of officers and subjects involved:</p> <p>___ May inspect officer's weapon at scene, but avoid collecting it there whenever possible.</p> <p>___ Immediately provide officers involved with a replacement weapon</p> <p>___ Search warrant needed?</p> <p>___ For scene?</p> <p>___ Additional locations?</p> <p>___ For blood draws?</p> <p>___ Cell track?</p> <p>___ Cell phones?</p> <p>___ Security needed at hospital?</p> <p>___ Evidence collection (Clothing, bullets/fragments, etc)<u>ON SCENE</u></p> <p>___ Status of officer / obtain medical assistance for the officer</p> |
|---|--|

- ___ If the officer is deemed to be a victim in the incident, provide the Information for Victims of Crime in Wisconsin notification form and informational pamphlet.
- ___ Identify and obtain "Public Safety Statement" from officer(s) involved:
 - ___ What force did they use?
 - ___ Direction and approximate number of shots fired by involved officer(s) and suspect(s)?
 - ___ Location of injured person(s)?
 - ___ Description of outstanding suspect(s), direction of travel, time last seen, and suspect's weapons?
 - ___ Description and location of any known witnesses?
 - ___ Description and location of any known evidence?
 - ___ Any other information to ensure officer and public safety, and assist in apprehension of suspect(s) still at large?
- ___ Instruct Officers Involved they are not to discuss details of incident with anyone other than their attorney / union rep, mental health professional, investigating officers, or supervisors until formal interview is completed a later time.
- ___ Status of subject(s) / obtain medical assistance for the subject(s)
- ___ Re-evaluate need of investigative assistance
 - ___ Identify DCI Supervisor in Charge
 - ___ Identify a corresponding OIC from local agency
- ___ Establish where the crime scene is and what needs to be taped off
- ___ Coordinate with Crime Laboratory and/or Evidence Tech Team on scene processing
- ___ Scene processing: what was moved prior to arrival?
- ___ **Recorded** interviews of citizen witnesses (keep witnesses separate)
 - ___ What witnesses need isolation?
- ___ Neighborhood canvass (Assign a Team Leader / multiple interview teams)
 - ___ Identify any security or cell phone cameras that may contain footage of incident
- ___ Make sure security is established at the hospital if necessary
- ___ Talk to prosecutor for search warrant or subpoena on medical records and toxicology
- ___ Establish search teams if needed:
 - ___ Evidence search teams
 - ___ Manhunt search teams
- ___ Assign death notification team:
 - ___ Establish last 24-48 hours of suspect's activities
 - ___ Identify other witnesses, suspects, evidence, and / or crimes?
 - ___ Obtain family's statements regarding suspect(s)
- ___ Establish media relations officer
- ___ Who is injured and how were they injured?
- ___ Photo lineup needed?
- ___ Establish a support officer for the Officer involved in OIS
- ___ Allow the Officer to make phone calls
- ___ Has the Officer already made a statement?
 - ___ If so, obtain it
- ___ Has the Officer done a walk-through for anyone? If so, talk to that person.
- ___ Conduct walk thru if not yet done (See Public Safety Statement)
- ___ Remove the Officer from the scene as soon as practical

HOSPITAL

___ Medical opinion of subject(s) condition	___ Medical opinion of Officer's condition
___ Prognosis of subject(s)	___ Prognosis of Officer
___ Medical opinion of subject(s) injuries, type & severity	___ Medical opinion of Officer's injuries, type & severity
___ Medical treatment of subject(s)	___ Medical treatment of Officer
___ Pre-treatment / pre-transfusion blood drawn?	___ Pre-treatment / pre-transfusion blood drawn?
___ Evidence removed from subject(s) in course of medical treatment	___ Evidence removed from officer in course of medical treatment
___ Subject(s) clothing	___ Officer's clothing
___ Statements made by subject(s)	___ Statements made by officer
___ Type & quantity of medication given to subject(s)	___ Type & quantity of medication given to Officer
___ Medical Records: Where & How?	___ Medical Records: Where & How?
___ Security Needs	___ Security Needs
___ Hold placed on subject vs release from hospital	___ Photographs taken by hospital?
___ Photographs taken by hospital?	
___ Interview subject at hospital if dying or incapacitated for a long time	

OFFICER INTERVIEW

- ___ Sleep cycle considerations (24-72 hours removed from incident)
- ___ Department policies
- ___ Initial walk-through of incident
- ___ Initial / Follow-up Interviews
- ___ Report writing discussion (who writes it, etc)
- ___ Collection of Officer's weapons, clothing, communication(s)
- ___ Provide Officer with replacement firearm
- ___ Watch available video: In-Squad, surveillance from nearby businesses
- ___ Training / Experience: General, Specific, Intra-Departmental
- ___ Prior knowledge of / history with subject
- ___ Did Officer discuss incident in detail with anyone?
- ___ Written report completed by Officer? Was Officer ordered to write it?
- ___ If Garrity requested, we don't grant it!!! (applies to internal investigation only)
 - ___ Don't be present when Garrity is given
 - ___ If Garrity interview is done by Officer's department, DO NOT discuss that interview with them!
- ___ Officer's actions during use of force:
 - ___ Weapons used?
 - ___ Approach to scene? How there?
 - ___ Verbalization?
- ___ Actions immediately after use of force
- ___ Officer on any medications or alcohol? Blood draw?
- ___ Timeline for Officer for 48 hours prior to the OIS

POST INCIDENT

- ___ Arrange autopsy
 - ___ Evidence collection
 - ___ Photos
- ___ PTSD debriefing for all law enforcement, fire and medical personnel involved
- ___ Obtain 911 tapes and call report
- ___ Obtain radio traffic tapes
- ___ Obtain recorded phone tapes
- ___ Obtain squad video, media video and any neighborhood / surveillance videos
- ___ Is there a squad car GPS? (if so, obtain it)
- ___ Obtain a list of family and friends of the subject(s) and interview
- ___ Interview medical personnel (doctors and nurses)
- ___ Interview EMS personnel
- ___ Obtain subpoena for medical records
- ___ Obtain criminal history on subject(s)
- ___ Obtain any agency contacts and reports on subject(s)
- ___ Reconstruct officer's and subject's whereabouts and activities for the previous 48 hours to help further establish the investigative timeline
- ___ Schedule debriefing with the agency head and district attorney
- ___ Obtain news articles
- ___ Obtain all reports from Officer's agency
- ___ Obtain death certificate(s)
- ___ Follow-up photos of officer and subject(s)
- ___ Arrange interview with subject(s)
- ___ If necessary, complete neighborhood canvass (speaking with anyone missed during first canvass)
- ___ Obtain prosecutor decision letter subsequent to review

CHECKLIST FOR CRITICAL INCIDENT RESPONSE

CALLOUT

- ☐ Contact agency for initial information
- ☐ Evaluate need for assistance (Contact regional DCI supervisor for additional assistance)
- ☐ Prosecutor notified?
- ☐ Crime Lab and / or Evidence Tech Team notified?
- ☐ State Patrol notified (total station)?
- ☐ DCI TSU / Analysts needed?
 - ☐ Cell phone tracking, preservation letters, emergency DNR?
 - ☐ Social Media monitoring / preservation?
 - ☐ Computer media analysis?
- ☐ Office of Crime Victims Services notified?
- ☐ Scene secured?
 - ☐ Establish scene security with inner and outer perimeter
 - ☐ Start scene log
- ☐ Status of officer involved?
- ☐ Status of subject(s) involved?
- ☐ Coroner needed and notified?
- ☐ Search team for manhunt needed? (If so, establish separate Tactical Operations Center / command structure for this)
- ☐ Initial photo / video documentation of Scene:
 - ☐ Agents / officers and their vehicles as they appeared at the time of the incident
 - ☐ Lighting / WX conditions
 - ☐ Injuries of subject(s) before treatment?
 - ☐ Injuries of subject(s) after treatment?
 - ☐ Injuries of officer before treatment?
 - ☐ Injuries of officer after treatment?
- ☐ Photograph and Secure weapons of officers and subjects involved:
 - ☐ May inspect officer's weapon at scene, but avoid collecting it there whenever possible.
 - ☐ Immediately provide officers involved with a replacement weapon
- ☐ Search warrant needed?
 - ☐ For scene?
 - ☐ Additional locations?
 - ☐ For blood draws?
 - ☐ Cell track?
 - ☐ Cell phones?
- ☐ Security needed at hospital?
 - ☐ Evidence collection (Clothing, bullets/fragments, etc)

ON SCENE

- ___ Status of officer / obtain medical assistance for the officer
- ___ Identify and obtain "Public Safety Statement" from officer(s) involved:
 - ___ What force did they use?
 - ___ Direction and approximate number of shots fired by involved officer(s) and suspect(s)?
 - ___ Location of injured person(s)?
 - ___ Description of outstanding suspect(s), direction of travel, time last seen, and suspect's weapons?
 - ___ Description and location of any known witnesses?
 - ___ Description and location of any known evidence?
 - ___ Any other information to ensure officer and public safety, and assist in apprehension of suspect(s) still at large?
- ___ Instruct Officers Involved they are not to discuss details of incident with anyone other than their attorney / union rep, mental health professional, investigating officers, or supervisors until formal interview is completed a later time.
- ___ Status of subject(s) / obtain medical assistance for the subject(s)
- ___ Re-evaluate need of investigative assistance
 - ___ Identify DCI Supervisor in Charge
 - ___ Identify a corresponding OIC from local agency
- ___ Establish where the crime scene is and what needs to be taped off
- ___ Coordinate with Crime Laboratory and/or Evidence Tech Team on scene processing
- ___ Scene processing: what was moved prior to arrival?

- ___ **Recorded** interviews of citizen witnesses (keep witnesses separate)
 - ___ What witnesses need isolation?
- ___ Neighborhood canvass (Assign a Team Leader / multiple interview teams)
 - ___ Identify any security or cell phone cameras that may contain footage of incident
- ___ Make sure security is established at the hospital if necessary
- ___ Talk to prosecutor for search warrant or subpoena on medical records and toxicology
- ___ Establish search teams if needed:
 - ___ Evidence search teams
 - ___ Manhunt search teams
- ___ Assign death notification team:
 - ___ Establish last 24-48 hours of suspect's activities
 - ___ Identify other witnesses, suspects, evidence, and / or crimes?
 - ___ Obtain family's statements regarding suspect(s)
- ___ Establish media relations officer
- ___ Who is injured and how were they injured?
- ___ Photo lineup needed?
- ___ Establish a support officer for the Officer involved in OIS
- ___ Allow the Officer to make phone calls
- ___ Has the Officer already made a statement?
 - ___ If so, obtain it
- ___ Has the Officer done a walk-through for anyone? If so, talk to that person.
- ___ Conduct walk thru if not yet done (See Public Safety Statement)
- ___ Remove the Officer from the scene as soon as practical

HOSPITAL

___	Medical opinion of subject(s) condition	___	Medical opinion of Officer's condition
___	Prognosis of subject(s)	___	Prognosis of Officer
___	Medical opinion of subject(s) injuries, type & severity	___	Medical opinion of Officer's injuries, type & severity
___	Medical treatment of subject(s)	___	Medical treatment of Officer
___	Pre-treatment / pre-transfusion blood drawn?	___	Pre-treatment / pre-transfusion blood drawn?
___	Evidence removed from subject(s) in course of medical treatment	___	Evidence removed from officer in course of medical treatment
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___	Type & quantity of medication given to subject(s)	___	Type & quantity of medication given to Officer
___	Medical Records: Where & How?	___	Medical Records: Where & How?
___	Security Needs	___	Security Needs
___	Hold placed on subject vs release from hospital	___	Photographs taken by hospital?
___	Photographs taken by hospital?		
___	Interview subject at hospital if dying or incapacitated for a long time		

OFFICER INTERVIEW

- ___ Sleep cycle considerations (24-72 hours removed from incident)
- ___ Department policies
- ___ Initial walk-through of incident
- ___ Initial / Follow-up Interviews
- ___ Report writing discussion (who writes it, etc)
- ___ Collection of Officer's weapons, clothing, communication(s)
- ___ Provide Officer with replacement firearm
- ___ Interview considerations: Location, Video/Audio
- ___ Watch available video: In-Squad, surveillance from nearby businesses
- ___ Training / Experience: General, Specific, Intra-Departmental
- ___ Prior knowledge of / history with subject
- ___ Did Officer discuss incident in detail with anyone?
- ___ Written report completed by Officer? Was Officer ordered to write it?
- ___ If Garrity requested, we don't grant it!!! (applies to internal investigation only)
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- ___ Officer's actions during use of force:
 - ___ Weapons used?
 - ___ Approach to scene? How there?
 - ___ Verbalization?
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POST INCIDENT

- ___ Arrange autopsy
 - ___ Evidence collection
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- ___ Obtain radio traffic tapes
- ___ Obtain recorded phone tapes
- ___ Obtain squad video, media video and any neighborhood / surveillance videos
- ___ Is there a squad car GPS? (if so, obtain it)
- ___ Obtain a list of family and friends of the subject(s) and interview
- ___ Interview medical personnel (doctors and nurses)
- ___ Interview EMS personnel
- ___ Obtain subpoena for medical records
- ___ Obtain criminal history on subject(s)
- ___ Obtain any agency contacts and reports on subject(s)
- ___ Obtain officer training records
- ___ Obtain Department Policy on Deadly Force
- ___ Trace officer's and subject's whereabouts for the past 48 hours
- ___ Schedule debriefing with the agency head and district attorney
- ___ Obtain news articles
- ___ Obtain all reports from Officer's agency
- ___ Obtain death certificate(s)
- ___ Follow-up photos of officer and subject(s)
- ___ Arrange interview with subject(s)
- ___ If necessary, complete neighborhood canvass (speaking with anyone missed during first canvass)
- ___ Obtain prosecutor decision letter subsequent to review

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- ☐ Scene secured?
 - ☐ Establish scene security with inner and outer perimeter
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___	Photographs taken by hospital?		
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OFFICER INTERVIEW

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- ___ Obtain recorded phone tapes
- ___ Obtain squad video, media video and any neighborhood / surveillance videos
- ___ Is there a squad car GPS? (if so, obtain it)
- ___ Obtain a list of family and friends of the subject(s) and interview
- ___ Interview medical personnel (doctors and nurses)
- ___ Interview EMS personnel
- ___ Obtain subpoena for medical records
- ___ Obtain criminal history on subject(s)
- ___ Obtain any agency contacts and reports on subject(s)
- ___ Obtain officer training records
- ___ Obtain Department Policy on Deadly Force
- ___ Trace officer's and subject's whereabouts for the past 48 hours
- ___ Schedule debriefing with the agency head and district attorney
- ___ Obtain news articles
- ___ Obtain all reports from Officer's agency
- ___ Obtain death certificate(s)
- ___ Follow-up photos of officer and subject(s)
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- ___ If necessary, complete neighborhood canvass (speaking with anyone missed during first canvass)
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WI DOJ-DCI

CRITICAL INCIDENT RESPONSE

NOTIFICATION FORM



DATE OF REQUEST FOR INVESTIGATIVE RESPONSE

TYPE OF EVENT

LOCATION OF EVENT

REQUESTING AGENCY

AGENCY CONTACT PERSON, TELEPHONE NUMBER & AGENCY ADDRESS

AGENCY CHIEF/SHERIFF AND TELEPHONE NUMBER

AGENCY PIO NAME AND CONTACT NUMBER

☐ **SAC _____ HAS CONTACTED THE REQUESTING AGENCY REPRESENTATIVE AND PROVIDED THE CONTACT INFORMATION FOR THE WI DOJ AG'S OFFICE PIO AS LISTED BELOW:**

Anne E. Schwartz
Director of Communications and Public Affairs
Department of Justice
Office of Attorney General Brad Schimel

17 W. Main St.
P.O. Box 7857
Madison, WI 53707-7857 Direct
Phone: (608) 266-6686
schwartzae@doj.state.wi.us



WI DOJ-DCI
CRITICAL INCIDENT RESPONSE
NOTIFICATION FORM



NARRATIVE



WISCONSIN DEPARTMENT OF JUSTICE
DIVISION OF CRIMINAL INVESTIGATION

DOJ-DCI
PO BOX 7857
MADISON WI-53707
(608) 266-1671

DJ-DCI (Rev. 8/2013)

Critical Incident: DCI Agent Involved Shooting

Supervisor Checklist

The purpose of this checklist is to provide DCI supervisors with guidelines regarding incidents of Agent-Involved Shootings (AIS) when DCI personnel are involved.

I. CONFIRM

- _____ that the subject/threat is controlled. Control the scene, treat it like a crime scene.
- _____ that the agent has rendered first aid to any injured person. Request emergency medical assistance as soon as practical.
- _____ the agent's location and safety/condition.
- _____ that local law enforcement has been notified of the situation, and that basic public safety information has been given to them. They need to know if there are any at-large subjects or threats remaining to the public.

II. NOTIFY

- _____ DCI's Management Alert Group via email, providing a summary of the incident. During non-duty hours, telephone the appropriate Director, who in turn will notify the Administrator or the Administrator's designee.

III. ADVISE

- _____ the agent to remain at the scene until cleared to leave by the SAC or SAC designee, unless the agent is injured or it is unsafe for the agent to remain present.
- _____ the agent to protect the firearm used, keep holstered if possible, and privately submit it to the SAC or the SAC's designee, not to local law enforcement.
- _____ the agent not to discuss the incident with anyone except appropriate DCI supervisors; investigating DCI agents or other law enforcement personnel assigned to the investigation; the prosecuting attorney; the agent's attorney; a mental health professional or physician; the agent's clergy; the agent's immediate family; and others as authorized by the Administrator or the Administrator's designee.



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IV. ON-SCENE SUPERVISION

- _____ Assign a note-taker to record all personnel entering and leaving the scene and any other significant events.
- _____ Obtain a quick briefing of the situation to make sure the subject/threat/area is controlled and secured. If not secure, contact a tactical enforcement team (either local or DCI).
- _____ Identify the agents involved and immediately identify potential witnesses. Separate all witnesses, including agents. Safeguard civilian witnesses to make sure they don't leave the scene before making a statement as to what they observed.
- _____ Obtain the agent's weapon and magazines and supply him/her with a replacement weapon unless circumstances dictate otherwise. This should be done in a private, discreet location.
- _____ Inspect the weapon for condition, serial number, type of ammunition, and the number of rounds in the weapon and in magazines. Also check the weapons of all agents on scene for condition, serial number and numbers of rounds in weapon and magazines. Do not keep the other agents' weapons unless circumstances dictate otherwise.
- _____ Clear the area of all non-essential personnel and treat it as a crime scene. Tape it off, barricade it, or utilize roadblocks.
- _____ Remove the agent from the scene by transporting him/her away from the immediate scene and outside the perimeter. The agent should be accompanied by an agent not involved in the shooting. Offer food, drink, restroom, telephone and other support as necessary.
- _____ Document the agent's manner of dress/appearance, including law enforcement identifiers.
- _____ Notify the agent he/she will be placed on administrative leave with pay as ordered by the Administrator or the Administrator's designee, pending the results of the investigation or until the Administrator or his/her designee reinstates the agent to full duty. Assignment to administrative leave shall not be interpreted to imply or indicate that the agent has acted improperly.
- _____ Do not conduct an in-depth interview of the agent immediately after the incident. Generally the agent will be given 48 to 72 hours prior to an in-depth interview regarding what transpired.



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DJ-DCI (Rev. 8/2013)

- _____ Notify the agent that while he/she is on administrative leave, he/she should remain available for interviews and statements and shall be subject to recall to full duty at any time. Offer EAP, the Special Agent Support Team (SAST) and other support services.
- _____ Encourage the agents on scene to contact their families and provide assurance that they are okay. No details regarding the incident are to be provided in this family contact.
- _____ Notify the District Attorney.
- _____ Notify DCI office personnel regarding the incident. Division notification may be handled by the Administrator or his/her designee.

V. IF AGENT IS INJURED OR KILLED

- _____ Make sure an agent accompanies the injured agent to the hospital and is relieved within a reasonable time by another agent or local law enforcement.
- _____ Make sure the injured agent contacts his/her family as soon as possible to notify them regarding his/her condition. If the agent is too seriously injured, or if the agent is dead, the SAC should obtain the agent's "Personal Information Document" (see ***Policy 260: Line of Duty Death or Serious Injury***) for access to the agent's emergency contact information, then proceed with notifications as soon as possible. Coordinate with the DCI Administrator or his/her designee. The agent will have listed a primary contact, a secondary contact and a list of three agents they would prefer to have make the contact with the agent's family. If at all possible, make sure the listed agents are part of the **in-person** notification of the agent's family.
- _____ Assign an agent to be a point of contact for the agent's family.
- _____ Contact the DCI Special Agent Support Team SAST (again, see ***Policy 260***). The SAST will have their own checklist to provide assistance to the agent and family. The SAST will coordinate assistance to the agent's family, which may include providing agents for transportation of family members to the hospital; liaison with the family and staying with the family either at home and/or at the hospital as necessary; advising the family regarding what to expect; completion of duty death forms; notification regarding court appearances; arrangement of counseling sessions for agents involved; etc. The SAC should make sure the SAST is following its protocol.



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- _____ Contact the Department of Justice, Office of Crime Victim Services to advise them of the shooting incident and request supportive assistance for the agent and the agent's family. All victim service support should be coordinated with the SAC or SAC designee.

VI. IF LOCAL LAW ENFORCEMENT WILL INVESTIGATE

- _____ Contact the on-scene commander from the local law enforcement agency and advise him/her of what transpired and what actions DCI has taken since the shooting. This briefing should include the names and phone numbers of all agents/witnesses involved.
- _____ Turn over note taking/recording of events to local law enforcement.
- _____ Obtain the name of and contact information for the local law enforcement agency's lead investigator. Advise the lead investigator/supervisor on scene that you have the weapon and magazines from the agent involved in the shooting. Give the lead investigator/supervisor the name of the agent involved in the shooting and your contact information for arranging an interview of the agent.
- _____ Advise the commander/lead investigator that the agent involved in the shooting will not be available until 48 to 72 hours after the shooting. (If circumstances allow, the agent may be made available immediately after shooting for a scene walk-through and explanation of what happened, but not an in-depth interview.) Seek approval from headquarters before agents are interviewed.
- _____ The agent may be asked to voluntarily provide a blood sample by the lead investigator for the purpose of drug/alcohol toxicology.
- _____ The shooting agent(s) will retain his/her weapon, keeping it holstered if possible, until such time as he/she is in a private location to relinquish it to the investigating agency. (The weapon may only be released to local law enforcement with Administrator approval.)
- _____ Provide local media and local law enforcement with the name and contact information for DOJ's media representative, and advise them that any statements regarding DCI's involvement in the incident will come from DOJ headquarters only.
- _____ Provide local law enforcement with a contact name and contact information for DOJ's Office of Crime Victim Services (OCVS). Advise them that DOJ would like supportive victim services for the agent and the agent's family to involve OCVS.



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DJ-DCI (Rev. 8/2013)

VII. IF DCI IS INVESTIGATING THE SHOOTING

- _____ With input from the Administrator or designee, select and contact an agent to lead the investigation of the shooting incident.
- _____ Assemble a team of agents to conduct the investigation, contact the Wisconsin State Crime Laboratory and the Wisconsin State Patrol TSU to process the scene(s) and collect evidence (if either or both of these resources are deemed necessary by the investigative team), and request any other investigative resources needed to ensure the incident is investigated thoroughly and professionally.
- _____ Support the agent and the agent's family, ensuring that they are treated fairly and professionally. The SAC will coordinate efforts with the Special Agent Support Team (SAST) and with DOJ OCVS.
- _____ Facilitate the lead agent obtaining a general verbal overview of the shooting incident from the agent involved in the shooting, which may include a scene walk-through. Within a reasonable amount of time (48-72 hours), a follow-up interview with the agent may be necessary. If the agent involved volunteers to provide an in-depth statement prior to 48-72 hours after the shooting, he/she will be allowed to do so. Every consideration should be given to the mental and emotional state of any agent involved in an AIS.
- _____ The agent will be asked to provide a blood sample by the lead agent or designee for the purpose of drug/alcohol toxicology.

VIII. POST-INCIDENT CONSIDERATIONS

- _____ A post-incident debriefing with a qualified mental health professional will be required of the agent as soon as practical. The debriefing shall not be used in any DCI investigation and shall be kept confidential. Additional counseling services will be available to the agent if requested.
- _____ At the discretion of the Administrator, a post-incident debriefing may be required of all agents and DCI personnel involved. The debriefing will be coordinated with the DOJ Office of Human Resources and will occur as soon as practical.
- _____ Counseling services will be made available to any DCI personnel affected by the incident if requested.



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- _____ The family of an agent involved in an AIS will be offered confidential counseling with a qualified mental health professional. These consultation sessions will remain protected by that privileged relationship.
- _____ The Administrator shall select a DCI supervisor to lead the administrative investigation. This supervisor shall be from a field office other than the one to which the involved agent is assigned.
- _____ Before returning to full duty, the agent may be assigned to limited duty for a period of time as deemed appropriate by the Administrator or designee after consultation with the agent and the mental health professional.



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Critical Incident: Officer-Involved Shootings

Supervisor Checklist

The purpose of this checklist is to provide DCI supervisors with guidelines regarding DCI's response to officer-involved shootings when DCI is asked to assist other agencies in investigating such incidents.

RECEIVE THE REQUEST FOR ASSISTANCE

- _____ Document the contact name, agency, title and telephone number of the requester
- _____ Upon making contact, obtain a summary of the incident:
 - _____ Status of officer(s) involved and location
 - _____ Status of subject(s) involved and location
 - _____ Status of manhunt, if initiated
 - _____ Location of scene including address
 - _____ Status of scene(s) and ability to secure, preserve, and protect
 - _____ Number of scenes
 - _____ Type of scene (urban, rural, highway, indoor/outdoor, etc)
 - _____ Status of evidence involved and ability to preserve
 - _____ Witnesses
- _____ Identify local point of contact from the requesting law enforcement agency (name, telephone number)
- _____ Ask requesting agency to initiate their protocol if dictated by policy
 - _____ If no policy exists, ask them to initiate the following activities:
 - _____ Secure weapon(s) of all involved and replace officer's weapon
 - _____ Establish and maintain an inside and outside perimeter
 - _____ Establish and maintain a crime scene entry log
 - _____ Preservation of physical evidence
 - _____ Limit communication with others
 - _____ Agency support system for officer(s) involved



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- _____ Send email notification to DCI Alert Group. During non-duty hours also call respective Director who will notify the Deputy Administrator and Administrator.
- _____ Contact regional Special Agents as needed
- _____ Assign lead special agent and brief on the situation
 - _____ Determine the ETA of the lead agent
 - _____ Discuss and determine the need for additional DCI resources
 - _____ Additional special agents for interviews
 - _____ Additional special agents for scene/evidence processing
 - _____ Inform lead special agent of point of contact at requesting agency
- _____ Contact other SACs for additional Special Agents if needed
- _____ If necessary, contact State Crime Lab Field Response Unit
 - Madison – 608-266-2031
 - Wausau – 715-845-8626
- _____ If necessary, contact WSIC SAC for:
 - _____ MSU response
 - _____ Analytical support or response
 - _____ Technical Services Unit support or response
- _____ If necessary, contact Wisconsin State Patrol for support
 - _____ Total Station Unit
 - _____ Traffic/aerial support
- _____ Contact with District Attorney
 - _____ Obtain search warrants/court orders, if needed
- _____ Obtain the address/location of Incident Command



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ON-SCENE ASSISTANCE

- _____ Establish command post / check in with Incident Command
- _____ Consult with lead special agent to determine if additional resources are needed
 - _____ Agents for interviews
 - _____ Agent needed to attend autopsy
 - _____ Coordination with Medical Examiner or Coroner
 - _____ Scene/Evidence agents
- _____ Assist lead agent in managing the additional areas of attention: Officer Involved, Subject Involved, Witnesses, Scene and Evidence (**see below**)
- _____ Ensure scene perimeters are established and logs are initiated
- _____ Identify points of contact
 - _____ local agency OIC
 - _____ State Crime Lab
 - _____ State Patrol
- _____ Considerations for MSU and Analyst responsibilities
 - _____ Suspect backgrounds
 - _____ Neighborhood canvass
 - _____ Timeline
 - _____ Additional Equipment (i.e. lighting, evidence supplies, radios, computers, Wi-Fi capabilities)
 - _____ Additional outside resources (i.e. canine support, search and rescue, federal law enforcement)
- _____ Ongoing assessment of the needs of DCI personnel involved
 - _____ Food and water
 - _____ Shelter for extreme weather
 - _____ Fatigue and travel concerns
 - _____ Lodging
 - _____ Reassignment of previously scheduled tasks



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_____ Establish periodic briefing times

_____ Provide periodic updates to DCI Management

_____ Media

_____ Identify local agency Public Information Officer

_____ Coordinate media information with the DOJ Public Information Officer

_____ Post-incident debrief

ADDITIONAL AREAS OF ATTENTION

OFFICER INVOLVED

_____ Department policy for officer-involved shootings

_____ Location of the officer's equipment used in the course of the incident or related to the incident

_____ Radio communications

_____ In-squad video

_____ AVL

_____ Cell phone

_____ 911 telephone communications

_____ Weapon(s) utilized

_____ Weapon(s) not utilized

_____ Uniform

_____ Squad car

_____ Statement given prior to DCI arrival?



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SUBJECT INVOLVED

- _____ Status and location of subject(s) involved
 - _____ Hospital
 - _____ Provide security at hospital, if needed
 - _____ In custody
 - _____ Not in custody / manhunt
- _____ Weapon and/or actions that subject used and/or displayed
- _____ Custodial circumstances of subject
- _____ Statements, utterances, actions of subject
- _____ Writings, phone calls, computer entries of subject prior to incident
- _____ Death notification

WITNESSES

- _____ Status of witnesses
- _____ Location of witnesses
- _____ Witness statements
- _____ Observation point of witnesses

CRIME SCENE AND EVIDENCE

- _____ Scene is being properly secured
- _____ Who will be responsible for evidence
- _____ Any items collected or preserved prior to DCI's arrival

Amendment for Failure to Reach Agreement – Alternative 1

Amend lines 12-14 as follows:

- (b) Independent investigation required. ~~[[The]]~~ Except as provided in subsection (f), the Executive must ensure that an independent investigation is performed for each officer involved death. The independent investigation must be performed by at least 2 independent investigators:

Add the following after line 33:

- (f) Reporting. If, after making good faith efforts, the Executive is unable to enter into an agreement with another law enforcement agency to perform the required independent investigation, the Executive must submit:
- (1) a report to the Council on or before January 1, 2020:
 - (A) explaining all efforts made to secure an agreement with another law enforcement agency; and
 - (B) recommending changes to the law to support its goals; and
 - (2) updates to the Council every 90 days beginning on April 1, 2020 explaining continuing efforts to secure an agreement.

Amendment for Failure to Reach Agreement – Alternative 2

Amend lines 12-14 as follows:

- (b) Independent investigation required. ~~[[The]]~~ Except as provided in subsection (f), the Executive must make good faith efforts to ensure that an independent investigation is performed for each officer involved death. The independent investigation must be performed by at least 2 independent investigators:

Add the following after line 33:

- (f) Reporting. If, after making good faith efforts, the Executive is unable to enter into an agreement with another law enforcement agency to perform the required independent investigation, the Executive must submit:
- (1) a report to the Council on or before January 1, 2020:
 - (A) explaining all efforts made to secure an agreement with another law enforcement agency; and
 - (B) recommending changes to the law to support its goals; and
 - (2) updates to the Council every 90 days beginning on April 1, 2020 explaining continuing efforts to secure an agreement.

Amendment for Publication of Report – Alternative 1

Amend lines 27-29 as follows:

(d) Publication of the investigation report.

- (1) [[If no criminal charges are filed against the police officer,]]
Except as provided in paragraph (2), the written report must be
released to the public to the extent permitted by law:
 - (A) if no criminal charges are filed against the police officer;
or
 - (B) after the conclusion of any criminal case against the police
officer.
- (2) The custodian of the report may deny inspection of any part of
the written report if it would:
 - (A) interfere with a valid and proper law enforcement
proceeding;
 - (B) deprive a person of a right to a fair trial or an impartial
adjudication;
 - (C) constitute an unwarranted invasion of personal privacy;
 - (D) disclose the identity of a confidential source;
 - (E) disclose an investigative technique or procedure;
 - (F) prejudice an investigation; or
 - (G) endanger the life or physical safety of an individual.
- (3) This subsection must apply to a written investigation report
prepared by the independent investigators or a report prepared by
the Department if the Executive is unable to obtain an
independent investigation.

Amendment for Publication of Report – Alternative 2

Amend lines 27-29 as follows:

(d) Publication of the investigation report.

(1) [[If no criminal charges are filed against the police officer,]]
Except as provided in paragraph (2), the written report must be
released to the public to the extent permitted by law:

(A) if no criminal charges are filed against the police officer;
or

(B) after the conclusion of any criminal case against the police
officer.

(2) The custodian of the report may deny inspection of any part of
the written report if it would be contrary to the public interest,
including if it would:

(A) interfere with a valid and proper law enforcement
proceeding;

(B) deprive a person of a right to a fair trial or an impartial
adjudication;

(C) constitute an unwarranted invasion of personal privacy;

(D) disclose the identity of a confidential source;

(E) disclose an investigative technique or procedure;

(F) prejudice an investigation; or

(G) endanger the life or physical safety of an individual.

(3) This subsection must apply to a written investigation report
prepared by the independent investigators or a report prepared by

the Department if the Executive is unable to obtain an independent investigation.

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Police Assistance Amendment – Alternative 1

Amend lines 29-33 as follows:

- (e) Internal ~~[[administrative review]]~~ investigation. This Section must not be interpreted to prohibit:
- (1) an internal administrative review of the incident by the Department for possible discipline of a police officer pursuant to the Law Enforcement Officers' Bill of Rights, MD Public Safety Code, §§3-101 to 3-113, as amended or;
 - (2) the Department from:
 - (A) responding to the crime scene to perform routine police duties to protect members of the public and members of the Department; or
 - (B) providing support and assistance to the independent investigators leading the investigation as requested by the independent investigators.

Optional:

Amend lines 14-15 as follows:

The independent investigation must be [performed] led by at least 2 independent investigators:

Police Assistance Amendment – Alternative 2

Amend lines 29-33 as follows:

- (e) Internal ~~[[administrative review]]~~ investigation. This Section must not be interpreted to prohibit:
- (1) an internal administrative review of the incident by the Department for possible discipline of a police officer pursuant to the Law Enforcement Officers' Bill of Rights, MD Public Safety Code, §§3-101 to 3-113, as amended or;
 - (2) the Department from:
 - (A) responding to the crime scene to perform routine police duties to protect members of the public and members of the Department; or
 - (B) providing support and assistance to the independent investigators leading the investigation, including protecting the crime scene, searching for, collecting and preserving evidence, securing and interviewing witnesses, and any other tasks requested by the independent investigators.

Optional:

Amend lines 14-15 as follows:

The independent investigation must be [performed] led by at least 2 independent investigators:

§ 4-351. Investigation; intelligence information; security..., MD GEN PROVIS §...

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Maryland

General Provisions (Refs & Annos)

Title 4. Public Information Act (Refs & Annos)

Subtitle 3. Denials of Inspection (Refs & Annos)

Part IV. Denial of Part of Public Record (Refs & Annos)

MD Code, General Provisions, § 4-351
Formerly cited as MD CODE, SG, § 10-618

§ 4-351. Investigation; intelligence information; security procedures

Effective: October 1, 2014

Currentness

In general

(a) Subject to subsection (b) of this section, a custodian may deny inspection of:

- (1) records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff;
- (2) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or
- (3) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff.

Circumstances under which denial permissible

(b) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

- (1) interfere with a valid and proper law enforcement proceeding;

§ 4-351. Investigation; intelligence information; security..., MD GEN PROVIS §...

- (2) deprive another person of a right to a fair trial or an impartial adjudication;
- (3) constitute an unwarranted invasion of personal privacy;
- (4) disclose the identity of a confidential source;
- (5) disclose an investigative technique or procedure;
- (6) prejudice an investigation; or
- (7) endanger the life or physical safety of an individual.

Credits

Added by Acts 2014, c. 94, § 2, eff. Oct. 1, 2014.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2014, c. 94):

This section formerly was SG § 10-618(f).

The only changes are in style.

Defined terms: "County" § 1-107

"Custodian" § 4-101

"Person" § 1-114

"Person in interest" § 4-101

"State" § 1-115

§ 4-351. Investigation; intelligence information; security..., MD GEN PROVIS §...

MD Code, General Provisions, § 4-351, MD GEN PROVIS § 4-351

Current through all legislation from the 2018 Regular Session of the General Assembly

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§ 4-343. Denial of inspection by custodian, MD GEN PROVIS § 4-343

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Maryland

General Provisions (Refs & Annos)

Title 4. Public Information Act (Refs & Annos)

Subtitle 3. Denials of Inspection (Refs & Annos)

Part IV. Denial of Part of Public Record (Refs & Annos)

MD Code, General Provisions, § 4-343
Formerly cited as MD CODE, SG, § 10-618

§ 4-343. Denial of inspection by custodian

Effective: October 1, 2014

Currentness

Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part of the record, as provided in this part.

Credits

Added by Acts 2014, c. 94, § 2, eff. Oct. 1, 2014.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2014, c. 94):

This section formerly was SG § 10-618(a).

The reference to that part "of the record" is added for clarity.

The only other changes are in style.

Defined terms: "Applicant" § 4-101

"Custodian" § 4-101

§ 4-343. Denial of inspection by custodian, MD GEN PROVIS § 4-343

“Public record” § 4-101

Notes of Decisions (95)

MD Code, General Provisions, § 4-343, MD GEN PROVIS § 4-343

Current through Chapters 1 & 2 from the 2019 Regular Session of the General Assembly.

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MONTGOMERY COUNTY COUNCIL

WILL JAWANDO
COUNCILMEMBER
AT-LARGE

MEMORANDUM

March 22, 2019

TO: Councilmember Sidney Katz, Chair, Public Safety Committee
Councilmember Tom Hucker
Councilmember Gabe Albornoz

FROM: Councilmember Will Jawando

SUBJECT: Bill 1-19, Police – Officer Involved Death – Independent Investigation

As the Public Safety Committee has a work session on the Law Enforcement Trust and Transparency Act on Monday, March 25, this memo serves to compile feedback my office has received and offer you my input on concerns and questions raised by some of the testimony presented at the public hearing.

Generations of racial profiling by police in the United States has culminated in recent years with an increase in police-involved deaths. But those killings are not limited to national headlines, as we saw with the June 11, 2018 shooting death, by a county police officer, of 41-year-old Robert White, an unarmed Silver Spring man. I know you are already aware, but this police-involved death here in Montgomery County is, in great part, the impetus of the LETT Act.

In that case and others like it, the families of the victims, the public and the individual police officers all deserve to have an independent investigation conducted, with transparency and accountability. That's what the LETT Act provides: accountability and transparency, for the purpose of rebuilding trust between an increasingly skeptical community and the police officers involved.

Since the introduction of the bill on Jan. 15, we have had tremendous feedback and support from many grassroots community advocacy groups and the general public.

First, as noted in the staff packet, I am supportive of an amendment that would require making the police report public in any instance of a police-involved killing, whether the officer is ultimately charged or not. As written, the LETT act requires a report to be made public at the end of the investigation if there are no charges brought against the police officer(s) involved in the killing. The amendment I would like to include would see the eventual release the investigation report. If no charges are brought, the report would be made public immediately. If criminal charges are brought against the officer(s) involved, the report would be held and released at the conclusion of any trial or other adjudication of the case.

We have also received concerns about the implementation of the bill. Some concerns by outgoing Chief Manger include the question of who we partner with to complete our investigations, the length of time it might take an outside investigator to arrive at the scene and whether the County Executive can be directed to partner with another agency.

These are thoughtful considerations, and we appreciate Chief Manger's input. However, these are matters best suited for consideration after the law is in place, and a detailed framework for implementation can be constructed. Other models for this exist. For instance, Wisconsin is a much larger state, geographically, compared to Maryland and yet Wisconsin has successfully implemented their legislation using independent investigators. The LETT Act allows for the county to partner with a Federal, State or local agency, giving the county many different options. If the Executive comes back to the Council and says he needs more time to find a partner to work with, that can be addressed. Furthermore, the stated concern over the potential period of time it would take for the independent investigators to get to the scene is already addressed, as the bill does not prevent the county police or the first responder from doing their work of securing the scene until the proper investigators arrive. This is something that already occurs in the regular course of police work.

The staff packet offers guidance that the Council amend the bill to allow a "good faith effort" by the County Executive, in place of the current language that the County Executive "must ensure that an independent investigation is performed." I recommend against adopting the staff packet's suggested amendment, as it undermines a significant purpose of the legislation: ensuring accountability. The packet's argument that the County Executive does not have the authority to force another jurisdiction to investigate overlooks the County Executive's role in forging cooperative agreements with other jurisdictions – just as the State's Attorney has in place now in an agreement with Howard County. And as OMB Director Madaleno makes plain in his analysis of the LETT Act, the underlying assumption is that the County Executive would make a cooperative agreement with another jurisdiction, which is entirely within the functions of the County Executive. I urge you to reject the packet recommendation in this instance.

Further, the staff packet recommends an amendment that the independent investigation be "led" by at least two independent investigators, replacing the current language the inquiry be "performed" by those outside investigators. I urge you to reject this language, as it fails to uphold the goals of accountability, rendered by an independent investigation. An investigation cannot be independent if it depends on the findings of the force which it is investigating. By virtue of performing the investigation, the outside inspectors would be leading the inquiry.

I will repeat what I have said from the beginning. No one should see the LETT Act as hindering the ability of police to do their job. Nor should we permit anyone to make the false claim that the men and women who wear the police uniform are not worth our trust. I believe Montgomery County is home to the state's finest police officers, and I hold them in high regard. However, I also believe their position requires a higher standard of transparency, and that this bill could help repair the damaged trust between the police and the communities they serve, particularly people of color.