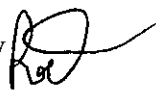


**MEMORANDUM**

January 11, 2019

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

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

PURPOSE: Introduction – no Council votes required

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 Alborno, is scheduled to be introduced on January 15, 2019. A public hearing is tentatively scheduled for March 5, 2019 at 7:30 p.m.

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.<sup>1</sup>

**Background**

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. 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. If the State's Attorney decides not to prosecute the involved officer or officers, the report must be released to the public to the extent permitted under the Maryland Public Information Act. The independent investigation required by Bill 1-19 must not be used as a basis of discipline of the officer. However, the Bill

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<sup>1</sup> #LawEnforcementTransparency, LETT Act, officer involved death, and police investigation.

would not prevent the Police Department from conducting an internal investigation for possible discipline under the Law Enforcement Officers' Bill of Rights.

This packet contains:

Bill 1-19

Legislative Request Report

Councilmember Jawando Memorandum

Circle #

1

4

5

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Bill No. 1-19  
Concerning: Police – Officer Involved  
Death – Independent Investigation  
Revised: January 9, 2019 Draft No. 4  
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

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Lead Sponsor: Councilmember Jawando  
Co-Sponsors: Councilmembers Rice, Riemer, Council President Navarro and Councilmember Albornoz

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**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

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*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 Executive must ensure that an  
13              independent investigation is performed for each officer involved death.  
14              The independent investigation must be performed by at least 2  
15              independent investigators:

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

17              (2) who have experience and expertise in conducting complex  
18              criminal investigations; and

19              (3) work for a:

20                      (A) local law enforcement agency located outside of the  
21                      County;

22                      (B) Federal law enforcement agency; or

23                      (C) State law enforcement agency.

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

26 (d) Publication of the investigation report. If no criminal charges are filed  
27 against the police officer, the written report must be released to the public  
28 to the extent permitted by law.

29 (e) Internal administrative review. This Section must not be interpreted to  
30 prohibit an internal administrative review of the incident by the  
31 Department for possible discipline of a police officer pursuant to the Law  
32 Enforcement Officers' Bill of Rights, MD Public Safety Code, §§3-101  
33 to 3-113, as amended.

34 **Sec. 2. Effective date.**

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

37 *Approved:*

38 \_\_\_\_\_  
Nancy Navarro, President, County Council

Date

39 *Approved:*

40 \_\_\_\_\_  
Marc Elrich, County Executive

Date

41 *This is a correct copy of Council action.*

42 \_\_\_\_\_  
Megan Davey Limarzi, Esq., Clerk of the 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

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**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 21<sup>st</sup> 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.