

Montgomery, Howard to make official deal on review of fatal police shootings

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FULL TEXT

After informal agreement in 2015, counties aim to disclose more to public

In 2015, the state's attorneys in Montgomery and Howard counties came to an agreement: Following best practices, the two jurisdictions would review each other's police-involved deaths to determine whether the officer acted lawfully.

Four years later, they're going to write it down.

Montgomery County state's attorney John McCarthy and his newly elected counterpart in Howard, Rich Gibson, this week plan to sign what had been a handshake agreement up to this point.

The formalized agreement now will include provisions aimed at disclosing more information about how they arrived at their findings. Public criticism of the process had mounted last year after the Howard County state's attorney's office issued a one-page letter in July stating it was not pursuing criminal charges against the officer who fatally shot an African American man, Robert Lawrence White, in Silver Spring last summer - leaving some in the community with questions about the case.

Now, under the new agreement, whenever prosecutors review a death caused by police, they must issue a written report detailing their investigation and why they decided to either press charges or take no action.

While that report itself wouldn't be public, the agreement allows for the state's attorney in the county where the death occurred to use the report to speak about the case. It also calls for the prosecutor's office that reviewed the case to be available to talk to the public about how the decision was reached.

"If there's a press conference or public meeting, the investigating entity will be present to help shed light on questions that may be asked," said Gibson, who drafted the agreement after taking office in January.

"It is important to be able to stand behind the choices that we make, and it's important to be able to explain to the community," he said. "There are some people who are never going to accept a given outcome, but you should be able to communicate with some level of transparency when appropriate."

McCarthy said the new agreement will "allow us to provide detailed answers to fair questions asked by the public."

He pointed to a March 19 report produced by two Howard County prosecutors detailing their review of January's fatal shooting of an armed bank robbery suspect in Silver Spring who had said he had a bomb in his backpack.

The eight-page report, which has not been made public, included a lengthy list of the evidence prosecutors reviewed - including witness interviews, forensics, autopsy reports, detectives' notes and the officers' body-camera footage - and concluded with a three-page summary of the facts. Prosecutors found that shooting to be justified.

"There's much more detailed information in it now," said McCarthy, adding that future reports would be modeled off this template. "I think if the public then begins to say, who did you talk to, what did you do, and you wanted to know more of the details of the specifics of what was done, this spells it out."

The original agreement between the two state's attorneys offices was an effort, in part, to increase transparency surrounding police actions and ensure prosecutors weren't too close to the officers they were investigating.

Having outside prosecutors examine fatal police shootings was one of the recommendations made in 2015 by President Barack Obama's Task Force on 21st Century Policing. Using independent prosecutors would "demonstrate the transparency to the public that can lead to mutual trust between community and law

enforcement," the report said.

The following month, Montgomery and Howard became the first in the state to create such a pact.

In the last four years, Montgomery - which, at 1.1 million people, has more than three times the population of Howard - has investigated two deaths in Howard, while Howard has investigated six deaths and one nonfatal police shooting in Montgomery.

"Having an outside jurisdiction, Howard County, evaluating the police of Montgomery County . . . affords a level of distance which would preserve fairness and hopefully trust in the investigation," Gibson said.

But Montgomery County Council Member Will Jawando (D-At Large), who took office in December, called the written agreement "insufficient."

"I think it's a mistake, and it falls short on transparency goals if you don't release the report," he said.

In January, Jawando introduced a bill that would require an outside law enforcement agency to also conduct the initial investigation into any fatal police shooting that occurs in Montgomery. Around 20 people spoke about the bill at a public hearing last month, with many supporting the idea and asking for even more provisions - civilian investigators instead of law enforcement or mandating an outside look at excessive force complaints.

Jawando's bill, sponsored by the rest of the nine-member, all-Democratic council, would require the county executive to enter into an agreement with another law-enforcement agency to lead the investigation.

Jawando said the county would be the first in the state to have independent police investigations - another recommendation from the Obama task force on policing.

"The ultimate goal here is to build trust between police and the community," he said. "That's why an independent investigation is so important."

But the county executive and the former police chief both have expressed concerns that the legislation would be unworkable.

One issue the committee wrestled with is how to require the county executive to enter into an agreement with another jurisdiction because the executive has no legal authority to require an outside agency to sign up.

It's not the first time that county officials have considered outside police investigations. The same year the two state's attorneys' offices began their agreement, then-Chief J. Thomas Manger looked into having another law enforcement agency - not Montgomery officers - investigate the county's fatal police shootings. He explained to the council at the time that it was about "public perception, public trust."

But last month, Manger (who has since retired) told the council's public safety committee, which was deliberating over Jawando's bill, that he couldn't find one that would be interested in the role - and he had his doubts that one could be found now.

Howard County's police chief said her county attorney had advised her against such a partnership, Manger said, while her investigators said they didn't have the capacity to take on Montgomery investigations.

The bill will come before the council's public safety committee again on April 12.

Several officials, including Manger, the county executive and Montgomery's and Howard's state's attorneys, have argued that a statewide investigative bureau would be a better option than ad hoc arrangements between two agencies.

Legislation that would require outside investigations statewide was introduced in the General Assembly this session but has not advanced.

"I think the statewide option is the best option down the line," Jawando said at the committee meeting. "I think like we do in many areas, here in Montgomery County, we can lead and show how it can be done in a cooperative way."

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