

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 629
Judiciary

(Delegate Moon, *et al.*)

Criminal Law - Law Enforcement Officers - Misconduct

This bill prohibits a law enforcement officer from (1) intentionally disabling a body camera, a dash camera, or any other video or audio recording device in violation of the policy for such recordings established by the law enforcement agency that employs the law enforcement officer; (2) causing injury to a person detained by or in the custody of the law enforcement officer by intentionally failing to request medical assistance for the person; and (3) discharging a firearm and causing injury to another if the discharge was in violation of the policy for use of force established by the law enforcement agency that employs the law enforcement officer. A violator is guilty of a misdemeanor, punishable by imprisonment ranging from a maximum of one year to a maximum five years, as specified, and/or a fine not exceeding \$25,000.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Any increase in workload for the District Court can be handled with existing resources of the Judiciary.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions. Any increase in workload for the circuit courts can be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law/Background:

Discharge of Firearm/Use of Force: Although there is no statewide uniform law or policy regarding the use of force or the use of a firearm by a law enforcement officer, the Police Training Commission (PTC) is required to ensure that the entrance-level police training curriculum includes training on the proper use of force. PTC, within the Department of Public Safety and Correctional Services, operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. PTC certifies persons as police officers who have met commission standards. An individual who is not satisfactorily trained in the 12-month probationary period may not be employed as a police officer, and a police officer may not serve after certification has been revoked, suspended, or allowed to lapse.

Duty to Render Aid: In Maryland, as in many states, police officers have no affirmative duty to render aid to a member of the public who is in distress or in need of medical attention, although generally under common law, an officer can create a duty to act by being the cause of an injury or emergency. Several states have case law establishing a requirement for law enforcement officers to render aid in all cases where they are able to do so. A failure to render aid on the part of a law enforcement officer may give rise to a civil action and could lead to administrative discipline or dismissal.

In Wisconsin, it is a misdemeanor for a peace officer to fail to render or make arrangements for any necessary first aid for an individual in the officer's custody. Another officer who knowingly allows a violation is also guilty of a misdemeanor under Wisconsin law.

Body-worn Cameras: Chapters 128 and 129 of 2015 established the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers. Through examination of model policies and discussion, the commission compiled a list of best practices for body-worn cameras (BWCs) and submitted a report to PTC and the General Assembly on September 16, 2015.

The commission's [report](#) addresses (1) procedures for testing and operating equipment, including when BWCs must be activated and when use is prohibited; (2) notification responsibilities of law enforcement officers to individuals being recorded; (3) confidentiality and ownership of data; (4) procedures and requirements for data storage; (5) review of recordings by parties in interest; and (6) establishment of retention periods, release of recordings as required by the Maryland Public Information Act, and development of written policies for BWC usage consistent with State law and regulations issued by PTC.

In addition, pursuant to Chapters 128 and 129, PTC developed a policy for the issuance and use of a BWC by a law enforcement officer; the policy incorporated the recommendations of the commission. PTC also published a [Body-worn Camera Procedural Reference Guide](#) that provides practical and detailed background information and advisory language for use by law enforcement agencies. The reference guide addresses:

- the testing of BWCs to ensure adequate functioning;
- the procedure for the law enforcement officer to follow if the camera fails to properly operate at the beginning of or during the law enforcement officer's shift;
- when a recording is mandatory, prohibited, or discretionary;
- when a recording may require consent of a subject being recorded;
- when a recording may be ended;
- providing notice of a recording;
- access to and confidentiality of recordings;
- the secure storage of data from a BWC and review of that data;
- the retention and use of recordings;
- dissemination and release of recordings;
- consequences for violations of the agency's BWC policy;
- notification requirements when another individual becomes a party to the communication following the initial notification;
- specific protections for individuals when there is an expectation of privacy in private or public places; and
- additional issues determined to be relevant in the implementation and use of BWCs by law enforcement officers.

Nationally, laws regarding police recording devices continue to evolve. Prior to 2015, only 4 states had enacted legislation related to BWCs. In 2015, more than 30 states introduced such legislation. However, like Maryland, much of the proposed legislation sought to establish groups to study the use of BWCs and related policies.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery, Washington, and Worcester counties; Town of Leonardtown; Maryland State Commission on Criminal Sentencing

Policy; Judiciary (Administrative Office of the Courts); Department of General Services; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Governor's Office of Crime Control and Prevention; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2016
kb/lgc

Analysis by: Shirleen M. E. Pilgrim
and Jennifer L. Young

Direct Inquiries to:
(410) 946-5510
(301) 970-5510