

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 669  
Judiciary

(Delegate Conaway)

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Law Enforcement - Body-Worn Cameras - Release of Information to Public

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This bill authorizes, unless otherwise ordered by a court, a law enforcement agency that establishes a program to use body-worn cameras (BWCs), in accordance with the policy developed by the Police Training Commission (PTC), to keep any data recorded by the camera that is related to an ongoing investigation from being released to the public until after the investigation is closed. Unless otherwise ordered by a court, a law enforcement agency, for a public safety purpose, may keep investigative data recorded by the camera from being released to the public after an investigation is closed if the data identifies (1) a crime victim; (2) a minor; (3) a witness to a crime; (4) an undercover law enforcement officer; or (5) a member of the public.

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Fiscal Summary

**State Effect:** The bill's changes can be handled with existing budgeted resources. Revenues are not affected.

**Local Effect:** The bill's changes can be handled with existing budgeted resources. Revenues are not affected.

**Small Business Effect:** None.

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Analysis

**Current Law/Background:**

*Body-worn Cameras in Maryland:* 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 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 (MPIA), and development of written policies for BWC usage consistent with State law and regulations issued by PTC.

In addition, the commission recommended that the General Assembly consider amending MPIA to incorporate provisions specifically governing the release of audio/video recordings captured by BWCs, including recordings depicting victims of violent crimes and domestic abuse.

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 recording is mandatory, prohibited, or discretionary;
- when recording may require consent of a subject being recorded;
- when a recording may be ended;
- providing notice of 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.

### *Body-worn Cameras in Other States*

A July 2015 report from the Bureau of Justice Statistics stated that 32% of all state and local police departments deployed BWCs for at least some of their officers in 2013. Since then, policing has become the focus of national debate, with much attention being given to expanding BWC use. To date, the National Conference of State Legislatures (NCSL) reports that 19 states have enacted laws or adopted resolutions concerning BWCs for police. During 2015 legislative sessions, 37 states considered BWC legislation, and 15 of those states enacted new measures.

According to NCSL, eight states have addressed how BWC data is to be released to the public under open record laws. Oklahoma's law states that body camera recordings are public records but provides many situations for which police may temporarily withhold, redact, or obscure certain videos. For example, footage containing the death of a person, or violence against a person, may be redacted unless the harm was caused by law enforcement. North Dakota's law states that any recording taken in a private place is exempt from release as a public record. Some legislation has also addressed mass data requests. For example, Texas law defines a "voluminous public information request" as a request for recordings that includes more than five separate incidents, more than five separate requests from the same person in a 24-hour period, or a request, or series of requests, in a 24-hour period that totals more than five total hours of footage. Under that law, such requests are answered adequately if responded to within 21 business days.

### *Access to Public Records*

Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any Public Information Act Manual published by OAG.

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time.

A custodian has to deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, personnel records, certain hospital and school records, records of certain State agencies, certain recorded and surveillance images, and captured plate data collected by automatic license plate reader systems. Denial of inspection is required for information in a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. Permissible denials include information relating to documents that would not be available through discovery in a lawsuit, certain information about publicly administered tests, research projects conducted by an institution of the State or a political subdivision, real estate appraisals of property to be acquired by the State prior to its acquisition, certain information on inventions owned by State public higher educational institutions, and trade secrets or confidential information owned by the Maryland Technology Development Corporation.

The Office of the Public Access Ombudsman reviews and resolves disputes between applicants and custodians over requests for public records, including disputes over (1) the custodian's application of an exemption; (2) redactions of information in the public record; (3) the custodian's failure to timely produce a public record or to disclose all records relevant to the request; (4) overly broad requests for public records; (5) the amount of time a custodian needs, given available staff and resources, to produce public records; (6) requests for or denials of fee waivers; and (7) repetitive or redundant applicant requests.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore City; Harford, Montgomery, and Talbot counties; City of College Park; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Maryland

Department of Transportation; National Conference of State Legislatures; Bureau of Justice Statistics; Department of Legislative Services

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