

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 199

(Senator Brochin, *et al.*)

Judicial Proceedings

Environment and Transportation

Transit and Transportation Service - Audio Recordings - Requirements and Limitations

This bill prohibits the Maryland Transit Administration (MTA), a county, or municipality from activating an audio recording device on a transit or transportation vehicle, except under specified circumstances. The bill limits the purpose for which audio recordings made and retained under the bill may be accessed, prohibits the unauthorized disclosure or dissemination of such recordings, and establishes a civil penalty for violations of that prohibition. The bill also establishes specified recordkeeping and reporting requirements.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures increase by approximately \$7.5 million in FY 2017 only to retrofit systems on MTA buses. In future years, while MTA may be able to procure transit vehicles that meet the bill’s requirements at no additional cost, TTF expenditures may also increase. General fund revenues may increase minimally due to the bill’s civil penalty provision.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
SF Expenditure	\$7,500,000	-	-	-	-
Net Effect	(\$7,500,000)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local expenditures increase, potentially significantly, in FY 2017 to modify audio surveillance equipment on transportation vehicles. For example, Montgomery County expenditures may increase by \$1.8 million in FY 2017 to retrofit its buses in accordance with the bill’s provisions. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary: MTA, a county, or a municipality may activate an audio recording device if the device is (1) located no more than five feet away from the vehicle operator and intended to record activity occurring within the immediate vicinity of the operator; (2) under the exclusive control of the vehicle operator and activated by the operator only in the event of an accident or other incident involving public safety that requires documentation; or (3) activated automatically in the event of an accident or other incident involving public safety that requires documentation.

Audio recordings may be made available only in connection with (1) a specific crime for which there is probable cause for investigation or prosecution; (2) an accident involving a vehicle used by MTA or the local government to provide transportation service; or (3) some other incident in which access to the recording is necessary for litigation or penalty purposes. The recordings may not be disclosed or disseminated for any reason other than those listed above. A person who violates that prohibition is subject to a civil penalty of up to \$1,000 for each violation.

Access to an audio recording must be limited to the portion of the recording that is pertinent to the crime or incident under investigation. MTA, a county, or a municipality must keep a log of the name, address, and affiliation of each person granted access to an audio recording made and retained under the bill. By December 31 each year, MTA and each county or municipality that makes and retains audio recordings in accordance with the bill must report to the Governor and the General Assembly on (1) the number and type of vehicles used for transit or transportation service that are equipped with audio recording devices and (2) each incident for which an audio recording was retained during the preceding year.

Current Law: Under the Maryland Wiretapping and Electronic Surveillance Act (Wiretap Act), it is unlawful to willfully intercept any wire, oral, or electronic communication. Under the Act, “intercept” is defined, in part, as “the... acquisition of the contents of any... oral communication through the use of any... device.” Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called “two-party consent”). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a “reasonable expectation of privacy.”

The Act does provide specified exceptions, including one for a law enforcement officer who intercepts an oral communication in the regular course of the officer's duty, so long as the officer (1) initially lawfully detained a vehicle during a criminal investigation or for a traffic violation; (2) is a party to the oral communication; (3) has been identified as a law enforcement officer to the other parties to the communication prior to any interception; (4) informs all other parties to the communication of the interception at the beginning of the communication; and (5) makes the interception as part of a videotape recording.

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a \$10,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney's fees, and litigation costs.

A "transit service" is the transportation of persons and their packages and baggage and of newspapers, express, and mail in regular route, special, or charter service by means of transit facilities between points within the metropolitan transit district. Transit service does not include taxicab service, vanpool operation, or railroad service. A "transit vehicle" is a mobile device used in rendering transit service.

Background: MTA operates a comprehensive transit system throughout the Baltimore-Washington metropolitan area, including more than 50 local bus lines in Baltimore and other services such as the light rail, metro subway, commuter buses, Maryland Area Regional Commuter (MARC) trains, and mobility/paratransit vehicles.

MTA has installed and activated audio surveillance equipment in many of its local bus vehicles, in part, to serve as an after-the-fact investigative tool in the event of a criminal incident or crash. MTA reports that all 750 of its fleet buses are equipped with video recording devices; however, only 487 buses have audio capability active. MTA has plans to procure 44 new buses in fiscal 2016, 43 new buses in fiscal 2017, and 85 new buses in fiscal 2018.

Approximately 82% of the metro rail car fleet is audio capable; however, the proper circuitry is not installed to allow audio recording. At this time, MTA does not have any plans to add audio surveillance equipment to metro rail cars, but MTA has advised this feature could be added to existing equipment in approximately six months at a relatively low cost. MTA advises that when new metro rail cars are ordered, they will be equipped with both audio and video camera equipment. All light rail cars do not currently have audio capability. However, for a "mid-life overhaul" beginning in March 2016, MTA plans to add audio surveillance equipment into rail cars that will enable the operator to have exclusive control of the equipment whereby the device can only be activated in the same specified situations described in the bill. At this time, MTA does not have, nor does it plan to install, audio surveillance equipment in MARC trains or commuter buses.

State Expenditures: Because MTA’s audio surveillance system is not configured in a manner that meet’s the bill’s requirements, this analysis assumes that MTA must uninstall and replace its existing audio recording systems on transit vehicles.

MTA’s TTF expenditures increase by approximately \$7.5 million in fiscal 2017 to replace existing audio systems with systems that allow operators to selectively activate and deactivate audio recordings. Although the bill authorizes the activation of a device under other circumstances, for purposes of this analysis, it is assumed that MTA uses systems that are under the exclusive control of the vehicle operator, as specified. This estimate assumes:

- existing audio recording systems on 750 buses require retrofitting with new systems to meet the bill’s requirements; and
- a per unit retrofitting cost of \$10,000, based on costs incurred by the Washington Metropolitan Area Transit Authority to install the same system in its bus fleet.

The Maryland Department of Transportation (MDOT) advises that TTF expenditures may also increase in future years to procure buses that are equipped with audio recording systems that meet the bill’s requirements. Currently, buses procured by MTA come equipped with the system it currently uses. MTA’s vendor *may* be able to install a compliant system in new buses at no additional cost; however, the vendor may also consider such a system to be a special order, resulting in additional costs.

As noted above, MDOT also advises that approximately 82% of its rail car fleet has an audio capability built into its camera system, but that the audio system is not functional. To activate these audio systems, MDOT needs to purchase additional appropriate motherboards and install them into the camera system on each car. Because the bill applies to transit vehicles that are “equipped” with audio recording devices but does not define the term “equipped” and because the systems in these rail cars are not currently functional, this analysis assumes that these systems are not subject to the bill’s requirements.

This estimate assumes the Judiciary can absorb any costs associated with additional cases that may be filed as a result of the bill.

Any impact on law enforcement agencies is assumed to minimal.

Local Expenditures: Local expenditures increase, potentially significantly, in fiscal 2017 to modify audio surveillance equipment on transportation vehicles operated by local agencies. The Maryland Association of Counties (MACO) advises that numerous local governments operate transit vehicles, most of which are equipped with audio recording systems that do not comply with the bill’s requirements. For example, MACO reports that

Cecil and Frederick counties both use recording systems in which microphones are built directly into the cameras and record audio at all times. Thus, similar to MTA, local governments must retrofit or replace the audio recording systems in their transportation vehicles at a cost of about \$10,000 per vehicle. Montgomery County reports that it may incur costs of approximately \$1.8 million to retrofit its local buses.

Additional Information

Prior Introductions: A number of similar bills have been introduced in recent years. SB 800 of 2015 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 239 of 2014 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 938 of 2013 received a hearing in the House Economic Matters Committee but was subsequently withdrawn.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Judiciary (Administrative Office of the Courts), Office of the Attorney General, Maryland Association of Counties, Maryland Municipal League, Montgomery and Prince George's counties, Department of Legislative Services

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