

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 209

(Senator Brochin, *et al.*)

Judicial Proceedings

Baltimore County – Uniformed Off-Duty Law Enforcement Officer – Body
Camera

This bill establishes that if a law enforcement agency authorizes or approves an officer to work secondary employment in the agency uniform, the agency must require the off-duty officer to wear and use a body-worn camera (BWC) during the secondary employment in the same manner as required while on duty, as specified. The provisions apply only in Baltimore County.

Fiscal Summary

State Effect: None.

Local Effect: Potential significant increase in Baltimore County expenditures. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law/Background:

Use of BWCs by Law Enforcement Officers

Chapters 128 and 129 of 2015 established the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers. Through the examination of model policies and discussion, the commission compiled a list of best practices for BWCs and submitted a report to the General Assembly and the Police Training Commission (now

known as the Maryland Police Training and Standards Commission (MPTSC)) in September 2015. The commission's [report](#) addresses (1) procedures for testing and operating equipment, including when BWCs must be activated and when their 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) the review of recordings by parties in interest; and (6) the establishment of retention periods, the release of recordings as required by the Public Information Act, and the development of written policies for BWC usage consistent with State law and regulations issued by MPTSC.

Pursuant to Chapters 128 and 129, MPTSC developed a policy for the issuance and use of BWCs by law enforcement officers, which incorporated the recommendations of the commission. MPTSC also published a [Body-worn Camera Procedural Reference Guide](#) that provides practical and detailed background information on BWCs as well as advisory language for use by law enforcement agencies.

Maryland's Wiretap Act

Under Maryland's 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. In addition, the interception of an oral communication by a law enforcement officer *in the course of the officer's regular duties* is lawful if (1) the officer is in uniform or prominently displaying the officer's badge or other insignia; (2) the officer is making reasonable efforts to conform to standards for the use of a body-worn digital recording device or an electronic control device capable of recording video and oral communications; (3) the officer is a party to the oral communication; (4) the officer notifies, as soon as practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or

impossible to do so; and (5) the oral interception is being made as part of a videotape or digital 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.

Local Expenditures: Deployment of BWCs for officers in the Baltimore County Police Department (BCoPD) began in July 2016. Annual operating costs for the BWC program are estimated at \$1.6 million.

Baltimore County advises that BWCs are only deployed to BCoPD-uniformed police officers who interact with the public as part of the officers' regular duties. (Officers who are not required to wear uniforms daily are not issued BWCs; however, these officers may be approved to work secondary employment in uniform.) Cameras issued to officers are returned to the station at the end of each shift and are reassigned to other officers for the next shift. Baltimore County advises that BCoPD does not currently own enough BWCs for every uniformed officer to be able to take one home at the end of a shift. The county advises that, under the bill, if it were required to acquire and install BWCs for every police officer, it would need to purchase 500 additional camera units. Although it is unclear if the bill requires every officer to have a BWC, the county advises that its expenditures would increase by approximately \$1.1 million in fiscal 2019 if it were required to do so. The ongoing costs to the county for digital evidence storage, maintenance, and support for the additional BWCs are estimated at more than \$650,000 annually. The county's estimate does not include certain costs, such as training for officers in the use of BWCs, among other things. Accordingly, costs could be higher.

The Department of Legislative Services notes that it is unclear how the bill applies to an officer who is employed by a law enforcement agency *outside* of Baltimore County but who is approved for secondary employment *within* Baltimore County. Because the number of such law enforcement agencies is unknown, this analysis does not address any potential increase in expenditures for those agencies.

Additional Comments: As noted above, Maryland's Wiretap Act generally provides exceptions for a law enforcement officer to intercept oral communications *in the course of the officer's regular duties*. As secondary employment is outside of the officer's regular duties, it is unclear whether these exceptions apply under the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 453 (Delegate West) - Judiciary.

Information Source(s): Baltimore and Harford counties; Comptroller's Office; Department of General Services; Department of Natural Resources; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2018
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