

Chapter 128

(Senate Bill 482)

AN ACT concerning

Public Safety – Law Enforcement Officers – Body-Worn Cameras Digital Recording Device and Electronic Control Device

FOR the purpose of ~~requiring a law enforcement officer to activate both the audio and visual recording capabilities of a body worn camera under certain circumstances; requiring a certain camera, once activated, to continue recording until a certain event; providing that a law enforcement officer may not use a certain camera to record an individual engaged in certain activities, with a certain exception; providing that a recording made under certain circumstances may not be used to identify certain persons; requiring a certain law enforcement officer to provide a certain notice to the subject of a certain recording; providing certain requirements for recording on private property under certain circumstances; providing for requests to turn the camera off under certain circumstances; requiring a certain law enforcement agency to establish certain policies; limiting the use or review of certain recordings for certain purposes; requiring a certain log to be maintained and updated under certain circumstances; requiring an unedited copy of a certain recording to be maintained; providing that the subject of a certain recording is a certain person in interest; providing that it is lawful under a certain provision of law for a law enforcement officer to intercept a certain oral communication; providing for the application of this Act; and generally relating to law enforcement officers and body worn cameras~~ establishing that it is lawful under a certain provision of law for a law enforcement officer to intercept a certain oral communication with a certain device under certain circumstances; requiring the Maryland Police Training Commission to develop and publish a certain policy; establishing the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers; providing for the composition, chair, and staffing of the Commission; prohibiting a member of the Commission from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Commission to study and make recommendations regarding the use of body cameras by a law enforcement officer; requiring the Commission to report its findings and recommendations to the Maryland Police Training Commission and the General Assembly on or before a certain date; providing that a certain jurisdiction is not subject to certain provisions of law for a certain period under certain circumstances; making this Act an emergency measure; providing for the termination of a certain provision of this Act; defining certain terms; and generally relating to the interception of oral communications.

~~BY adding to~~
~~Article – Public Safety~~
~~Section 3-510~~
~~Annotated Code of Maryland~~

~~(2011 Replacement Volume and 2014 Supplement)~~

BY adding to

Article – Courts and Judicial Proceedings
 Section 10–402(c)(11)
 Annotated Code of Maryland
 (2013 Replacement Volume and 2014 Supplement)

BY adding to

Article – Public Safety
Section 3–510
Annotated Code of Maryland
(2011 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

10–402.

(c) (11) (I) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

2. “BODY–WORN DIGITAL RECORDING DEVICE” MEANS A DEVICE WORN ON THE PERSON OF A LAW ENFORCEMENT OFFICER THAT IS CAPABLE OF RECORDING VIDEO AND INTERCEPTING ORAL COMMUNICATIONS.

3. “ELECTRONIC CONTROL DEVICE” HAS THE MEANING STATED IN § 4–109 OF THE CRIMINAL LAW ARTICLE.

(II) IT IS LAWFUL UNDER THIS SUBTITLE FOR A LAW ENFORCEMENT OFFICER IN THE COURSE OF THE OFFICER’S REGULAR DUTY TO INTERCEPT AN ORAL COMMUNICATION WITH A BODY–WORN DIGITAL RECORDING DEVICE OR AN ELECTRONIC CONTROL DEVICE CAPABLE OF RECORDING VIDEO AND ORAL COMMUNICATIONS IF:

1. THE LAW ENFORCEMENT OFFICER IS IN UNIFORM OR PROMINENTLY DISPLAYING THE OFFICER’S BADGE OR OTHER INSIGNIA;

2. THE LAW ENFORCEMENT OFFICER IS ~~CONFORMING~~ MAKING REASONABLE EFFORTS TO CONFORM TO STANDARDS IN ACCORDANCE WITH § 3–510 OF THE PUBLIC SAFETY ARTICLE FOR THE USE OF BODY–WORN DIGITAL

RECORDING DEVICES OR ELECTRONIC CONTROL DEVICES CAPABLE OF RECORDING VIDEO AND ORAL COMMUNICATIONS;

3. THE LAW ENFORCEMENT OFFICER IS A PARTY TO THE ORAL COMMUNICATION;

4. LAW ENFORCEMENT NOTIFIES, AS SOON AS IS 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.

Article – Public Safety

3-510.

~~(A) THIS SECTION APPLIES TO A LAW ENFORCEMENT OFFICER WHO IS PROVIDED WITH A BODY WORN CAMERA TO WEAR WHILE ON DUTY.~~

~~(B) (1) A LAW ENFORCEMENT OFFICER SHALL ACTIVATE BOTH THE AUDIO AND VISUAL RECORDING CAPABILITIES OF A BODY WORN CAMERA WHEN THE LAW ENFORCEMENT OFFICER IS RESPONDING TO A CALL FOR SERVICE OR AT THE INITIATION OF A LAW ENFORCEMENT OR INVESTIGATIVE ENCOUNTER BETWEEN THE LAW ENFORCEMENT OFFICER AND A MEMBER OF THE PUBLIC.~~

~~(2) SUBJECT TO SUBSECTION (D) OF THIS SECTION, ONCE ACTIVATED, A BODY WORN CAMERA SHALL CONTINUE RECORDING UNTIL:~~

~~(I) THE CONCLUSION OF THE ENCOUNTER;~~

~~(II) THE LAW ENFORCEMENT OFFICER HAS LEFT THE SCENE; OR~~

~~(III) A SUPERVISOR, ON CAMERA, HAS AUTHORIZED THE RECORDING TO CEASE.~~

~~(C) (1) A LAW ENFORCEMENT OFFICER MAY NOT USE A BODY WORN CAMERA TO RECORD AN INDIVIDUAL ENGAGED IN A CONSTITUTIONALLY PROTECTED ACTIVITY, INCLUDING A DEMONSTRATION, A PROTEST, OR AN ATTENDANCE AT A RELIGIOUS FUNCTION, MEETING, OR SIMILAR ACTIVITY, UNLESS THE LAW ENFORCEMENT OFFICER HAS A REASONABLE SUSPICION THAT A CRIMINAL ACTIVITY IS OCCURRING.~~

~~(2) A VIDEO TAKEN OF A CONSTITUTIONALLY PROTECTED ACTIVITY UNDER THIS SUBSECTION MAY NOT BE USED TO IDENTIFY PERSONS PRESENT AT THE ACTIVITY WHO ARE NOT SUSPECTED OF BEING ENGAGED IN ILLEGAL ACTIVITY.~~

~~(D) (1) A LAW ENFORCEMENT OFFICER WEARING A BODY WORN CAMERA SHALL NOTIFY A SUBJECT OF A RECORDING THAT THE SUBJECT IS BEING RECORDED AS CLOSE TO THE INCEPTION OF THE ENCOUNTER AS REASONABLY POSSIBLE.~~

~~(2) (I) WHEN A LAW ENFORCEMENT OFFICER WEARING A BODY WORN CAMERA ENTERS ON PRIVATE PROPERTY WITHOUT A WARRANT OR IN A NONEMERGENCY SITUATION, THE LAW ENFORCEMENT OFFICER SHALL NOTIFY ALL PERSONS PRESENT THAT A CAMERA IS RECORDING AND PROVIDE ANY PERSON PRESENT THE OPTION TO REQUEST THE CAMERA BE TURNED OFF.~~

~~(II) IF A REQUEST DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH IS MADE, THE LAW ENFORCEMENT OFFICER SHALL RECORD THE REQUEST ON VIDEO BEFORE THE BODY WORN CAMERA IS TURNED OFF.~~

~~(III) IN THE EVENT OF CONTRADICTING REQUESTS FROM MORE THAN ONE PERSON DURING AN ENCOUNTER, THE LAW ENFORCEMENT OFFICER SHALL RECORD THE CONTRADICTING REQUESTS AND CONTINUE RECORDING, UNLESS AND UNTIL THE PERSONS MAKING THE REQUESTS CAN BE SEPARATED.~~

~~(3) (I) WHEN A LAW ENFORCEMENT OFFICER WITH A BODY WORN CAMERA BEGINS AN ENCOUNTER WITH A PERSON WHO REPORTS A CRIME, PROVIDES INFORMATION REGARDING A CRIME OR AN ONGOING POLICE INVESTIGATION, CLAIMS TO BE THE VICTIM OF A CRIME, OR REQUESTS TO SPEAK WITH THE OFFICER, AND THE PERSON IS FREE TO END THE ENCOUNTER, THE OFFICER IMMEDIATELY SHALL PROVIDE NOTICE THAT THE BODY WORN CAMERA IS RECORDING AND PROVIDE THE PERSON WITH THE OPTION TO HAVE THE CAMERA TURNED OFF.~~

~~(II) A LAW ENFORCEMENT OFFICER SHALL RECORD A REQUEST TO TURN OFF THE BODY WORN CAMERA BEFORE THE CAMERA IS TURNED OFF.~~

~~(E) A LAW ENFORCEMENT AGENCY THAT ISSUES A BODY WORN CAMERA TO A LAW ENFORCEMENT OFFICER SHALL ESTABLISH A POLICY RELATING TO THE USE OF BODY WORN CAMERAS, INCLUDING:~~

~~(1) THE TESTING OF BODY WORN CAMERAS TO ENSURE ADEQUATE FUNCTIONING; AND~~

~~(2) THE PROCEDURE FOR THE LAW ENFORCEMENT OFFICER IF THE CAMERA FAILS TO PROPERLY OPERATE AT THE BEGINNING OF OR DURING THE LAW ENFORCEMENT OFFICER'S SHIFT.~~

~~(F) USE OR REVIEW OF A RECORDING MADE UNDER THIS SECTION IS ALLOWED ONLY:~~

~~(1) FOR A LAW ENFORCEMENT AGENCY'S INTERNAL AND EXTERNAL INVESTIGATIONS OF MISCONDUCT;~~

~~(2) FOR A LAW ENFORCEMENT AGENCY'S INTERNAL AUDITING, SUPERVISION, OR TRAINING PURPOSES;~~

~~(3) IN THE EVENT THE LAW ENFORCEMENT AGENCY HAS REASONABLE SUSPICION THAT THE RECORDING CONTAINS EVIDENCE OF A CRIME;~~

~~(4) IN THE INVESTIGATION, PROSECUTION, OR DEFENSE OF CRIMINAL OR CIVIL ACTIONS;~~

~~(5) IN RESPONSE TO PUBLIC RECORDS REQUESTS; OR~~

~~(6) FOR EXTERNAL AUDITING.~~

~~(G) THE STORED VIDEO AND AUDIO DATA FROM A BODY-WORN CAMERA MAY NOT, IN WHOLE OR IN PART:~~

~~(1) BE USED TO CREATE A DATABASE OR POOL OF MUG SHOTS;~~

~~(2) BE USED IN PHOTO ARRAYS; OR~~

~~(3) BE OTHERWISE SEARCHED USING FACIAL OR VOICE RECOGNITION SOFTWARE.~~

~~(H) (1) IF A LAW ENFORCEMENT OFFICER REVIEWS A RECORDING BEFORE THE LAW ENFORCEMENT OFFICER WRITES A STATEMENT ABOUT THE ENCOUNTER THAT WAS RECORDED, THE LAW ENFORCEMENT OFFICER SHALL NOTE THE FACT THAT THE RECORDING WAS REVIEWED IN THE WRITTEN STATEMENT.~~

~~(2) (I) A LOG OF ALL ACTIVITY RELATING TO EACH RECORDING MADE UNDER THIS SECTION SHALL BE MAINTAINED.~~

~~(H) EVERY TIME A RECORDING UNDER THIS SECTION IS VIEWED, COPIED, DELETED, OR EDITED, THE INDIVIDUAL ACCESSING THE~~

~~RECORDING SHALL LOG THE IDENTITY OF THE PERSON ACCESSING THE VIDEO, WHAT WAS DONE, AND WHEN.~~

~~(III) IN THE EVENT A RECORDING MADE UNDER THIS SECTION IS EDITED, AN UNEDITED COPY OF THE RECORDING SHALL BE MAINTAINED.~~

~~(I) THE SUBJECT OF A RECORDING UNDER THIS SECTION IS A PERSON IN INTEREST WITH RESPECT TO THE RECORDING UNDER § 4-351 OF THE GENERAL PROVISIONS ARTICLE.~~

ON OR BEFORE JANUARY 1, 2016, THE MARYLAND POLICE TRAINING COMMISSION SHALL DEVELOP AND PUBLISH ONLINE A POLICY FOR THE ISSUANCE AND USE OF A BODY-WORN CAMERA BY A LAW ENFORCEMENT OFFICER THAT ADDRESSES:

(1) THE TESTING OF BODY-WORN CAMERAS TO ENSURE ADEQUATE FUNCTIONING;

(2) 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;

(3) WHEN RECORDING IS MANDATORY;

(4) WHEN RECORDING IS PROHIBITED;

(5) WHEN RECORDING IS DISCRETIONARY;

(6) WHEN RECORDING MAY REQUIRE CONSENT OF A SUBJECT BEING RECORDED;

(7) WHEN A RECORDING MAY BE ENDED;

(8) PROVIDING NOTICE OF RECORDING;

(9) ACCESS TO AND CONFIDENTIALITY OF RECORDINGS;

(10) THE SECURE STORAGE OF DATA FROM A BODY-WORN CAMERA;

(11) REVIEW AND USE OF RECORDINGS;

(12) RETENTION OF RECORDINGS;

(13) DISSEMINATION AND RELEASE OF RECORDINGS;

(14) CONSEQUENCES FOR VIOLATIONS OF THE AGENCY’S BODY-WORN CAMERA POLICY;

(15) NOTIFICATION REQUIREMENTS WHEN ANOTHER INDIVIDUAL BECOMES A PARTY TO THE COMMUNICATION FOLLOWING THE INITIAL NOTIFICATION;

(16) SPECIFIC PROTECTIONS FOR INDIVIDUALS WHEN THERE IS AN EXPECTATION OF PRIVACY IN PRIVATE OR PUBLIC PLACES; AND

(17) ANY ADDITIONAL ISSUES DETERMINED TO BE RELEVANT IN THE IMPLEMENTATION AND USE OF BODY-WORN CAMERAS BY LAW ENFORCEMENT OFFICERS.

~~Article — Courts and Judicial Proceedings~~

~~10-402.~~

~~(e) (11) IT IS LAWFUL UNDER THIS SUBTITLE FOR A LAW ENFORCEMENT OFFICER IN THE COURSE OF THE OFFICER’S REGULAR DUTY TO INTERCEPT AN ORAL COMMUNICATION IN ACCORDANCE WITH § 3-510 OF THE PUBLIC SAFETY ARTICLE.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any recording made before the effective date of this Act.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) There is a Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers.

(b) The Commission consists of the following members:

(1) one member of the Senate of Maryland, appointed by the President of the Senate;

(2) one member of the House of Delegates, appointed by the Speaker of the House;

(3) the Secretary of State Police or the Secretary’s designee;

- (4) the Attorney General or the Attorney General's designee;
- (5) the Public Defender or the Public Defender's designee;
- (6) one representative of the Governor's Office of Crime Control and Prevention;
- (7) one representative of the Maryland Fraternal Order of Police;
- (8) one representative from each of the five major local law enforcement agencies in the State, as determined and appointed by the Governor;
- (9) one representative of a law enforcement agency that currently utilizes body cameras to record law enforcement officer activities, as appointed by the chair of the Commission;
- (10) one representative of the American Civil Liberties Union;
- (11) one representative of the National Association for the Advancement of Colored People;
- (12) one representative of the Maryland Sheriff's Association;
- (13) three representatives of the general public, appointed by the Governor;
~~and~~
- (14) two experts in any field deemed relevant for the purpose of the Commission, as determined and appointed by the chair of the Commission; ~~and~~
- (15) one representative of the Maryland Chiefs of Police Association; and
- (16) one representative of CASA de Maryland.
- (c) The Governor shall appoint a chair of the Commission from among its members.
- (d) The Governor's Office of Crime Control and Prevention and the Department of State Police shall provide staff for the Commission.
- (e) A member of the Commission:
- (1) may not receive compensation as a member of the Commission; but
- (2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Commission shall study and make recommendations regarding the best practices for the use of body cameras by a law enforcement officer.

(g) On or before October 1, 2015, the Commission shall report its findings and recommendations to the Maryland Police Training Commission and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(1) A jurisdiction that commences a pilot program for the use of body-worn cameras or electronic control devices before the issuance of a policy established in accordance with § 3-510 of the Public Safety Article is not subject to § 10-402(c)(11)(ii)2 of the Courts and Judicial Proceedings Article for the duration of the pilot program.

(2) On the conclusion of a pilot program described in this section, a jurisdiction's fully implemented program shall conform to § 10-402(c)(11)(ii)2 of the Courts and Judicial Proceedings Article.

SECTION 4. AND BE IT FURTHER ENACTED, That a jurisdiction that has established a program to use body-worn cameras or electronic devices on or before the date this Act becomes effective is not subject to § 10-402(c)(11)(ii)2 of the Courts and Judicial Proceedings Article until a policy is issued in accordance with § 3-510 of the Public Safety Article.

SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted. Section 2 of this Act shall remain effective through June 1, 2016, and, at the end of June 1, 2016, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 12, 2015.