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FISCAL AND POLICY NOTE
Revised

House Bill 533
Judiciary

(Delegate Sydnor, *et al.*)

Judicial Proceedings

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

This emergency bill requires the Police Training Commission (PTC), by January 1, 2016, to develop and publish online a policy for the issuance and use of a body-worn camera (BWC) by a law enforcement officer that addresses specified issues and procedures. The bill makes it lawful 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 under specified circumstances. The bill also establishes a Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers to study and make recommendations to PTC and the General Assembly, by October 1, 2015, regarding the best practices for the use of body cameras by a law enforcement officer. The bill specifies the membership and duties of the commission, which must be staffed by the Governor's Office of Crime Control and Prevention (GOCCP) and the Department of State Police (DSP).

The bill does not *mandate* the use of body-worn digital recording devices or electronic control devices by law enforcement agencies or law enforcement officers while on duty.

The bill terminates June 1, 2016.

Fiscal Summary

State Effect: The bill's changes are not anticipated to significantly affect State finances, as discussed below.

Local Effect: The bill's changes are not anticipated to significantly affect local finances, as discussed below.

Small Business Effect: Minimal or none. Any future opportunities for small businesses in the State cannot be reliably estimated.

Analysis

Bill Summary: Under the bill, the interception of an oral communication by a law enforcement officer 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 either type of 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.

The online policy developed and published by PTC pursuant to the bill must address:

- 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 officer's shift;
- when recording is mandatory, prohibited, or discretionary;
- when consent of the subject being recorded is required;
- when a recording may be ended;
- providing notice of a recording;
- notification requirements when another individual becomes a party to the communication following the initial notification;
- access to and confidentiality of recordings;
- the secure storage of data;
- review and use of recordings;
- retention of recordings;
- dissemination and release of recordings;
- consequences for violations of the agency's body-worn camera policy;
- specific protections for individuals when there is an expectation of privacy in private or public places; and
- any additional issues determined to be relevant in the implementation and use of BWCs by law enforcement officers.

Members of the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers may not receive compensation, but may receive reimbursement for expenses under the standard State travel regulations.

A jurisdiction that starts a pilot program for the use of BWCs or electronic control devices before the issuance of the policy by PTC is exempt from specified State wiretap and electronic surveillance provisions for the duration of the pilot program. Upon the conclusion of such a pilot program, a jurisdiction's fully implemented program must conform to those provisions. A jurisdiction that has already established a program to use BWCs or electronic devices on or before the bill's effective date is not subject to those provisions until the issuance of the policy by PTC.

A "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. An "electronic control device" means a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current.

Current Law/Background: In a 2014 report by the Police Executive Research Forum, [Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned](#), it was stated that any police department considering the use of body cameras must have well designed policies in place or public trust in the use of the cameras may be undermined. Another 2014 report underwritten by the U.S. Department of Justice, Office of Justice Programs (DOJ/OJP), *Police Officer Body-Worn Cameras: Assessing the Evidence*, concluded that:

There is little evidence regarding most of the perceived benefits and drawbacks of the technology. For example, little is known about citizen attitudes toward BWCs, most notably whether the technology increases trust, legitimacy, and transparency of the police. The potential for the technology to serve as a training tool for police is also largely unexplored. Moreover, the privacy implications of BWCs, for both citizens and police officers, are not clearly understood and may vary considerably as a result of differences in state law.

Simply put, there is not enough evidence to offer a definitive recommendation regarding the adoption of BWCs by police. Departments considering BWCs should proceed cautiously, consider the issues outlined in this review, and recognize that most of the claims made about the technology are untested.

These reports and others were cited in the December 2014 report to the chairs of the Senate Judicial Proceedings Committee and the House Judiciary Committee by GOCCP on the findings of the Workgroup on the Implementation and Use of Body Worn Cameras by Law Enforcement, which met during the 2014 interim. The workgroup found that, while such cameras have many potential benefits, their use also "raises some difficult issues for members of the public, government agencies, civil liberties advocates, and even the officers who wear the devices." However, despite the fact that GOCCP concluded that more

research should be done on this subject, GOCCP also found that the DOJ/OJP report cautions against drawing firm conclusions with respect to BWCs because available research is either limited or has design flaws. The workgroup concluded that BWCs have the potential to be useful tools for improving police/community relations, improving the criminal justice system, and modifying the behavior of both police and citizens. The full report of the workgroup can be found [here](#).

According to DSP, as of January 16, 2015, the following local law enforcement agencies in the State have already purchased and/or deployed BWCs for field use:

- Berwyn Heights Police Department;
- Cambridge Police Department;
- Capital Heights Police Department;
- Cheverly Police Department;
- Cottage City Police Department;
- Denton Police Department;
- Federalsburg Police Department;
- Forest Heights Police Department (pilot program);
- Fruitland Police Department;
- Harford County Sheriff's Office (field testing four cameras);
- Hurlock Police Department;
- Hyattsville Police Department;
- Laurel Police Department;
- Mount Rainier Police Department;
- Pokomoke City Police Department;
- Princess Anne Police Department;
- Rising Sun Police Department (one camera);
- Snow Hill Police Department; and
- Upper Marlboro Police Department (pilot, testing).

Additional agencies are considering the purchase and deployment of such equipment.

In December 2014, the Baltimore City Council voted to require BWCs for all city police officers. However, the Mayor vetoed the bill and awaits recommendations from a mayoral task force that will address issues of cost and privacy. The Baltimore City Police Commissioner has publically advocated a limited pilot program.

In October 2014, the Metropolitan Police Department in Washington, DC, began a pilot program testing the use of BWCs on police officers. A total of 165 officers participate in

the pilot program, including volunteers from all seven police districts in the city. Each officer is working with five different camera models over a six-month period and will provide written feedback on each camera model.

The Laurel Police Department has had an on-body camera program for nearly four years. The police chief calls the cameras “a huge success” and says complaints about his officers have dropped and training has improved. The cameras and related equipment, including data storage, in current use in the City of Laurel are the AXON flex units available through TASER International, Inc. The cost for each camera was about \$500. The City of Laurel has been outfitting its full patrol force at a rate of about 25% per year, with about 50% (25 officers) currently outfitted with an AXON unit. While the operational life of each camera is expected to be five years, the City of Laurel budgets for cameras on a three-year basis. The current three-year costs for each law enforcement body camera in Laurel is about \$2,000, which includes the camera, storage, and data uploading. The City of Laurel has an annual contract for data storage in the amount of \$1,050 for up to 300 gigabytes of storage. Laurel officers patrol on 10-hour shifts and download the data from each camera at the end of each shift, a process that takes about 30 minutes. Stored data is maintained for a period of six months, unless known to be needed for a criminal trial or related matters. The Laurel video units do record audio.

National and International Developments

According to the National Conference of State Legislatures, several states have introduced legislation in 2015 regarding BWCs for police officers.

Police in London, England began using BWCs on police officers in May 2014. Recent announcements of the use of BWCs by law enforcement officers in major U.S. cities have included the following notices:

- New York City – 54 officers in six precincts will begin wearing the cameras as a pilot program;
- Los Angeles – the city will purchase 7,000 cameras for police officers to wear while on patrol;
- Philadelphia – launched a pilot body-camera program in which more than two dozen officers will wear the cameras while on duty for six months; and
- Chicago – the city police department will begin testing BWCs on officers in early 2015 as part of a pilot project.

In addition, law enforcement officers in Cleveland, Ohio began wearing BWCs as part of a program to outfit city officers with the devices in February 2015. Cleveland spent \$2.4 million to outfit nearly all of the city’s 1,510 officers with BWCs. The recordings

will be maintained on an evidence collection website and will be subject to open public records requests in Ohio.

The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ), produced *A Primer on Body-Worn Cameras for Law Enforcement* in September 2012, which stated that a BWC can be attached to various body areas, including the head (by helmet, glasses, or other means) or to the body (by pocket, badge, or other means). A BWC has the capability to record officer interactions that previously could only be captured by in-car or interrogation room camera systems.

NIJ also states that there are many specification issues to consider before purchasing a camera system. The system requirements and trade-offs are dependent on the intended use, budget, unit cost, interoperability, operating environment, and other factors. According to NIJ, specifications to consider include battery life, video quality, recording limits, night recording capabilities, camera focal width, camera placement, and radio integration capability. NIJ also includes audio recording capabilities under specifications to consider.

Maryland Wiretapping and Electronic Surveillance Act (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.

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.

State Fiscal Effect: PTC can develop and publish a policy for the issuance and use of BWCs with existing budgeted resources. Any expense reimbursements for commission members and staffing costs for GOCCP and DSP are assumed to be minimal and absorbable within existing budgeted resources. The bill's exceptions to wiretapping and electronic surveillance provisions are not expected to have a significant operational or fiscal impact on the courts or State law enforcement agencies.

The bill does not *require* the use of body-worn digital recording devices or electronic control devices by State law enforcement officers. It is assumed that no State agency would put such a program in place without the operational and financial wherewithal to do so. It is assumed that the bill may lend itself to greater operational efficiencies for State law enforcement units employing such devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

Local Fiscal Effect: The bill's exceptions to wiretapping and electronic surveillance provisions are not expected to have a significant operational or fiscal impact local law enforcement agencies.

The bill does not *require* the use of body-worn digital recording devices or electronic control devices by local law enforcement officers. It is assumed that no local jurisdiction would put such a program in place without the operational and financial wherewithal to do so. It is assumed that the bill may lend itself to greater operational efficiencies for local law enforcement units employing such devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

It is also assumed that any local jurisdictions that already use such body-worn devices, such as the City of Laurel, can make any required changes to conform their programs to PTC policies with existing local resources.

Additional Information

Prior Introductions: None..

Cross File: SB 628 (Senator Klausmeier) - Judicial Proceedings.

Information Source(s): Calvert, Howard, and Montgomery counties; cities of Bowie, Laurel, and Takoma Park; Governor's Office of Crime Control and Prevention; Department of Natural Resources; Department of General Services; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Morgan State University; National Conference of State Legislatures; U.S. Department of Justice; BBC News; *New York Times*; cleveland.com; Huffington Post; Reuters; Department of Legislative Services

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