

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 308
Judiciary

(Delegate Conaway, *et al.*)

Public Safety - Law Enforcement Officers - Video Cameras

This bill authorizes all “law enforcement officers” in the State, excluding officers on detective duty, to wear a video camera affixed to the officer’s uniform while on duty. A law enforcement agency must preserve a video recording made under the bill for at least 30 calendar days. A law enforcement agency must develop policies and procedures to execute the bill’s provisions.

The bill also makes it lawful for a law enforcement officer, in the course of the officer’s regular duty, to intercept an oral communication if the interception is being made under the bill’s authorization for law enforcement officers to wear video cameras.

Fiscal Summary

State Effect: None. All State law enforcement agencies may already employ the use of video cameras by law enforcement officers. The bill’s provision relating to the interception of an oral communication by a law enforcement officer using a video camera is not expected to have a direct State fiscal impact. Revenues are not affected.

Local Effect: None. All local law enforcement agencies may already employ the use of video cameras by law enforcement officers. The bill’s provision relating to the interception of an oral communication by a law enforcement officer using a video camera is not expected to have a direct local fiscal impact. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A “law enforcement officer” means an individual who in an official capacity is authorized by law to make arrests and is a member of one of the following law enforcement agencies:

- the Department of State Police (DSP);
- the Police Department of Baltimore City;
- the Baltimore City School Police Force;
- the Housing Authority of Baltimore City Police Force;
- the Baltimore City Watershed Police Force;
- the police department, bureau, or force of a county, municipality, or bi-county agency;
- the office of the sheriff of a county;
- the Maryland Transportation Authority Police;
- the police forces of the Maryland Department of Transportation, the Department of Natural Resources, the Department of Health and Mental Hygiene, the Department of General Services, and the Department of Labor, Licensing, and Regulation;
- the Field Enforcement Bureau of the Comptroller’s Office;
- the Crofton Police Department;
- the police forces of the University System of Maryland and Morgan State University;
- the Office of the State Fire Marshal;
- the Ocean Pines Police Department;
- the police forces of Baltimore City Community College and Hagerstown Community College;
- the Internal Investigation Unit of the Department of Public Safety and Correctional Services (DPSCS); or
- the Warrant Apprehension Unit of the Division of Parole and Probation within DPSCS.

“Law enforcement officer” does not include:

- an individual who serves at the pleasure of the Police Commissioner of Baltimore City;
- an individual who serves at the pleasure of the appointing authority of a charter county;
- the police chief of a municipal corporation;
- an officer who is in probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer’s duties is made; or

- a fire and explosive investigator in Anne Arundel, Montgomery, Prince George’s, or Worcester counties, or the cities of Annapolis or Hagerstown, as defined in the Criminal Procedure Article.

Current Law/Background:

Use of Body-worn Cameras

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-worn cameras (BWCs) 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 the Governor’s Office of Crime Control and Prevention (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: State law enforcement agencies may already employ the use of video cameras by law enforcement officers. It is assumed that any expansion of the use of video cameras by State agencies, and the development of any related policies and procedures, is only done within budgeted resources and likely exceeds the bill's minimum preservation requirement.

It is also assumed that the bill's exception to wiretapping and electronic surveillance provisions may lend itself to greater operational efficiencies for State law enforcement units employing video recording devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

Local Fiscal Effect: All local law enforcement agencies may already authorize the use of video cameras by law enforcement officers. It is assumed that any expansion of the use of video cameras by local agencies, and the development of any related policies and procedures, is only done within budgeted resources and likely exceeds the bill's minimum preservation requirement.

It is also assumed that the bill's exception to wiretapping and electronic surveillance provisions may lend itself to greater operational efficiencies for local law enforcement units employing video recording devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

Additional Information

Prior Introductions: HB 116 of 2014, a similar bill, passed the House with amendments and received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Calvert, Howard, Montgomery, and Prince George's counties; cities of Frederick and Havre de Grace; Baltimore City; Department of Natural Resources; Department of General Services; Department of Health and Mental Hygiene; Comptroller's Office; Department of Labor, Licensing, and Regulation; Department of State Police; Morgan State University; Department of Public Safety and Correctional Services; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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