

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 628

(Senator Klausmeier)

Judicial Proceedings

**Wiretapping and Electronic Surveillance - Body-Worn Digital Recording Device
and Electronic Control Device - Exception**

This bill make 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 if (1) the officer is a party to the oral communication; (2) the officer, if reasonable under the circumstances, has been identified as a law enforcement officer to the other parties to the oral communication before the oral interception; and (3) the oral interception is being made as part of a videotape or digital recording.

Fiscal Summary

State Effect: Minimal. The bill's exceptions to wiretapping and electronic surveillance provisions are not expected to have a significant operational or fiscal impact on the courts. It is assumed that the bill may lend itself to greater operational efficiencies for State law enforcement units employing body-worn digital recording devices or electronic control devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

Local Effect: Minimal. It is assumed that the bill may lend itself to greater operational efficiencies for local law enforcement units employing body-worn digital recording devices or electronic control devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

Small Business Effect: None.

Analysis

Bill Summary: “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.

“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:

Wiretapping

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.

Electronic Control Devices

The Police Training Commission (PTC) requires, for entrance-level police training and annually for in-service level police conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special

training in the proper use of electronic control devices for specified police officers, consistent with established law enforcement standards and constitutional provisions. Training for the certification of law enforcement officers in the State may be conducted at PTC facilities or at any of 20 police training academies in the State certified by PTC. There are approximately 16,000 certified police officers in Maryland.

Use of Body-worn Cameras

In December 2014, the Baltimore City Council voted to require body cameras 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.

According to the Department of State Police, as of January 16, 2015, the following local law enforcement agencies in the State have already purchased and/or deployed body-worn cameras 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;
- Upper Marlboro Police Department (pilot, testing);

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

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. In October 2014, the Metropolitan Police Department in Washington, DC, began a pilot program testing the use of body cameras 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.

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

Police in London, England began using body-worn cameras on police officers in May 2014. Recent announcements of the use of body-worn cameras 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 body cameras on officers in early 2015 as part of a pilot project.

In addition, law enforcement officers in Cleveland, Ohio began wearing body cameras 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 body-worn cameras. 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, produced *A Primer on Body-Worn Cameras for Law Enforcement* in September 2012. The report states that body-worn cameras 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). The cameras have the capability to record officer interactions that previously could only be captured by in-car or interrogation room camera systems.

Additional Information

Prior Introductions: None.

Cross File: HB 533 (Delegate Sydnor, *et al.*) - Judiciary.

Information Source(s): Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, City of Laurel, 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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