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FISCAL AND POLICY NOTE
First Reader

Senate Bill 930 (Senators Ferguson and Bates)
Judicial Proceedings

**Public Information Act - Inspection of Records From Body-Worn Digital
Recording Devices**

This bill sets forth the circumstances under which a custodian of records must deny or allow inspection of the part of a recording from a body-worn digital recording device worn by a law enforcement officer regarding specified incidents.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources. Revenues are not affected.

Local Effect: While most local governments can handle the bill's requirements with existing resources, some may incur an increase in costs to hire additional personnel. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Generally, a custodian of records must deny inspection of that part of a recording from a body-worn digital recording device worn by a law enforcement officer regarding an incident that:

- involves domestic violence;
- involves a sexual crime under Title 3, Subtitle 3 of the Criminal Law Article;

- involves abuse or other offensive conduct under Title 3, Subtitle 6 of the Criminal Law Article, except for a sale of a minor where the victim is an adult; or
- does not result in (1) the arrest, temporary detention, death, or injury of an individual or (2) a complaint of officer misconduct made against any law enforcement officer involved in the incident.

However, a custodian of records must allow inspection of a recording from a body-worn digital recording device by an individual who is a subject in the recording and is directly involved in the incident that prompted the recording. If the individual who is a subject in the recording and is directly involved in the incident that prompted the recording is a minor, the custodian must allow inspection by the individual's parent or legal guardian. If the individual is an incapacitated person, then inspection must be allowed by the individual's guardian or agent.

A custodian of records may not allow copying of a recording from a body-worn digital recording device by an individual who is allowed to inspect the recording under the bill's provisions and who is under investigation for, or charged with, pleaded *nolo contendere* to, pleaded guilty to, or has been found guilty of a violation specified above.

Current Law: Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. The Office of the Attorney General (OAG) must post all such contact information on its website and in any Public Information Act Manual published by OAG.

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time.

A custodian has to deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, personnel records, certain hospital and school records, records of certain State agencies, certain recorded and surveillance images, and captured plate data collected by automatic license plate reader systems. Denial of inspection is required for information in a public record relating to certain medical, psychological, sociological, and financial

information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. Permissible denials include information relating to documents that would not be available through discovery in a lawsuit, certain information about publicly administered tests, research projects conducted by an institution of the State or a political subdivision, real estate appraisals of property to be acquired by the State prior to its acquisition, certain information on inventions owned by State public higher educational institutions, and trade secrets or confidential information owned by the Maryland Technology Development Corporation.

The Office of the Public Access Ombudsman reviews and resolves disputes between applicants and custodians over requests for public records, including disputes over (1) the custodian's application of an exemption; (2) redactions of information in the public record; (3) the custodian's failure to timely produce a public record or to disclose all records relevant to the request; (4) overly broad requests for public records; (5) the amount of time a custodian needs, given available staff and resources, to produce public records; (6) requests for or denials of fee waivers; and (7) repetitive or redundant applicant requests.

Background:

Body-worn Cameras in Maryland: Chapters 128 and 129 of 2015 established the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers. Through examination of model policies and discussion, the commission compiled a list of best practices for body-worn cameras (BWCs) and submitted a report to the Police Training Commission (PTC) and the General Assembly on September 16, 2015.

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

In addition, the commission recommended that the general assembly consider amending MPIA to incorporate provisions specifically governing the release of audio/video recordings captured by BWCs, including recordings depicting victims of violent crimes and domestic abuse.

MPIA: MPIA was largely created to handle paper documents and only recently updated to better handle static electronic records. However, MPIA still does not currently address the practical, technical, and privacy challenges facing governments from potential requests of hundreds of hours of accumulated BWC video, all of which must be subjected to attorney review and redaction when appropriate. In light of such challenges, many states are working to strike a balance between affected people having proper access to the footage while preventing overbroad, abusive, or invasive requests.

Activity in Other States: According to the National Conference of State Legislatures, eight states have addressed how BWC data is to be released to the public under open record laws. Oklahoma's law states that body camera recordings are public records but provides many situations for which police may temporarily withhold, redact, or obscure certain videos. For example, footage containing the death of a person, or violence against a person, may be redacted unless the harm was caused by law enforcement. North Dakota's law states that any recording taken in a private place is exempt from release as a public record. Some legislation has also addressed mass data requests. For example, Texas law defines a "voluminous public information request" as a request for recordings that includes more than five separate incidents, more than five separate requests from the same person in a 24-hour period, or a request, or series of requests, in a 24-hour period that totals more than five total hours of footage. Under that law, such requests are answered adequately if responded to within 21 business days.

Local Expenditures: While most jurisdictions surveyed advise that the bill has no fiscal impact or that it may even result in workload efficiencies and associated savings, the City of Takoma Park reports that it needs to hire a records request manager at an annual cost of approximately \$100,000.

Additional Information

Prior Introductions: None.

Cross File: HB 947 (Delegate Sydnor) - Judiciary.

Information Source(s): Baltimore City, Montgomery and Prince George's counties, cities of Bowie and Takoma Park, Department of State Police, Maryland State Archives, Governor's Office of Crime Control and Prevention, National Conference of State Legislatures, Department of Legislative Services

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