

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 661  
Judiciary

(Delegate Conaway)

Judicial Proceedings

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Public Safety - Law Enforcement Officers - Firearm Cameras

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This 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 "firearm camera" under specified circumstances.

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Fiscal Summary

**State Effect:** The bill does not materially affect State finances.

**Local Effect:** The bill does not materially affect local government finances.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The interception of an oral communication with a firearm camera 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 body-worn digital recording devices or electronic control devices 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.

"Firearm camera" means a device attached to a firearm that is capable of recording video and intercepting oral communications.

**Current Law:** 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. In addition, 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 a body-worn digital recording device or an electronic control 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.

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.

**Background:** 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.

In addition, pursuant to Chapters 128 and 129, PTC developed a policy for the issuance and use of a BWC by a law enforcement officer; the policy incorporated the recommendations of the commission. PTC also published a [Body-worn Camera Procedural Reference Guide](#) that provides practical and detailed background information and advisory language for use by law enforcement agencies. The reference guide addresses:

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

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Garrett, Kent, Prince George's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Department of State Police; Governor's Office of Crime Control and Prevention; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2016  
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