

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 767
Judiciary

(Delegate Sydnor, *et al.*)

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 recordings from a body-worn digital recording device worn by a law enforcement officer. The bill's provisions (1) do not apply to a public record that has been entered into evidence in a court proceeding and (2) may not be construed to affect the discovery or evidentiary rights of a party to a civil suit or criminal prosecution.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted 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 purchase software and hire additional personnel. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Subject to exceptions specified below, 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:

- depicts a victim or information that could identify a victim of domestic violence;
- depicts a victim or information that could identify a victim of a rape or other sexual crime;

- depicts a victim or information that could identify a victim of abuse, except for a crime of hazing where the victim is an adult;
- depicts the death of a law enforcement officer that occurred in the performance of the officer's duties; or
- does not result in (1) the arrest, attempted arrest, temporary detention, attempted temporary detention, search, attempted search, citation, death, or injury of an individual; (2) the use of force against an individual; or (3) a complaint or allegation of officer misconduct made against any law enforcement officer involved in the incident.

A custodian of records must deny inspection of records in accordance with the bill regardless of a subsequent action taken by law enforcement or a court resulting from the incident recorded.

A victim who is the subject of a record must be notified of all requests to inspect the record. The Maryland Police Training and Standards Commission (MPTSC), in consultation with the Maryland Association of Counties, the Maryland Municipal League, law enforcement agencies, the press, and other stakeholders, must develop uniform standards and procedures to carry out provisions regarding victim notification.

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 deceased or unable to request the recording due to injury, the custodian must allow inspection by the individual's parent, legal guardian, spouse, adult child, next of kin, or a representative of the individual's estate. 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, received probation before judgement for, is subject to a peace or protective order as a result of, pleaded *nolo contendere* to, pleaded guilty to, or has been found guilty of a violation specified above, if the recording is of the incident leading to the investigation, probation before judgment, order, charge, plea, or verdict.

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.

Duties of Custodians: 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 must notify an applicant in writing or via email within 10 working days of receiving a request if the estimated time to produce responsive records exceeds more than 10 working days.

Required Denials: A custodian must 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, hospital 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.

Discretionary Denials: 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.

A custodian that denies inspection of a public record on this basis must provide (1) a written statement to the applicant giving the reason for denial; (2) the legal authority on which it is based; (3) a brief description of the undisclosed record (without disclosing the protected information); and (4) a notice of the statutory remedies available.

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) – now known as MPTSC – 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.

Maryland Public Information Act: MPIA was largely created to handle paper documents and was 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, 18 states and the District of Columbia have addressed how BWC data is to be released to the public under open record. In statute, states specify procedures for the public to request footage and which footage is and is not to be released to the public. The goal of these provisions is to be transparent in law enforcement without unnecessarily infringing on privacy. Specifically, laws in Connecticut, Nevada, North Dakota, Oklahoma, and Texas treat body camera recordings as public records but provide standards and many caveats for when police may withhold, redact, or obscure certain videos. Connecticut excludes specific incidents from its open records laws including footage containing communication between police officers and undercover officers or informants, any medical or psychological treatment and victims of domestic or sexual abuse, homicide, suicide, or accidental death. Oklahoma's law allows footage containing the death of a person, or violence against a person, to be redacted unless the harm was caused by law enforcement. Texas' law provides that only body camera footage that is used, or could be used, as

evidence in a criminal proceeding is subject to the state's open record law and specifically prohibits the release of any footage taken in a private place, or that contains behavior that didn't result in an arrest and would only be a misdemeanor punishable by a fine. In addition, North Dakota makes any recording made in a private place by a police officer's or firefighter's body camera exempt from the state's open records law.

State laws also address how much video data a requester may access and what standards must be met to access the data. For example, Nevada's law requires that video be requested on a per incident basis, and enables law enforcement to only provide the information at the location the video is being stored if it contains confidential information that cannot otherwise be redacted. Texas addresses how to respond to requests for large amounts of data. The 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 that totals more than five hours of footage. Under the law, such requests are answered adequately if they are responded to within 20 business days.

State Expenditures: The Administrative Office of the Courts, the Maryland State Archives, the Maryland Department of Transportation, the Governor's Office of Crime Control and Prevention, and the Department of State Police can handle the bill's requirements with existing resources.

MPTSC advises that the development of uniform standards and procedures requires a full-time program manager with a salary range of \$53,193 to \$85,401. The Department of Legislative Services disagrees and advises that the bill's requirements can likely be handled with existing resources. The requirement to develop uniform standards and procedures in conjunction with other entities is not burdensome. Assistance can be drawn from the Maryland Association of Counties, the Maryland Municipal League, law enforcement agencies, the press, victims' rights advocates, and other stakeholders in developing the standards and procedures.

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, Montgomery County reports that it may need to purchase computer equipment and software and hire staff to review, edit, or shield video content.

Additional Information

Prior Introductions: HB 947 of 2016, a similar bill, passed the House with amendments and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 930, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: Although designated as a cross file, SB 970 (Senators Kagan and Lee – Judicial Proceedings) is not identical.

Information Source(s): Baltimore City; Harford and Montgomery counties; Maryland Association of Counties; City of College Park; Maryland Municipal League; Governor’s Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland State Archives; National Conference of State Legislatures; Department of Legislative Services

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