

Chapter 60

(Senate Bill 71)

AN ACT concerning

~~**Police Officers – Testimony – Presumption of Inadmissibility**~~
~~**(Maryland Police Accountability Act of 2021)**~~

Maryland Police Accountability Act of 2021 – Body-Worn Cameras, Employee Programs, and Use of Force

FOR the purpose of ~~providing that a knowing and willful failure of a certain police officer to activate a body worn camera creates a rebuttable presumption that certain testimony is inadmissible in a certain proceeding; providing that a certain presumption may be rebutted by a certain showing; requiring certain law enforcement agencies to require the use of body-worn cameras by certain law enforcement officers on or before a certain date; requiring all law enforcement agencies of a county in the State to require the use of body-worn cameras by certain law enforcement officers on or before a certain date; requiring certain law enforcement agencies to develop and maintain certain policies; establishing the Task Force on Statewide Body Camera Implementation; providing for the composition, chair, and staffing of the Task Force; prohibiting a member of the Task Force from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Task Force to study and make recommendations regarding certain matters; requiring the Task Force to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; requiring a certain body-worn camera to automatically record and save a certain amount of video footage at a certain time; prohibiting a law enforcement agency from negating or altering certain requirements or policies through collective bargaining; altering a certain provision of law requiring each law enforcement agency to establish a certain early intervention policy to instead require a system to identify police officers who are at risk of engaging in certain behavior; requiring each law enforcement agency to provide access to a certain employee assistance program for certain police officers; establishing certain requirements for a certain program; requiring each law enforcement agency to develop a policy to provide access to certain services at no cost to a police officer; requiring each police officer to sign a certain pledge; establishing certain use of force standards; requiring a police officer to take certain steps to gain compliance and de-escalate conflict under certain circumstances; requiring a police officer to intervene to prevent or terminate the use of certain force by a certain police officer; requiring a police officer to render certain first aid to a certain subject and request certain assistance at a certain time; requiring a police supervisor to respond to the scene of a certain incident and gather and review certain recordings; requiring a law enforcement agency to adopt a certain policy; requiring a police officer to undergo certain training; requiring a police officer to sign a certain training completion document; prohibiting a police officer from intentionally violating a certain provision of law, resulting in serious physical injury or death to a person; establishing certain penalties; providing that a certain sentence may be~~

separate from and consecutive to or concurrent with a certain other sentence; altering the termination date for the Law Enforcement Body Camera Task Force; altering the duties of the Task Force; requiring the Task Force to submit an additional report of its findings and recommendations on or before a certain date; providing for a delayed effective date for certain provisions of this Act; ~~providing for the application of this Act; defining certain terms; providing for the termination of a certain provision of this Act;~~ and generally relating to ~~testimony of police officers~~ body-worn cameras, employee programs, and use of force.

~~BY adding to~~

~~Article – Criminal Procedure
Section 2-109
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)~~

BY repealing and reenacting, with amendments,

Article – Public Safety
Section 3-511 and 3-516
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY adding to

Article – Public Safety
Section 3-523 and 3-524
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Chapter 309 of the Acts of the General Assembly of 2020
Section 1(f) and (g) and 2

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

~~Article – Criminal Procedure~~

~~2-109.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

~~(2) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3-201 OF THE PUBLIC SAFETY ARTICLE.~~

~~(3) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THE PUBLIC SAFETY ARTICLE.~~

~~(B) THIS SECTION APPLIES TO A POLICE OFFICER WHO IS REQUIRED TO USE A BODY WORN CAMERA WHILE ON DUTY BY THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE POLICE OFFICER.~~

~~(C) (1) THE KNOWING AND WILLFUL SUBJECT TO SUBSECTION (D) OF THIS SECTION, THE INTENTIONAL FAILURE OF A POLICE OFFICER TO ACTIVATE A BODY WORN CAMERA, IN VIOLATION OF THE POLICY OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE POLICE OFFICER, CREATES A REBUTTABLE PRESUMPTION THAT ANY TESTIMONY OF THE POLICE OFFICER SOUGHT TO BE INTRODUCED IN A CRIMINAL PROSECUTION RELATING TO THE INCIDENT THAT WAS NOT RECORDED IS INADMISSIBLE.~~

~~(D) (2) THE PRESUMPTION IN SUBSECTION (C) OF THIS SECTION MAY BE REBUTTED BY A SHOWING THAT:~~

~~(1) (I) THE BODY WORN CAMERA WAS NOT ACTIVATED DUE TO A MALFUNCTION OF THE CAMERA;~~

~~(II) THE POLICE OFFICER WAS:~~

~~1. NOT AWARE OF THE MALFUNCTION; OR~~

~~2. NOT ABLE TO FIX THE MALFUNCTION BEFORE THE~~

~~INCIDENT; AND~~

~~(III) THE LAW ENFORCEMENT AGENCY'S DOCUMENTATION SHOWS THAT THE POLICE OFFICER CHECKED THE FUNCTIONALITY OF THE BODY WORN CAMERA AT THE BEGINNING OF THE POLICE OFFICER'S SHIFT; OR~~

~~(2) IT WAS UNSAFE, IMPRACTICAL, OR IMPOSSIBLE FOR THE LAW ENFORCEMENT OFFICER TO ACTIVATE THE BODY WORN CAMERA.~~

Article - Public Safety

3-511.

(A) IN THIS SECTION, "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

(B) On or before January 1, 2016, the Maryland Police Training and Standards Commission shall develop and publish online a policy for the issuance and use of a body-worn camera by a law enforcement officer that addresses:

- (1) the testing of body-worn cameras to ensure adequate functioning;
- (2) 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;
- (3) when recording is mandatory;
- (4) when recording is prohibited;
- (5) when recording is discretionary;
- (6) when recording may require consent of a subject being recorded;
- (7) when a recording may be ended;
- (8) providing notice of recording;
- (9) access to and confidentiality of recordings;
- (10) the secure storage of data from a body-worn camera;
- (11) review and use of recordings;
- (12) retention of recordings;
- (13) dissemination and release of recordings;
- (14) consequences for violations of the agency's body-worn camera policy;
- (15) notification requirements when another individual becomes a party to the communication following the initial notification;
- (16) specific protections for individuals when there is an expectation of privacy in private or public places; and
- (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.

(C) (1) (I) THIS PARAGRAPH APPLIES TO:

1. THE DEPARTMENT OF STATE POLICE;

- 2. THE ANNE ARUNDEL COUNTY POLICE DEPARTMENT;
- 3. THE HOWARD COUNTY POLICE DEPARTMENT; AND
- 4. THE HARFORD COUNTY SHERIFF’S OFFICE.

(II) ON OR BEFORE JULY 1, 2023, A LAW ENFORCEMENT AGENCY TO WHICH THIS PARAGRAPH APPLIES SHALL REQUIRE THE USE OF BODY-WORN CAMERAS, SUBJECT TO THE POLICY ON THE USE OF BODY-WORN CAMERAS DEVELOPED BY THE LAW ENFORCEMENT AGENCY, BY EACH LAW ENFORCEMENT OFFICER EMPLOYED BY THE LAW ENFORCEMENT AGENCY WHO REGULARLY INTERACTS WITH MEMBERS OF THE PUBLIC AS PART OF THE LAW ENFORCEMENT OFFICER’S OFFICIAL DUTIES.

(2) ON OR BEFORE JULY 1, 2025, A LAW ENFORCEMENT AGENCY OF A COUNTY, OTHER THAN A LAW ENFORCEMENT AGENCY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, SHALL REQUIRE THE USE OF BODY-WORN CAMERAS, SUBJECT TO THE POLICY ON THE USE OF BODY-WORN CAMERAS DEVELOPED BY THE LAW ENFORCEMENT AGENCY, BY EACH LAW ENFORCEMENT OFFICER EMPLOYED BY THE LAW ENFORCEMENT AGENCY WHO REGULARLY INTERACTS WITH MEMBERS OF THE PUBLIC AS PART OF THE LAW ENFORCEMENT OFFICER’S OFFICIAL DUTIES.

(D) (1) A LAW ENFORCEMENT AGENCY DESCRIBED IN SUBSECTION (C) OF THIS SECTION SHALL DEVELOP AND MAINTAIN A WRITTEN POLICY CONSISTENT WITH THE POLICY PUBLISHED BY THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION UNDER SUBSECTION (B) OF THIS SECTION FOR THE USE OF BODY-WORN CAMERAS.

(2) A POLICY DEVELOPED AND MAINTAINED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL SPECIFY WHICH LAW ENFORCEMENT OFFICERS EMPLOYED BY THE LAW ENFORCEMENT AGENCY ARE REQUIRED TO USE BODY-WORN CAMERAS.

~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

~~(a) There is a Task Force on Statewide Body-Camera Implementation.~~

~~(b) The Task Force consists of the following members:~~

~~(1) one member of the Senate of Maryland, appointed by the President of the Senate;~~

~~(2) one member of the House of Delegates, appointed by the Speaker of the House;~~

- ~~(3) the Secretary of Information Technology, or the Secretary's designee;~~
- ~~(4) the Secretary of Budget and Management, or the Secretary's designee;~~
- ~~(5) the Secretary of General Services, or the Secretary's designee; and~~
- ~~(6) the following members, appointed by the Governor:~~

- ~~(i) one representative of the Maryland Municipal League;~~
- ~~(ii) one representative of the Maryland Association of Counties;~~
- ~~(iii) one representative of the Maryland Chiefs of Police Association;~~
- ~~(iv) one representative of the Maryland Sheriffs' Association;~~
- ~~(v) one representative of the Governor's Office of Homeland~~

~~Security; and~~

~~(vi) one representative of the Governor's Office of Crime Prevention, Youth, and Victim Services.~~

~~(c) The Governor shall designate the chair of the Task Force.~~

~~(d) The Governor's Office of Crime Prevention, Youth, and Victim Services shall provide staff for the Task Force.~~

~~(e) A member of the Task Force:~~

~~(1) may not receive compensation as a member of the Task Force; but~~

~~(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.~~

~~(f) The Task Force shall:~~

~~(1) study and make findings on the implementation and feasibility of requiring the use of body worn cameras by law enforcement officers in counties and municipalities throughout the State, consistent with the requirements of Section 1 of this Act; and~~

~~(2) make recommendations regarding requiring the use of body worn cameras by counties and municipalities based on its findings.~~

~~(g) On or before July 1, 2022, the Task Force shall report its findings and recommendations to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly.~~

~~SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October June 1, 2021. Section 2 of this Act shall remain effective for a period of 1 year and 6 months and, at the end of December 31, 2022, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.~~

(E) A BODY-WORN CAMERA THAT POSSESSES THE REQUISITE TECHNOLOGICAL CAPABILITY SHALL AUTOMATICALLY RECORD AND SAVE AT LEAST 60 SECONDS OF VIDEO FOOTAGE IMMEDIATELY PRIOR TO THE OFFICER ACTIVATING THE RECORD BUTTON ON THE DEVICE.

(F) A LAW ENFORCEMENT AGENCY MAY NOT NEGATE OR ALTER ANY OF THE REQUIREMENTS OR POLICIES ESTABLISHED IN ACCORDANCE WITH THIS SECTION THROUGH COLLECTIVE BARGAINING.

3-516.

*(a) Each law enforcement agency shall establish a confidential and nonpunitive early intervention [policy for counseling officers who receive three or more citizen complaints within a 12-month period] **SYSTEM TO IDENTIFY POLICE OFFICERS WHO ARE AT RISK OF ENGAGING IN THE USE OF EXCESSIVE FORCE AND TO PROVIDE THE OFFICERS WITH TRAINING, BEHAVIORAL INTERVENTIONS, REASSIGNMENTS, OR OTHER APPROPRIATE RESPONSES TO REDUCE THE RISK OF THE USE OF EXCESSIVE FORCE.***

*(b) A [policy] **SYSTEM** described in this section may not prevent the investigation of or imposition of discipline for any particular complaint.*

3-523.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “EMPLOYEE ASSISTANCE PROGRAM” MEANS A WORK-BASED PROGRAM OFFERED TO ALL POLICE OFFICERS THAT PROVIDES ACCESS TO VOLUNTARY AND CONFIDENTIAL SERVICES TO ADDRESS THE MENTAL HEALTH ISSUES OF A POLICE OFFICER STEMMING FROM PERSONAL AND WORK-RELATED CONCERNS, INCLUDING STRESS, FINANCIAL ISSUES, LEGAL ISSUES, FAMILY PROBLEMS, OFFICE CONFLICTS, AND ALCOHOL AND SUBSTANCE ABUSE DISORDERS.

(3) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

(4) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

(B) EACH LAW ENFORCEMENT AGENCY SHALL PROVIDE ACCESS TO AN EMPLOYEE ASSISTANCE PROGRAM FOR ALL POLICE OFFICERS WHOM THE LAW ENFORCEMENT AGENCY EMPLOYS.

(C) THE EMPLOYEE ASSISTANCE PROGRAM REQUIRED BY THIS SECTION SHALL PROVIDE POLICE OFFICERS ACCESS TO CONFIDENTIAL MENTAL HEALTH SERVICES, INCLUDING:

- (1) COUNSELING SERVICES;**
- (2) CRISIS COUNSELING;**
- (3) STRESS MANAGEMENT COUNSELING;**
- (4) RESILIENCY SESSIONS; AND**
- (5) PEER SUPPORT SERVICES FOR POLICE OFFICERS.**

(D) (1) IN ADDITION TO THE REQUIREMENTS OF § 3-516 OF THIS SUBTITLE AND SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AS PART OF THE EMPLOYEE ASSISTANCE PROGRAM REQUIRED BY THIS SECTION, BEFORE A POLICE OFFICER RETURNS TO FULL DUTY, A LAW ENFORCEMENT AGENCY SHALL PROVIDE:

(I) A VOLUNTARY MENTAL HEALTH CONSULTATION AND VOLUNTARY COUNSELING SERVICES TO THE POLICE OFFICER IF THE POLICE OFFICER IS INVOLVED IN AN INCIDENT INVOLVING AN ACCIDENT RESULTING IN A FATALITY; AND

(II) A MANDATORY MENTAL HEALTH CONSULTATION AND VOLUNTARY COUNSELING SERVICES TO THE POLICE OFFICER IF THE POLICE OFFICER IS INVOLVED IN AN INCIDENT INVOLVING:

- 1. A SERIOUS INJURY TO THE POLICE OFFICER;**
- 2. AN OFFICER-INVOLVED SHOOTING; OR**
- 3. ANY USE OF FORCE RESULTING IN A FATALITY OR SERIOUS INJURY.**

(2) A MENTAL HEALTH CONSULTATION AND COUNSELING SERVICE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONFIDENTIAL.

(E) THE EMPLOYEE ASSISTANCE PROGRAM REQUIRED BY THIS SECTION SHALL INCLUDE A COMPONENT DESIGNED TO PROTECT THE MENTAL HEALTH OF POLICE OFFICERS DURING PERIODS OF PUBLIC DEMONSTRATIONS AND UNREST.

(F) EACH LAW ENFORCEMENT AGENCY SHALL DEVELOP A POLICY TO PROVIDE ACCESS TO THE SERVICES REQUIRED BY THIS SECTION AT NO COST TO A POLICE OFFICER.

3-524.

(A) THIS SECTION SHALL BE KNOWN AS THE MARYLAND USE OF FORCE STATUTE.

(B) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

(3) "POLICE OFFICER" MEANS:

(I) A POLICE OFFICER AS DEFINED IN § 3-201 OF THIS TITLE;

OR

(II) A SPECIAL POLICE OFFICER AS DEFINED IN § 3-301 OF THIS TITLE.

(4) "SERIOUS PHYSICAL INJURY" HAS THE MEANING STATED IN § 3-201 OF THE CRIMINAL LAW ARTICLE.

(C) EACH POLICE OFFICER SHALL SIGN AN AFFIRMATIVE WRITTEN SANCTITY OF LIFE PLEDGE TO RESPECT EVERY HUMAN LIFE AND ACT WITH COMPASSION TOWARD OTHERS.

(D) (1) A POLICE OFFICER MAY NOT USE FORCE AGAINST A PERSON UNLESS ~~A POLICE OFFICER UNDER SIMILAR CIRCUMSTANCES WOULD BELIEVE THAT,~~ UNDER THE TOTALITY OF THE CIRCUMSTANCES, THE FORCE IS NECESSARY AND PROPORTIONAL TO:

(I) PREVENT AN IMMINENT THREAT OF PHYSICAL INJURY TO A PERSON; OR

(II) EFFECTUATE A LEGITIMATE LAW ENFORCEMENT OBJECTIVE.

(2) A POLICE OFFICER SHALL CEASE THE USE OF FORCE AS SOON AS:

(I) THE PERSON ON WHOM THE FORCE IS USED:

1. IS UNDER THE POLICE OFFICER'S CONTROL; OR

2. NO LONGER POSES AN IMMINENT THREAT OF PHYSICAL INJURY OR DEATH TO THE POLICE OFFICER OR TO ANOTHER PERSON; OR

(II) THE POLICE OFFICER DETERMINES THAT FORCE WILL NO LONGER ACCOMPLISH A LEGITIMATE LAW ENFORCEMENT OBJECTIVE.

(E) A POLICE OFFICER SHALL:

(1) WHEN TIME, CIRCUMSTANCES, AND SAFETY ALLOW, TAKE STEPS TO GAIN COMPLIANCE AND DE-ESCALATE CONFLICT WITHOUT USING PHYSICAL FORCE;

(2) INTERVENE TO PREVENT OR TERMINATE THE USE OF FORCE BY ANOTHER POLICE OFFICER BEYOND WHAT IS AUTHORIZED UNDER SUBSECTION (D) OF THIS SECTION;

(3) RENDER BASIC FIRST AID TO A PERSON INJURED AS A RESULT OF POLICE ACTION AND PROMPTLY REQUEST APPROPRIATE MEDICAL ASSISTANCE; AND

(4) FULLY DOCUMENT ALL USE OF FORCE INCIDENTS THAT THE OFFICER OBSERVED OR WAS INVOLVED IN.

(F) A POLICE SUPERVISOR SHALL:

(1) RESPOND TO THE SCENE OF ANY INCIDENT DURING WHICH A POLICE OFFICER USED PHYSICAL FORCE AND CAUSED SERIOUS PHYSICAL INJURY; AND

(2) GATHER AND REVIEW ALL KNOWN VIDEO RECORDINGS OF A USE OF FORCE INCIDENT.

(G) A LAW ENFORCEMENT AGENCY SHALL:

(1) HAVE A WRITTEN DE-ESCALATION OF FORCE POLICY; AND

(2) ADOPT A WRITTEN POLICY REQUIRING SUPERVISORY AND COMMAND-LEVEL REVIEW OF ALL USE OF FORCE INCIDENTS.

(H) A POLICE OFFICER SHALL:

(1) UNDERGO TRAINING ON WHEN A POLICE OFFICER MAY OR MAY NOT DRAW A FIREARM OR POINT A FIREARM AT A PERSON AND ENFORCEMENT OPTIONS THAT ARE LESS LIKELY TO CAUSE DEATH OR SERIOUS PHYSICAL INJURY, INCLUDING SCENARIO-BASED TRAINING, DE-ESCALATION TACTICS AND TECHNIQUES, AND REASONABLE ALTERNATIVES TO DECREASE PHYSICAL INJURY; AND

(2) SIGN A TRAINING COMPLETION DOCUMENT STATING THAT THE OFFICER UNDERSTANDS AND SHALL COMPLY WITH THE MARYLAND USE OF FORCE STATUTE.

(1) (1) A POLICE OFFICER MAY NOT INTENTIONALLY VIOLATE SUBSECTION (D) OF THIS SECTION, RESULTING IN SERIOUS PHYSICAL INJURY OR DEATH TO A PERSON.

(2) A POLICE OFFICER WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.

(3) A SENTENCE IMPOSED UNDER THIS SUBSECTION MAY BE SEPARATE FROM AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Chapter 309 of the Acts of 2020

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(f) The Task Force shall:

(1) study options for the economical storage of audio and video recordings made by law enforcement body-worn cameras; [and]

(2) make recommendations for storage considering the budgets of State, county, local, and campus law enforcement jurisdictions;

(3) STUDY AND MAKE FINDINGS ON THE IMPLEMENTATION AND FEASIBILITY OF REQUIRING THE USE OF BODY–WORN CAMERAS BY POLICE OFFICERS IN COUNTIES AND MUNICIPALITIES THROUGHOUT THE STATE; AND

(4) MAKE RECOMMENDATIONS REGARDING REQUIRING THE USE OF BODY–WORN CAMERAS BY COUNTIES AND MUNICIPALITIES BASED ON ITS FINDINGS.

*(g) On or before December 1, 2020, AND **DECEMBER 1, 2022**, the Task Force shall report its findings and recommendations to the General Assembly, in accordance with § 2–1257 of the State Government Article.*

*SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2020. It shall remain effective for a period of [1 year] **3 YEARS** and, at the end of June 30, [2021] **2023**, this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.*

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 2022.

SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect June 1, 2021.

Gubernatorial Veto Override, April 10, 2021.