

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 71

(Senator Sydnor, *et al.*)

Judicial Proceedings

Judiciary

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

This bill (1) requires specified law enforcement agencies to require the use of a body-worn camera (BWC) 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) requires each law enforcement agency to establish a specified early intervention system; (3) requires each law enforcement agency to provide access to an “employee assistance program” for all police officers that the law enforcement agency employs and develop a policy to provide access to required program services at no cost to a police officer; (4) establishes the Maryland Use of Force Statute; and (5) extends the duration and required duties of the Law Enforcement Body Camera Task Force. **The provisions pertaining to the Law Enforcement Body Camera Task Force take effect June 1, 2021; all other provisions take effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by \$2.6 million in FY 2023. Transportation Trust Fund (TTF) expenditures increase by \$114,000 in FY 2023. Future years reflect ongoing costs. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	2,570,900	1,778,100	1,798,200	1,818,900
SF Expenditure	0	114,000	110,100	111,800	113,500
Net Effect	\$0	(\$2,684,900)	(\$1,888,200)	(\$1,910,000)	(\$1,932,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: County expenditures increase significantly to comply with the bill’s BWC requirements. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The bill incorporates the definition of a “law enforcement agency” under § 3-201 of the Public Safety Article.

Body-Worn Cameras

By July 1, 2023, the Department of State Police (DSP), the Anne Arundel County Police Department, the Howard County Police Department, and the Harford County Sheriff’s Office must require the use of a BWC 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, subject to the agency’s policy on the use of BWCs. A law enforcement agency of a county that is not subject to the July 1, 2023 deadline is required to comply with the aforementioned requirement by July 1, 2025. A BWC that possesses the requisite technological capability must automatically record and save at least 60 seconds of video footage immediately prior to the officer activating the record button on the device.

A law enforcement agency subject to the bill’s BWC requirements must develop and maintain a written policy consistent with the policy published by the Maryland Police Training and Standards Commission (MPTSC) for the use of BWCs. The policy must specify which law enforcement officers employed by the law enforcement agency are required to use BWCs. A law enforcement agency may not negate or alter any of the requirements or policies established in accordance with specified BWC-related provisions through collective bargaining.

Early Intervention System

The bill repeals a provision that requires each law enforcement agency to establish a confidential and nonpunitive early intervention policy for counseling officers who receive three or more citizen complaints within a 12-month period. Instead, the bill requires each law enforcement agency to establish a confidential and nonpunitive early intervention system to identify police officers who are at risk of engaging in the use of excessive force and to provide those officers with training, behavioral interventions, reassignments, or other appropriate responses to reduce the risk of the use of excessive force. The system may not prevent the investigation of or imposition of discipline for any particular complaint.

Employee Assistance Program

Each law enforcement agency must provide access to an “employee assistance program” for all police officers whom the law enforcement agency employs. An “employee assistance program” is 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.

The employee assistance program must provide police officers access to confidential mental health services, including counseling services, crisis counseling, stress management counseling, resiliency sessions, and peer support services for police officers. The employee assistance program also must include a component designed to protect the mental health of police officers during periods of public demonstrations and unrest.

In addition to the early intervention system and as part of the required employee assistance program, before a police officer returns to full duty, a law enforcement agency must provide to the police officer (1) a voluntary mental health consultation and voluntary counseling services if the police officer is involved in an incident involving an accident resulting in a fatality and (2) a mandatory mental health consultation and voluntary counseling services if the police officer is involved in an incident involving a serious injury to the police officer, an officer-involved shooting, or any use of force resulting in a fatality or serious injury. A mental health consultation and counseling service provided pursuant to these provisions must be confidential.

Maryland Use of Force Statute

The bill establishes the Maryland Use of Force Statute, which establishes requirements regarding a police officer’s use of force; requires a police officer to sign an affirmative written sanctity of life pledge to respect every human life and act with compassion toward others; requires a law enforcement agency to adopt specified policies; and requires a police officer to undergo specified training. The statute applies to police officers and “special police officers.”

A police officer may not use force against a person unless, under the totality of the circumstances, the force is necessary and proportional to prevent an imminent threat of physical injury to a person or effectuate a legitimate law enforcement objective. A police officer must cease the use of force as soon as (1) the person on whom the force is used is under the police officer’s control or no longer poses an imminent threat of physical injury or death to the police officer or to another person or (2) the police officer determines that force will no longer accomplish a legitimate law enforcement objective. A police officer

who intentionally violates the prohibitions on use of force that results in “serious physical injury” or death to a person is guilty of a misdemeanor, punishable by imprisonment for up to 10 years. A sentence imposed for a conviction may be separate from and consecutive to or concurrent with a sentence for any crime on which the act establishing a violation.

Also, a police officer must (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 the authorized use of force described above; (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.

A police supervisor must respond to the scene of any incident during which a police officer used physical force and caused serious physical injury and gather and review all known video recordings of a use of force incident. A law enforcement agency must have a written de-escalation of force policy and adopt a written policy requiring supervisory and command-level review of all use of force incidents.

A police officer must (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 must comply with the Maryland Use of Force Statute.

Law Enforcement Body Camera Task Force

The bill extends, from June 30, 2021, to June 30, 2023, the termination date of the Law Enforcement Body Camera Task Force established by Chapter 309 of 2020. The bill also expands the duties of the task force to include (1) studying and making findings on the implementation and feasibility of requiring the use of BWCs by police officers in counties and municipalities throughout the State and (2) making recommendations regarding requiring the use of BWCs by counties and municipalities based on its findings. The task force must submit a report of its findings and recommendations to the General Assembly by December 1, 2022.

Current Law:

Body-Worn Cameras and MPTSC’s Body-Worn Camera Policy

While statute does not require a law enforcement agency to use BWCs, by January 1, 2016, MPTSC was required to develop and publish online a policy for the issuance and use of a

BWC by a law enforcement officer that addresses specified factors, including mandatory, prohibited, and discretionary recording; when a recording may be ended; and retention of recordings.

Relevant Definitions

Under Section 3-201 of the Public Safety Article, with specified exceptions for members of the Maryland National Guard, a “law enforcement agency” is a governmental police force, sheriff’s office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State. Section 3-201 defines a “police officer” as an individual who is authorized to enforce the general criminal laws of the State and is a member of one of a list of specified law enforcement agencies, with specified inclusions and exclusions from the list.

Maryland Police Training and Standards Commission

MPTSC, an independent commission within the Department of Public Safety and Correctional Services (DPSCS), operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

Early Intervention Counseling

Each law enforcement agency must establish a confidential and nonpunitive early intervention policy for counseling officers who receive three or more citizen complaints within a 12-month period. The policy may not prevent the investigation of or imposition of discipline for any particular complaint.

Employee Assistance Program

The Employee and Labor Relations Division within the Department of Budget and Management administers the Employee Assistance Program, which provides confidential and professional referral and assessment services to State employees experiencing personal difficulties that are affecting job performance.

Other Related Programs

Maryland Police Training and Standards Commission: In consultation with the Maryland Department of Health (MDH), MPTSC must establish a confidential hotline that is available for police officers and other law enforcement personnel to contact and speak with

a trained peer law enforcement officer or a mental health professional who may provide initial counseling advice and confidential referral to appropriate services. In addition, MPTSC is required to develop standards for the mandatory psychological consultation with a law enforcement officer who was actively involved in an incident when another person was seriously injured or killed as a result of an accident or a shooting or has returned from combat deployment.

Maryland Behavioral Health Crisis Response System: The Maryland Behavioral Health Crisis Response System (BHCRS) must (1) operate a statewide network utilizing existing resources and coordinating interjurisdictional services to develop efficient and effective crisis response systems to serve all individuals in the State, 24 hours a day and 7 days a week; (2) provide skilled clinical intervention to help prevent suicides, homicides, unnecessary hospitalizations, and arrests or detention, and to reduce dangerous or threatening situations involving individuals in need of behavioral health services; and (3) respond quickly and effectively to community crisis situations.

In each jurisdiction, a crisis communication center provides a single point of entry to the system and coordination with the local core service agency (CSA) or local behavioral health authority, police, emergency medical service personnel, and behavioral health providers. Crisis communication centers are authorized to provide a variety of specified programs.

The Behavioral Health Administration within MDH determines the implementation of BHCRS in collaboration with the local CSA or local behavioral health authority serving each jurisdiction. Additionally, BHCRS must conduct an annual survey of consumers and family members who have received services from the system. Annual data collection is also required on the number of behavioral health calls received by police, attempted and completed suicides, unnecessary hospitalizations, hospital diversions, arrests and detentions of individuals with behavioral health diagnoses, and diversion of arrests and detentions of individuals with behavioral health diagnoses.

Chapter 209 of 2018 established a Behavioral Health Crisis Response Grant Program in MDH to provide funds to local jurisdictions to establish and expand community behavioral health crisis response systems.

Crisis Intervention Team Center for Excellence: Chapter 547 of 2020 established a Crisis Intervention Team Center of Excellence (CITCE) in the Governor's Office of Crime Prevention, Youth, and Victim Services to (1) provide technical support to local governments, law enforcement, public safety agencies, behavioral health agencies, and crisis service providers and (2) develop and implement a crisis intervention model program. The operation of CITCE is subject to the limitations of the State budget and must be supported by appropriations provided in the State budget, grants or other assistance from

federal, State, or local government, and any other money made available to CITCE from any public or private source. By December 1 annually, CITCE must report to the General Assembly on its activities and related criminal justice efforts. “Crisis intervention model program” means a nationally recognized crisis intervention team program developed and published by the University of Memphis in Tennessee or a comparable nationally recognized crisis intervention team program.

Use of Force

Common law allowed police officers to use any force necessary to effectuate a felony arrest; however, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court held that when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” In *Graham v. Connor*, 490 U.S. 386 (1989), the U.S. Supreme Court expanded its definition to include the objective reasonableness standard. The court held that the Fourth Amendment “reasonableness” inquiry is “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” In *Randall v. Peaco*, 175 Md. App. 320 (2007), the Court of Special Appeals applied principles of the *Graham v. Connor* case and stated that the test for determining the objective reasonableness of an officer’s conduct for purposes of deciding a claim of excessive force brought under the State constitution is the test the U.S. Supreme Court announced in *Graham v. Connor*.

State Expenditures: State expenditures (general fund and TTF) increase by approximately \$2.7 million in fiscal 2023 for DSP and Maryland Transit Administration (MTA) Police to comply with the bill’s requirements, as discussed below. Future year expenditures reflect annualization and ongoing costs. The bill’s criminal penalty provision is not expected to materially affect State expenditures.

Body-Worn Cameras – Department of State Police

General fund expenditures for DSP increase by \$2,570,937 in fiscal 2023. This estimate reflects the cost to purchase BWC equipment as well as the cost of hiring one lead technician, three technicians, and four administrative specialists to manage DSP’s BWC program and handle related requests. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	8.0
Salaries and Fringe Benefits	\$401,712
BWC Equipment	2,059,200
Automobiles	62,000
Start-up Costs and Other Operating Expenses	<u>48,025</u>
Total FY 2023 DSP Expenditures	\$2,570,937

The information and assumptions used in calculating the estimate are stated below:

- According to DSP, approximately 936 law enforcement officers within DSP require BWCs under the bill, at a cost of approximately \$2.1 million (\$2,200 per device) in fiscal 2023.
- Implementation of a BWC program in DSP requires eight additional personnel, as described above, beginning October 1, 2022.
- Additional first year one-time start-up costs and operating expenses are estimated at \$48,025, which includes \$44,650 for one-time start-up costs and ongoing operating costs for the additional personnel and \$3,375 for user management, licensing, and storage of BWC footage.
- Two vehicles are needed for technicians to travel to provide maintenance and support to officers using BWCs.

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. To the extent that additional BWC maintenance and storage are needed, expenditures increase further.

State Employee Assistance Program and Maryland Transit Administration

The State Employee Assistance Program provides confidential and professional referral and assessment services to State employees, including State law enforcement officers. Insurance plans offered to State employees also include some coverage for mental health services. In addition, some State agencies have established departmental employee assistance programs. However, it is unclear if the services currently offered meet the bill's requirements. To the extent that existing programs must be modified to meet the bill's requirements, State expenditures (multiple fund types) increase minimally.

In addition, TTF expenditures for the MTA Police increase by \$113,957 in fiscal 2023, which accounts for the July 1, 2022 effective date of the relevant provisions. This estimate reflects the cost of hiring a part-time administrator to administer and evaluate an early intervention system for law enforcement officers in the agency. It includes a salary, fringe benefits, one-time start-up costs, computer software licensing, and ongoing operating expenses.

Position	0.5
Salary and Fringe Benefits	\$43,539
Computer Software	65,000
Other Operating Expenses	<u>5,418</u>
Total FY 2023 MTA Expenditures	\$113,957

Future year expenditures reflect a salary with annual increases and employee turnover and ongoing operating expenses.

Use of Force Training

As noted above, MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. Pursuant to MPTSC standards, the curriculum and minimum courses of study must include use of force de-escalation training, as specified. This requirement applies to in-service level police training every two years and entrance-level training conducted by the State and each county and municipal police training school. In addition, MPTSC has the power and duty to adopt and recommend a set of best practices and standards for the use of force. DPSCS did not provide information in time for the preparation of this fiscal and policy note regarding the effect of the bill’s use of force provisions on MPTSC.

DSP and the Department of Natural Resources (Natural Resources Police) advise that they can implement changes to existing training programs to reflect the Maryland Use of Force Statute using existing budgeted resources.

Assuming that MPTSC and other State law enforcement agencies can alter training programs using existing budgeted resources or minimal resources, the bill’s effect on use of force training is not expected to materially affect State finances.

Law Enforcement Body Camera Task Force

DPSCS can continue to staff the Law Enforcement Body Camera Task Force with existing budgeted resources. Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing resources.

Local Expenditures:

Body-Worn Cameras

Expenditures increase significantly for counties to comply with the bill’s BWC requirements. Information regarding the use or planned use of BWCs by some counties and anticipated costs to implement the bill’s BWC requirements are detailed below.

- With respect to other BWC legislation proposed this year, Baltimore City and Howard, Montgomery, Prince George's, and Wicomico counties advised that BWC programs are currently operational and budgeted within their respective jurisdictions.
- Anne Arundel County advises that it is in the process of implementing a BWC program. The county's current year budget includes funding and positions to start the program, and the county has a contract in place for BWC hardware. While the county cannot provide an exact timeline for full implementation, the county expects full implementation in advance of the July 1, 2023 deadline in the bill.
- Harford County estimates that initial costs to implement the bill total \$843,000, with significant ongoing costs (at least \$600,000 annually) in future years.
- Based on recently submitted budget requests, Charles County advises that initial costs for its Sheriff's Office to implement a BWC program exceed \$1.9 million; the State's Attorney Office for Charles County estimates approximately \$650,000 in costs to address additional workloads generated by the use of BWCs by the Sheriff's Office, including video analysis.

Employee Assistance Programs

Similar to the State, several local jurisdictions provide employee assistance programs for local government employees, including law enforcement officers. Insurance plans offered to local government employees also include some coverage for mental health services. In addition, some local law enforcement agencies have established employee assistance programs internal to their agencies. However, to the extent that existing programs must be modified to meet the bill's requirements, local government expenditures increase minimally.

Montgomery County advises that psychological examinations offered to law enforcement officers are approximately \$200 per visit.

Use of Force Training

Local expenditures may increase if local law enforcement agencies need to alter existing use of force training programs to reflect the bill and cannot do so with existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Harford, and Montgomery counties; City of Havre de Grace; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Governor’s Office for Crime Prevention, Youth, and Victim Services; Department of State Police; Department of Public Safety and Correctional Services; Department of Natural Resources; Maryland Department of Transportation; Department of Legislative Services

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