

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 40

(Senator Sydnor)

Judicial Proceedings

Judiciary

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

This bill sets forth the circumstances under which a custodian of records, in accordance with Maryland's Public Information Act (PIA), 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 is not expected to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local government finances, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: Subject to the 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 or neglect, except for a crime of hazing where the victim is an adult;
- 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; or
- depicts the death of a law enforcement officer that occurred in the performance of the officer's duties.

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 news media, victims' rights advocates, and other stakeholders, must develop uniform standards and procedures to carry out the bill's 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 such an individual 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, the custodian must allow inspection by the individual's guardian or agent.

A custodian of records may not allow inspection or copying of a recording from a body-worn digital recording device by an individual who is under investigation for or is charged with a violation specified above if the recording is of the incident leading to the investigation or charge. In addition, a custodian may not allow copying of a recording from a body-worn digital recording device by an individual who has received probation before judgement for, is subject to a peace or protective order as a result of, has pleaded *nolo contendere* to, has pleaded guilty to, or has been found guilty of a violation specified

above if the recording is of the incident leading to the probation before judgment, order, plea, or verdict.

Current Law:

Maryland's Public Information Act

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative whom 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: Generally, a custodian of a public record must permit inspection of any public record at any reasonable time. A custodian must designate types of public records that are to be made available to any applicant immediately on request and maintain a current list of the types of public records that have been so designated. Each custodian must adopt reasonable rules or regulations that, consistent with PIA, govern timely production and inspection of a public record. Chapter 658 of 2021, effective July 1, 2022, requires each official custodian to adopt a policy of proactive disclosure of public records that are available for inspection under PIA, as specified.

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. PIA also requires denial of inspection for specified personal and confidential records and information, including, for example, personnel and student records, hospital records, specified medical and financial information, and shielded criminal and police records. Chapter 62 of 2021 specifies that a record relating to an administrative or criminal investigation of misconduct by a police officer is not a protected personnel record under PIA and requires a custodian to allow access to such records by federal and State prosecutors.

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. PIA specifies the types of records that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

Procedure for Denial: A custodian who denies inspection of a public record must, within 10 working days, provide a written statement to the applicant that gives (1) the reason for

denial; (2) if denying a part of a record on a discretionary basis, a brief explanation of why the denial is necessary and why redacting information would not address the reasons for the denial; (3) the legal authority for the denial; (4) a brief description of the undisclosed record (without disclosing the protected information); and (5) notice of the available statutory remedies.

Fees and Fee Waivers: An official custodian may charge an applicant the actual cost of the search, preparation, and reproduction of any public record in a *standard* format, including the cost of media and mechanical processing. If an applicant requests a public record in a *customized* format, an official custodian may charge a reasonable fee for the search, preparation, and reproduction of the public record. PIA authorizes fee waivers under specified circumstances.

Body-worn Cameras

Chapters 128 and 129 of 2015 established the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers. Through the examination of model policies and discussion, the commission compiled a list of best practices for body-worn cameras (BWC) and submitted a report to the General Assembly and the Police Training Commission (now known as MPTSC) in September 2015. Among other things, the [report](#) addresses (1) notification responsibilities of law enforcement officers to individuals being recorded; (2) confidentiality and ownership of data; (3) procedures and requirements for data storage; (4) the review of recordings by parties in interest; (5) the establishment of retention periods; and (6) the release of recordings as required by PIA.

Chapter 60 of 2021 requires the Department of State Police (DSP), the Anne Arundel County Police Department, the Howard County Police Department, and the Harford County Sheriff's Office, by July 1, 2023, to 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 BWC requirements must develop and maintain a written policy consistent with the policy published by 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.

State Expenditures: Several State law enforcement agencies (*e.g.*, DSP, the Maryland Transit Administration Police, and the University System of Maryland) advise of the need to hire additional staff and/or purchase additional equipment to review, assemble, and disseminate information in accordance with the bill's requirements. However, the Department of Legislative Services (DLS) notes that agencies that use body-worn digital recording devices are already subject to PIA requests and thus should have the necessary equipment and staff to review, assemble, and disseminate information in reference to such requests. In fact, the bill limits the circumstances under which a person is authorized to inspect or receive a copy of a recording from a body-worn digital recording device.

In addition, MPTSC advises that it needs to hire a part-time contractual program manager (at a cost of \$32,600 in fiscal 2024, increasing to \$37,300 by fiscal 2028) to develop uniform standards and procedures to carry out the bill's provisions. However, DLS disagrees and advises that MPTSC, in consultation with the Maryland Association of Counties, the Maryland Municipal League, law enforcement agencies, the news media, victims' rights advocates, and other stakeholders, can develop the required standards and procedures using existing resources.

Local Expenditures: While several local jurisdictions indicate that the bill does not materially affect local operations or finances, the City of Annapolis advises of the need to hire additional staff to review, assemble, and disseminate information in accordance with the bill's requirements. However, similar to the discussion above regarding State agencies, DLS notes that local agencies that use body-worn digital recording devices are already subject to PIA requests and thus should have the necessary equipment and staff to review, assemble, and disseminate information in reference to such requests.

Also, both the Maryland Association of Counties and the Maryland Municipal League note that the bill's changes could result in a *decrease* in the amount of time spent by local jurisdictions on PIA-related requests related to BWC footage.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 31 of 2022 and SB 690 of 2021.

Designated Cross File: None.

Information Source(s): Carroll, Harford, Queen Anne's, and St. Mary's counties; Maryland Association of Counties; City of Annapolis; Maryland Municipal League; Comptroller's Office; Baltimore City Community College; University System of Maryland; Morgan State University; Department of General Services; Maryland

Department of Health; Maryland Department of Labor; Department of Natural Resources;
Department of Public Safety and Correctional Services; Department of State Police;
Maryland Department of Transportation; Department of Legislative Services

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