

ANTHONY G. BROWN
Attorney General



CANDACE MCLAREN LANHAM
Chief of Staff

CAROLYN A. QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
443-681-1060

WRITER'S DIRECT DIAL NO.
410-576-7070

February 1, 2023

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Hannibal G. Williams II Kemerer
Office of the Attorney General

Re: SB 40 – Public Information Act – Inspection of Records From Body-Worn Digital
Recording Devices – **Support with Amendments**

The Office of the Attorney General urges the Judicial Proceedings Committee to add two perfecting amendments and then favorably report SB 40. The amendments would prevent law-enforcement officers who are the subject of an ongoing investigation, or who witnessed the incident being investigated, from viewing other officers' body-worn camera footage from the incident.

Senate Bill 40 provides certain categories of individuals with access to body-worn camera footage while also protecting certain information from disclosure. The bill provides access to individuals who are the subject of the recording and involved in the incident in question, or to those individuals' parents, guardians, or similar representatives in certain circumstances. The bill also protects from inspection footage that includes information that could identify victims of domestic violence, sexual crimes, and certain other crimes against minors and vulnerable adults, and incidents which do not involve an actual or attempted detention, search, arrest, citation, use of force, injury, or death, or which do not lead to a complaint of misconduct against an officer.

As written, SB 40 has the potential to undermine investigations into law enforcement misconduct—such as those conducted by the Office of the Attorney General's Independent Investigations Division—by providing the officers being investigated and officers who witnessed the potential misconduct with access to body-worn camera footage of the incidents in question. Proposed Crim. Law § 4-357(C)(1)(I) would allow inspection of footage by, “an individual who is a subject in the recording and is directly involved in the incident that prompted the recording.” Such individuals could include law enforcement officers. This would allow officers being investigated and officers who witnessed the potential misconduct to review not only their own

body-worn camera footage, but also that of other officers, which often portrays actions, statements, and other information that was not actually perceived by the officers being investigated or other witness officers. Access to this information could undermine ongoing investigations by affecting officers' recollections or accounts of the incident in question.

This unintended consequence could be remedied by clarifying that a custodian may deny a law enforcement officer who was involved in or present for the injury or death of an individual access to body-worn camera footage related to the incident. Such an amendment would preserve the salutary effects of SB 40 without jeopardizing active investigations into possible law enforcement misconduct.

Subject to the Committee's adoption of this amendment and a minor corresponding amendment referencing the proposed provision, both of which are stated below, the Office of Attorney General urges a favorable report on SB 40, as amended.

Amendments:

Add the following after page 7, line 7: (4) A CUSTODIAN MAY NOT ALLOW, UNTIL THE COMPLETION OF ADJUDICATION OF ALL ASSOCIATED CRIMINAL CASES AT THE TRIAL COURT LEVEL, INSPECTION OR COPYING OF A RECORDING FROM A BODY-WORN DIGITAL RECORDING DEVICE BY A LAW ENFORCEMENT OFFICER WHO WAS INVOLVED IN OR PRESENT FOR THE INJURY OR DEATH OF AN INDIVIDUAL IF THE RECORDING CONCERNS THE INCIDENT LEADING TO THE INJURY OR DEATH.

Amend page 6, lines 15 through 17, to read: SUBJECT TO PARAGRAPHS (2) THROUGH (4) OF THIS SUBSECTION, A CUSTODIAN SHALL ALLOW INSPECTION OF A RECORDING FROM A BODY-WORN DIGITAL RECORDING DEVICE BY:

cc: Committee Members