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SB 40

April 4, 2023

TO: Members of the House Judiciary Committee
FROM: Nina Themelis, Interim Director of Government Relations
RE: Senate Bill 40 – Public Information Act – Inspection of Records From Body Worn Digital Recording Devices

POSITION: Support

Chair Clippinger, Vice Chair Moon, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate Bill (SB) 40.

This bill is nearly identical to SB 31 from last session and SB 695 from the 2021 session. It implements the recommendation of the General Assembly’s 2015 Special Commission to amend the Public Information Act “to incorporate provisions specifically governing the release of audio/video recordings captured by a law enforcement officer’s body-worn camera, to include, but not be limited to, those recordings which **depict victims of violent crimes and domestic abuseⁱ**.” (emphasis added).

Although this bill appears wordy, it is narrowly tailored to prevent disclosure of the body-worn camera videos of interviews with victims or perpetrators of sexual crimes or domestic violence. These victims should not fear calling the police for help simply because the perpetrator could obtain a copy of the body-worn camera video interview and use it to shame or intimidate the victims by showing it to friends, family, employers or putting it online.

While providing the requisite privacy to these victims, the bill **specifically allows disclosure of body camera videos showing the types of police conduct that the public desires to view:**

1. arrest or attempted arrest
2. temporary detention or attempted temporary detention
3. search or attempted search
4. any citation
5. any death or any injury

Any other body-camera videos that you want the public to view can be added to this list. This list should reflect the General Assembly's desire to be clear about what videos can and cannot be seen by the public. Many other states recognize the unique need to protect sexual assault and domestic violence victims from disclosure of body-camera videos, including, Wisconsin, California, Oklahoma, Kentucky, North Dakota, Ohio, Tennessee, Colorado and Connecticut.

The National Chapter of the ACLU authored a policy white paper on body cameras entitled *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All*, by Jay Stanley, ACLU Senior Policy Analystⁱⁱ. It specifically endorses this type of legislation that protects domestic violence victims and the interior of people's homes:

“Perhaps most troubling is that some recordings will be made inside people's homes, whenever police enter — including in instances of consensual entry (e.g., responding to a burglary call, voluntarily participating in an investigation) and such things as domestic violence calls.”

The National ACLU highlights the risk of “embarrassing and titillating releases of video is significantly increased by body cams.ⁱⁱⁱ” **“We don't want crime victims to be afraid to call for help because of fears that video of their officer interactions will become public or reach the wrong party.”**^{iv} (emphasis added). “Public disclosure of government records can be a tricky issue pitting two important values against each other: the need for government oversight and openness, and privacy. Those values must be carefully balanced by **policymakers.**”^v(emphasis added).

This is the opposite of the local ACLU's position that custodians of Maryland's body camera videos should spend time analyzing these types of videos on a case by case basis using the existing investigatory records framework in PIA Section 4-351. The local ACLU claims that each and every time a domestic violence or sexual assault victim is captured on camera, the government should be required to articulate why that victim's privacy deserves protecting.

Existing PIA Section 4-351 is not the answer. It is too narrow because it only applies when denying access to the subject of the video, which is usually not the perpetrator. It provides no guarantee to victims that their privacy will be respected because it is a DISCRETIONARY exemption. Custodians should not make balancing decisions on a case by case basis when the protecting privacy of the domestic abuse and sexual violence victims is ALWAYS in the public interest. Rather, as many other states have done, and as the National ACLU advocates, the policymakers should strike this balance, and not leave it up to government lawyers or record custodians to determine when victim privacy should be respected.

The Maryland General Assembly's 2015 Special Commission to amend the Public Information Act asked for this law. It is time to enact this law for victims of domestic violence and sexual assault. They deserve the peace of mind that comes with knowing that calling the police for help will not result in the release of a video about their incident to the public or to their abuser.

We respectfully request a **favorable** report on Senate Bill 40.

ⁱ September 16, 2015 Final Report, Including Findings and Best Practices, p. 11 <https://goccp.maryland.gov/wp-content/uploads/body-cameras-commission-final-report.pdf>; mandated by 2015 Laws of Md., Ch. 129

ⁱⁱ <https://www.aclu.org/other/police-body-mounted-cameras-right-policies-place-win-all>

ⁱⁱⁱ ACLU Policy Paper, p. 5

^{iv} ACLU Policy Paper, p. 8

^v ACLU Policy Paper, p. 8