



Maryland State's Attorneys' Association

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BILL NUMBER: HB 669

POSITION: Unfavorable

The Maryland State's Attorney's Association (MSAA) opposes HB 669, and urges this Committee to issue an unfavorable report.

HB 669 is a complex bill that impacts a number of aspects of the current legal framework regulating the use of body-worn cameras – while the bill contains some benign provisions and some that are duplicative of currently-existing legal provisions, there are a few aspects of the bill that actively impair the truth-seeking function of the criminal legal system, and it is because of these provisions that MSAA is opposed to the bill.

In particular, the bill requires law enforcement officers to deactivate their body-worn cameras when interacting with crime victims or witnesses if asked to do so by the victim or witness, unless either exigent circumstances exist or the officer has a reasonable articulable suspicion that the victim or witness is themselves committing a crime. While MSAA can certainly understand individuals may not want to be captured on body-worn camera, these interactions can be crucial to a subsequent prosecution (or a decision not to prosecute). The exceptions provided to this requirement are too narrow, and vesting someone other than a trained law enforcement officer with the authority to determine whether to use a body-worn camera will result in less information to courts, defense attorneys, and prosecutors who rely on this footage to fulfill their constitutional obligations in the adjudicatory process.

Additionally, the retention and deletion requirements imposed by the bill fail to recognize the challenges associated with actually investigating criminal offenses in the real world. In many instances, footage is mistakenly categorized incorrectly, particularly in cases involving many officers responding to the same scene, some of whom have very little involvement. This error may not come to light until months after the incident, as discovery is being reviewed by a prosecutor. The mandatory deletion provisions in HB 669 leave no room for error, and will result in the inadvertent erasure of important footage. Providing for a minimum retention period, but affording agencies the discretion to retain footage for an appropriate period thereafter, builds in the flexibility necessary to ensure that all footage related to an incident is available when needed.

There are a number of other provisions in this bill that will frustrate the efficient use of body-worn camera footage in the criminal legal system – including the prohibition on duplicating body-worn camera footage by anyone other than “personnel responsible for redacting or duplicating recordings,” which, depending on the interpretation of that language, could complicate efforts to disclose footage in the discovery process – but in sum, the HB 669 will impair the ability of Maryland's prosecutors to make informed prosecution decisions and to fulfill their obligation to seek justice, and MSAA accordingly urges an unfavorable report.