

Department of Legislative Services  
Maryland General Assembly  
2015 Session

FISCAL AND POLICY NOTE

House Bill 627  
Judiciary

(Delegate Rosenberg, *et al.*)

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Public Safety - Law Enforcement Officers - Body-Worn Cameras

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This bill specifies requirements for law enforcement officers, and law enforcement agencies, with respect to the wearing of body-worn cameras (BWCs) by law enforcement officers while on duty. The bill does not *mandate* the use of BWCs by law enforcement agencies or the wearing of BWCs by law enforcement officers while on duty.

The bill applies prospectively only.

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Fiscal Summary

**State Effect:** Because the bill does not *require* the use of BWCs by State law enforcement officers, it does not immediately or directly affect governmental operations or finances. Future costs for the use of BWCs vary by the number of officers equipped, the costs of related hardware and software, and data storage capacities, as discussed below. It is assumed that no State agency would put such a program in place without the operational and financial wherewithal to do so.

**Local Effect:** Because the bill does not *require* the use of BWCs by local law enforcement officers, it does not immediately or directly affect local governmental operations or finances, assuming any existing programs can be modified to meet the bill's requirements with existing resources. Future costs for the use of BWCs vary by the number of officers equipped, the costs of related hardware and software, and data storage capacities, as discussed below. It is assumed that no local law enforcement agency would put such a program in place without the operational and financial wherewithal to do so.

**Small Business Effect:** Minimal or none. Any future opportunities for small businesses in the State cannot be reliably estimated.

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## Analysis

**Bill Summary:** The bill requires a law enforcement officer who is provided with a BWC to wear while on duty, to activate both the audio and visual recording capabilities of the camera when responding to a call for service or at the initiation of a law enforcement or investigative encounter between the officer and a member of the public. Once activated, a BWC must continue recording until (1) the conclusion of the encounter; (2) the officer has left the scene; or (3) a supervisor, on camera, has authorized the recording to cease.

A law enforcement officer may not use a BWC to record an individual engaged in a constitutionally protected activity, including a demonstration, a protest, or an attendance at a religious function, meeting, or similar activity, unless the officer has a reasonable suspicion that a criminal activity is occurring. A video taken of a constitutionally protected activity in violation of these provisions may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity.

A law enforcement officer wearing a BWC must notify a subject of a recording that the subject is being recorded as close to the inception of the encounter as reasonably possible. When a law enforcement officer wearing a BWC enters on private property without a warrant or in a nonemergency situation, the officer must notify all persons present that a camera is recording and provide any person present the option to request the camera be turned off. If such a request is made, the officer must record the request on video before the camera is turned off. In the event of contradicting requests from more than one person during an encounter, the officer must record the contradicting requests and continue recording, unless and until the persons making the requests can be separated.

When a law enforcement officer wearing a BWC begins an encounter with a person who reports a crime, provides information regarding a crime or an ongoing police investigation, claims to be the victim of a crime, or requests to speak with the officer, and the person is free to end the encounter, the officer must immediately provide notice that the camera is recording and provide the person with the option to have the camera turned off. An officer must record a request to turn off the camera before the camera is turned off.

A law enforcement agency that issues a BWC to a law enforcement officer must establish a policy relating to the use of BWC, including:

- the testing of the BWC to ensure adequate functioning; and
- the procedure for the law enforcement officer if the camera fails to properly operate at the beginning of or during the law enforcement officer's shift.

Use or review of a BWC recording is allowed only (1) for a law enforcement agency's internal and external investigations of misconduct; (2) for an agency's internal auditing,

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supervision, or training purposes; (3) in the event the agency has reasonable suspicion that the recording contains evidence of a crime; (4) in the investigation, prosecution, or defense of criminal or civil actions; (5) in response to public records requests; or (6) for external auditing.

The stored video and audio data from a BWC may not, in whole or in part (1) be used to create a database or pool of mug shots; (2) be used in photo arrays; or (3) be otherwise searched using facial or voice recognition software.

If a law enforcement officer reviews a recording before the officer writes a statement about the encounter that was recorded, the officer must note the fact that the recording was reviewed in the written statement.

A log of all activity relating to each BWC recording must be maintained. Every time a recording is viewed, copied, deleted, or edited, the individual accessing the recording must log the identity of the person accessing the video, what was done, and when. In the event a recording made is edited, an unedited copy of the recording must be maintained.

The subject of a BWC recording is a person in interest under specified provisions of the General Provisions Article whereby a custodian of records may deny inspection of certain records relating to an investigation, intelligence information, or security procedures, but only to the extent that the inspection would (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual.

It is lawful for a law enforcement officer in the course of the officer's regular duty to intercept an oral communication in accordance with the provisions of this bill.

**Current Law/Background:** In a 2014 report by the Police Executive Research Forum, [Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned](#), it was stated that any police department considering the use of body cameras must have well designed policies in place or public trust in the use of the cameras may be undermined. Another 2014 report underwritten by the U.S. Department of Justice, Office of Justice Programs (DOJ/OJP), *Police Officer Body-Worn Cameras: Assessing the Evidence*, concluded that:

There is little evidence regarding most of the perceived benefits and drawbacks of the technology. For example, little is known about citizen attitudes toward BWCs, most notably whether the technology increases trust, legitimacy, and transparency of the police. The potential for the technology to serve as a training tool for police

is also largely unexplored. Moreover, the privacy implications of BWCs, for both citizens and police officers, are not clearly understood and may vary considerably as a result of differences in state law.

Simply put, there is not enough evidence to offer a definitive recommendation regarding the adoption of BWCs by police. Departments considering BWCs should proceed cautiously, consider the issues outlined in this review, and recognize that most of the claims made about the technology are untested.

These reports and others were cited in the December 2014 report to the chairs of the Senate Judicial Proceedings Committee and the House Judiciary Committee by the Governor's Office of Crime Control and Prevention (GOCCP) on the findings of the Workgroup on the Implementation and Use of Body Worn Cameras by Law Enforcement, which met during the 2014 interim. The workgroup found that, while such cameras have many potential benefits, their use also "raises some difficult issues for members of the public, government agencies, civil liberties advocates, and even the officers who wear the devices." However, despite the fact that GOCCP concluded that more research should be done on this subject, GOCCP also found that the DOJ/OJP report cautions against drawing firm conclusions with respect to BWCs because available research is either limited or has design flaws. The workgroup concluded that BWCs have the potential to be useful tools for improving police/community relations, improving the criminal justice system, and modifying the behavior of both police and citizens. The full report of the workgroup can be found [here](#).

According to the Department of State Police (DSP), as of January 16, 2015, the following local law enforcement agencies in the State have already purchased and/or deployed BWCs for field use:

- Berwyn Heights Police Department;
- Cambridge Police Department;
- Capital Heights Police Department;
- Cheverly Police Department;
- Cottage City Police Department;
- Denton Police Department;
- Federalsburg Police Department;
- Forest Heights Police Department (pilot program);
- Fruitland Police Department;
- Harford County Sheriff's Office (field testing four cameras);
- Hurlock Police Department;
- Hyattsville Police Department;

- Laurel Police Department;
- Mount Rainier Police Department;
- Pokomoke City Police Department;
- Princess Anne Police Department;
- Rising Sun Police Department (one camera);
- Snow Hill Police Department; and
- Upper Marlboro Police Department (pilot, testing).

Additional agencies are considering the purchase and deployment of such equipment.

In December 2014, the Baltimore City Council voted to require BWCs for all city police officers. However, the Mayor vetoed the bill and awaits recommendations from a mayoral task force that will address issues of cost and privacy. The Baltimore City Police Commissioner has publically advocated a limited pilot program.

In October 2014, the Metropolitan Police Department in Washington, DC, began a pilot program testing the use of BWCs on police officers. A total of 165 officers participate in the pilot program, including volunteers from all seven police districts in the city. Each officer is working with five different camera models over a six-month period and will provide written feedback on each camera model.

The Laurel Police Department has had an on-body camera program for nearly four years. The police chief calls the cameras “a huge success” and says complaints about his officers have dropped and training has improved. The cameras and related equipment, including data storage, in current use in the City of Laurel are the AXON flex units available through TASER International, Inc. The cost for each camera was about \$500. The City of Laurel has been outfitting its full patrol force at a rate of about 25% per year, with about 50% (25 officers) currently outfitted with an AXON unit. While the operational life of each camera is expected to be five years, the City of Laurel budgets for cameras on a three-year basis. The current three-year costs for each law enforcement body camera in Laurel is about \$2,000, which includes the camera, storage, and data uploading. The City of Laurel has an annual contract for data storage in the amount of \$1,050 for up to 300 gigabytes of storage. Laurel officers patrol on 10-hour shifts and download the data from each camera at the end of each shift, a process that takes about 30 minutes. Stored data is maintained for a period of six months, unless known to be needed for a criminal trial or related matters. The Laurel video units do record audio.

### *National and International Developments*

According to the National Conference of State Legislatures, several states have introduced legislation in 2015 regarding BWCs for police officers.

Police in London, England began using BWCs on police officers in May 2014. Recent announcements of the use of BWCs by law enforcement officers in major U.S. cities have included the following notices:

- New York City – 54 officers in six precincts will begin wearing the cameras as a pilot program;
- Los Angeles – the city will purchase 7,000 cameras for police officers to wear while on patrol;
- Philadelphia – launched a pilot body-camera program in which more than two dozen officers will wear the cameras while on duty for six months; and
- Chicago – the city police department will begin testing BWCs on officers in early 2015 as part of a pilot project.

In addition, law enforcement officers in Cleveland, Ohio began wearing BWCs as part of a program to outfit city officers with the devices in February 2015. Cleveland spent \$2.4 million to outfit nearly all of the city's 1,510 officers with BWCs. The recordings will be maintained on an evidence collection website and will be subject to open public records requests in Ohio.

The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ), produced *A Primer on Body-Worn Cameras for Law Enforcement* in September 2012, which stated that a BWC can be attached to various body areas, including the head (by helmet, glasses, or other means) or to the body (by pocket, badge, or other means). A BWC has the capability to record officer interactions that previously could only be captured by in-car or interrogation room camera systems.

NIJ also states that there are many specification issues to consider before purchasing a camera system. The system requirements and trade-offs are dependent on the intended use, budget, unit cost, interoperability, operating environment, and other factors. According to NIJ, specifications to consider include battery life, video quality, recording limits, night recording capabilities, camera focal width, camera placement, and radio integration capability. NIJ also includes audio recording capabilities under specifications to consider.

#### *Maryland Wiretapping and Electronic Surveillance Act (Wiretap Act)*

Under Maryland's Wiretap Act, it is unlawful to willfully intercept any wire, oral, or electronic communication. Under the Act, "intercept" is defined, in part, as "the... acquisition of the contents of any... oral communication through the use of any... device." Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. The statute does authorize the interception of an oral communication if

all participants have given prior consent (sometimes called “two-party consent”). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a “reasonable expectation of privacy.”

The Act does provide specified exceptions, including one for a law enforcement officer who intercepts an oral communication in the regular course of the officer’s duty, so long as the officer (1) initially lawfully detained a vehicle during a criminal investigation or for a traffic violation; (2) is a party to the oral communication; (3) has been identified as a law enforcement officer to the other parties to the communication prior to any interception; (4) informs all other parties to the communication of the interception at the beginning of the communication; and (5) makes the interception as part of a videotape recording.

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a \$10,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney’s fees, and litigation costs.

**State Expenditures:** Because the bill does not mandate the use of BWCs by law enforcement agencies or officers, there is no immediate fiscal impact, *per se*. It is assumed that law enforcement agencies in the State, including State-operated agencies, may eventually institute a BWC program – perhaps similar to the current use of vehicle cameras. As is cited above, and in the recent GOCCP report, several local agencies have already started a BWC program, trial program, or pilot program. This bill provides the requirements for any program subsequently put into use.

State agencies that responded to a request for information by the Department of Legislative Services (DLS) provided the following information regarding potential costs if a BWC program were to be put into place. DLS assumes that no agency would put such a program in place without the operational and financial wherewithal to do so. Both DSP and the Department of Natural Resources indicate that because the bill does not require the use of BWCs, it has no fiscal impact.

- *Maryland Department of Transportation* – If put into place by the Maryland Transportation Authority Police, as many as 464 sworn officers could be equipped with BWCs. In addition to equipment costs, there would be additional training and overtime costs.
- *Department of General Services* – The Maryland Capital Police currently has 65 officers who could be equipped with BWCs. If put into place, using quotes provided by TASER for hardware and data storage, first-year costs are estimated at \$105,013. Future year annual costs are estimated at \$50,115.

- *Department of Health and Mental Hygiene* – Developmental Disabilities Administration police do not currently wear BWCs. If required to do so for 20 officers, total first-year costs are estimated at about \$51,000, which includes back-up cameras and other related equipment and warranties. Annual out-year costs are estimated at about \$18,000, which includes continuing data storage costs and maintenance.
- *Morgan State University* – If it were to equip up to 33 officers assigned to uniformed patrol with BWCs, the estimated cost is \$1,000 per unit, plus \$150 per unit for storage and maintenance.

**Local Expenditures:** Several local jurisdictions provided information to DLS regarding the potential impacts of the bill, including:

- *City of Takoma Park* – The city does not now have a BWC program. Implementation is estimated to cost about \$36,000 annually, and would necessitate either expanding current data storage capacity or linking to a Montgomery County system.
- *Calvert County* – The county is currently testing two cameras, but has not made any decisions as to full use, functionality, or data storage. The county believes full employment would impose significant costs.

Howard and Montgomery counties merely indicate that the bill does not require the use of BWCs. The City of Bowie indicates that city police officers do not currently wear BWCs, but the police department is looking into the issue. The city expressed concerns that restricting the recording of public activity by police officers, while members of the public are allowed to do so, may pose an operational problem. The city does not believe that consent by multiple parties at a scene is realistic.

It is assumed that any local jurisdictions that already use BWCs, such as the City of Laurel, can make any required changes to their programs with existing local resources.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 482 (Senator Ramirez, *et al.*) - Judicial Proceedings.

**Information Source(s):** Calvert, Howard, and Montgomery counties; cities of Bowie, Laurel, and Takoma Park; Governor’s Office of Crime Control and Prevention; Department of Natural Resources; Department of General Services; Judiciary



(Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Morgan State University; National Conference of State Legislatures; U.S. Department of Justice; BBC News; *New York Times*; cleveland.com; Huffington Post; Reuters; Department of Legislative Services

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