

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 899

(Senator Smith)

Judicial Proceedings

Judiciary

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Maryland Police Training and Standards Commission - Body-Worn Camera  
Policy

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This bill establishes that it is lawful under the wiretapping and electronic surveillance statutes (Title 10, Subtitle 4 of the Courts and Judicial Proceedings Article) for a law enforcement officer in the course of the officer's secondary employment to intercept an oral communication with a body-worn digital recording device or an electronic control device capable of recording video and oral communications under the same circumstances as if done in the course of the officer's regular duty. In addition, the bill requires the Maryland Police Training and Standards Commission (MPTSC) to develop and publish online a policy for the issuance and use of a body-worn camera (BWC) by a law enforcement officer that addresses the use of a BWC by an off-duty law enforcement officer authorized or approved by a law enforcement agency to work secondary employment and who is (1) in the uniform of the agency or (2) carrying or possessing a firearm as a part of the officer's official duties.

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**Fiscal Summary**

**State Effect:** State government finances are not materially affected. The existing MPTSC policy can be applied to on-duty and off-duty law enforcement officers as determined by the agency of the officer.

**Local Effect:** Local government finances are not materially affected.

**Small Business Effect:** None.

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## Analysis

**Current Law:** 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. In addition, the interception of an oral communication by a law enforcement officer in the course of the officer's regular duties is lawful if (1) the officer is in uniform or prominently displaying the officer's badge or other insignia; (2) the officer is making reasonable efforts to conform to standards for the use of a body-worn digital recording device or an electronic control device capable of recording video and oral communications; (3) the officer is a party to the oral communication; (4) the officer notifies, as soon as practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and (5) the oral interception is being made as part of a videotape or digital recording.

The failure of a law enforcement officer to provide notice, as specified, to an individual who is being recorded in accordance with requirements for lawful interception of an oral communication with a body-worn digital recording device, does not affect the admissibility in court of the recording if the failure to notify involved an individual who joined the discussion in progress for which proper notification was previously given.

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.

**Background:** 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 BWCs and submitted a report to the General Assembly and the Police Training Commission (now known as MPTSC) in September 2015. The commission's [report](#) addresses (1) procedures for testing and operating equipment, including when BWCs must be activated and when their use is prohibited; (2) notification responsibilities of law enforcement officers to individuals being recorded; (3) confidentiality and ownership of data; (4) procedures and requirements for data storage; (5) the review of recordings by parties in interest; and (6) the establishment of retention periods, the release of recordings as required by the Public Information Act, and the development of written policies for BWCs usage consistent with State law and regulations issued by MPTSC.

Pursuant to Chapters 128 and 129, MPTSC developed a policy for the issuance and use of BWCs by law enforcement officers, which incorporated the recommendations of the commission. MPTSC also published a [Body-worn Camera Procedural Reference Guide](#) that provides practical and detailed background information on BWCs as well as advisory language for use by law enforcement agencies.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 239 (Delegate Moon, *et al.*) - Judiciary.

**Information Source(s):** Anne Arundel and Howard counties; City of Laurel; Department of General Services; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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