

SENATE BILL 71

E2, E4

1lr1465

(PRE-FILED)

By: ~~Senator Sydnor~~ Senators Sydnor, Smith, Waldstreicher, Jackson, Carter, Hough, Lee, West, and Hettleman

Requested: November 1, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 17, 2021

CHAPTER _____

1 AN ACT concerning

2 ~~Police Officers Testimony Presumption of Inadmissibility~~

3 ~~(Maryland Police Accountability Act of 2021)~~

4 Maryland Police Accountability Act of 2021 – Body-Worn Cameras

5 FOR the purpose of providing that a knowing and willful failure of a certain police officer
6 to activate a body-worn camera creates a rebuttable presumption that certain
7 testimony is inadmissible in a certain proceeding; providing that a certain
8 presumption may be rebutted by a certain showing; requiring certain law
9 enforcement agencies to require the use of body-worn cameras by certain law
10 enforcement officers on or before a certain date; requiring all law enforcement
11 agencies of a county in the State to require the use of body-worn cameras by certain
12 law enforcement officers on or before a certain date; requiring certain law
13 enforcement agencies to develop and maintain certain policies; establishing the Task
14 Force on Statewide Body-Camera Implementation; providing for the composition,
15 chair, and staffing of the Task Force; prohibiting a member of the Task Force from
16 receiving certain compensation, but authorizing the reimbursement of certain
17 expenses; requiring the Task Force to study and make recommendations regarding
18 certain matters; requiring the Task Force to report its findings and
19 recommendations to the Governor and the General Assembly on or before a certain
20 date; providing for the application of this Act; defining certain terms; providing for
21 the termination of a certain provision of this Act; and generally relating to ~~testimony~~
22 of police officers body-worn cameras.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
 2 Article – Criminal Procedure
 3 Section 2–109
 4 Annotated Code of Maryland
 5 (2018 Replacement Volume and 2020 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Public Safety
 8 Section 3–511
 9 Annotated Code of Maryland
 10 (2018 Replacement Volume and 2020 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 12 That the Laws of Maryland read as follows:

13 **Article – Criminal Procedure**

14 **2–109.**

15 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 16 INDICATED.

17 (2) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN §
 18 3–201 OF THE PUBLIC SAFETY ARTICLE.

19 (3) “POLICE OFFICER” HAS THE MEANING STATED IN § 3–201 OF THE
 20 PUBLIC SAFETY ARTICLE.

21 (B) THIS SECTION APPLIES TO A POLICE OFFICER WHO IS REQUIRED TO USE
 22 A BODY–WORN CAMERA WHILE ON DUTY BY THE LAW ENFORCEMENT AGENCY THAT
 23 EMPLOYS THE POLICE OFFICER.

24 (C) ~~(1) THE KNOWING AND WILLFUL~~ SUBJECT TO SUBSECTION (D) OF
 25 THIS SECTION, THE INTENTIONAL FAILURE OF A POLICE OFFICER TO ACTIVATE A
 26 BODY–WORN CAMERA, IN VIOLATION OF THE POLICY OF THE LAW ENFORCEMENT
 27 AGENCY THAT EMPLOYS THE POLICE OFFICER, CREATES A REBUTTABLE
 28 PRESUMPTION THAT ANY TESTIMONY OF THE POLICE OFFICER SOUGHT TO BE
 29 INTRODUCED IN A CRIMINAL PROSECUTION RELATING TO THE INCIDENT THAT WAS
 30 NOT RECORDED IS INADMISSIBLE.

31 (D) ~~(2)~~ THE PRESUMPTION IN SUBSECTION (C) OF THIS SECTION MAY BE
 32 REBUTTED BY A SHOWING THAT:

33 (1) (I) THE BODY–WORN CAMERA WAS NOT ACTIVATED DUE TO A
 34 MALFUNCTION OF THE CAMERA;

1 (II) THE POLICE OFFICER WAS:

2 1. NOT AWARE OF THE MALFUNCTION; OR

3 2. NOT ABLE TO FIX THE MALFUNCTION BEFORE THE
4 INCIDENT; AND

5 (III) THE LAW ENFORCEMENT AGENCY'S DOCUMENTATION
6 SHOWS THAT THE POLICE OFFICER CHECKED THE FUNCTIONALITY OF THE
7 BODY-WORN CAMERA AT THE BEGINNING OF THE POLICE OFFICER'S SHIFT; OR

8 (2) IT WAS UNSAFE, IMPRACTICAL, OR IMPOSSIBLE FOR THE LAW
9 ENFORCEMENT OFFICER TO ACTIVATE THE BODY-WORN CAMERA.

10 Article – Public Safety

11 3-511.

12 (A) IN THIS SECTION, "LAW ENFORCEMENT AGENCY" HAS THE MEANING
13 STATED IN § 3-201 OF THIS TITLE.

14 (B) On or before January 1, 2016, the Maryland Police Training and Standards
15 Commission shall develop and publish online a policy for the issuance and use of a
16 body-worn camera by a law enforcement officer that addresses:

17 (1) the testing of body-worn cameras to ensure adequate functioning;

18 (2) the procedure for the law enforcement officer to follow if the camera
19 fails to properly operate at the beginning of or during the law enforcement officer's shift;

20 (3) when recording is mandatory;

21 (4) when recording is prohibited;

22 (5) when recording is discretionary;

23 (6) when recording may require consent of a subject being recorded;

24 (7) when a recording may be ended;

25 (8) providing notice of recording;

26 (9) access to and confidentiality of recordings;

1 (10) the secure storage of data from a body-worn camera;

2 (11) review and use of recordings;

3 (12) retention of recordings;

4 (13) dissemination and release of recordings;

5 (14) consequences for violations of the agency's body-worn camera policy;

6 (15) notification requirements when another individual becomes a party to
7 the communication following the initial notification;

8 (16) specific protections for individuals when there is an expectation of
9 privacy in private or public places; and

10 (17) any additional issues determined to be relevant in the implementation
11 and use of body-worn cameras by law enforcement officers.

12 **(C) (1) (I) THIS PARAGRAPH APPLIES TO:**

13 **1. THE DEPARTMENT OF STATE POLICE;**

14 **2. THE ANNE ARUNDEL COUNTY POLICE DEPARTMENT;**

15 **3. THE HOWARD COUNTY POLICE DEPARTMENT; AND**

16 **4. THE HARFORD COUNTY SHERIFF'S OFFICE.**

17 **(II) ON OR BEFORE JULY 1, 2023, A LAW ENFORCEMENT**
18 **AGENCY TO WHICH THIS PARAGRAPH APPLIES SHALL REQUIRE THE USE OF**
19 **BODY-WORN CAMERAS, SUBJECT TO THE POLICY ON THE USE OF BODY-WORN**
20 **CAMERAS DEVELOPED BY THE LAW ENFORCEMENT AGENCY, BY EACH LAW**
21 **ENFORCEMENT OFFICER EMPLOYED BY THE LAW ENFORCEMENT AGENCY WHO**
22 **REGULARLY INTERACTS WITH MEMBERS OF THE PUBLIC AS PART OF THE LAW**
23 **ENFORCEMENT OFFICER'S OFFICIAL DUTIES.**

24 **(2) ON OR BEFORE JULY 1, 2025, A LAW ENFORCEMENT AGENCY OF A**
25 **COUNTY, OTHER THAN A LAW ENFORCEMENT AGENCY DESCRIBED IN PARAGRAPH**
26 **(1) OF THIS SUBSECTION, SHALL REQUIRE THE USE OF BODY-WORN CAMERAS,**
27 **SUBJECT TO THE POLICY ON THE USE OF BODY-WORN CAMERAS DEVELOPED BY THE**
28 **LAW ENFORCEMENT AGENCY, BY EACH LAW ENFORCEMENT OFFICER EMPLOYED BY**
29 **THE LAW ENFORCEMENT AGENCY WHO REGULARLY INTERACTS WITH MEMBERS OF**
30 **THE PUBLIC AS PART OF THE LAW ENFORCEMENT OFFICER'S OFFICIAL DUTIES.**

1 (D) (1) A LAW ENFORCEMENT AGENCY DESCRIBED IN SUBSECTION (C) OF
2 THIS SECTION SHALL DEVELOP AND MAINTAIN A WRITTEN POLICY CONSISTENT
3 WITH THE POLICY PUBLISHED BY THE MARYLAND POLICE TRAINING AND
4 STANDARDS COMMISSION UNDER SUBSECTION (B) OF THIS SECTION FOR THE USE
5 OF BODY-WORN CAMERAS.

6 (2) A POLICY DEVELOPED AND MAINTAINED UNDER PARAGRAPH (1)
7 OF THIS SUBSECTION SHALL SPECIFY WHICH LAW ENFORCEMENT OFFICERS
8 EMPLOYED BY THE LAW ENFORCEMENT AGENCY ARE REQUIRED TO USE
9 BODY-WORN CAMERAS.

10 SECTION 2. AND BE IT FURTHER ENACTED, That:

11 (a) There is a Task Force on Statewide Body-Camera Implementation.

12 (b) The Task Force consists of the following members:

13 (1) one member of the Senate of Maryland, appointed by the President of
14 the Senate;

15 (2) one member of the House of Delegates, appointed by the Speaker of the
16 House;

17 (3) the Secretary of Information Technology, or the Secretary's designee;

18 (4) the Secretary of Budget and Management, or the Secretary's designee;

19 (5) the Secretary of General Services, or the Secretary's designee; and

20 (6) the following members, appointed by the Governor:

21 (i) one representative of the Maryland Municipal League;

22 (ii) one representative of the Maryland Association of Counties;

23 (iii) one representative of the Maryland Chiefs of Police Association;

24 (iv) one representative of the Maryland Sheriffs' Association;

25 (v) one representative of the Governor's Office of Homeland
26 Security; and

27 (vi) one representative of the Governor's Office of Crime Prevention,
28 Youth, and Victim Services.

29 (c) The Governor shall designate the chair of the Task Force.

1 (d) The Governor's Office of Crime Prevention, Youth, and Victim Services shall
2 provide staff for the Task Force.

3 (e) A member of the Task Force:

4 (1) may not receive compensation as a member of the Task Force; but

5 (2) is entitled to reimbursement for expenses under the Standard State
6 Travel Regulations, as provided in the State budget.

7 (f) The Task Force shall:

8 (1) study and make findings on the implementation and feasibility of
9 requiring the use of body-worn cameras by law enforcement officers in counties and
10 municipalities throughout the State, consistent with the requirements of Section 1 of this
11 Act; and

12 (2) make recommendations regarding requiring the use of body-worn
13 cameras by counties and municipalities based on its findings.

14 (g) On or before July 1, 2022, the Task Force shall report its findings and
15 recommendations to the Governor and, in accordance with § 2-1257 of the State
16 Government Article, the General Assembly.

17 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 ~~October~~ June 1, 2021. Section 2 of this Act shall remain effective for a period of 1 year and
19 6 months and, at the end of December 31, 2022, Section 2 of this Act, with no further action
20 required by the General Assembly, shall be abrogated and of no further force and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.