

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 707 (Delegate Bhandari)
 Judiciary

Public Safety - Law Enforcement Reform

This bill requires, by October 1, 2023, the use of body-worn cameras (BWC) by each law enforcement agency that employs more than 20 law enforcement officers with (1) the cost of initial equipment split equally between the State and the county or municipality served by the law enforcement agency and (2) the ongoing costs borne solely by the county or municipality. In addition, the bill establishes the Baltimore Police Department (BPD) as an agency and instrumentality of Baltimore City (instead of the State); alters the application process for a “no-knock warrant”; alters police training requirements; requires establishment of a specified early intervention system; and requires the chief of a law enforcement agency to adopt specified rules.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$6.2 million in FY 2022, which only reflects costs for specified State agencies and does not reflect any potential cost sharing with local jurisdictions; future years reflect annualization and ongoing costs. State expenditures (multiple fund types) for other State agencies may also increase significantly but cannot be quantified. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	6,204,100	3,454,800	3,482,700	3,518,000	3,554,200
GF/SF Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential significant increase in expenditures for Baltimore City and other local jurisdictions. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Baltimore Police Department

As a result of the bill establishing BPD as an agency and instrumentality of Baltimore City (rather than the State of Maryland), the Mayor and the City Council of Baltimore City are authorized to amend the law relating to BPD in order to implement policy changes. In addition, the bill clarifies that BPD police officers continue to have the authority to make arrests, conduct investigations, and otherwise enforce the laws of the State conferred under Title 2 of the Criminal Procedure Article.

No-knock Warrants

The bill requires preapproval of an application for a no-knock warrant by an applicant's supervisor and the State's Attorney.

Police Training

The bill alters the required frequency with which the Maryland Police Training and Standards Commission (MPTSC) must require specified in-service level training conducted by the State and each county, and municipal training school; under the bill, the affected training must occur annually. In addition, the bill alters the scope of required training to include (1) training regarding *interacting with* individuals with physical, intellectual, developmental, and psychiatric disabilities and (2) special training, attention to, and study of implicit bias.

Early Intervention System

The bill repeals a provision that requires each law enforcement agency to establish a confidential and nonpunitive early intervention policy for counseling officers who receive three or more citizen complaints within a 12-month period. Instead, each law enforcement agency must establish an early intervention system to identify police officers who are at risk of engaging in the use of excessive force and to provide those officers with training, behavioral interventions, reassignments, or other appropriate responses to reduce the risk of the use of excessive force. The system may not prevent the investigation of or imposition of discipline for any particular complaint.

Law Enforcement Agency Rules

The chief of a law enforcement agency must adopt specified rules to be followed by all law enforcement officers employed by the agency, including (1) demonstrating the highest regard for the sanctity of human life and value of all persons; (2) using only objectively reasonable, necessary and proportional force; (3) using de-escalation techniques, when safe and reasonably possible, as specified; (4) intervening to prevent or terminate the use of excessive force by another officer and reporting any such interventions; (5) prohibiting retaliation against officers who report such incidents; (6) rendering aid, as specified; (7) reporting physical force, injuries or complaints of pain by a person in custody, or the discharge of firearms; and (8) prohibiting the use of specified restraints.

Current Law:

History of the Baltimore Police Department

BPD was initially brought under State control by Chapter 7 of 1860. Chapter 367 of 1867 replaced Chapter 7 and provided for control of the police by a board of three commissioners who were to be elected by the General Assembly, and subject to removal by the legislature when it was in session, and by the Governor, though only for conviction of a felony, during the interim. The expenses of operating the police force were to be paid by the city.

The law governing BPD was substantially revised by Chapter 203 of 1966. Under Chapter 203, BPD was “constituted and established as an agency and instrumentality of the State of Maryland.” Chapter 203 established that BPD is operated by a single police commissioner who was to be appointed and subject to removal by the Governor. The city retained responsibility for funding the department. Chapter 39 and 40 of 2009 established that the police commissioner is subject to removal at the pleasure of the mayor.

While the city is responsible for the funding of BPD, the State retains the ability to amend the law relating to the department in order to implement policy changes.

Purpose of the Baltimore Police Department and Powers of Police Officers

Generally, the purpose of BPD is to safeguard the lives and safety of all persons within the city, to protect property within the city, and to assist in securing the equal protection of the laws of all persons. Within the boundaries of the city, the department has the duty and responsibility to (1) preserve the public peace; (2) detect and prevent the commission of crime; (3) enforce the laws of the State, and of the Mayor and City Council of Baltimore; (4) apprehend and arrest criminals and persons who violate or are lawfully accused of violating such laws and ordinances; (5) preserve order at public places; (6) maintain the orderly flow of traffic on public streets and highways; (7) assist law enforcement agencies

of this State and any municipality of the United States in carrying out their respective duties; and (8) discharge the department's duties and responsibilities with the dignity and manner which inspires public confidence and respect.

All police officers of BPD, including members who may be designated by the commissioner to exercise the powers and duties of police officers, have the same powers, with respect to criminal matters and the enforcement of laws, as sheriffs, constables, police, and peace officers possessed at common law and have in their respective jurisdictions. Any person charged with the commission of crime in the city, or in those areas outside the corporate limits of the city owned, controlled, operated or leased by the Mayor and City Council of Baltimore, may be arrested by BPD police officers. Under Title 2 of the Criminal Procedure Article, police officers are generally granted the authority to make arrests, conduct investigations, and otherwise enforce the laws of the State, as specified.

Immunity

BPD police officers have all the immunities and matters of defense available to sheriffs, constables, police, and peace officers in any suit (civil or criminal) brought against officers for acts done in the course of official duties.

BPD is considered a "local government" for purposes of the Local Government Tort Claims Act (LGTCa). However, at the same time, because BPD is a State agency, courts have held that the department has sovereign immunity in State court for *direct* tort liability – *Baltimore Police Department v. Cherkes*, 140 Md. App. 282 (2001). In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent.

LGTCa defines "local government" to include counties, municipalities, Baltimore City, BPD, and various agencies and authorities of local governments, such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities. Pursuant to Chapter 131 of 2015, for causes of action arising on or after October 1, 2015, LGTCa limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for the tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCa prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

Body-worn Cameras

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.

Maryland Police Training and Standards Commission

MPTSC, an independent commission within the Department of Public Safety and Correctional Services (DPSCS), operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

Among other requirements, MPTSC requires, for entrance-level police training and, *as determined by MPTSC*, for in-service level training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include (1) training in lifesaving techniques, including cardiopulmonary resuscitation; (2) training in the proper level and use of force; (3) training regarding sensitivity to cultural and gender diversity; and (4) training regarding individuals with physical, intellectual, developmental, and psychiatric disabilities. In addition, MPTSC requires for entrance-level police training and *at least every two years* for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special training, attention to, and study of the application of antidiscrimination and use of force de-escalation training.

In consultation with the Maryland Department of Health, MPTSC must establish a confidential hotline that is available for police officers and other law enforcement personnel to contact and speak with a trained peer law enforcement officer or a mental health professional who may provide initial counseling advice and confidential referral to appropriate services. In addition, MPTSC is required to develop standards for the mandatory psychological consultation with a law enforcement officer who was actively involved in an incident when another person was seriously injured or killed as a result of an accident or a shooting or has returned from combat deployment.

Early Intervention Counseling

Each law enforcement agency must establish a confidential and nonpunitive early intervention policy for counseling officers who receive three or more citizen complaints within a 12-month period. The policy may not prevent the investigation of or imposition of discipline for any particular complaint.

No-knock Warrants

A circuit court or District Court judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the jurisdiction of the judge or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing.

An application for a search warrant must be (1) in writing; (2) signed and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause.

A law enforcement officer may request, in an application for a search warrant, that a building, apartment, premises, place, or thing be searched without the officer having to provide notice of the officer's authority or purpose. To execute such a warrant (also referred to as a "no-knock" warrant), the officer must have a reasonable suspicion that, without the authorization, the property subject to search or seizure may be destroyed, disposed of, or secreted or the life or safety of the executing officer or another person may be in danger. This warrant authorizes the executing law enforcement officer to enter the building, apartment, premises, place, or to search a thing without giving notice of the officer's authority or purpose.

Use of Force

Common law allowed police officers to use any force necessary to effectuate a felony arrest; however, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court held

that when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court expanded its definition to include the objective reasonableness standard. The court held that the Fourth Amendment “reasonableness” inquiry is “whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” In *Randall v. Peaco*, 175 Md. App. 320 (2007), the Court of Special Appeals applied principles of the *Graham v. Connor* case and stated that the test for determining the objective reasonableness of an officer’s conduct for purposes of deciding a claim of excessive force brought under the State constitution is the test the Supreme Court announced in *Graham v. Connor*.

State Expenditures: General fund expenditures increase by *at least* \$6.2 million in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date, for DPSCS and law enforcement units within other specified State agencies to implement the bill’s provisions relating to training and BWCs. Future year expenditures are annualized and reflect ongoing costs. State expenditures (multiple fund types) for *other* State law enforcement agencies may also increase significantly beginning in fiscal 2022 but cannot be quantified. Additional, significant costs may be incurred by the State to the extent local jurisdictions incur costs for the initial purchase of BWC equipment that must be split equally between the State and the implementing local government.

Department of State Police

General fund expenditures for the Department of State Police (DSP) increase by *at least* \$3.8 million in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost to purchase BWC equipment as well as the cost of hiring one lead technician, three technicians, and four administrative specialists to manage the BWC program and handle related requests. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	8
Salaries and Fringe Benefits	\$420,424
BWC Equipment and Training	3,322,095
Automobiles	62,000
Other Operating Expenses	3,930
Minimum FY 2022 DSP Expenditures	\$3,808,449

The information and assumptions used in calculating the estimate are stated below:

- While BWCs are not required until October 1, 2023, this estimate assumes that the purchase of BWC equipment occurs in fiscal 2022.
- Two vehicles are needed for technicians to travel to provide maintenance and support to officers using BWCs.
- There are currently approximately 1,490 law enforcement officers within DSP that require BWCs, at a cost of approximately \$3.3 million (\$2,200 per device). Additional first year operating costs for user management, licensing, and storage of BWC footage are estimated at \$3,375.

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. Also included are continued BWC user management and BWC storage costs. To the extent that additional BWC training, maintenance, and storage are needed, expenditures increase further; however, without actual experience using BWCs within the department, such costs cannot be reliably estimated and are not included in this estimate.

DSP provides primary law enforcement for several local jurisdictions within the State; however, it is unclear to what extent those jurisdictions must share the cost for the initial equipment for officers within those jurisdictions. To the extent that local jurisdictions must share in the initial implementation of DSP's BWC program, the need for general funds decreases.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by *at least* \$1.1 million in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost to purchase BWC equipment as well as the cost of hiring two administrators to modify police training curricula and to track compliance and annually audit the increased training required under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$111,485
BWC Equipment and Training	955,190
Other Operating Expenses	11,163
Minimum FY 2022 DPSCS Expenditures	\$1,077,838

The information and assumptions used in calculating the estimate are stated below:

- While BWCs are not required until October 1, 2023, this estimate assumes that the purchase of BWC equipment occurs in fiscal 2022.
- There are currently approximately 82 law enforcement officers within DPSCS that require BWCs, at an estimated cost of \$195,350 (\$2,200 per device and 10 centralized charging stations at a cost of \$1,495 each).
- Additional first-year operating costs for user management and storage of BWC footage are estimated at \$759,840; DPSCS advises that it must establish a storage area network for this purpose.

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses; also included are continued BWC user management and BWC storage costs. To the extent that additional BWC training, maintenance, and storage are needed, expenditures increase further; however, without actual experience using BWCs within the department, such costs cannot be reliably estimated and are not included in this estimate.

Natural Resources Police

General fund expenditures (or possibly a combination of general and special fund expenditures) for the Natural Resources Police (NRP) within the Department of Natural Resources increase by *at least* \$1.1 million in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost to purchase BWC equipment as well as the cost of hiring two technicians and two administrative aides to manage the BWC program and handle associated requests. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	\$204,315
BWC Equipment and Training	850,950
Automobiles	62,000
Other Operating Expenses	22,325
Minimum FY 2022 NRP Expenditures	\$1,139,590

The information and assumptions used in calculating the estimate are stated below:

- While BWCs are not required until October 1, 2023, this estimate assumes that the purchase of BWC equipment occurs in fiscal 2022.
- Two vehicles are needed for technicians to travel to provide maintenance and support to officers using BWCs.

- There are currently approximately 279 law enforcement officers within NRP that require BWCs, at a cost of \$613,800 (\$2,200 per device). Additional first-year operating costs for user management, licensing, and storage of BWC footage are estimated at \$237,150.

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. Also included are continued BWC user management and BWC storage costs. To the extent that additional BWC training, maintenance, and storage are needed, expenditures increase further; however, without actual experience using BWCs within the department, such costs cannot be reliably estimated and are not included in this estimate.

Department of General Services

General fund expenditures for the Department of General Services increase by *at least* \$178,200 in fiscal 2022. This estimate reflects the cost of purchasing BWCs for 81 law enforcement officers at a cost of \$2,200 per BWC. This estimate does not include costs for additional staff, training, maintenance, user management, licensing, or data storage. To the extent that additional staff and/or BWC training, maintenance, and storage are needed in fiscal 2022 and in future years, expenditures increase further. However, without actual experience using BWCs within the department, such costs cannot be reliably estimated and are not included in this estimate.

Other State Law Enforcement Agencies

Other State agencies with law enforcement units are also affected. As a result, State expenditures (multiple fund types) increase potentially significantly to purchase BWCs and implement a BWC program.

Other Costs

Although no local jurisdiction that provided information regarding the potential fiscal effect of this legislation indicated any anticipated costs for the acquisition of BWCs, to the extent that affected local jurisdictions incur costs for the initial purchase of BWC equipment resulting from the bill, general fund expenditures increase for the State to equally split such costs with those counties and/or municipalities.

State law enforcement agencies can likely adopt the required rules, establish the required early intervention systems, make procedural changes to the no-knock warrant application process, and complete the new training requirements with existing budgeted resources.

The establishment of BPD as an agency and instrumentality of Baltimore City (rather than the State of Maryland) does not materially affect State operations or finances. Even though BPD is a State agency, funding for BPD is the responsibility of Baltimore City.

Local Expenditures: Although several local jurisdictions currently operate BWC programs, to the extent that local jurisdictions must purchase BWCs and implement a BWC program as a result of this bill, local expenditures increase, potentially significantly. Although any initial costs to purchase BWCs are split equally with the State, ongoing BWC-related costs are borne solely by the county or municipality served by the law enforcement agency operating the BWC program.

Baltimore City and Howard, Montgomery, and Prince George's counties advise that BWC programs are currently operational and budgeted within their respective jurisdictions. DSP provides primary law enforcement in several jurisdictions within the State; however, it is unclear to what extent such jurisdictions must share in DSP's costs to purchase the initial equipment for officers assigned to those jurisdictions. To the extent that local jurisdictions must share in a portion of DSP's costs, local expenditures increase (and State expenditures decrease correspondingly).

In addition, Baltimore City expenditures increase, potentially significantly, to the extent that the bill affects the city's ability to be sued for common law and State constitutional torts; however, any resulting impact cannot be predicted. By designating BPD as an agency of Baltimore City, BPD is no longer entitled to sovereign immunity available to State agencies. As a result, the bill allows direct lawsuits against the city and BPD for State constitutional torts committed by BPD officers, and it is reasonable to conclude that the city may be exposed to significantly higher damage awards.

It is assumed that State's Attorneys can work with law enforcement to provide preapproval of no-knock warrants with existing budgeted resources. It is also assumed that the chiefs of local law enforcement agencies can adopt the required rules with existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 237 (Senator West) - Judicial Proceedings.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Howard, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Department of Budget and Management; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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