

MEMORANDUM

October 28, 2021

TO: Public Safety Committee

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Bill 18-21, Police – Internal Affairs Procedures and Reporting Requirements

PURPOSE: Worksession – Committee recommendation expected

Expected Attendees

Chief Marcus Jones, Montgomery County Police Department
Assistant Chief Darren Francke, MCPD
Assistant Chief Willie Parker-Loan, MCPD
Assistant County Attorney Haley Roberts

Bill 18-21, Police – Internal Affairs Procedures and Reporting Requirements, sponsored by Lead Sponsor Council President Hucker and Co-Sponsors Councilmembers Jawando, Riemer, Glass, Navarro, and Rice, was introduced on May 18, 2021.¹ A public hearing was held on June, 22, 2021. An initial Public Safety Committee worksession was held on July 22.

Bill 18-21 would:

- require the issuance of body-worn cameras under certain circumstances;
- require the internal random review of certain body-worn camera recordings;
- require investigation by the Internal Affairs Division of certain body-worn camera recordings;
- require the internal reporting of certain investigations to the Chief of Police;
- require the reporting of certain investigations, investigative files, and body-worn camera recordings to the County Executive, the County Council, and the State's Attorney; and
- require maintenance of a log of each time a body-worn camera recording is accessed or redacted.

PURPOSE

The purpose of Bill 18-21 is to improve police accountability through the random review of body-worn camera, and through the prompt reporting of serious Internal Affairs Division (IAD) investigations.

BILL SPECIFICS

The bill would make several additions to the law related to the use and transparency of body-worn camera recordings. First, the bill would require the provision of a body-worn camera to an officer whenever the officer is on-duty wearing a uniform or prominently displaying insignia. This would ensure that officers who normally work in plain clothes or undercover have body-worn cameras when they are required to work in uniform in *ad hoc* situations. Currently, a plainclothes officer called to serve in uniform, for example during the Capitol riots, does not necessarily have access to a body-worn camera.

Second, the bill would mandate internal random reviews of body-worn camera recordings to evaluate officer performance and compliance with police rules. The bill would distinguish this “random” review from reviewing the recordings of a particular officer without cause. The routine review of an officer’s body camera footage without cause is precluded by the Department’s current collective bargaining agreement with the Fraternal Order of Police (FOP). The Department does not currently conduct random reviews without cause to discover misconduct.

Third, the bill would require that certain types of potential administrative misconduct discovered on body-camera recordings be investigated by the IAD. These would include instances of:

- a use of force under Section 35-22;
- a situation involving a child under the age of 18;
- a potential criminal offense by a Department employee;
- a fatality or serious bodily injury; or
- potential discrimination or harassment by an employee on the basis of race, ethnicity, national origin, sex, sexual orientation, gender expression, gender identity, disability, or religion.

Regarding IAD investigations in general, the bill would require the IAD to brief the Police Chief on its investigations at least monthly. The following types of investigations would need to be reported to the Chief immediately:

- a use of force under Section 35-22;
- a child under the age of 18;
- a potential criminal offense by a Department employee;
- a fatality or serious bodily injury; or
- potential discrimination or harassment by an employee on the basis of race, ethnicity, national origin, sex, sexual orientation, gender expression, gender identity, disability, or religion.

The Police Chief, in turn, would be required to inform the County Executive and the County Council about the above-mentioned types of IAD investigations within 24 hours. If the County Executive or County Council requests a copy of an investigative file or a body-worn camera recording, then the file or recording must be provided within 7 days of the request. Currently, the Police Department engages in internal reporting; the bill would set up specific standards for the reporting and specify a timeline for sharing information.

Another requirement of the bill would be that the Police Chief would be required to inform the State's Attorney's Office, within 7 days, upon becoming aware of a potential criminal offense by a Department employee. Thus, the bill would help ensure that the State's Attorney has notice of a potential crime before the applicable statute of limitations has run.

Additionally, the bill would require a log of each instance that an individual accesses or redacts a body-worn camera recording. Lastly, the bill would require the Chief, on a quarterly basis, to report to the County Executive and County Council on any IAD investigations that have been pending for more than 180 days. Under current law, the Chief is not required to report to the Council on a quarterly basis, although the Department does issue annual IAD reports, [IAD reports page, MCPD, Montgomery County, MD \(montgomerycountymd.gov\)](#).

SUMMARY OF THE PUBLIC HEARING

At the public hearing on June 22, five speakers testified regarding Bill 18-21. On behalf of the County Executive, ACAO Caroline Sturgis supported the bill and noted that a preliminary external audit of the Police Department was forthcoming. Mr. Holland, on behalf of the FOP Lodge 35, stated that the union supports the bill as written. He stated that the bill aligns with the current Collective Bargaining Agreement, and that the bill would improve the timeliness of internal affairs investigations.

Ms. Blackburne, on behalf of the NAACP, expressed support for the bill, but asked that language regarding the "random" review of body camera recordings be clarified. Two organizations – the Silver Spring Justice Coalition (SSJC) and Jews United for Justice – expressed significant concerns about the bill. Both organizations stated that they oppose the bill unless a number of amendments are adopted to increase transparency.

In the Racial Equity and Social Justice Impact Statement, the Office of Legislative Oversight (OLO) has stated that the bill is likely to have a positive effect and recommended amendments.

According to the Fiscal Impact Statement, a supplemental appropriation of approximately \$1 million would be needed to implement Bill 18-21 in FY22. Costs over a 6-year period would be approximately \$3.3 million.

SUMMARY OF THE FIRST WORKSESSION

Participating in the first worksession were Chief Jones, Montgomery County Police Department; Ms. Roberts, Office of the County Attorney; and Mr. Holland, Fraternal Order of Police. The PS Committee recommended (3-0) the following four amendments to Bill 18-21:

Amendment #1

(e) Monthly internal affairs reports to the Chief. At least once a month, the Internal Affairs Division must report to the Chief regarding the status of each pending investigation. For each investigation, the report must include, at a minimum[[],];

- (1) the nature of the allegation[.,];
- (2) the date of the complaint, the name or each employee involved[[], and];
- (3) the name of the investigating officer; and
- (4) the source of the investigation, including whether the investigation arose from a random review under subsection (c).

* * *

(g) Required reports to the County Executive and the County Council. Within 24 hours after receiving a report of an investigation under subsection (f), the Chief must notify the County Executive and the County Council of the existence and nature of the investigation, including:

* * *

- (4) demographic information, including race, ethnicity, and gender information, regarding residents involved the matter under investigation; and

* * *

Amendment #2

(h) Required reports to the State's Attorney. The Chief must notify the State's Attorney regarding the existence and nature of an incident or investigation within [7 days] 3 days after the Chief:

- (1) receives a report under subsection (e) that involves a potential criminal offense by a Department employee; or
- (2) otherwise becomes aware of a potential criminal offense by a Department employee.

Amendment #3

Define "random review". The working definition, subject to further modification by the Committee:

Random review means reviewing, at regular intervals, statistically valid samples of a set, in which each item of the set has an equal opportunity of being chosen for a sample.

Amendment #4

Technical amendments recommended by the Office of the County Attorney as follows: change the term “review” in line 38 of the bill to “investigate”, to more accurately describe the role of the Internal Affairs Department (IAD); insert the word “in” between “involved” and “the” in line 80 of the bill, and add the phrase “if known” in line 80 after the words “demographic information”, because demographic information may not be available to the Department.

The Committee also discussed whether IAD should be required to conduct the random reviews contemplated under the bill, the types of incidents that must be reviewed by IAD, and issues of public access to body camera footage, civilian oversight, collective bargaining, and changes to state law. The Committee determined that it needed an additional worksession to further discuss who within the police department should conduct random reviews of BWC recordings, and whether IAD should review all complaints against officers, regardless of the source of the complaint.

OUTSTANDING ISSUES FOR THE COMMITTEE’S CONSIDERATION

1. Who Should Conduct the Random Review of BWC Footage?

During the first worksession, the Committee discussed who within the police department should conduct the random reviews required under the bill. Community advocates have suggested that IAD should conduct all random reviews given their expertise.

U.S. Department of Justice – Best Practices. In its *Standards and Guidelines for Internal Affairs*, the U.S. Department of Justice has advised:

As a form of quality and integrity control, audits comparing electronic recordings with written statements should be at least done randomly.

See [cops-p164-pub.pdf \(usdoj.gov\)](#) at 35.

The U.S. Department of Justice further has recommended:

An agency’s internal audit unit, rather than the officer’s direct chain of command, should periodically conduct a random review of body-worn camera footage to monitor compliance with the program and assess overall officer performance.

See *Implementing a Body Worn Camera Program*, [Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned \(justice.gov\)](#) at 46. The rationale for this recommendation is “to avoid undermining the trust between an officer and his or her supervisor.”
Id.

Other Jurisdictions. In other jurisdictions, policies are variable. In the Chicago Police Department, operations lieutenants are responsible for the random review of BWC footage, although Chicago’s Office of the Inspector General found that the review was not taking place in accordance with policy. [Evaluation of the Chicago Police Department’s Random Reviews of Body-Worn Camera Recordings Follow-Up – Office of Inspector General \(igchicago.org\)](#). In the Honolulu Police Department, by contrast:

Random audits shall be conducted by the Professional Standards Office to determine if officers are using the BWC appropriately and in accordance with policy.

[Body-Worn Cameras - Honolulu Police Department \(honolulu.police.hawaii.gov\)](#)

MCPD Input. Chief Jones has shared with Council staff his view that the Professional Accountability Division should conduct the random reviews. The Division was created in 2020 to oversee compliance with established policies, procedures and legal mandates through internal inspections and audits. The Chief noted that IAD would not have the time to conduct the random reviews required under the bill.

If the Committee wishes to require the Professional Accountability Division to conduct all random reviews, it could adopt the following amendment:

(c) Mandatory random review of body-worn camera recordings.

(1) The ~~[[Department]]~~ Professional Accountability Division must conduct periodic, random reviews of body-worn camera recordings to assess:

* * *

Decision point: whether to adopt the amendment above to require that all random reviews be conducted by a specific division, such as the Professional Accountability Division, as opposed to the Department generally.

2. Scope of Mandatory Review by IAD

The Silver Spring Justice Coalition (SSJC) has recommended that IAD investigation of certain incidents be made mandatory under Bill 18-21, regardless of whether the incidents are discovered through the random review of BWC recordings. Currently, the bill requires mandatory IAD investigation of certain incidents that are discovered through periodic, random review of BWC.

Current MCPD Policy. Under current policy (MCPD FC 301), the following types of incidents must be reported to IAD:

1. When an employee is involved in a firearm discharge whether intentional or accidental and regardless of duty status, except for authorized target practice or the killing of a dangerous or injured animal as authorized in FC 131, “Use of Force.” (CALEA 1.3.6.a)

2. When an employee is charged with a criminal offense, or anytime there is an allegation of criminal activity on the part of an employee where police investigation is necessary regardless of jurisdiction of occurrence. (Refer to FC 310, “Administrative Leave.”)
3. When an employee is charged with operating a motor vehicle while under the influence of alcohol or drugs.
4. When an employee is the operator of a county vehicle involved in a fatal accident.
5. When, after a supervisor confers with an executive officer and justification is determined, an employee is believed to be in violation of the department’s substance abuse policy. (Refer to FC 371, “Employee Substance Abuse Program.”)
6. Any incident where an executive officer or officer in charge of the district of occurrence feels an immediate administrative investigation is necessary or where so directed by the Chief of Police, or designee.

IAD, in turn, “has primary” – but not exclusive – responsibility to investigate:

1. All use of force complaints.
2. All firearms discharges to include intentional and accidental discharges, regardless of the employee’s duty status (except for range practice or the destruction of animals).
3. All racial, ethnic, and sexual harassment/ discrimination complaints.
4. All administrative investigations required whenever an employee is charged with:
 - a. A criminal offense. Allegations of criminal misconduct will first be investigated by the appropriate criminal investigative unit. Upon completion of the criminal investigation, the case is forwarded to IAD for the administrative investigation.
 - b. Operating a motor vehicle while under the influence of alcohol or drugs.
 - c. Operating a county vehicle involved in a fatal accident.
5. Any complaint or situation designated by the Chief of Police, or designee.

In determining whether IAD will have investigative responsibility, the IAD Director *must* consider the following principles:

1. Discipline is a command responsibility.
2. Complaints should be investigated at the lowest possible level.
3. Performance-related issues will generally be handled at the district/unit level.

MCPD Input. Per Chief Jones, IAD currently reviews all complaints which are brought to the department, and he believes that the current processes should remain in place.

Collective Bargaining. In order to alter the existing MCPD policies regarding IAD investigations, it is unclear whether mandatory collective bargaining would be triggered under Section 33-80 of the Code. Mandatory subjects of bargaining include “working conditions” and “[m]atters affecting the health and safety of employees”, which have been interpreted broadly by the permanent umpire.

If the Committee wishes to amend the bill to require IAD to investigate certain types of incidents identified through complaints (as opposed to random review only), it could adopt the following amendment.

(d) Mandatory review by the Internal Affairs Division. The Internal Affairs Division must ~~investigate~~ investigate, in addition to any matter it is required to ~~investigate~~ investigate by the Chief or under Department policy, any body-worn camera recording identified under subsection (c), or related to a complaint against an officer, that:

(1) relates to potential administrative misconduct by an employee of the Department; and

(2) involves:

(A) a use of force under Section 35-22;

(B) a child under the age of 18;

(C) a potential criminal offense by a Department employee;

(D) a fatality or serious bodily injury; or

(E) potential discrimination or harassment by an employee on the basis of race, ethnicity, national origin, sex, sexual orientation, gender expression, gender identity, disability, or religion.

Decision point: whether to adopt the amendment above to require IAD to investigate certain types of complaints.

3. Undercover Officers

The SSJC has requested (©55) that the bill be amended to require the use of body-worn cameras by undercover officers in certain situations. Council staff believes that the bill already

requires the issuance of body-worn cameras to undercover officers to the extent permitted by state law.

The Maryland Wiretapping and Electronic Surveillance Act permits audio-recording without consent only in certain circumstances, including if an officer is wearing a uniform or otherwise prominently displaying a badge or other insignia identifying the officer as law enforcement. *See* Md. Code Ann., Courts & Judicial Procedure § 10-402 (permitting a law enforcement officer in the course of the officer's regular duty to intercept an oral communication with a body-worn digital recording device or an electronic control device capable of recording video and oral communications only if certain conditions are met, including that “[t]he law enforcement officer is in uniform or prominently displaying the officer’s badge or other insignia”).

Using the standard set forth in the wiretap law, the bill currently provides:

Mandatory issuance of body worn cameras. The Department must issue a body worn camera, for the use of an on-duty employee of the Department, whenever the employee:

- (1) is in uniform; or
- (2) prominently displays a badge or other insignia.

At the request of the Committee, Council staff has confirmed with the City Attorney for the City of Gaithersburg that undercover officers in the Gaithersburg Police Department conform to the requirements that a BWC may not be used unless the officer is clearly identified as a police officer. In fact, the Gaithersburg City policy explicitly states the following:

4.1. Legal Considerations - Pursuant to [Section 10-401 et. seq., Maryland Courts and Judicial Proceedings Code Annotated \(“CJP Article”\)](#), otherwise known as the Maryland Wiretapping and Electronic Surveillance Act “State Wiretap Act” it is unlawful for any person to willfully intercept, attempt to intercept, disclose, attempt to disclose, use, or attempt to use, any oral communications.

4.1.1. The State Wiretap Act, CJP Article §10-402(c)(11) provides that a law enforcement officer may lawfully, in the course of the officer’s regular duty, intercept an oral communication with a body-worn digital recording device, including a BWC, which is capable of recording video and oral communications if:

4.1.1.1. The law enforcement officer is in uniform or is otherwise prominently displaying the officer’s badge or other insignia;

4.1.1.2. The law enforcement officer is making reasonable efforts to conform to Maryland Police Training Commission standards promulgated in accordance with Section 3-511 of the Maryland Public Safety Code Annotated for the use of body worn digital recording devices;

4.1.1.3. The law enforcement officer is a party to the oral communications;

4.1.1.4. The law enforcement 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

4.1.1.5. The oral communication is being made as part of a videotape or digital recording.

https://apps.gaithersburgmd.gov/general_orders/619_4_Body_Worn_Cameras.pdf

If the Committee wishes, it could adopt the following amendment to make absolutely clear that undercover officers must have BWCs if they are on-duty and in uniform or otherwise displaying a badge or insignia.

Mandatory issuance of body worn cameras. The Department must issue a body worn camera, for the use of an on-duty uniformed, plain-clothed, or undercover employee of the Department whenever the employee:

- (1) is in uniform; or
- (2) prominently displays a badge or other insignia.

Decision point: whether to adopt the amendment above.

4. Officers with a History of Misconduct

The SSCJ has requested that officers with a “history of misconduct” have their body-worn camera footage “reviewed randomly” (©54). Council staff believes that such an amendment likely would be incompatible with existing police policy, which is also reflected in lines 36-39 of the existing bill:

BWCS recordings shall not be routinely reviewed for the express purpose of discovering acts of misconduct or instances of poor performance without cause.

FC No. 301.

If the Committee wishes to amend the bill to require the review of the recordings of officers with a history of misconduct, it should consider defining “history of misconduct.” In addition, it should be noted that collective bargaining might be required, under Code Section 33-80, in order to amend police policy to review the footage of officers with a history of misconduct.

The Committee might wish to ask for MCPD feedback on whether a history of misconduct would constitute “cause” under the current policy, such that officers with a history of misconduct could be subject to heightened review; and whether bargaining would be required to implement the potential amendment.

Next Steps: Committee recommendation on whether to enact Bill 18-21, including any additional amendments described above.

<u>This packet contains:</u>	<u>Circle #</u>
Bill 11-21	1
Legislative Request Report	8
Sponsor's Memorandum	9
RESJ Impact Statement	11
Economic Impact Statement	17
Fiscal Impact Statement	19
Executive Testimony	23
Office of the County Attorney Memorandum	24
Public Testimony	
National Association for the Advancement of Colored People (NAACP)	26
Jews United for Justice (JUFJ)	27
Silver Spring Justice Coalition	29
MCPD Body Worn Camera Policy (FC 430)	39
MCPD Disciplinary Process Policy (FC 301)	47
Supplemental Silver Spring Justice Coalition Testimony	54

Bill No. 18-21
Concerning: Police – Internal Affairs
Procedures and Reporting
Requirements
Revised: 7/22/2021 Draft No. 4
Introduced: May 18, 2021
Expires: November 18, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Hucker
Co-Sponsors: Councilmembers Jawando, Riemer, Glass, Navarro, and Rice, and
Council Vice-President Albornoz

AN ACT to:

- (1) require the issuance of body-worn cameras under certain circumstances;
- (2) require the internal random review of certain body-worn camera recordings;
- (3) require review by the Internal Affairs Division of certain body-worn camera recordings;
- (4) require the internal reporting of certain investigations to the Chief of Police;
- (5) require the reporting of certain investigations, investigative files, and body-worn camera recordings to the County Executive, the County Council, and the State's Attorney;
- (6) require maintenance of a log of each time a body-worn camera recording is accessed or redacted; and
- (7) generally amend the law governing policing, body-worn camera recordings, and police internal affairs.

By amending
Montgomery County Code
Chapter 35, Police
Section 35-9

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 35-9 is amended as follows:**

2 **35-9. [Reserved.] Internal Affairs Procedures and Reporting Requirements.**

3 (a) Definitions. For purposes of this Section, the following terms have the
4 meanings indicated.

5 Administrative misconduct means alleged misconduct by a Department
6 employee that, if true, could result in discipline against the employee.

7 Body-worn camera recording or recording means a video or audio
8 recording obtained through a camera system worn on the person of an
9 employee of the Department.

10 Chief or Police Chief means the Chief of the Department or the Chief's
11 designee.

12 Department means the Montgomery County Police Department.

13 Internal Affairs Division or Division means the division or unit of the
14 Department with primary responsibility for investigating administrative
15 misconduct by a Department employee if the investigation could result in
16 disciplinary action against the employee.

17 Investigation means an investigation conducted by the Division into
18 allegations of administrative misconduct by an employee of the
19 Department.

20 Random review means reviewing, at regular intervals, statistically valid
21 samples of a set, in which each item of the set has an equal opportunity
22 of being chosen for a sample.

23 (b) Mandatory issuance of body worn cameras. The Department must issue
24 a body worn camera, for the use of an on-duty employee of the
25 Department, whenever the employee:

26 (1) is in uniform; or

27 (2) prominently displays a badge or other insignia.

- 28 (c) Mandatory random review of body-worn camera recordings.
 29 (1) The Department must conduct periodic, random reviews of body-
 30 worn camera recordings to assess:
 31 (A) employee compliance with legal requirements and
 32 Department policy;
 33 (B) employee performance; and
 34 (C) consistency between employees' written reports and
 35 recordings.
 36 (2) Except when performing a random review under paragraph (1), the
 37 Department must not review body-worn camera recordings,
 38 without cause, to discover acts of misconduct or instances of poor
 39 performance.
 40 (d) Mandatory review by the Internal Affairs Division. The Internal Affairs
 41 Division must [[review]] investigate, in addition to any matter it is
 42 required to [[review]] investigate by the Chief or under Department
 43 policy, any body-worn camera recording identified under subsection (c)
 44 that:
 45 (1) relates to potential administrative misconduct by an employee of
 46 the Department; and
 47 (2) involves:
 48 (A) a use of force under Section 35-22;
 49 (B) a child under the age of 18;
 50 (C) a potential criminal offense by a Department employee;
 51 (D) a fatality or serious bodily injury; or
 52 (E) potential discrimination or harassment by an employee on
 53 the basis of race, ethnicity, national origin, sex, sexual

54 orientation, gender expression, gender identity, disability, or
 55 religion.

56 (e) Monthly internal affairs reports to the Chief. At least once a month, the
 57 Internal Affairs Division must report to the Chief regarding the status of
 58 each pending investigation. For each investigation, the report must
 59 include, at a minimum[[],]:

60 (1) the nature of the allegation[.,];

61 (2) the date of the complaint, the name or each employee involved[[],
 62 and]];

63 (3) the name of the investigating officer; and

64 (4) the source of the investigation, including whether the investigation
 65 arose from a random review under subsection (c).

66 (f) Immediate reporting of certain investigations to the Chief.

67 (1) The Internal Affairs Division immediately must report to the Chief
 68 regarding any investigation that involves:

69 (A) a use of force under Section 35-22;

70 (B) a child under the age of 18;

71 (C) a potential criminal offense by a Department employee;

72 (D) a fatality or serious bodily injury; or

73 (E) potential discrimination or harassment by an employee on
 74 the basis of race, ethnicity, national origin, sex, sexual
 75 orientation, gender expression, gender identity, disability, or
 76 religion.

77 (2) Within 48 hours of submitting a report under paragraph (1), the
 78 Division must provide to the Chief any body-worn camera
 79 recordings associated with the investigation.

80 (g) Required reports to the County Executive and the County Council.
 81 Within 24 hours after receiving a report of an investigation under
 82 subsection (f), the Chief must notify the County Executive and the
 83 County Council of the existence and nature of the investigation,
 84 including:

85 (1) the date of any complaint that precipitated the investigation;

86 (2) the date and location of the incident under investigation;

87 (3) the general nature of the allegations under investigation;

88 (4) demographic information if known, including race, ethnicity, and
 89 gender information, regarding residents involved in the matter
 90 under investigation; and

91 (5) the category of the investigation under paragraph (1) of subsection
 92 (f).

93 (h) Required reports to the State's Attorney. The Chief must notify the
 94 State's Attorney regarding the existence and nature of an incident or
 95 investigation within ~~[[7 days]]~~ 72 hours after the Chief:

96 (1) receives a report under subsection (e) that involves a potential
 97 criminal offense by a Department employee; or

98 (2) otherwise becomes aware of a potential criminal offense by a
 99 Department employee.

100 (i) Copies of investigative files and recordings.

101 (1) If the County Executive, the County Council, or the State's
 102 Attorney requests a copy of an investigative file or a body-worn
 103 camera recording associated with an incident or investigation
 104 under subsections (g) or (h), the Department must provide the
 105 requested copy within 7 calendar days, unless a state or federal
 106 law:

- 107 (A) requires an earlier disclosure; or
- 108 (B) prohibits the disclosure.
- 109 (2) The recipient of an investigative file or a body-worn camera
 110 recording under paragraph (1) must not redisclose the file or
 111 recording except in accordance with the Maryland Public
 112 Information Act or other applicable law.
- 113 (j) Log of access to body-worn camera recordings.
- 114 (1) The Department must maintain a log that records each instance that
 115 a person accesses or redacts a body-worn camera recording.
- 116 (2) The log must include, at a minimum, the time and date of the
 117 access or redaction, and the identity of the person accessing or
 118 redacting the recording.
- 119 (k) Prompt completion of internal investigations. At least once every 3
 120 months, the Chief must report to the County Executive and the County
 121 Council regarding:
- 122 (1) each investigation that is not complete within 180 days;
- 123 (2) the reasons for the delay; and
- 124 (3) an estimate of when the investigation will be complete.

LEGISLATIVE REQUEST REPORT

Bill 18-21

Police – Internal Affairs Procedures and Reporting Requirements

DESCRIPTION:	Bill 18-21 would: <ul style="list-style-type: none">• require the issuance of body-worn cameras under certain circumstances;• require the internal random review of certain body-worn camera recordings;• require review by the Internal Affairs Division of certain body-worn camera recordings;• require the internal reporting of certain investigations to the Chief of Police;• require the reporting of certain investigations, investigative files, and body-worn camera recordings to the County Executive, the County Council, and the State’s Attorney; and• require maintenance of a log of each time a body-worn camera recording is accessed or redacted.
PROBLEM:	Improving accountability and oversight regarding body-worn camera recordings and Internal Affairs Division (IAD) investigations.
GOALS AND OBJECTIVES:	<i>See above.</i>
COORDINATION:	
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversight
EVALUATION:	
EXPERIENCE ELSEWHERE:	To be researched
SOURCE OF INFORMATION:	Christine Wellons, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

TOM HUCKER
Council President

Member, Public Safety Committee
Chair, Transportation & Environment Committee

M E M O R A N D U M

TO: Councilmembers

FROM: Tom Hucker, Council President

DATE: May 13, 2021

SUBJECT: Bill 18-21 – Police – Internal Affairs Procedures and Reporting Requirements

Dear Colleagues,

Next Tuesday, I will introduce legislation to bring transparency to our police body worn camera policy, to ensure serious incidents involving police are investigated judiciously and expeditiously, and that these incidents are elevated to the Chief, County Executive, State's Attorney, and County Council.

In March, we all watched with horror and disgust a nearly hour-long video of two patrol officers accosting and abusing a five-year-old child at East Silver Spring Elementary School. Beyond the egregious and disturbing conduct displayed by the officers involved, it is unacceptable that this incident, which generated international news, was not reported by MCPD to either the County Executive and the County Council until over a year after it occurred, and the video was not shared with us for many weeks despite requests from Councilmembers. If it were not for an intrepid reporter who happened to spot the case on a court docket, we might never have even found out about it. And we do not currently have visibility into the other incidents involving police use of force that result in investigations. Absent this legislation, serious incidents like the one at ESS can continue to be hidden from oversight and public view, further eroding community trust, undercutting our goals of increasing public confidence in MCPD, and making it very difficult to perform our oversight role.

We have worked with many County staff and community stakeholders on this proposal. The legislation provides a roadmap to enhanced police transparency and public accountability by instituting mandatory periodic and random reviews of body worn cameras and by requiring mandatory and timely reporting of certain incidents resulting in investigations - those involving use of force, a child under 18, alleged discrimination or harassment, potential criminal offenses, or fatalities or serious bodily injuries - to the County Executive and County Council.

Further, the bill requires that the State's Attorney's Office be notified within seven days when potential criminal offenses are committed by an employee. In addition to notification, the police department would also be required to provide certain investigative files and body-worn camera recordings to the County Executive, County Council, and State's Attorney within seven days, upon request. The bill increases transparency by requiring MCPD to make body cameras available to any officer who is called into uniform. Finally, the bill requires that the police department submit to the County Executive and County Council a quarterly report on ongoing investigations that exceed the 18c-day period recommended as a best practice by the Department of Justice.

When we initiated the body worn camera pilot program in 2015, we set public expectations that it would provide significant transparency into policing practices for elected officials, community stakeholders and the general public, resulting in greater public confidence in and awareness of the work of our officers. Our current body worn camera policy has not yet achieved that and needs this reform.

I urge you to support and to cosponsor this legislation that will bring needed sunlight into our body worn camera program. We should not have to wait until a lawsuit is brought or rely on media reports to hear about such unacceptable behavior by a member of law enforcement.

Please feel free to reach out with any questions or suggestions.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 18-21: POLICE-INTERNAL AFFAIRS PROCEDURES AND REPORTING REQUIREMENTS

SUMMARY

OLO anticipates that Bill 18-21 will favorably impact racial equity and social justice (RESJ) in Montgomery County. This impact could be further improved if it includes amendments to (1) increase civilian oversight of internal affairs investigations, and (2) make body-worn camera recordings available to civilian complainants.

BACKGROUND

Bill 18-21, Police - Internal Affairs Procedures and Reporting Requirements, was introduced to the County Council on May 18, 2021. The purpose of Bill 18-21 is to improve police accountability through the random review of body-worn camera (BWC) footage, the use of BWC footage to launch Internal Affairs Division (IAD) investigations, and through the prompt reporting of serious IAD investigations to County leaders. To achieve these goals, Bill 18-21 would require the following changes to County law:

- The issuance of body-worn cameras whenever an officer is on-duty wearing a uniform or prominently displaying insignia;
- The internal random review of certain body-worn camera recordings to evaluate officer performance and compliance with police rules;
- The internal reporting of IAD investigations to the Chief of Police monthly;
- Across the following five categories, IAD will investigate potential administrative misconduct discovered on BWC recordings and report investigations to the Chief of Police immediately:
 - Use of force,
 - Children,
 - Potentially criminal offenses by MCPD employees,
 - Fatality or serious bodily harm, or
 - Potential discrimination or harassment by a MCPD employee;
- The reporting of certain investigations, investigative files, and BWC recordings for the above-mentioned types of IAD investigations within 24 hours to the County Executive, County Council, and the State's Attorney;
- If the Executive or Council request a copy of the investigative file or body-worn camera footage, then the file or recording must be provided within seven days;
- The maintenance of a log of each time a body-worn camera recording is accessed or redacted; and
- The Chief to report to the Executive and County Council quarterly any IAD investigations that have been pending for more than 180 days.

RESJ Impact Statement

Bill 18-21

The overarching goal of Bill 18-21 is to increase the transparency and accountability of BWC footage to address policing misconduct. Other jurisdictions have implemented similar policing reform practices that use BWC footage to audit policing practices, including the Los Angeles Police Department.¹

CRIMINAL JUSTICE, BODY-WORN CAMERAS, AND RACIAL EQUITY

The War on Drugs and the system of mass incarceration that primarily impacts Black people is essential for understanding the potential impact of Bill 18-21 on racial equity and social justice in Montgomery County.

Racial equity occurs when race no longer predicts life outcomes and each racial group has the power to determine their own agency. Yet, as noted by Michelle Alexander, the War on Drugs has increased the number of people in the criminal justice system and exacerbated racial inequities in the system in three ways.² Alexander refers to this process of creating second-class citizens among Black people in the criminal justice system as the “New Jim Crow.”

- The first phase is the **Roundup** where the police conduct drug operations primarily in poor communities of color and sweep vast numbers of people into the criminal justice system. The police are rewarded for rounding up as many people as possible; they can stop, interrogate, and search anyone they choose for drug investigations, provided they get “consent.” Because there is no meaningful check on the exercise of police discretion, racial biases are granted free rein. In fact, police are allowed to rely on race as a factor in selecting whom to stop and search (even though people of color are no more likely to be guilty of drug crimes than Whites) – effectively guaranteeing those who are swept into the system are primarily Black and Brown.
- The second phase is **Conviction** where defendants, once arrested, are generally denied meaningful legal representation and pressured to plead guilty whether they are or not. Prosecutors are free to “load up” defendants with extra charges, and their decisions cannot be challenged for racial bias. Once convicted, due to the Drug War’s harsh sentencing laws, drug offenders spend more time under the criminal justice system’s formal control – in jail or prison, on probation or parole - than drug offenders anywhere else in the world. This period may last a lifetime, even for those convicted of extremely minor, nonviolent offenses, but the vast majority of those swept into the system are eventually released.
- The final phase is **Invisible Punishment** where individuals experience criminal sanctions after they have served their time. These sanctions, which are largely outside of public view, are imposed by the operation of law rather than the decisions of a sentencing judge. The collateral damages of invisible punishment can have a greater impact on individuals than the time spent incarcerated, denying individuals to fully mainstream back into society. The legal discriminations that manifest as invisible punishment include; denied employment, housing, education, and public benefits. Unable to surmount these challenges, most will eventually return to prison and then be released again, caught in this never-ending cycle that reinforces their marginality and second-class citizenship.

Within this mass incarceration context, body cameras are viewed as a key police reform to help interrupt the disproportionate entry of Black and Latinx people into the criminal justice system. The implied theory of action for Bill 18-21 is that greater transparency of police misbehavior documented by body-worn cameras will lead to greater accountability for constitutional policing that diminishes racial and ethnic inequities in the criminal justice system. BWC are viewed as a strategy to interrupt the biased “roundup” and “conviction” stages of the mass incarceration pipeline. Yet, the available research to date offers at best mixed results on whether BWC affect policing or improves accountability for policing misconduct in ways that improve racial equity.³

RESJ Impact Statement

Bill 18-21

For example, a recent summary of research on body-worn cameras by the CCJ Task Force on Policing finds that the use of BWC can be effective at reducing public complaints as a tool to support investigations, prosecutions, and public defense cases.⁴ Research from the University of Chicago suggests that BWC can reduce police use of force.⁵ Research from the federal monitor for the New York City Police Department finds that the use of BWC compels officers to provide a more accounting of their pedestrian stops.⁶

Yet, there is no research finding that the use of BWC has diminished racial disparities in policing.⁷ Moreover, Black residents are not as confident as White residents that BWC will improve police-community relations, narrow racial disparities, or improve officer accountability. Some Black residents fear that BWC footage can generate more harm than good by re-traumatizing Black residents with repeated views of state-sanctioned violence against their communities.⁸ These findings align with research demonstrate the disparate treatment of Black residents among BWC equipped officers who (a) spoke less respectfully to Black community members in one study and (b) engaged in more unlawful stop and frisk encounters among Black and Latinx residents in another study.⁹

The Leadership Conference on Civil and Human Rights and Upturn note that whether BWC make police more accountable, or simply intensify police surveillance of communities, depends on how the cameras and footage are used.¹⁰ The CCJ Task Force on Policing recommends that police departments employ strong accountability structures – training, supervision, appropriate policies, and oversight – to respond to misconduct revealed by video evidence.¹¹ The CCJ Task Force also notes that if BWC video is used routinely in officer trainings, performance reviews, BWC footage, supervisory audits, and misconduct investigations, BWC can uncover officer misconduct and enhance officer accountability. Enhanced accountability to address officer misconduct is required for BWC footage to impact disparities in policing by race and ethnicity.

The operation of internal affairs within police departments is also essential to promoting accountability for addressing allegations of police misconduct. Best practice recommends that internal affair functions focus on a broad range of concerns, rather than solely adjudicating individual cases.¹² Ideally, this should include a review of whether deficiencies in departmental policies, procedures or training have contributed to problematic policing behavior.¹³ Toward this end, the Building Trust Internal Affairs Promising Practices Guide offers three promising practices for enhancing accountability measures through internal affairs:

- Implement a citizen review or advisory function to reassure the community of the accountability of the department. This could include the use of:
 - Citizen review board as a panel of citizens that handles every aspect of the citizen compliant continuum;
 - Police review/civilian oversight where the police department handles every aspect of the compliant continuum, but citizens review their actions;
 - Police review/citizen-police appeal board where the police department handles every aspect of the compliant continuum, but the complainant may appeal the outcome to a board comprised of officers and citizens; and
 - An independent citizen auditor where the police department handles every aspect of the compliant continuum, but a citizen serves as an auditor.
- Use data systems to track complaints and assess departmental climate.
- Disseminate summary complaint and investigation outcomes to the public on a regular, consistent basis

RESJ Impact Statement

Bill 18-21

DEMOGRAPHIC DATA

A review of data demonstrates racial and ethnic disparities in the “roundup” phase of the criminal justice system in Montgomery County. While Black people accounted for 18 percent of County residents, they comprised:

- 32 percent of Montgomery County Police Department (MCPD) traffic stops,
- 44 percent of MCPD arrests, and
- 55 percent of MCPD use of force cases.¹⁴

Among those experiencing traffic stops by MCPD:

- Black men were three times as likely as White men to receive any traffic violations (46% v. 17%),
- Latino men were nearly twice as likely (32% v. 17%), and
- Other men were more than twice as likely (42% v. 17%).¹⁵

A review of state data also demonstrates racial disparities in the “roundup” and “conviction” phases of the criminal justice system. While Black people accounted for 29 - 30 percent of the state’s population, they accounted for:

- 54 percent of arrests for marijuana use across Maryland;¹⁶
- 71 percent of Maryland’s correctional population;¹⁷
- 77 percent of Maryland’s maximum-security correctional population and prisoners serving life sentences;¹⁸ and
- 100 percent of exonerated individuals across the state.¹⁹

ANTICIPATED RESJ IMPACTS

Bill 18-21 aligns with the research recommending greater accountability in the use of BWC footage to identify and sanction police misconduct. As such, OLO anticipates that Bill 18-21 will reduce racial inequities in policing and policing outcomes by holding more police officers accountable for misconduct and racially biased policing in particular.

To date, the greater transparency of policing behavior available with BWC footage has been used to improve the tactical functions of police departments aimed at collecting evidence for court, investigate support, social control (e.g. mass demonstrations) and protecting officers in the line of duty. These goals benefit officers, but not as much as the communities that police are sworn to protect and serve. To achieve the later requires an accountability infrastructure aimed at using BWC footage to investigate and hold police officers accountable for misconduct.

The key provisions of Bill 18-21 require the random review of BWC footage to identify serious incidents of alleged misconduct and to increase reporting of internal affairs investigations. These key provisions align with policy expert recommendations for improving policing equity and accountability for police misconduct. Given this alignment, OLO anticipates that Bill 18-21 will reduce instances of racial misconduct in local policing and, in-turn, help diminish disparities by race and ethnicity in criminal justice outcomes across the County.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

OLO reviewed several sources of information to develop this RESJ impact statement, including the following:

RESJ Impact Statement

Bill 18-21

- Internal Affairs Division Annual Report, Montgomery County Department of Police, 2020
- Justin Ready and Jacob Young, The Unfulfilled Potential of Police Body Cameras in the Era of Black Lives Matter, Slate, October 1, 2020
- Ashley Southall, Police Body Cameras Cited as ‘Powerful Tool’ Against Stop and Frisk Abuses, New York Times, November 30, 2020
- Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement, 2009
- CCJ Task Force on Policing, Body-Worn Cameras, Policy Assessment, April 2021
- The Leadership Conference on Civil and Human Rights and Upturn, Policy Body Worn Cameras: A Policy Scorecard, November 2017
- PBS NewsHour, Body Cameras Are Seen As Key to Police Reform. But Do They Increase Accountability? June 25, 2020
- Cheryl Corley, Study: Body-Worn Camera Research Shows Drop in Use of Force, NPR Criminal Justice Collaborative, April 26, 2021
- Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, Community Oriented Policing Services, U.S. Department of Justice, 2008
- Sunyoung Pyo, Do Body-Worn Cameras Change Law Enforcement Behavior? A National Study of Local Police Departments, The American Review of Public Administration, December 27, 2020
- Rob Voigt, et al, Language From Police Body Camera Footage Shows Racial Disparities in Officer Respect, PNAS, June 20, 2017
- Erin M. Kerrison, Jennifer Cobbina, and Kimberly Bender, Stop-Gaps, Lip Service, and Perceived Futility of Body-Worn Police Officer Cameras in Baltimore City, Journal of Ethnic and Cultural Diversity in Social Work, June 8, 2018

OLO also reviewed Racial and Equity Impact Notes authored by Jasmon Bailey of the Maryland Department of Legislative Services for the 2021 Maryland General Assembly for three criminal justice bills: HB 3, HB 32, and HB 742.

RECOMMENDED AMENDMENTS

To further enhance accountability to identify and address police misconduct, OLO recommends the Council consider amendments to Bill 18-21 that increase citizen oversight of internal audit investigations and provide citizen complainants access to relevant BWC footage.

As noted in the Building Trust Internal Affairs Promising Practices Guide, the use of citizen reviews and advisory functions can improve departmental accountability for policing misconduct and reassure the community about the accountability of the department.²⁰ One of four common approaches - citizen review board, police review with citizen oversight, police review with citizen-police appeal board, or an independent citizen auditor - should be considered as recent changes to state law that now allow civilian oversight of police misconduct investigations.

RESJ Impact Statement

Bill 18-21

Another best practice for advancing accountability in policing as noted by the Leadership Conference on Civil and Human Rights and Upturn is making BWC footage available to individuals filing complaints.²¹ While MCPD officers can access BWC footage to file initial police reports and statements, civilians accusing police officers of misconduct do not have this same right.²² To improve both accountability and equity and to identify and address instances of misconduct, civilian complainants, like police officers, should be able to access BWC footage to help inform their complaints.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO Senior Legislative Analyst Dr. Elaine Bonner-Tompkins authored this RESJ impact statement.

¹ Haley Samsel, Los Angeles Police Plan to Review Body Camera Footage for Instances of 'Biased Policing', Security Today, November 8, 2019

² See pages 185-6 of Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, The New Press, 2012

³ PBS NewsHour, *Body Cameras Are Seen As Key to Police Reform. But Do They Increase Accountability?* June 25, 2020

⁴ CCJ Task Force on Policing: *Body-Worn Cameras*, Policy Assessment, April 2021

⁵ BWC Research Shows Drop in Police Use of Force, Cheryl Corley, NPR, April 26, 2021

⁶ New York Times, Ashley Southall, *Police Body Cameras Cites as "Powerful Tool" Against Stop-and-Frisk Abuses*, November 30, 2020

⁷ CCJ Task Force on Policing and Sunyoung Pyo, December 27, 2020

⁸ Lawrence, Peterson, and Thompson, 2018 cited in CCJ Task Force on Policing and Erin Kerrison, Jennifer Cobbina, and Kimberly Bender, *Journal of Ethnic and Cultural Diversity in Social Work*, 2016

⁹ Rob Voigt et al, *Journal of Psychological and Cognitive Sciences (PNAS)*, June 20, 2017 and Ashley Southall, *New York Times*, November 30, 2020

¹⁰ The Leadership Conference on Civil and Human Rights and Upturn, *Police Body Worn Cameras: A Policy Scorecard*, November 2017

¹¹ CCJ Task Force on Policing

¹² *Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement*, 2009

¹³ *Protecting Civil Rights*, 2006, cited in *Building Trust Between the Police and the Citizens*.

¹⁴ OLO Report 2020-9, *Local Policing Data and Best Practices*,

<https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/OLOREport2020-9.pdf>

¹⁵ Ibid

¹⁶ Race and Equity Note for HB 32, <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2021rs-HB32-REIN.pdf>

¹⁷ Race and Equity Note for HB 3, <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2021rs-HB3-REIN.pdf>

¹⁸ Ibid

¹⁹ Race and Equity Note for HB 742, <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2021rs-HB742-REIN.pdf>

²⁰ *Internal Affairs Promising Practices Guide for Local Law Enforcement*

²¹ *Police Body Worn Cameras: A Policy Scorecard*

²² Ibid

Economic Impact Statement

Office of Legislative Oversight

Bill 18-21

Police – Internal Affairs Procedures and Reporting Requirements

SUMMARY

The Office of Legislative Oversight (OLO) believes that enacting Bill 18-21 would have insignificant impacts on economic conditions in the County.

BACKGROUND

The purpose of Bill 18-21 is to improve “accountability and oversight regarding body-worn camera recordings and Internal Affairs Division (IAD) investigations.” The bill would attempt to do so by requiring the following: “the issuance of body-worn cameras under certain circumstances; ... the internal random review of certain body-worn camera recordings; ... review by the Internal Affairs Division of certain body-worn camera recordings; ... the internal reporting of certain investigations to the Chief of Police; ... the reporting of certain investigations, investigative files, and body-worn camera recordings to the County Executive, the County Council, and the State’s Attorney; and ... maintenance of a log of each time a body-worn camera recording is accessed or redacted.”¹

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

No methodologies were used in this analysis. The assumptions underlying the claims in subsequent sections are based on OLO staff judgment.

VARIABLES

Not applicable

¹ Montgomery County Council, Bill 18-21, Police – Internal Affairs Procedures and Reporting Requirements, introduced on May 18, 2021. See Introduction Staff Report, https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2709_1_14442_Bill_18-21_Introduction_20210518.pdf.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organization

OLO believes that Bill 18-21 would have no economic impacts on private organizations in the County in terms of the Council's priority indicators, namely business income, workforce, operating costs, capital investments, property values, taxation policy, economic development, and competitiveness.²

Residents

OLO does not believe that Bill 18-21 would significantly affect County residents in terms of the Council's priority indicators.

DISCUSSION ITEMS

Not applicable

WORKS CITED

Montgomery County Code. Sec. 2-81B. Economic Impact Statements.

Montgomery County Council. Bill 18-21, Police – Internal Affairs Procedures and Reporting Requirements. Introduced on May 18, 2021.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

² For the Council's priority indicators, see Montgomery County Code, Sec. 2-81B. Economic Impact Statements, https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-80894.

Fiscal Impact Statement
Bill 18-21, Police – Internal Affairs Procedures and Reporting Requirements

1. Legislative Summary

Bill 18-21 requires the use of body-worn cameras by on-duty officers in uniform or wearing identifiable police insignia, an internal random review of those recordings, investigations of misconduct by the Internal Affairs Division under certain circumstances, mandatory reporting to the County Executive, County Council and the State’s Attorney regarding specific investigation types, and documentation of each time body-worn camera footage is accessed or redacted.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

By Montgomery County Police Department (MCPD) policy, each active duty officer is assigned two Body-Worn Cameras (BWCs), and in each 24-hour period approximately 1,320 BWCs are in use or being re-charged (see table below).

Shift	Average Number of Active Officers ⁱ	Number of Cameras in Use
Daywork	280	560
Evenings	260	520
Midnight	120	240

MCPD has an inventory of 1,850 AB3ⁱⁱ cameras, with an additional 295 AB3 cameras reserved as emergency replacements. Approximately 600 new cameras would be needed for officers that only occasionally wear uniforms and for other non-patrol uniformed officers that have not been issued a camera. BWCs are unique to each officer and have a specific ID number so that recorded footage can be assigned to a particular individual. The purchase of additional BWCs to implement this Bill would include the one-time costs of the camera, camera mounts, docking stations, and the ongoing costs for licensing, storage, and software updates.

600 Body-Worn Cameras	Estimate
Onetime Unit Costs ⁱⁱⁱ	398,430
Annual Cost of Licensing for New Users ^{iv}	331,200
Docking Stations ^v	106,502
Network Connectivity ^{vi}	33,750
Total	869,882

MCPD currently has two Information Technology Specialist positions, one of which is vacant, that are responsible for reviewing and redacting BWC footage in accordance with the Maryland Public Information Act (MPIA). MCPD processes over 100 requests monthly which originate from residents, attorneys, and the media. Although the number of requests received by the department are a significant cost factor, the department’s ability to fill the IT Specialist vacancy is a greater factor in determining the speed of fulfilling these requests and controlling overtime costs.

In addition to outside requests, MCPD reviews BWC recordings as part of evidence reviews, administrative inquiries, training assessments, and for any official investigation involving a personnel complaint, criminal activity, or civil infraction.

The random reviews stipulated by the Bill will likely be made the responsibility of MCPD’s Professional Accountability Division (PAD). As a result, PAD would need additional resources that may come from shifting existing resources or from the addition of an Administrative Specialist I, Grade 21.

Regarding the Bill’s requirement for IAD investigations resulting from the random reviews, an increase is possible but not expected. Note that in the FY22 approved budget, the Internal Affairs Division will add two additional Sergeants to the Division.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

	FY22	FY23	FY24	FY25	FY26	FY27	6-Year Total
Administrative Specialist (PAD)	\$125,027	\$127,545	\$130,632	\$133,819	\$137,085	\$140,429	\$794,568
Additional Body-Worn Cameras	\$538,682	-	-	-	-	-	\$538,682
User Licenses	\$331,200	\$331,200	\$331,200	331,200	331,200	331,200	\$1,987,200
Total:	\$994,939	\$458,745	\$461,832	\$465,019	\$468,285	\$471,629	\$3,320,450

- 4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

- 5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable.

- 6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Bill 18-21 does not authorize future spending.

- 7. An estimate of the staff time needed to implement the bill.**

Although it is not mandated by the Bill, implementation could result in an increase in the requests for BWC footage, the frequency of BWC reviews, and the number of Internal Affairs investigations. More information is needed about these possibilities; however, an additional Administrative Specialist within the PAD will be needed.

- 8. An explanation of how the addition of new staff responsibilities would affect other duties.**

The residual impact of this Bill's implementation on existing responsibilities will depend on the unpredictable increase in requests for BWC footage from the public, and investigations by the Internal Affairs Division.

- 9. An estimate of costs when an additional appropriation is needed.**

Approximately \$994,940 in additional FY22 appropriation is expected for this Bill's implementation to accommodate the additional costs of BWCs, and for the personnel costs of an Administrative Specialist that would be assigned to complete random reviews of camera footage.

- 10. A description of any variable that could affect revenue and cost estimates.**

Requests for BWC footage must be reviewed and redacted to comply with the privacy requirements established in the Maryland Public Information Act. These requests originate from residents, attorneys, and the media. A significant increase in requests is possible, but not expected. Given that MCPD currently receives over 100 requests monthly, any increase in requests will result in the need to shift responsibilities from existing resources in the department to meet the new demand or for an additional Information Technology Specialist within the Information Management Division. Pursuing the option of reallocating existing resources may create resource and capacity issues within MCPD, while the additional salary and benefits costs of an additional IT Specialist, Grade 23, is approximately \$136,000.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

The Bill’s implementation is expected to cost \$3.3 million over a six-year period. With the inclusion of an additional Information Technology Specialist within the Information Management Division, the six-year estimate would increase to \$3.47 million.

In FY22, costs would increase from \$994,940 to \$1,130,990.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

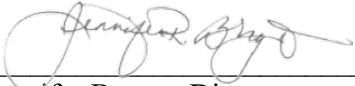
13. Other fiscal impacts or comments.

Article 71 of the Collective Bargaining Agreement with the Fraternal Order of Police establishes several restrictions on when BWC footage can be viewed. In particular, BWC footage can be viewed following a specific incident of a pursuit, use of force resulting in injury, collision of a police vehicle, an external complaint, or if there is reasonable basis to suspect an officer’s criminal activity or misconduct.

Bill 18-21 would require bargaining with respect to implementation.

14. The following contributed to and concurred with this analysis:

Neil Shorb, Department of Police
Taman Morris, Office of Management and Budget



Jennifer Bryant, Director
Office of Management and Budget

7/2/21
Date

ⁱ Each shift of active duty officers includes approximately 30 executive officers.
ⁱⁱ These are upgraded Body-worn Cameras from the supply procured from Axon.
ⁱⁱⁱ The one-time unit cost of a Body-worn Camera is \$664.05
^{iv} Licensing costs are an ongoing expense of \$92 per month per user. This fee covers the costs of unlimited storage, the camera’s warranty, software integrations, and software updates for 300 users.
^v Docking stations are equipped to charge eight Body-worn Cameras at time.
^{vi} Network connectivity is needed for the 75 Docking Stations needed for the 600 new Body-worn Cameras.

**TESTIMONY ON BEHALF OF THE COUNTY EXECUTIVE MARC ELRICH ON BILL 18-21, POLICE –
INTERNAL AFFAIRS PROCEDURES AND REPORTING**

Greetings Council President and Councilmembers, I am ACAO Caroline Sturgis. I appear before you on behalf of County Executive Elrich regarding Bill 18-21. The County Executive supports this bill.

The bill provides for random review of body-worn camera recordings by the Police Department, requires the Department's Internal Affairs Division (IAD) to report certain internal investigations to the Police Chief, and requires the Chief to report some of those investigations to the County Executive and County Council. Last year, the County Executive launched an independent audit of the police department and two of the areas of focus being evaluated are internal affairs and use of force. The preliminary report provides recommendations to enhance both areas, including an internal auditing protocol for body worn camera and other force related videos. The police department audit preliminary report will be available at the end of this month. The Executive is committed to implementing the recommendations offered by the independent consultant that are evidence-based and best practices.

Thank you for your time this afternoon.




OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Caroline Sturgis
Assistant Chief Administrative Officer

FROM: Edward B. Lattner, Chief 
Division of Government Operations

DATE: June 10, 2021

RE: **Bill 18-21, Police - Internal Affairs Procedures and Reporting Requirements**

Bill 18-21 provides for random review of body-worn camera recordings by the Police Department, requires the Department's Internal Affairs Division (IAD) to report certain internal investigations to the Police Chief, and requires the Chief to report some of those investigations to the County Executive and County Council. The bill is legally sufficient, but we write to highlight the relationship between the Bill's requirement for random review of body-worn camera recordings and the police collective bargaining agreement's (CBA) prohibition of routine review of those recordings. We also have some suggested edits.

Body-Worn Camera Video

The Bill provides as follows:

- (c) *Mandatory random review of body-worn camera recordings.*
 - (1) The Department must conduct periodic, random reviews of body worn camera recordings to assess:
 - (A) employee compliance with legal requirements and Department policy;
 - (B) employee performance; and
 - (C) consistency between employees' written reports and recordings.
 - (2) Except when performing a random review under paragraph (1), the Department must not review body-worn camera recordings, without cause, to discover acts of misconduct or instances of poor performance.

Article 72(D)(2) of the CBA provides as follows:

[Body Worn Camera System] recordings shall not be routinely reviewed for the express purpose of discovering acts of misconduct or instances of poor performance without cause. An employee's supervisor may use BWCS recordings to address performance when cause exists.

Council staff has concluded that the Bill language does not conflict with the CBA language. "The bill would distinguish this 'random' review [required by the Bill] from reviewing the recordings of a particular officer without cause [prohibited by the CBA]. The routine review of an officer's body camera footage without cause is precluded by the Department's current collective bargaining agreement with the Fraternal Order of Police (FOP)." Council Introduction Packet 2.

We believe the Council staff's conclusion is reasonable. Moreover, even if this provision of the Bill could be read to conflict with a sentence in the CBA, we do not believe this conflict rises to the level of a violation of the federal constitution's Contract Clause.¹

Technical Edits

We suggest the Council amend the term "review" in line 38 to "investigate," because this more accurately describes the role of IAD. The Bill compels the Department to conduct periodic, random "reviews" of body-worn camera recordings. IAD must then "investigate" recordings that meet the specified statutory criteria (e.g., the recording reveals potential violation of the Departmental use of force policy).

The word "in" should be inserted between "involved" and "the" in line 80. We also suggest that the phrase "if known" be inserted in line 80, after "demographic information," because demographic information may not be available to the Department.

cc: Christine Wellons, Legislative Attorney
Dale Tibbitts, Special Assistant to the County Executive
Marcus Jones, Police Chief
Haley Roberts, Associate County Attorney
Tammy Seymour, OCA

21-003444

¹ Despite the absolutist nature of the Clause, the Constitutional prohibition against impairing the obligation of contracts is not to be read literally. *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S. 470, 502 (1987). The Contract Clause does not prohibit governments from impairing contracts but limits a government's right to do so. The courts employ a three-part test for harmonizing the command of the Contract Clause with the necessarily reserved sovereign power of the government to provide for the welfare of its citizens. *Baltimore Teachers Union v. Mayor and City Council*, 6 F.3d 1012, 1015 (4th Cir. 1993). A reviewing court must determine: (1) whether there has been an impairment of the contract; (2) whether that impairment was substantial; and (3) if so, whether the impairment was nonetheless a legitimate exercise of the police power. *FOP Lodge No. 89 v. Prince George's Cty.*, 608 F.3d 183, 188 (4th Cir. 2010).



**The National Association for the Advancement of Colored People (NAACP)
Montgomery County Branch
Testimony - Bill 18-21, Police – Internal Affairs Procedures and Reporting
Requirements
Tuesday, June 22, 2021**

Good afternoon Council President Hucker and Council Members. Thank you for holding this hearing to receive comments on Council Bill 18-21 – Police Internal Affairs Procedures and Reporting Requirements.

The NAACP Montgomery County Branch supports the overall aim and direction of this bill. Further, we appreciate Council President Hucker's willingness to work with us as this bill moved from idea to written product.

Over the last year, since the death of George Floyd, we have seen the important role of video recording in general and body-worn cameras in particular in providing evidence in cases involving police use of excessive force. The effective and consistent use of body-worn cameras by police officers must be an integral part of 21st century policing and may provide the kind of transparency that leads to accountability.

However, body-worn cameras are of little value in discerning the contours of police interaction with residents if the footage recorded is not routinely and randomly reviewed. Council Bill 18-21 is a commendable bill as it seeks to improve police accountability through the random review of body-worn cameras, and through the prompt reporting of serious Internal Affairs Division (IAD) investigations.

However, The NAACP Montgomery County Branch, has some concerns with the "random" review of body cam video. We are concerned that the essential component of "random review" may be undermined by the "with cause" provision. While we are sympathetic to the FOP's concern that the review of body cam videos should not be used by management to target or harass officers, we believe that the product of the reviews which reveal a failure to comply with established policy should be used to instruct, re-train and potentially discipline if a review reveals egregious conduct. Because a 'with cause standard' undermines the "random review" required in the bill we urge you to clarify the language in the bill to assure that the randomness element is not lost. Further, we recommend that the department be required to submit a plan for "random review" which involves use of an algorithm which assures a truly "random review."

The NAACP continues to be on the forefront of diminishing and promoting the de-escalation of police use of force. We believe that CB18-21 is an important step in moving towards more accountable and transparent police practices in Montgomery County.

Thank you for the opportunity to testify and we look forward to continuing to work with you on legislation that brings equity and inclusion to every aspect of county government.

Jews United for Justice (JUFJ)

Melissa Coretz Goemann

Silver Spring, MD

www.jufj.org

**JEW'S UNITED
FOR JUSTICE**

THINK JEWISHLY. ACT LOCALLY.

**Testimony in Opposition unless Amended to Bill 18-21
Police - Internal Affairs - Procedures and Reporting Requirements
Public Hearing June 22, 2021 - 1:30 pm**

Dear Montgomery County Councilmembers:

My name is Melissa Coretz Goemann and I am offering this testimony in opposition, unless amended, to Bill 18-21 regarding Body Worn Cameras, on behalf of Jews United for Justice (JUFJ). JUFJ represents over 2,700 Jews and allies from across Montgomery County who, based on our shared values, work to advance economic and social justice and racial equity in our local community. I am a resident of Silver Spring and have worked on juvenile justice and civil rights issues for over 15 years, currently as the Senior Policy Counsel for the National Juvenile Justice Network.

Body worn cameras (BWCs) are an important tool in uncovering police misconduct to take corrective action. An extremely disturbing incident of police officers verbally abusing and traumatizing a 5-year-old boy who had left the grounds of East Silver Elementary School recently made national news. But this horrific incident didn't come to light until one year later, when the boy's mother sued Montgomery County and local media covered the lawsuit - even the Montgomery County Council and State's Attorney were unaware of this police abuse of power.

Police abuse of residents - and especially of children - must not be allowed to happen again. We appreciate Councilmember Hucker's work to address this wrong through the proposed Bill 18-21. However, without the amendments outlined below, we are concerned that this bill will not prevent police from continuing to keep misconduct hidden from the rest of the County government and the public.

We urge you to adopt these amendments:

1) Bill 18-21 expressly limits BWCs to officers in uniform or who are prominently displaying a badge. The bill should be amended to include both plain clothes and undercover officers. This

follows the new Gaithersburg City Police Department policy, which expressly requires BWCs for undercover officers.

2) The bill contains few details regarding the random reviews of BWC footage, making it very difficult to enforce. The Office of Legislative Oversight's Racial Equity and Social Justice (RESJ) Impact Statement on this bill stresses that the random review aspect of the bill is the key provision that could help to reduce racial misconduct in local policing. It can't do this, however, unless it is easily enforceable. In addition to the need to bolster this provision, we would like to expand the random reviews of BWC footage to include officers with a history of misconduct complaints.

3) The bill should provide requirements for public reporting about misconduct investigations and release of BWC footage to victims of misconduct and to the public. The RESJ Impact Statement also recommended that civilian complainants, like police officers, be given access to BWC footage to help inform their complaints.

4) The bill should require public reporting and publishing of information about misconduct investigations to the fullest extent possible under the newly amended MPIA.

5) The bill should contain language prohibiting collective bargaining on the substance of the bill's requirements.

6) Pursuant to the recommendation in the RESJ Impact Statement, the Council should increase citizen oversight of internal audit investigations in order to promote accountability for addressing allegations of police misconduct by implementing one of the following: a citizen review board; police review with citizen oversight; police review with a citizen-police appeal board; or an independent citizen auditor.

Our Jewish faith teaches us that "When we destroy one person, we destroy an entire universe" (Mishna Sanhedrin 4:5). We must make this bill as strong as possible to help prevent police from taking actions that can severely harm and even destroy people's lives.

Respectfully submitted,

Melissa Coretz Goemann, on behalf of Jews United for Justice



Roberto Martinez
Silver Spring, Maryland
On Behalf of the Silver Spring Justice Coalition

**Bill 18-21 - Internal Affairs - Procedures and Reporting Requirements - Testimony in
Opposition Unless Amended**

My name is Roberto Martinez and I am a criminal defense attorney in this County. I am testifying on behalf of the Silver Spring Justice Coalition; a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County. We envision a state and county where community and individual needs for safety are met while police harm is eliminated.

Body-worn cameras recorded officers killing Robert White and Finan Berhe, as well as officers terrorizing a 5 year old child; yet all of these officers remain on active duty. I know from my work that months after killing Mr. White, Officer Badgular abused and illegally arrested another County resident. The case was dismissed, but Officer Badgular is still on active duty. These cases illustrate that reviews of body worn camera footage have little impact, and we do not believe that will change with this bill, especially not in its current form.

For this reason, SSJC opposes Bill 18-21 unless it includes a number of amendments to increase transparency and accountability, such as:

- All reviews of body worn camera recordings must be conducted by the Internal Affairs Division and random reviews must have parameters beyond the word “random,” such as, a specific percent of recordings, taking place with a specified frequency, and in a specific period of time;
- Require additional random reviews of recordings of officers with prior misconduct complaints;
- Require review by IAD of the recordings of *any* alleged incident that forms the basis for *any* misconduct complaint;
- Create a mechanism for releasing body-worn camera recordings to the public; the Office of Legislative Oversight made a similar recommendation in its Racial Equity and Social Justice Impact Statement;

- The body-worn camera requirement must be consistent with the recently enacted State law and it should specify that cameras must be used by plain clothes and undercover officers;
- All information that is provided to the County Executive, County Council, and State's Attorney under the bill should also be published on a public dashboard, to the extent permitted by law; and
- The Bill's provisions cannot be subject to collective bargaining.

Only if this bill is strengthened to include far greater transparency and accountability will it have any chance of actually decreasing harm by police.

SSJC Redline

Bill No. 18-21

Lead Sponsor: Council President Hucker
Co-Sponsors: Councilmembers Jawando and Riemer

AN ACT to:

- (1) require the issuance of body-worn cameras under certain circumstances;
- (2) require the internal random review of certain body-worn camera recordings;
- (3) require review by the Internal Affairs Division of certain body-worn camera recordings;
- (4) require the internal reporting of certain investigations to the Chief of Police;
- (5) require the reporting of certain investigations, investigative files, and body-worn camera recordings to the County Executive, the County Council, and the State's Attorney;
- (6) require maintenance of a log of each time a body-worn camera recording is accessed or redacted; and
- (7) generally amend the law governing policing, body-worn camera recordings, and police internal affairs.

By amending

Montgomery County Code
Chapter 35, Police
Section 35-9

The County Council for Montgomery County, Maryland approves the following Act:

- 1 **Sec. 1. Section 35-9 is amended as follows:**
- 2 **35-9. [Reserved.] Internal Affairs Procedures and Reporting Requirements.**
- 3 (a) *Definitions.* For purposes of this Section, the following terms have the
- 4 meanings indicated.
- 5 *Administrative misconduct* means alleged misconduct by a Department
- 6 employee that, if true, could result in discipline against the employee.
- 7 *Body-worn camera recording or recording* means a video or audio
- 8 recording obtained through a camera system worn on the person of an
- 9 employee of the Department.
- 10 *Chief or Police Chief* means the Chief of the Department or the Chief's

11 designee.
12 *Department* means the Montgomery County Police Department.
13 *Internal Affairs Division* or *Division* means the division or unit of the
14 Department with primary responsibility for investigating administrative
15 misconduct by a Department employee if the investigation could result in
16 disciplinary action against the employee.
17 *Investigation* means an investigation conducted by the Division into
18 allegations of administrative misconduct by an employee of the
19 Department.

Formatted: Font: Italic

20 (b) *Mandatory issuance and use of body worn cameras.*

The Department must issue

~~(1) 21~~ a body-worn camera, ~~for~~ to all law enforcement officers who regularly interact with members of the use of a public as part of their official duties:

~~(2) 22~~ Body-worn cameras must be used by all on-duty-employee of the, and off-duty and armed, law enforcement officers, including all plain-clothes and undercover officers.

Formatted: Outline numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

~~23~~ Department, whenever the employee:

~~24~~ (1) is in uniform; or

~~25~~ (2) prominently displays a badge or other insignia.

26 (c) *Mandatory random review of body-worn camera recordings.*

27 (1) —The ~~Department~~Internal Affairs Division must conduct periodic, random ~~reviews~~review of body

~~28~~ worn camera recordings to assess:

~~29~~ (A) ~~employee~~Employee compliance with legal requirements and

~~(A) 30~~ Department policy;

~~(B) 31~~ (B) ~~employee~~Employee performance; and

~~32~~ (C) ~~consistency~~Consistency between employees' written reports and

~~(C) 33~~ recordings.

Formatted: Outline numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

~~34~~ (2) —~~Except when performing a~~In addition to periodic random ~~review under paragraph~~reviews required in (1), the

Formatted: Outline numbered + Level: 1 + Numbering Style: A, B, C, ... + Start at: 1 + Alignment: Left + Aligned at: 0.75" + Indent at: 1"

34 ~~Department must not review~~ Division shall conduct periodic random reviews of all body-worn camera recordings;

35 ~~without cause, to discover acts generated by law enforcement officers who have received a complaint of misconduct or instances of poor~~ within the past three years;

36 ~~performance.~~

(3) Periodic, random reviews required in (1) and (2) shall be:

(A) Performed within 90 days of the date the body worn camera recording is stored in the Department's records.

(B) Of a statistically valid sample of all body worn camera recordings stored each month;

(4) The Chief shall provide, 90 days after the enactment of this Bill and within 30 days of the beginning of each year thereafter, to the County Executive and the County Council a detailed description of the review process established pursuant to this Bill.

37 (d) *Mandatory review by the Internal Affairs Division.* The Internal Affairs

38 Division must review, in addition to any matter it is required to review by subsection (c), the Chief, or under Department policy, any body-worn camera recording

39 ~~the Chief or under Department policy, any body-worn camera recording~~
40 ~~identified under subsection (e) that:~~

41 ~~(1) relates to potential administrative misconduct by an employee of~~
42 ~~the Department; and~~

43 ~~(2)~~ involves:

44 (A) a use of force under Section 35-22;

45 (B) a child under the age of 18;

46 ~~(C) a fatality or serious bodily injury;~~

(D) a complaint (sworn or not sworn) by an individual of police misconduct by any person, for which a body-worn camera recording has been made; or

(2) relates to possible administrative misconduct by an employee of the Department involving:

Formatted: Indent: First line: 0.5"

Formatted: Highlight

- 46 (A) a potential criminal offense by a Department employee;
47 ~~(D) a fatality or serious bodily injury; or or~~
48 ~~(E) potential discrimination or harassment by an employee on~~
49 the basis of race, ethnicity, national origin, sex, sexual
50 orientation, gender expression, gender identity, disability, or
51 religion.

Formatted: Font: 11 pt

Formatted: Font: 11 pt

(e) Except when performing a random review under paragraph (c) or mandatory review under paragraph (d), the Division must not review body-worn camera recordings, without cause, to discover acts of misconduct or instances of poor performance.

52 (ef) *Monthly internal affairs reports to the Chief.* At least once a month, the
53 Internal Affairs Division must report to the Chief regarding the status of
54 each pending investigation. For each investigation, the report must
55 include, at a minimum, the nature of the allegation, the date of the
56 complaint, the name or each employee involved, and the name of the
57 investigating officer. The report must also include a statement regarding Division compliance with the requirement for periodic, random reviews in subsection (c) and the mandatory reviews in subsection (d).

58 (fg) *Immediate reporting of certain investigations to the Chief.*

59 (1) The Internal Affairs Division immediately must report to the Chief
60 regarding any investigation that involves:

- 61 (A) a use of force under Section 35-22;
62 (B) a child under the age of 18;
63 (C) a potential criminal offense by a Department employee;
64 (D) a fatality or serious bodily injury; or
65 (E) potential discrimination or harassment by an employee on
66 the basis of race, ethnicity, national origin, sex, sexual
67 orientation, gender expression, gender identity, disability, or
68 religion.

Formatted: Font: 11 pt

69 (2) Within 48 hours of submitting a report under paragraph (1), the

70 Division must provide to the Chief any body-worn camera
71 recordings associated with the investigation.

72 (gh) *Required reports to the County Executive and the County Council.*

73 Within 24 hours after receiving a report of an investigation under
74 subsection (f), the Chief must notify the County Executive and the
75 County Council of the existence and nature of the investigation,
76 including:

77 (1) the date of any complaint, if applicable, that precipitated the investigation;

78 (2) the date and location of the incident under investigation;

79 (3) ~~the general nature~~ a description of the allegations under investigation;

80 (4) demographic, including racial, ethnic, and gender, information regarding
~~residents~~ individuals involved in the matter

81 under investigation; and

82 (5) the category of the investigation under paragraph (1) of subsection
83 (f).

84 (hi) *Required reports to the State's Attorney.* The Chief must notify the
85 State's Attorney regarding the existence and nature of an incident or
86 investigation within ~~7 days~~ 48 hours after the Chief:

87 (1) receives a report under subsection (e) that involves a potential
88 criminal offense by a Department employee; or

89 (2) otherwise becomes aware of a potential criminal offense by a
90 Department employee.

91 (j) *Copies of investigative files and recordings.*

92 (1) If the County Executive, the County Council, or the State's
93 Attorney requests a copy of an investigative file or a body-worn
94 camera recording associated with an incident or investigation
95 under subsections (g) or (h), the Department must provide the
96 requested copy within 7 calendar days, unless a state or federal
97 law:

98 (A) requires an earlier disclosure; or

99 (B) prohibits the disclosure.

100 (2) The recipient of an investigative file or a body-worn camera
101 recording under paragraph (1) must not redisclose the file or
102 recording except in accordance with the Maryland Public
103 Information Act or other applicable law.

(3) If the complainant associated with an incident or investigation under subsections (g) or (h) requests a copy of an investigative file or a body-worn camera recording, the Department must provide the requested copy within 7 calendar days, unless a state or federal law:

(A) requires an earlier disclosure; or

(B) prohibits the disclosure.

104 ~~(j)~~ *Log of access to body-worn camera recordings.*

105 (1) The Department must maintain a log that records each instance that
106 a person accesses or redacts a body-worn camera recording.

107 (2) The log must include, at a minimum, the time and date of the
108 access or redaction, and the identity of the person accessing or
109 redacting the recording.

110 ~~(k)~~ *Prompt completion of internal investigations.* At least once every 3
111 months, the Chief must report to the County Executive and the County
112 Council regarding:

113 (1) each investigation that is not complete within 180 days;

114 (2) the reasons for the delay; and

115 (3) an estimate of when the investigation will be complete.

(m) Public access to investigations by Internal Affairs Division. To the extent permitted by applicable law, the Department shall establish and maintain a publicly accessible dashboard on the Department website listing all pending Internal Affairs Division investigations, including, but not limited to:

(A) the names and districts of the officers and districts of the officers and the offenses under investigation,

(B) the date the investigation was initiated,

(C) finding of the investigation (including interim determinations), (D) demographic information of the victim(s) of the alleged misconduct;

(E) footage of all body-worn camera recording relevant to the investigation

(n) Reporting and public disclosure by the County Attorney of litigation related to police misconduct.

(1) The County Attorney shall notify the County Executive and the County Council of any and all litigation brought against the County or any County component or employee, which involves a claim of misconduct by an employee of the Department, within 24 hours of receiving legal service of such litigation.

(2) The County Attorney shall establish and maintain a publicly accessible online website that links to and describes any and all litigation in which the County Attorney, or its designee, is properly an attorney of record for litigation involving allegations of police misconduct, as set forth herein:

(A) The website shall be publicly available within 6 months after the enactment of this Bill.

(B) The website shall list, for each such case, the names of plaintiff(s) and defendant(s), the date the case was filed, a description of the claim(s), a description (including any amounts) of any settlement or court decision in the case, and other information the County Executive or Policing Advisory Committee deems appropriate.

(D) The website shall include all cases involving allegations of misconduct by a Department employee that the County Attorney, or its designee, has been an attorney of record, that have been filed over the past 5 years. All such information shall be posted on such website within 12 months of the enactment of this Bill.

(E) The County Attorney shall update the website with new cases within 24 hours after the case has been received by the County Attorney.

All other updates shall be completed within 30 days.

(o) County Executive annual report on Internal Affairs Division investigations. The County Executive shall issue to the County Council and the public an annual report summarizing the Internal Affairs Division investigations that occurred during the previous fiscal year.

(1) The report shall be issued within 90 days after the end of the fiscal year.

(2) The report shall contain as much information as is permitted by state law, including the allegations investigated by the Division, the status of any open investigations, and any recommended policy changes based on the past year's investigations.

(3) The report shall include a statement regarding Division compliance with the requirement for periodic, random reviews in subsection (c) and the mandatory reviews in subsection (d).

(p) *Collective bargaining preempted.* The provisions of subsections (a) through (o) constitute minimum standards within the meaning of Section 33-80(c)(2) and are enacted within the scope of employer rights under Section 33-80(b)(1) - (5), and therefore are not subject to collective bargaining.



BODY WORN CAMERA SYSTEM

FC No.: 430

Date: 04-20-16

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

Contents:

- I. Policy
- II. Definitions
- III. Legal Consideration
- IV. Implementation
- V. General Operational Procedures
- VI. Activation of the Body Worn Camera System
- VII. Prohibited Use
- VIII. Reporting/Documentation
- IX. Internal Access, **Review**, and Use of Recordings
- X. Retention of Data
- XI. **Records Requests and Release of Recordings**
- XII. CALEA Standards
- XIII. Proponent Unit
- XIV. **Cancellation**

I. Policy

- A. It is the policy of this department to utilize the Body-Worn Camera System (BWCS) for the purpose of documenting evidence and accurately recording, through video and audio, interactions that occur between officers and members of the public. All BWCS equipment and recordings are the property of the Montgomery County Police Department.
- B. ***The Montgomery County Police Department (MCPD) is a designee for the County on matters regarding BWCS for police officers working for Montgomery County government.***
- C. ***Article 72 of the Fraternal Order of Police Collective Bargaining Agreement (FOP CBA) and this policy govern the use of BWCS by Fraternal Order of Police (FOP) bargaining unit members.***

II. Definitions

- A. Body-Worn Camera System (BWCS) – a camera system worn on the person of a uniformed law enforcement officer, or an officer prominently displaying the officer’s badge or other insignia, that is capable of recording video and intercepting oral communications.
- B. ***Officer – All sworn Montgomery County police officers.***
- C. ***Employee – All employees of the Montgomery County Police Department (both sworn and non-sworn).***
- D. ***FOP bargaining unit member – A sworn Montgomery County police officer up to and including the rank of Sergeant (including Police Officer Candidates).***

III. Legal Consideration

- A. Pursuant to the “State Wiretap Act” under Sections 10-401, et seq. of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, it is unlawful for any person to willfully intercept, endeavor to intercept, disclose, endeavor to disclose, use, or endeavor to use any oral communications. “Oral communication” is defined as any conversation or words spoken to or by any person in private conversation.
- B. The State Wiretap Act makes it lawful for a law enforcement officer, in the course of the officer’s regular duty, to intercept an oral communication with a body-worn digital recording device capable of recording video and oral communication if:
 - 1. The law enforcement officer is in uniform or prominently displaying the officer’s badge or other insignia;
 - 2. ***The law enforcement officer is making reasonable efforts to conform to standards in accordance with § 3-511 of the Public Safety Article for the use of body worn digital recording devices;***
 - 3. The law enforcement officer is a party to the oral communication;
 - 4. The law enforcement officer notifies, as soon as is 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.
- C. The State Wiretap Act also makes it lawful for a law enforcement officer to intercept an oral communication where the officer is party to the communication and where all parties to the communication have given prior consent to the recording.

IV. Implementation

- A. The BWCS program will be instituted for designated uniformed officers for patrol and patrol related functions. The BWCS will accurately document events, actions, conditions and statements made during law enforcement related encounters and activities as authorized under this program.
- B. The Department will ***provide training to officers prior to use of the BWCS. Training will include, but will not be limited to, operation of the BWCS and a review of policy, as well as alternative methods for effective notification of recording to persons with special needs or limited English proficiency.***
- C. Participating officers will use the BWCS in accordance with their training, ***the FOP CBA (applicable to FOP bargaining unit members), and this policy. Violations of this policy may result in discipline.***

V. General Operational Procedures

- A. Only officers trained in the proper use of the BWCS will use the system.
- B. ***All BWCS recordings and recording devices will be used for official business only. Use of the BWCS will comply with all applicable laws, the FOP CBA (applicable to FOP bargaining unit members), and this policy.***
- C. Prior to going into service at the beginning of each shift, officers will perform ***a function test*** of the BWCS in accord with their training ***and manufacturers recommendations*** to ensure that the BWCS is operating

properly. *Officers discovering a BWCS malfunction shall promptly report the malfunction to a supervisor.*

- D. *The BWCS will be worn in a manner consistent with Department training.*
- E. Officers are only authorized to use a BWCS while in uniform or prominently displaying the officers badge or other insignia.
- F. Officers may, but will not be required to, use the BWCS while off duty. Any off duty use must be for law enforcement related encounters and activities as authorized under this policy.
- G. Officers are authorized to use a BWCS during secondary employment *in situations where the off-duty use is for law enforcement related encounters and activities as authorized under this policy.*
- H. Officers will only wear a department issued BWCS.

VI. Activation of the Body Worn Camera System

- A. Officers shall only activate the BWCS for legitimate law enforcement purposes.
- B. *Except as otherwise exempted by law*, officers will notify individuals that they are being recorded as soon as practicable, unless it is unsafe, impractical, or impossible to do so.
 - 1. *This notice provision is satisfied even if another individual becomes a party to the communication after the initial notice has been provided.*
 - 2. *Examples of potential notification language include:*
 - a. *“You are being audibly and visually recorded”; or*
 - b. *“Our interaction is being recorded by my body camera”.*
- C. The BWCS must be activated during all law enforcement related encounters and activities such as, but not limited to, the following examples;
 - 1. *At the initiation of a call for service or other activity that is investigative or enforcement in nature.*
 - 2. All enforcement and investigation related citizen contacts.
 - 3. Documentation of evidence that can be used in the prosecution of criminal and traffic offenses.
 - 4. Arrests and transports.
 - 5. Traffic stops.
 - 6. Priority responses.
 - 7. Vehicle and foot pursuits.
 - 8. Suspicious situations.
 - 9. All searches (persons, vehicles, structures, effects), except strip searches.
 - 10. Interviews and interrogations.
 - 11. Mental health interventions.
 - 12. Any contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording.
- D. Once the BWCS has been activated, officers will continue to record until:
 - 1. The officer has left the scene and anticipates no further involvement in the event;
 - 2. A supervisor has authorized that a recording may cease;
 - 3. *The officer is no longer engaged in a related investigative or enforcement activity; or*
 - 4. The event has concluded. An event will be deemed “concluded” when:
 - a. all arrests have been made and arrestees have been transported and released from custody;
 - b. all witnesses and victims have been interviewed;

- c the continued recording will not serve to obtain additional evidence; and
 - d. no further law enforcement action is likely to occur.
- E. Whenever the BWCS equipment is deactivated, the officer must record a brief verbal explanation for the deactivation prior to turning off the recording.
- F. There may be instances in which officers are *unable to activate their BWCS due to circumstances making it unsafe, impossible, or impractical to do so. In these exigent circumstances, officers shall begin recording with the BWCS at the first reasonable opportunity to do so* and document the reason for the delayed start in the incident report and/or as part of the recording.
- G. In situations when community members, witnesses, crime victims or other parties wish to share information related to criminal activity, but refuse to do so while being recorded, officers will have the discretion to turn off the BWCS during the interview. The preference is to record such statements; however, it is recognized that such persons may be hesitant to provide information while being recorded due to a fear of retaliation, privacy concerns or a feeling that the information is sensitive. In these situations, officers may decide that obtaining the information is more important than recording the conversation. In such situation, the officer must record a brief verbal explanation for the deactivation prior to turning off the recording.
- H. The BWCS may be deactivated during conversations with officers or supervisors during information sharing sessions or discussing tactics and strategy.
- I. Officers are required to obtain consent prior to recording an interview with a victim of a sex offense. Consent in these cases must be documented/recorded on camera.

VII. Prohibited Use

- A. A BWCS will not be used to create recordings in locker rooms, dressing rooms, and restrooms unless part of a criminal investigation.
- B. A BWCS will not be used to create recordings of strip searches.
- C. A BWCS *shall not be used* to record *employees* during *routine* administrative activities.
- D. Officers will not intentionally record undercover officers or confidential informants without their consent.
- E. *Officers shall not record non-work related personal activity.*

VIII. Reporting/Documentation

- A. Whenever a BWCS recording is made of an event that results in a police report, the reporting officer must note in the report that the recording exists, if known.
- B. All BWCS recordings must be *uploaded* by the officer at the end of his or her assigned shift, unless an exception is authorized by a supervisor. The officer will be responsible for properly categorizing and tagging the recording at the time of the *upload*.

- C. In a critical incident (such as an officer involved shooting, in-custody death or other officer involved incident that results in serious injury or death), a supervisor may immediately take custody of the BWCS and, in such case, will be responsible for the *upload*.

IX. Internal Access, Review, and Use of Recordings

- A. *A BWCS recording may be reviewed by the recording officer for any work related reason, including but not limited to:*
1. *To ensure* the BWCS system is working properly.
 2. *To* assist with the writing of a report or other official document.
 3. *To* review/critique his or her own performance.
 4. *To* review/prepare for court.
 5. *To respond to a civil suit, criminal investigation (if the officer is the subject of the investigation), citizen complaint, or administrative complaint. The officer shall have the ability to review their BWCS recording of the subject incident prior to making a statement.*
- B. *Recordings may also be reviewed:*
1. By a supervisor.
 2. *By management for any legitimate matter, including, but not limited to:*
 - a. *to review evidence.*
 - b. *to participate in an official investigation such as a personnel complaint, administrative inquiry, or a criminal or civil investigation.*
 - c. *to assess training value.*
- C. *Officers are not allowed to view another officer's recording(s) except for a work-related reason which is authorized by a supervisor.*
- D. *An officer or FOP representative shall have access to a BWCS recording that is directly related to any administrative investigation or civil suit where the officer is named as a defendant.*
- E. *When a recorded incident or recording of an incident is used to question an officer during a formal internal investigation, access to all BWCS recordings related to the incident shall be provided to the officer at least five working days in advance of questioning.*
- F. *A supervisor shall review the BWCS recording of an incident when:*
1. *An officer is involved in a reportable use of force incident.*
 2. *An officer is injured during the performance of his or her duty.*
- G. *BWCS recordings shall not be routinely reviewed for the express purpose of discovering acts of misconduct or instances of poor performance without cause. An officer's supervisor may use BWCS recordings to address performance when cause exists. Any recording used must be reviewed with the subject officer prior to any documentation of performance. Any documented review will be included in the officer's supervisory file. The officer shall have the opportunity to respond in writing to the document. The response shall be attached to the supervisor's document. The officer and the officer's representative shall be provided access to the referenced recording if requested.*
- H. *Officers will be provided written notice from their immediate supervisor, or designee, of the intent to use a BWCS recording(s) for the purpose of performance evaluations which result in a below average rating in one or more categories.*
1. *This notice will be provided at least four months prior to the end of the rating period.*

2. *Any recording, supporting a below average rating, being referenced within the last four months of the rating period may also be used if the officer received written notice at least 30 days before the conclusion of the rating period.*
 3. *If a recording, supporting a below average rating, is referenced from the last 30 days of the rating period, the performance evaluation will serve as the written notice.*
 4. *Any portion of a recording used for the purpose of documenting below average performance in a performance evaluation will be reviewed with the subject officer and documented in a counseling session in accordance with Article 51, Section D, of the CBA.*
- I. *BWCS recordings may be used as a basis for discipline. Officers will be provided written notice of the department's intent to rely upon a BWCS recording(s) as a basis of discipline. This notice will be provided at the time the officer is served with the MCP 242 (Internal Investigation Notification Memorandum).*
1. *The officer will be afforded the opportunity to review the BWCS recording(s) related to the incident being investigated administratively with their selected representative at least five days prior to being interrogated.*
- J. *Officers will be provided written notice of the intent to utilize BWCS recordings for training purposes. The notice and opportunity to review the recording, will be provided at least ten working days before the recording is used in the training venue.*
1. *An officer captured in the recording (audio or video) may object to the use of the recording, in writing, to the Director of the Public Safety Training Academy (or designee) within five working days of receiving notice of intent to use the video for training as to why he or she does not wish the recording to be used. The Director of the Public Safety Training Academy (or designee) will consider any reason(s) submitted by the officer before proceeding with use. The decision shall be based upon a determination as to whether the training value outweighs the officer's objection.*
- K. *A log will be kept to record access to all recordings and officers shall have timely and ongoing access to the log. The log will include the:*
1. *Name of the employee accessing the recording;*
 2. *Reason for access with reasonable clarity;*
 3. *Date recording was accessed;*
 4. *Length of time it was reviewed, and*
 5. *Any copying or editing.*
- L. *A BWCS recording of a constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.*
- M. *The stored video and audio data from a BWCS recording may not:*
1. *Be used to create a database or pool of mug shots;*
 2. *Be used as fillers in photo arrays; or*
 3. *Be searched using facial or voice recognition software.*
 - a. *This does not prohibit the use of recognition software to analyze the recording of a particular incident when a sworn supervisor has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording.*
- N. *Employees shall not access, obtain, attempt to obtain, or copy/convert for their personal use any recording produced by a BWCS. Employees shall not upload BWCS recordings to public and/or social media websites.*

O- Except as authorized by policy, employees shall not attempt to copy, delete, alter, release, reuse, modify or tamper with BWCS recordings in any manner. Employees are prohibited from making a copy of a BWCS audio/video recording by using another recording device, such as a cell phone.

X. Retention of Data

A. All original BWCS recordings are the property of the Montgomery County Police Department and shall be *securely stored and* retained according to the department's retention schedule and consistent with state law and existing evidence protocols, unless a specific request is made to store them for a longer period of time by a person authorized by the Department.

B. BWCS recordings that can be used in an investigation or captures a confrontational encounter between an officer and a member of the public will be deemed "evidentiary" and categorized and tagged according to the type of incident. Recordings that do not contain evidence or capture routine, non-confrontational encounters will be deemed "non-evidentiary".

C. *Non-evidentiary* recordings will be destroyed after **210** days, unless the department deems it necessary to retain the recording for a longer period of time.

1. A recording will be retained *longer than 210 days* if an officer or the officer's representative provides notice to the Department within **210** days of the date of the recording of its potential use in an administrative hearing.
2. *Performance evaluation shall not be the sole reason for the Department retaining a recording beyond the agreed upon term.*
3. *An officer may elect to save BWCS recordings for longer than 210 days if the recording was used to support a performance evaluation which resulted in a single category being rated as below requirements.*

D. *If an officer activates a BWCS generating a recording of a prohibited use or that is not a law enforcement related encounter or activity, the officer shall notify his or her supervisor promptly. Recordings deemed by the department to be recorded inadvertently and which are of no legitimate purpose to the department, shall be destroyed expeditiously.*

XI. Records Requests and Release of Recordings

A. The public release of BWCS recordings will be conducted in accordance with applicable public records laws.

B. *(This section applies to FOP bargaining unit member only)*
The Department shall ensure that all external requests for copies of recordings, including subpoenas and summonses, will be reviewed for compliance with applicable standards, including those imposed by law, provisions of this policy, and the FOP CBA (applicable to FOP bargaining unit members). The Department will maintain a log of all MPIA requests for BWCS recordings that it receives. The log, the underlying MPIA request, and the requested recording will be made available to the FOP for inspection. If the FOP objects to the release of any portion of the recording, it must promptly notify the department of its objection(s) and its intent to file a "reverse MPIA" action if the Department decides to release the requested recording. The Department will promptly notify the FOP of any decision to release the requested recording and the date and time of that release, unless the FOP first serves the department with a "reverse MPIA" action it has filed in a court of competent jurisdiction. The Department and the FOP will make all reasonable efforts to provide each other with expeditious notice under this section

given the relatively short time limits in the MPIA and its overall policy of providing the public with prompt access to public records without unnecessary delay.

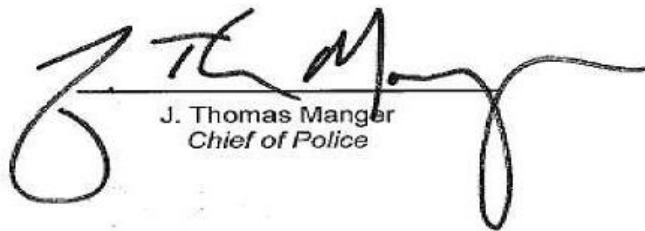
- C. *(This section applies to FOP bargaining unit member only)*
Release of BWCS recordings in absence of a specific request.
 - 1. *The Department will provide written notice to the FOP prior to the release of any BWCS recording to the public, except in the event of an emergency or bona fide public safety need the Department may be unable to provide written notice until after the release. This does not include release of recordings in connection with litigation.*
 - 2. *In events where there is no exigency, an officer captured in the video or audio recording may object to the release of the recording, in writing, to the Chief of Police (or designee) within two calendar days of receiving notice of intent to release the recording as to any reason(s) why he or she does not wish the recording to be released. The Chief of Police (or designee) will consider any reason submitted by the officer before proceeding with release.*
- D. *The release of recordings of an officer's death or injury shall not occur absent compelling law enforcement related reasons to release the recording or in situations where the release of these recordings are required by law.*
- E. Recordings will not be disseminated by the employee without receiving written permission under the authority of the Chief of Police.

XII. CALEA Standards: 41.3.8

XIII. Proponent Unit: IMTD

XIV. Cancellation:

This directive cancels Function Code 430, effective date 06-08-15.



J. Thomas Manger
Chief of Police



DISCIPLINARY PROCESS FOR LEOBR-COVERED SWORN OFFICERS

FC No.: 301

Date: 08-16-02

Contents:

- I. Policy
- II. Authority in Disciplinary Matters
- III. Definitions
- IV. Filing of Complaints
- V. Investigation of Complaints
- VI. Summary Punishment
- VII. *IAD* Notification Procedures
- VIII. Proponent Unit
- IX. Cancellation
- Appendix A: MCP 302, "Internal Inquiry Form"
- Appendix B: MCP 580, "Compliment/Complaint Form"

I. Policy

A relationship of trust and confidence between the department and the community is essential to effective law enforcement. It is important to establish a disciplinary process which enables the department to initiate positive, corrective action for improper conduct while at the same time protecting *employees* from unwarranted criticism for properly discharging their duties.

Discipline must be fair and equitable. A disciplinary action against an employee must be initiated promptly when it is evident that the action is necessary to maintain an orderly and productive work environment. Except in cases of theft or serious violations of policy or procedure that create a health or safety risk, disciplinary actions must be progressive in severity. The severity of the action should be determined after consideration of the nature and gravity of the offense, its relationship to the employee's assigned duties and responsibilities, the employee's work record, and other relevant factors.

It is the policy to invite *any* individual to bring to the attention of the department complaints about the conduct of its employees whenever that person believes an employee acted improperly. Further, it is the policy of this department to provide a thorough, fair, and expeditious disposition of complaints regarding the conduct of department employees.

Complaints will be received courteously *by any employee of the department*, and the department will make every effort to ensure that no adverse consequences occur to any person as a result of having brought what they believe to be a legitimate complaint or information to the attention of the department. The

procedures enumerated within *this directive* apply to allegations of misconduct against department employees, both on- and off-duty.

II. Authority in Disciplinary Matters

The Chief of Police has authority for disciplinary action involving both sworn personnel, within the guidelines of the Law Enforcement Officers' Bill of Rights (LEOBR, *Article 27, Sections 728 - 734D, Annotated Code of Maryland*), and civilian employees. (CALEA 26.1.5)

III. Definitions (CALEA 52.1.9)

- A. **Complaint**: An allegation of misconduct made against *an employee* of the department.
- B. **Serious Allegations of Misconduct**: Includes, among other acts, physical brutality, complaints which allege racial prejudice, misappropriation of monies, or untruthful statements.
- C. **Minor Allegations of Misconduct**: Not enumerated in this directive, but include those allegations, which if sustained, would be appropriately *resolved* through the imposition of summary punishment or use of the MCP 30, "Supervisor's *Documentation* Form." (CALEA 52.1.1.a)
- D. **Brutality**: The use of excessive or unjustified force by an officer in the exercise of official duties.
- E. **Inquiry**: *Both a form (MCP 302, "Internal Inquiry Form," see Appendix A) and an inquiry process developed by the department to process and document the allegation of and the factual occurrence of minor rule violations not deserving of disciplinary action if found to have occurred. Investigations and/or inquiries done in accordance with the inquiry process are generally not done under the guidelines of the LEOBR. Additionally, documentation generated during such an inquiry will be expunged one year following the completion of the inquiry.*
- F. **Formal Investigation**: *An investigation conducted by the Internal Affairs Division (IAD), or other designated department personnel, into allegations of administrative misconduct by employees of the department that, if true, would or could result in disciplinary action. These investigations are done in accordance with the LEOBR, negotiated contracts,*

Montgomery County Personnel Regulations, and department directives.

- G. **Internal Investigative Review Panel (IIRP):** *A five-member panel consisting of the three assistant chiefs, the Director, IAD, and the commander of the involved officer(s). Each of these individuals is a voting member. The County Legal Advisor and Legal and Labor Relations Division attorneys are also in attendance for advisory purposes; however, they have no voting rights. IIRP meetings are facilitated by the Director, Personnel Division. The panel will convene on a regularly scheduled basis for the purpose of reviewing sustained formal internal investigations for determination of findings and recommendations on discipline.*
- H. **Summary Punishment:**
- Disciplinary action implemented by the highest ranking officer of a unit, or officer acting in that capacity, which may be imposed when the facts constituting the offense are not in dispute. *The officer receiving summary punishment waives a hearing and accepts the punishment imposed. Article 27, Section 734A*
 - Summary punishment may not exceed three days suspension without pay, or a fine of \$150.00. *No other or lesser form of discipline may be included in summary punishment, as this form of punishment is restricted to suspension or fine. Article 27, Section 727(f)*
- I. **Counseling:** *Supervisory counseling of subordinates is nondisciplinary corrective action. In most cases, the action taken will not be made part of the employee's personnel record. An exception is the action taken in at-fault accidents. Counseling will be documented on the MCP 30 when appropriate. (CALEA 26.1.5)*
- J. **Oral Admonishment:** *A spoken warning or indication of disapproval concerning a specific act, infraction, or violation of a policy or procedure that is usually given by the immediate supervisor and is noted for the record but does not become part of an employee's personnel record. (CALEA 26.1.5)*
- K. **Written Reprimand:** *One of the lowest levels of disciplinary action permitted under the Montgomery County Personnel Regulations (section 33.1). The letter is a written statement concerning a specific act, infraction, or violation of a policy or procedure and is included in the employee's personnel file.*
- L. **Forfeiture of Annual Leave or Compensatory Time:** *Except where prohibited by the Fair Labor Standards Act, the removal of a specified number of hours from the annual leave or compensatory time balance of an employee. The amount forfeited may not be less than*

1 day nor more than 10 days. (This section is not applicable to FOP Bargaining Unit members.)

- M. **Suspension:** *The placing of an employee in leave without pay status for a specified period, not to exceed 40 hours, for a specific act, infraction, or violation of a policy or procedure. The Chief Administrative Officer may approve a suspension for more than 40 hours, but under no circumstances may a suspension exceed the number of hours scheduled for 1 calendar month. An employee voluntarily may accept a forfeiture of annual leave in lieu of suspension on an hour-for-hour basis. (This section is applicable only to FOP Bargaining Unit members.)*
- N. **Suspension Pending Investigation of Charges or Trial:** *The placing of an employee in leave without pay status for an indefinite period pending investigation of charges or trial for job-related offenses. If found innocent, or the charges are dismissed, the employee must be reinstated without loss of pay. Any salary due for the period of suspension must equal the employee's normal earnings less the amount earned in other employment obtained and engaged in during the period.*
- O. **Demotion:** *The movement of an employee from one merit system position or class to another with a lower grade level assignment. This sanction may only be imposed for performance-related events.*
- P. **Dismissal:** *The removal of an employee from the county service for just cause.*
- Q. **Non-Punitive Transfer:** *The Chief of Police has the authority "to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including, but not limited to, transfer and reassignment where that action is not punitive in nature and where the chief determines that action to be in the best interest of the internal management of the law enforcement agency." Article 27, Section 728(c)*
- R. **Unfounded:** *The investigation of the complaint reveals that the acts complained of did not occur.*
- S. **Insufficient Evidence:** *The investigation failed to disclose sufficient evidence to prove or disprove the allegation.*
- T. **Exonerated:** *The incident did occur, but the actions of the involved employee(s) were justified, lawful, and proper.*
- U. **Sustained:** *The investigation disclosed sufficient evidence to prove an allegation of misconduct.*

V. Policy Failure: The incident did occur, but there was an omission of policy or the established policy was insufficient or ineffective. The directive will be referred to the *Policy Development Section* for correction and re-issue.

W. Administrative Closure: *An administrative conclusion used to terminate an internal investigation which cannot proceed to a normal conclusion (e.g., because of an uncooperative complainant).*

X. Declined: *Those complaints that have been deemed by the Director, IAD, on their face, to have no merit.*

IV. Filing of Complaints

A. Initial Procedures

1. Individuals are encouraged to use the MCP 580, “*Compliment/Complaint Form*,” (see Appendix B) to document their complaints alleging misconduct. Use of the MCP 580 is not a requisite for filing a complaint. The person may, as an alternative, prepare a narrative written statement about the event including the times, dates, location, and name of the officer(s), if known. (CALEA 52.1.12)
2. An individual desiring to complain about an *employee* of the Department of Police either in person or by telephone, *should be provided with the MCP 580 or have their complaint documented for them on the MCP 580. If an individual wishes to speak with a supervisor, they will be referred to the highest ranking on-duty supervisor. A police executive or supervisor should be notified as soon as practical after a complaint is documented. (Refer to FC 250, “Duty Commander Function,” section III.) (CALEA 52.1.12)*
3. *Complaint forms will be provided to any citizen upon request.*
4. *Complaints will be taken by any employee regardless of the duty assignment of the employee who is the subject of the complaint.*
5. *Complaints will be filed on the MCP 580 and forwarded, via the district/unit commander where the complaint was made, to IAD for proper dissemination.*
6. A photocopy of the complaint will be given to the complainant as a receipt. (CALEA 52.1.5.a)
7. At IAD, the investigative assignment will be made and a letter of acknowledgment sent to the complainant. (CALEA 52.1.5.b)

B. Complaint by an Employee of the Department Any employee desiring to file a complaint against another employee of the department, will document *the complaint on the MCP 580, or in memo form,*

including the identical information prescribed in section IV.A.1, and submit it to *IAD*.

C. Anonymous or Uncooperative Complainant

Anonymous complaints are not, per se, excluded from investigation. *The information relating to anonymous complaints will be documented on the MCP 580 and forwarded directly to IAD.*

D. Nothing precludes the department from investigating allegations of *misconduct* against police officers from whatever source consistent with law when it is determined that such investigation is in the best interests of the department *or the community*.

E. Allegations of Minor Misconduct

If a preliminary review by a district/unit commander indicates the complaint is of a minor nature, it can be handled by the employee’s supervisor. The complaint will be documented on the MCP 580 with a copy being FAXED to IAD for numbering upon receipt by the Director, IAD. IAD will contact the commander with the assigned case number. The following information *will be* included in the report: (CALEA 26.1.4, 26.1.8, 52.1.1)

1. Date, time, and location of the incident.
2. The name, address, and telephone number of any witness(es).
3. The details of all circumstances surrounding the incident.

F. Allegations of Serious Misconduct (CALEA 52.1.1)

1. Complaints alleging brutality by a police officer must be duly sworn to prior to any investigation. According to Article 27, Section 728(b)(4), “A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint be duly sworn to by the aggrieved person, a member of the aggrieved person’s immediate family, or by any person with firsthand knowledge obtained as a result of the presence at and observation of the alleged incident, or by the parent or guardian in the case of a minor child before an official authorized to administer oaths. An investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken unless the complaint is filed within 90 days of the alleged brutality.”
2. Maryland Court decisions have carved out some exceptions to the 90-day time limit requirement. The 90-day rule is a statutory guide that should be followed in most circumstances. However, if the 90-day period has expired but it appears that good cause has been shown for not meeting the statutory 90-day limit, the excessive force complaint will be accepted and forwarded to the Director, IAD. The Director will review the facts

and reasons for the lack of a timely filing. The decision to investigate or not shall be made by the Chief of Police, or designee, on a case-by-case basis.

- G. Retaliatory Action Prohibited
Any department employee who takes retaliatory action against a complainant or witness shall incur appropriate disciplinary action. This in no way, however, prohibits the right of an officer to bring suit arising out of his duties as a police officer. Article 27, Section 728(b)(11)
- V. **Investigation of Complaints** (CALEA 52.1.1)
- A. **IAD** has primary responsibility for conducting administrative investigations in the following instances: (CALEA 52.1.1.b, c)
1. All use of force complaints.
 2. All firearms discharges to include intentional and accidental discharges, regardless of the employee's duty status (except for range practice or the destruction of animals).
 3. All racial, ethnic, and sexual harassment/discrimination complaints.
 4. All administrative investigations required whenever an employee is charged with:
 - a. A criminal offense. ***Allegations of criminal misconduct will first be investigated by the appropriate criminal investigative unit. Upon completion of the criminal investigation, the case is forwarded to IAD for the administrative investigation.***
 - b. Operating a motor vehicle while under the influence of alcohol or drugs.
 - c. Operating a county vehicle involved in a fatal accident.
 5. Any complaint ***or situation*** designated by the Chief of Police, or designee.
- B. The Director, **IAD**, will use the following guidelines in determining whether the investigation will be conducted by **IAD** or by the **employee's** commanding officers, excluding those complaint categories as delineated in section V.A: (CALEA 52.1.1.a)
1. **Nature** of the complaint.
 2. Source of the complaint.
 3. Number of individuals involved (**employees** and/or witnesses).
 4. Whether the **involved employees** are assigned to the same unit.
 5. Jurisdictional limitations.
 6. Underlying indications of graft, corruption, or other serious misconduct.
 7. Any other related matter that would dictate assignment.
 8. **Complaints will not be assigned to an investigator/supervisor at any level where there**

exists a conflict or potential conflict by virtue of involvement in the event under investigation.

- C. In addition, the following principles will serve as guidelines for the Director, **IAD**, when determining investigative responsibility:
1. Discipline is a command responsibility.
 2. Complaints should be investigated at the lowest possible level.
 3. ***Performance-related issues will generally be handled at the district/unit level.***
- D. **IAD Log** (CALEA 52.1.10)
An **IAD** log will be maintained to record all complaints against departmental personnel. This log will include the following information:
1. The name(s) of the accused employee(s)
 2. Name of the complainant
 3. District of the complaint
 4. Nature of the complaint
 5. **IAD** control number
 6. Date the complaint is received
 7. Date of the incident
 8. Unit assigned to investigate
 9. Disposition
- E. Cases Assigned to Units
1. Unit commanders assigned cases by **IAD** may assign an executive officer or supervisor under their command to conduct the investigation. ***Upon completion of the investigation, the commander will review the file for deficiencies, errors, or omissions. Upon final receipt of the case file, the commander will review the facts and determine a finding, which will be indicated in a separate memo included in the case file.*** All internal investigations conducted at the unit level will be reviewed by the Director, **IAD**, prior to submission to the **Internal Investigative Review Panel (IIRP)**.
 2. ***All formal investigations will be completed within a 90-day period unless authorized by the Director, IAD. (CALEA 52.1.4)***
 3. All **inquiry** investigations will be completed within ***30 days of the date of assignment.*** (CALEA 52.1.1.a, 52.1.4, 52.1.9)
- F. Cases Assigned to **IAD**
1. When a complaint is to be handled by **IAD**, the Director, **IAD**, will assign an **IAD** investigator to conduct an investigation and obtain **all available** documentary evidence. After completing the investigation, an internal report will be written which the **Deputy Director, IAD, or designee**, will review.
 2. ***If that review does not reveal any errors or need for additional work, the file will be forwarded to the Director, IAD, for final review and approval.***

Upon final review by the Director, IAD, the file will be forwarded to the commander of the involved employee for review.

3. *Upon completion of the file review, the commander will prepare a memorandum to the Director, IAD, which shall include a finding assessed to each rule allegation, the rationale for the finding, and, where appropriate, the commander's recommendation as to discipline or other resolution(s). This memorandum will become part of the permanent case file. (CALEA 52.1.9)*
4. *If the Director, IAD, concurs with the findings and the case is sustained, the file will be forwarded to the IIRP for review and recommendations for resolution.*
5. *In all cases where there is disagreement between the Director, IAD, and the commander, the file will be forwarded to the IIRP for review and recommendations.*
6. *In all cases where there is agreement between the Director, IAD, and the commander, and the findings are other than sustained, the case will be closed.*

G. Internal Investigative Reports (Formal)

All internal reports will include:

1. The allegations *as made by the complainant or discovered through investigation.*
2. *A written report of the investigative process and information uncovered or obtained.*
3. *A listing of all those contacted and/or interviewed during the course of the investigation.*

H. Interrogation of Officers under Investigation

The information in quotes below is from the LEOBR.

1. Notification (CALEA 52.1.6)
 - a. "The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation. Upon completion of the investigation, the law enforcement officer shall be notified of the name of any witness not less than ten days prior to any hearing." Article 27, Section 728 (b)(5)
 - b. In order to ensure the protection of rights guaranteed by LEOBR, the MCP 242, "Internal Investigation Notification," is used in the administrative investigation of any incident which could lead to disciplinary action against an officer. Once an apparent violation is discovered and the supervisor's investigation focuses on a particular officer, the MCP 242 shall be executed prior to interrogation of that officer. For example, since many at-fault traffic accidents result in disciplinary action, this form should be

executed prior to the supervisor's questioning of the responsible officer. It is suggested that the supervisor allow the accident investigator to complete the accident report prior to the start of the supervisor's investigation.

2. Representative at Interrogation - "At the request of any law enforcement officer under interrogation, he shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present at all times during the interrogation, unless waived by the law enforcement officer. The interrogation shall be suspended for a period of time not to exceed ten days until representation is obtained. However, the chief may, for good cause shown, within that ten day period, extend that period of time." Article 27, Section 728(b)(10)
3. LEOBR Rights Waiver - A police officer under investigation may waive, in writing, any or all rights provided under the LEOBR. It is a requirement of the law that the waiver of those rights be done in writing. To that end, the **MCP 459**, "LEOBR Rights Waiver Form," should be utilized for that purpose.
4. Record of Interrogation - "A complete record, either written, taped or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. Upon completion of the investigation, and upon request of the law enforcement officer under investigation or his counsel, a copy of the record of his interrogation shall be made available not less than ten days prior to any hearing." Article 27, Section 728(b)(8)
5. When to Use the MCP 50, "Advice of Rights" - "If the law enforcement officer under interrogation is under arrest or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation." Article 27, Section 728(b)(9)
6. Time, Place, and Manner of Interrogations (CALEA 52.1.6)
 - a. "The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, unless otherwise waived in writing by the law enforcement officer, or at any other reasonable and appropriate place." Article 27, Section 728(b)(2)
 - b. "The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such

- a degree that an immediate interrogation is required.” Article 27, Section 728(b)(1)
- c. “Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.” Article 27, Section 728(b)(6)
 - d. “The law enforcement officer under interrogation may not be threatened with transfer, dismissal or disciplinary action.” Article 27, Section 728(b)(7)(i)
 - e. “The law enforcement officer under investigation shall be informed of the name, rank and command of the officer in charge of the investigation, the interrogating officer and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator during any one interrogating session...” Article 27, Section 728(b)(3)
7. Required Interrogations and Tests - “This subtitle does not prevent any law enforcement agency from requiring a law enforcement officer under investigation to submit to blood alcohol tests, blood, breath or urine tests for controlled dangerous substances, polygraph examinations or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law enforcement agency from commencing any action which may lead to a punitive measure as a result of a law enforcement officer’s refusal to submit to a blood alcohol test, blood, breath or urine tests for controlled dangerous substances, polygraph examination or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol tests, blood, breath or urine test for controlled dangerous substances, polygraph examination or interrogation, as may be required by the law enforcement agency under this subparagraph are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the Administrative Hearing.” Article 27, Section 728(b)(7)(ii). (CALEA 52.1.6, 52.1.7)
8. During the internal investigation, any officer may be ordered by the investigator to submit a statement and/or answer all questions which specifically relate to the subject matter of the

investigation regardless of the relative rank of the officers involved.

- I. Notification of Employee after Investigation (CALEA 52.1.9)
 - 1. *In those cases where a finding other than sustained has been determined, the employee will be notified in writing within seven business days by the Director, IAD, that the case has been concluded.*
 - 2. *In those cases where a finding of sustained has been determined by the IIRP, the employee will be notified in writing by the Chief of Police of the investigative outcome and the recommended action to be taken.*
- J. Notification of Complainant (CALEA 52.1.5.c)
 - 1. *In all formal investigations, the complainant will be notified in writing by the Chief of Police or the Director, IAD, about the outcome of the investigation.*
 - 2. *For cases investigated at the inquiry level, the complainant will be notified via telephone of the outcome by the investigator within seven business days of the completion of the investigation. The date and time of the closure contact will be documented on the MCP 302.*
- K. Circumstances for No Punitive Action

An investigation shall result in no punitive action where the **complaint is unfounded**, the employee is exonerated, **the case is administratively closed**, or a **policy failure is discovered**. (CALEA 26.1.8)
- L. Investigations Confidential

Reports of internal investigations, including witness statements, are confidential. Authorization for access to these reports can only be granted by the Chief of Police, **or designee**. (CALEA 26.1.8, 52.1.10)
- M. When Officers will be Furnished Copy of File

In those cases where a charge of misconduct has been sustained and the officer has requested a hearing board, the officer will be furnished with a copy of the investigative file under the following conditions [Article 27, Section 728(5)(iii)]: (CALEA 26.1.8)

 - 1. Excluding the identity of confidential sources.
 - 2. Excluding any non-exculpatory information.
 - 3. Not less than **20** days before any hearing if the officer and the officer’s attorney agree:
 - a. To execute a confidentiality agreement with the law enforcement agency to not disclose any of the material contained in the record for any purpose other than to defend the officer; and
 - b. To pay any reasonable charge for the cost of reproducing the material involved.

VI. Summary Punishment
(CALEA 52.1.1)

A. Statutory Provisions

Summary punishment may be imposed for minor violations of departmental rules and regulations when: “(i) The facts which constitute the minor violation are not in dispute; (ii) the officer waives the hearing provided by this subtitle; and (iii) the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached.” Article 27, Section 734A(1)

B. Other Considerations (CALEA 26.1.5)

The above procedure does not preclude a commander from counseling a subordinate. Use of the counseling process can correct undesirable behavior while maintaining maximum harmony between a supervisor and subordinate.

C. Review

To ensure fairness and consistency in disciplinary matters involving the offer of summary punishment, all summary punishment cases will be reviewed *jointly* by the *employee’s assistant chief and the Director, IAD*, prior to an offer being made to an employee.

VII. IAD Notification Procedures (CALEA 52.1.1.c)

A. Immediate Notification Circumstances

An *IAD* investigator will be notified of and will immediately respond whenever an employee is involved in any of the following circumstances:

1. When an employee is involved in a firearm discharge whether intentional or accidental and regardless of duty status, except for authorized target practice or the killing of a dangerous or injured animal as authorized *in FC 131, “Use of Force.”* (CALEA 1.3.6.a)
2. When an employee is charged with a criminal offense, or anytime there is an allegation of criminal activity on the part of an employee where police investigation is necessary regardless of jurisdiction of occurrence. (Refer to FC 310, “Administrative Leave.”)
3. When an employee is charged with operating a motor vehicle while under the influence of alcohol or drugs.
4. When an employee is the operator of a county vehicle involved in a fatal accident.
5. *When, after a supervisor confers with an executive officer and justification is determined, an employee is believed to be in violation of the department’s substance abuse policy. (Refer to FC 371, “Employee Substance Abuse Program.”)*
6. Any incident where an executive officer or officer in charge of the district of occurrence feels an

immediate administrative investigation is necessary or where so directed by the Chief of Police, or designee.

B. Notifying IAD

1. When the circumstances are such that a notification of *IAD* is necessary (events listed in section VII.A), the notification will be made by an executive officer by direct contact with *IAD* during business hours or *through* ECC during off-duty hours. Any doubt should be resolved in favor of making the notification. Once notification is made, the responsibility for the administrative investigation lies with the *IAD* investigator. If an executive officer is unavailable, the responsibility for notification will revert to the senior ranking officer on the scene of the event.
2. *IAD* may be notified between 0800 hours and 1600 hours, Monday through Friday, *at (301) 840-2730*. At all other times, an *IAD* investigator will be available through ECC. (CALEA 52.1.1, 81.2.6)

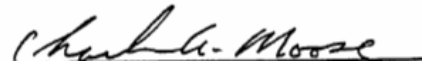
C. On-Call Investigator’s Responsibility

1. Upon notification, the *IAD* investigator will *consult with the Director, IAD, to determine the number of investigators who will respond to those incidents* listed in section VII.A.
2. *Interviews of involved employees* by *IAD* investigators will be conducted, *if necessary*, independently of any other interview or interrogation. *IAD* investigators will not involve themselves in the *interview of involved employees* conducted by other units unless so requested.

VIII. Proponent Unit: Internal Affairs *Division*

IX. Cancellation

This directive cancels Function Code 301, effective date 11-15-94.



Charles A. Moose, Ph.D.
Chief of Police

From: joanna silver <joannabethsilver@hotmail.com>
Sent: Thursday, August 19, 2021 2:46 PM
To: Hucker's Office, Councilmember
Cc: Murillo, Julio; Wolf, Sarah; Albornoz's Office, Councilmember; Cruz, Lillian; Katz's Office, Councilmember; Mandel-Trupp, Lisa; Jawando's Office, Councilmember; Thorne, Cecily; Wellons, Christine
Subject: SSJC Follow Up re: Bill 18-21

[EXTERNAL EMAIL]

Dear Council President Hucker,

I am writing on behalf of SSJC to follow up after the worksession on bill 18-21. We are aware you are all on recess now, but we wanted you to have this information in front of you when you return. We are grateful for the consideration that the members of the Public Safety Committee and Council staff gave to many of our suggested amendments. We wanted to follow up on items that were either not discussed and remain important to us or were discussed and necessitate additional consideration.

1. We asked that officers with a history of misconduct complaints have their BWC footage reviewed randomly, in addition to the random review process currently established by the bill. This request is supported by the preliminary audit's suggestion that intervening early to identify problem officers will both reduce harm and decrease the County's liability. This amendment was not discussed at the worksession and we hope you will revisit it at a future worksession on the bill.
- 2.
3. We disagree with Council staff's suggestion that our amendments touching on the scope of mandatory reviews are outside the purview of this bill. We asked that all BWC footage be reviewed by IAD whenever an investigation into certain types of misconduct is initiated (excessive use of force, for example). 18-21 is a bill about reviewing BWC footage and about more carefully reviewing certain types of BWC footage when that footage is identified through a random review process. It is not clear to us why our requested amendment falls outside of this scope. In addition, the suggestion that such a requirement would easily fit in the new disciplinary structures that the County will be mandated to create under the LEOBR-replacement statute is unsatisfactory; it does not make sense to wait on this piece of the bill until the new state-laws are implemented in the County. Finally, we are aware that you added the BWC-use requirement (which I will address below) at the request of the FOP shortly before the bill's introduction; that provision is much further outside the purview of the bill than our mandatory review amendments.
- 4.
5. We strongly disagree with the decision to wait until the FOP lawsuit is settled before crafting collective bargaining preemption language for this bill. The FOP lawsuit appears to lack merit. In addition, the suit is about the right to bargain around use of force policies because of the relationship between those policies and workplace health and safety. There is nothing in Bill 18-21 that relates to workplace health and safety. The real issue is the ineffectiveness of passing legislation imposing requirements on MCPD that the FOP will be able to bargain away.
- 6.

7. We have done additional research and spent a good amount of time discussing the BWC-use requirement in 18-21. We've discussed the issue with our partners at the ACLU of Maryland, and with Delegate Lesley Lopez, who is working with us and with the mother of Kwamena Ocran, to expand the new statewide BWC bill during the upcoming statewide legislative session. We now understand Council staff's position regarding the role of the Maryland wiretap statute and the limits it places on the use of BWCs for undercover officers. We agree that the wiretap statute would need to be amended in order to allow *undercover* officers to use *covert* recording devices. That said, there are still ways in which the proposed language in 18-21 should be expanded.
8.
 - a. As we proposed, off-duty officers who are armed and engaging in a law enforcement function should be required to use BWCs; the Sheriff's deputy who killed Kevin Costlow was off-duty but on his way to work when he acted in his law enforcement capacity and killed Mr. Costlow. In short, if every officer is issued a firearm to carry around when off-duty, **that** officer should similarly be issued a BWC to affix and use when he or she engages **with the public** as a law enforcement officer. This should include officers engaged in secondary law enforcement employment.
 - b.
 - c. Bill 18-21 should expressly state that the use requirement applies to *plainclothes* officers (as the Gaithersburg policy does). More important, the bill must make it clear that all non-undercover plainclothes officers must use a BWC when they are armed and interacting with members of the public in a law enforcement capacity. We do not want MCPD or individual officers to avoid the requirement of wearing a BWC based on how the officer displays his/her badge or other insignia (the relevant requirement of the wiretap statute). *We would appreciate it if Council staff could find out exactly what the current policy is for how badges/insignia are displayed by non-uniform officers so that we can all understand how to best craft language that will ensure that, unless it is necessary for officer safety (as in a formal undercover operation), officers will start recording when they begin to exert authority over a member of the public.* Our goal is to ensure that officers like those who killed Kwamena Ocran in the City of Gaithersburg will be required to have their BWCs on and recording when they are chasing members of the public while working in a plainclothes capacity, even if they are part of a special operations unit. As you may know, some jurisdictions are moving away from plainclothes special operations units because of their propensity for misconduct and excessive force (<https://www.baltimoresun.com/news/crime/bs-md-ci-cr-police-plainclothes-ordered-into-uniform-20200918-7wj5nyxqefcv3cciompireneeq-story.html>); it is critical that we ensure their interactions with the public are recorded.
 - d.
9. Last but certainly not least, it continues to be SSJC's position that funding for this bill should not come from newly-granted funds but **instead** should be reallocated from existing areas of MCPD's budget.

We look forward to continuing to work with you on this important legislation. We are also happy to see that you asked the Attorney General to investigate the killing of Ryan LeRoux. We look forward to learning what response you receive and your plans for next steps should the AG not agree to take the case.

Thank you.

Joanna Silver

Pronouns: she/her

joannabethsilver@hotmail.com
202-251-0235