



Committee: PS
Committee Review: At a future date
Staff: Christine Wellons, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #BodyCamReview #MCPDTransparency

AGENDA ITEM #9
 June 22, 2021
Public Hearing

SUBJECT

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

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

EXPECTED ATTENDEES

Public speakers

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; receive testimony

DESCRIPTION/ISSUE

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 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.

SUMMARY OF KEY DISCUSSION POINTS: N/A

This report contains:

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MEMORANDUM

June 17, 2021

TO: County Council

FROM: Christine Wellons, Legislative Attorney

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

PURPOSE: Public Hearing – no Council votes required

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 Safety Committee worksession is tentatively scheduled for July 22 at 9:30 a.m.

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 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.

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 have body-worn cameras when they are required to work in uniform in *ad hoc* situations.

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).

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 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.

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.

Additionally, the bill would require a log of each instance in which 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.

This packet contains:

Bill 18-21
Legislative Request Report
Sponsor's Memorandum
RESJ Impact Statement
Economic Impact Statement

Circle #

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F:\LAW\BILLS\2118 Police - Body Cams And Reporting Serious Incidents\PS Memo.Docx

Bill No. 18-21
Concerning: Police – Internal Affairs
Procedures and Reporting
Requirements
Revised: 5/11/2021 Draft No. 3
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

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

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

23 (1) is in uniform; or

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

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

- 26 (1) The Department must conduct periodic, random reviews of body-
 27 worn camera recordings to assess:
- 28 (A) employee compliance with legal requirements and
 29 Department policy;
- 30 (B) employee performance; and
- 31 (C) consistency between employees' written reports and
 32 recordings.
- 33 (2) Except when performing a random review under paragraph (1), the
 34 Department must not review body-worn camera recordings,
 35 without cause, to discover acts of misconduct or instances of poor
 36 performance.
- 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
 39 the Chief or under Department policy, any body-worn camera recording
 40 identified under subsection (c) 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 potential criminal offense by a Department employee;
- 47 (D) a fatality or serious bodily injury; 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.

52 (e) 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.

58 (f) 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.

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 (g) 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 that precipitated the investigation;

- 78 (2) the date and location of the incident under investigation;
- 79 (3) the general nature of the allegations under investigation;
- 80 (4) demographic information regarding residents involved the matter
- 81 under investigation; and
- 82 (5) the category of the investigation under paragraph (1) of subsection
- 83 (f).

84 (h) *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 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 (i) *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.

- 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.

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 Huckler, 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

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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

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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.