



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

AGENDA ITEM #10B
 May 18, 2021
Introduction

SUBJECT

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

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

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A; Introduction

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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Bill 18-21	©1
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MEMORANDUM

May 13, 2021

TO: County Council

FROM: Christine Wellons, Legislative Attorney

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

PURPOSE: Introduction – no Council votes required

Bill 18-21, Police – Internal Affairs Procedures and Reporting Requirements, sponsored by Lead Sponsor Council President Huckler and Co-Sponsors Councilmembers Jawando and Riemer, is scheduled to be introduced on May 18, 2021.¹ A public hearing is tentatively scheduled for June 22, 2021 at 1:30 p.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 Memorandum

Circle #

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F:\LAW\BILLS\21xx Police - Body Cams And Reporting Serious Incidents\Intro 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 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

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 (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 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.