



**Testimony for the House Judiciary Committee
March 8, 2018**

TONI HOLNESS
PUBLIC POLICY DIRECTOR

HB 1142 Interception of Oral Communication – Law Enforcement Officer

UNFAVORABLE

The ACLU of Maryland opposes HB 1142, which would repeal the requirement that law enforcement officers provide notice to persons being recorded in order to lawfully intercept a certain oral communication.

The 2015 Body-worn Camera Law struck an appropriate balance that should remain

In 2015, this body passed a carefully crafted law allowing for body-worn cameras (BWCs) to be used in Maryland. That law (SB 482), sponsored by Sen. Victor Ramirez struck an appropriate balance—it balanced the competing interests between the potential of BWCs to invade privacy alongside their strong benefit when it comes to police accountability. As our office testified in 2015, BWCs offer a potential win-win, but only if they are deployed within an appropriate policy framework that ensures they protect the public without becoming yet another system for routine surveillance of the public. The 2015 law struck the appropriate balance with regard to public notice and should not be upended.

In order to deter bad behavior, persons must know they are being recorded

Officers should be required to notify people that they are being recorded. This was a key component of the 2015 law—for cameras to have any hope of changing how members of the public behave in interactions with law enforcement, the public must be well informed that they are being recorded during their encounters with police. Consider for example, that in San Diego, after the implementation of BWCs, complaints of misconduct fell by 40% and use of force incidents also declined significantly.¹ This is likely because persons—both the public and law enforcement—behave better when they know they are being recorded. However, the potential to curb behavior is forfeited if individuals do not know they are being recorded. Moreover, the notification need not be elaborate and should take no more than a few seconds.

The appropriate solution to law enforcement non-compliance with the law is training, not an overhaul of privacy protections

The proponents of the bill suggest that law enforcement officers simply forget to alert members of the public that they are being recorded and as a result, footage recorded is not admissible as evidence. This challenge calls for greater training of law enforcement officers, not a sweeping overhaul of the wiretap law.

¹ LA Times, San Diego police body camera report: Fewer complaints, less use of force (Mar 18, 2015).

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

HB 1142 undermines a key recommendation of the 2015 Commission regarding the Implementation and Use of Body Cameras by Law Enforcement Officers

The policies governing the use of BWCs in Maryland has been subject to intense study, most recently the 2015 Commission regarding the Implementation and Use of Body Cameras by Law Enforcement Officers,² which poured over substantial research and deliberated for months. That commission promulgated best practices for the state, including a specific provision addressing notice—“Except as otherwise exempted by law, a law enforcement officer shall notify, as soon as practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so.”³ According to the proponents, incidents of forgetfulness are rare and only anecdotal—this is the exact opposite of making evidence-based and data-driven decisions, which is especially important in this context.

For the forgoing reasons, we urge an unfavorable report on HB 1142.

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

² Final Report, Commission regarding the Implementation and Use of Body Cameras by Law Enforcement Officers (Sept. 2015), available at <https://goccp.maryland.gov/wp-content/uploads/body-cameras-commission-final-report.pdf>.

³ *Id.* At p. 8.