

Bill No. 18-21
Concerning: Police – Internal Affairs
Procedures and Reporting
Requirements
Revised: 11/3/2021 Draft No. 5
Introduced: May 18, 2021
Enacted: November 9, 2021
Executive: November 19, 2021
Effective: February 18, 2022
Sunset Date: None
Ch. 32, Laws of Mont. Co. 2021

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

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

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

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

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

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

- 68 (1) The Internal Affairs Division immediately must report to the Chief
 69 regarding any investigation that involves:
 - 70 (A) a use of force under Section 35-22;
 - 71 (B) a child under the age of 18;
 - 72 (C) a potential criminal offense by a Department employee;
 - 73 (D) a fatality or serious bodily injury; or
 - 74 (E) potential discrimination or harassment by an employee on
 75 the basis of race, ethnicity, national origin, sex, sexual
 76 orientation, gender expression, gender identity, disability, or
 77 religion.

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

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

- 86 (1) the date of any complaint that precipitated the investigation;
- 87 (2) the date and location of the incident under investigation;
- 88 (3) the general nature of the allegations under investigation;
- 89 (4) demographic information if known, including race, ethnicity, and
 90 gender information, regarding residents involved in the matter
 91 under investigation; and
- 92 (5) the category of the investigation under paragraph (1) of subsection
 93 (f).

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

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

101 (i) *Copies of investigative files and recordings.*

- 102 (1) If the County Executive, the County Council, or the State's
 103 Attorney requests a copy of an investigative file or a body-worn

104 camera recording associated with an incident or investigation
 105 under subsections (g) or (h), the Department must provide the
 106 requested copy within 7 calendar days, unless a state or federal
 107 law:

108 (A) requires an earlier disclosure; or

109 (B) prohibits the disclosure.

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

114 (j) Log of access to body-worn camera recordings.

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

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


120 (k) Prompt completion of internal investigations. At least once every 3
 121 months, the Chief must report to the County Executive and the County
 122 Council regarding:

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

124 (2) the reasons for the delay; and

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

Approved:



Tom Hucker, President, County Council 11/12/2021
Date

Approved:



Marc Elrich, County Executive 11/19/2021
Date

This is a correct copy of Council action.



Selena Mendy Singleton, Esq., Clerk of the Council 11/19/2021
Date