

Department of Legislative Services
 Maryland General Assembly
 2025 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 176
 Appropriations

(Delegate Solomon)

Finance

Davis Martinez Public Employee Safety and Health Act

This bill establishes a Public Employees’ Safety and Health (PESH) Unit in the Division of Labor and Industry within the Maryland Department of Labor (MD Labor) and requires the Commissioner of Labor and Industry to head the unit. The bill expands the existing Maryland Occupational Safety and Health (MOSH) program by subjecting public bodies to existing penalties and enhancing notice and reporting requirements associated with public bodies, among other requirements and specifications. In addition, the bill establishes provisions relating to the use of body-worn cameras (BWCs) by correctional officers and a related exception to Maryland’s Wiretap Act.

Fiscal Summary

State Effect: Special fund and general fund expenditures increase by \$69,400 and \$106,700, respectively, for staffing in FY 2026; future years reflect annualization. State expenditures (all funds) increase for compliance. Special fund revenues increase, likely by \$30,000 in FY 2026 and by \$40,000 annually thereafter.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
SF Revenue	-	-	-	-	-
GF Expenditure	\$106,700	\$128,700	\$134,300	\$140,300	\$146,300
SF Expenditure	\$69,400	\$81,300	\$84,800	\$88,500	\$92,200
GF/SF/NB/HE Exp.	-	-	-	-	-
Net Effect	(\$176,000)	(\$210,000)	(\$219,200)	(\$228,800)	(\$238,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Expenditures for local governments may increase beginning in FY 2026 from penalties and for compliance. Local correctional facilities and the circuit courts are not materially affected. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Maryland Occupational Safety and Health Program and the Public Employees' Safety and Health Unit

The bill expands the purpose of MOSH to include standards that address workplace violence and making public bodies' workplaces safer and more healthful, as defined by the bill. Therefore, the Commissioner of Labor and Industry must include standards for protecting employees of public bodies from workplace violence as part of the MOSH standards. The Commissioner of Labor and Industry, in consultation with the MOSH Advisory Board, must adopt, by October 1, 2026, regulations to include these standards. Prior to adopting regulations, the commissioner must review and consider specified recommendations and hold meetings with stakeholders as specified. With respect to public bodies, the MOSH Advisory Board must give specific consideration to the workplace conditions and safety and health concerns of employees and recommend higher standards, if warranted.

In addition to a self-inspection required under current law, there must be an inspection program developed, conducted, and maintained by PESH that otherwise complies with specified inspection requirements under current law.

By July 1 each year, the Commissioner of Labor and Industry must publish online a written report with specified information on safety and health in public bodies and submit it to the General Assembly.

The bill does not limit or preclude the commissioner or the commissioner's authorized representative from inspecting a public body in accordance with any other provision under MOSH.

Requirements of Public Bodies

Each public body must annually make available to each employee a copy of the report issued by the Commissioner of Labor and Industry, and any citations issued by the commissioner to the public body in the immediately preceding year. The bill specifies information to be included in the annual report and notice requirements when PESH issues citations to public bodies. The commissioner must require by regulation that each public body keep an accurate record of, among other things, the incidence of workplace injuries or illnesses.

Attorney General

The Attorney General must provide notice to all affected employees of the public body, any employee representatives, the Governor, the President of the Senate, and the Speaker of the House of Delegates if the Commissioner of Labor and Industry requests that the Attorney General proceed in a State or federal court or before any other federal unit to enforce workplace safety requirements for public bodies.

The Attorney General must prioritize and expedite review of an application if the Commissioner of Labor and Industry or an authorized representative applies for an administrative search warrant.

Penalties

Public bodies are no longer exempt from existing MOSH penalties. The revenues from the civil penalties assessed against a public body must be distributed to a special fund to be used only for the Maryland Apprenticeship and Training Program (MATP).

Body-worn Cameras

The bill requires the Maryland Police Training and Standards Commission (MPTSC), by January 1, 2026, to adopt regulations for the training, issuance, and use of a BWC by a correctional officer that address specified issues and procedures.

Each correctional *unit* must develop and maintain a written policy consistent with the regulations adopted by MPTSC for the use of BWCs, and the policy must be a mandatory subject of collective bargaining.

A local correctional facility may not be required to adopt the use of BWCs by correctional officers; however, if a local correctional facility does so, the local correctional facility must develop and maintain a written policy consistent with the regulations adopted by MPTSC under the bill.

The bill makes it lawful for a correctional 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 if (1) the correctional officer is in uniform or prominently displaying the correctional officer's badge or other insignia; (2) the correctional officer is making reasonable efforts to conform to the standards for the use of the devices developed pursuant to the bill; (3) the correctional officer is a party to the oral communication; (4) the correctional 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 (5) the oral interception is being made as part of a videotape or digital recording.

A “body-worn digital recording device” means a device worn on the person of a law enforcement officer *or a correctional officer* that is capable of recording video and intercepting oral communications. The definition of an “electronic control device” under current law means a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current.

Current Law:

Maryland Occupational Safety and Health Program

The Division of Labor and Industry within MD Labor administers the MOSH program. The requirements of the MOSH program are codified by the MOSH Act. In general, these requirements parallel the safety standards established by the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor. OSHA specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards.

Employers (which include public bodies) must provide each employee with a place of employment that is safe and healthful and free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee.

The MOSH Act applies to public bodies, but the penalty provisions of MOSH do not apply to a public body. The MOSH Act defines a “public body” as a governmental unit, a public or quasi-public corporation of the State, a school district in the State or any unit of the district, or a special district in the State or any unit of the district. Specifically regarding public bodies, the Commissioner of Labor and Industry must provide for and maintain a comprehensive and effective program on occupational safety and health for public employees. The program must be generally consistent with the MOSH Act and require each public body to:

- provide conditions and places of employment that are safe and healthful;
- develop, conduct, and maintain in each unit of the public body a program of self-inspection that the commissioner approves;
- keep and make available any record that the commissioner requires for the development of information about occupational accidents, illnesses, and injuries, to allow proper evaluation and necessary corrective action; and
- submit each report that the commissioner requires.

The Commissioner of Labor and Industry must monitor the self-inspection program of each public body.

The MOSH Act defines a “place of employment” as a place in or about which an employee is allowed to work.

Maryland’s Wiretap Act and Body-worn Cameras

Under Maryland’s Wiretap Act, it is unlawful to willfully intercept any wire, oral, or electronic communication. Under the Wiretap Act, “intercept” is defined to mean the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device. However, statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called “two-party consent”). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a “reasonable expectation of privacy.”

The Wiretap Act does provide specified exceptions, including one for a law enforcement officer who intercepts an oral communication in the course of the law enforcement officer’s regular duty, so long as the law enforcement officer (1) initially lawfully detained a vehicle during a criminal investigation or for a traffic violation; (2) is a party to the oral communication; (3) has been identified as a law enforcement officer to the other parties to the communication prior to any interception; (4) informs all other parties to the communication of the interception at the beginning of the communication; and (5) makes the interception as part of a videotape recording. In addition, the interception of an oral communication by a law enforcement officer in the course of the officer’s regular duty is lawful if (1) the law enforcement officer is in uniform or prominently displaying the law enforcement officer’s badge or other insignia; (2) the law enforcement officer is making reasonable efforts to conform to standards for the use of a body-worn digital recording device or an electronic control device capable of recording video and oral communications; (3) the law enforcement officer is a party to the oral communication; (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 (5) the oral interception is being made as part of a videotape or digital recording.

The failure of a law enforcement officer to provide notice, as specified, to an individual who is being recorded in accordance with the requirements for lawful interception of an oral communication with a body-worn digital recording device, does not affect the admissibility in court of the recording if the failure to notify involved an individual who joined the discussion in progress for which proper notification was previously given.

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a \$10,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney's fees, and litigation costs.

Chapters 128 and 129 of 2015 established the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers. Through the examination of model policies and discussion, the commission compiled a list of best practices for BWCs and submitted a report to the General Assembly and the Police Training Commission (now known as MPTSC) in September 2015. The commission's [report](#) addresses (1) procedures for testing and operating equipment, including when BWCs must be activated and when their use is prohibited; (2) notification responsibilities of law enforcement officers to individuals being recorded; (3) confidentiality and ownership of data; (4) procedures and requirements for data storage; (5) the review of recordings by parties in interest; and (6) the establishment of retention periods, the release of recordings as required by the Public Information Act, and the development of written policies for BWC usage consistent with State law and regulations issued by MPTSC.

Pursuant to Chapters 128 and 129, MPTSC developed a [policy](#) for the issuance and use of BWCs by law enforcement officers, which incorporated the recommendations of the commission.

State Revenues: The bill subjects the public sector to civil penalties, so MATP special fund revenues increase beginning in fiscal 2026. Under its authority to monitor self-inspection programs by public bodies, MOSH currently completes between 83 and 100 inspections or investigations in the public sector per year, resulting in an average of approximately 200 citations to public-sector employers annually. If similar levels of violations continue to occur under the bill, MD Labor estimates receiving \$30,000 to \$40,000 in penalties per year, noting this estimate reflects a reduction in penalties that occur during an informal settlement once hazards are abated.

State Expenditures: As discussed below, the fiscal impact for State agencies is associated with the MOSH provisions of the bill.

Provisions Related to the Maryland Occupational Safety and Health Program

Maryland Department of Labor

MOSH already has authority under current law to inspect workplaces of public bodies. MOSH currently investigates and issues violations of the general duty clause in investigations where an employer could have reasonably predicted employee exposure to workplace violence and did not take common industry practice/reasonable steps to protect

an employee. Thus, MOSH can develop workplace violence standards for public bodies and investigate workplace violence in public bodies with existing resources.

However, under the bill, MOSH must comply with notice and reporting requirements and assess penalties on public bodies. The cost of administering the MOSH program is covered through an appropriation from the Workers' Compensation Commission and MOSH may accept federal OSHA grant awards. Thus, special fund expenditures increase by \$69,385 in fiscal 2026, which accounts for the bill's October 1, 2025 effective date. This estimate reflects the cost of hiring an administrative officer to carry out administrative functions related to penalty issuance. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$59,788
Operating Expenses	<u>9,597</u>
Total MD Labor FY 2026 State Expenditures	\$69,385

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Office of the Attorney General

Under current law, MOSH can cite public-sector employers, but they rarely request a contested case hearing because there is no financial penalty. Under the bill, the Office of the Attorney General (OAG) expects a greater volume of employers contesting citations, which it cannot handle with existing resources. Thus, general fund expenditures increase by \$106,659 in fiscal 2026, which accounts for the bill's October 1, 2025 effective date. This estimate reflects the cost of hiring an assistant Attorney General to assist with contested case hearings. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$99,290
Operating Expenses	<u>7,369</u>
Total OAG FY 2026 State Expenditures	\$106,659

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Judiciary

The Judiciary does not anticipate that the MOSH provisions of the bill will have a significant fiscal or operational impact on the courts.

State Agencies

Public bodies must make available to each of their employees a copy of the annual PESH report published online by the commissioner and any citations issued by the commissioner to the public body in the preceding year. Additionally, public bodies must make available a copy of any citation received to all affected employees in addition to the existing requirement to post the citation conspicuously at or near each place where the citation alleges a violation occurred. Thus, State expenditures (all funds) may increase beginning in fiscal 2026 to comply with these notification and reporting requirements, and may increase further due to public bodies being subject to civil penalties under MOSH.

Provisions Related to Body-worn Cameras

MPTSC can adopt regulations for the training, issuance, and use of BWCs by correctional officers with existing budgeted resources. The bill's exceptions to wiretapping and electronic surveillance provisions are not expected to have a material operational or fiscal impact on the Judiciary or the Department of Public Safety and Correctional Services (DPSCS). Likewise, the Department of Juvenile Services (DJS) advises that the bill has no fiscal impact.

The bill does not require the use of body-worn digital recording devices or electronic control devices by State correctional officers; however, the fiscal 2026 budget as introduced includes \$428,790 for the purchase of BWCs for correctional officers within DPSCS.

Local Expenditures: Expenditures for local governments may increase to comply with the bill's notification and reporting requirements and may increase further to the extent that local governments fail to comply with MOSH requirements and are subject to civil penalties.

The bill's exceptions to wiretapping and electronic surveillance provisions are not expected to have a material operational or fiscal impact on local correctional facilities or the circuit courts.

The bill does not require the use of body-worn digital recording devices or electronic control devices by local correctional officers. It is assumed that no local jurisdiction would put such a program in place without the operational and fiscal wherewithal to do so. It is

also assumed that local correctional facilities can develop the required policy using existing resources.

Additional Comments: This analysis assumes no material effect on assessments for workers' compensation.

Davis Martinez was a parole and probation agent employed by DPSCS who was allegedly killed by a client during a home visit in Chevy Chase in 2024.

The Department of Legislative Services advises that the BWC provisions of the bill also apply to DJS, as the bill requires each correctional *unit* (which includes DJS) to develop and maintain a written policy. Likewise, "correctional officer" is defined by reference to "correctional unit."

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 26 (Senator Kramer) - Finance.

Information Source(s): Baltimore City; Harford, Montgomery, and Talbot counties; Maryland Association of Counties; Maryland Municipal League; Town of Bel Air; Office of the Attorney General; Judiciary (Administrative Office of the Courts); University System of Maryland; Morgan State University; Department of Budget and Management; Maryland Department of Labor; Maryland Department of Transportation; Department of Juvenile Services; Department of Public Safety and Correctional Services; Maryland Environmental Service; Department of Legislative Services

Fiscal Note History: First Reader - January 28, 2025
km/mcr Third Reader - March 25, 2025
Revised - Amendment(s) - March 25, 2025
Revised - Clarification - March 25, 2025

Analysis by: Heather N. MacDonagh

Direct Inquiries to:
(410) 946-5510
(301) 970-5510