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LC002115

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO CRIMINAL PROCEDURE - POLICE-WORN BODY CAMERAS

Introduced By: Representatives Almeida, Walsh, Williams, Perez, and Maldonado

Date Introduced: March 16, 2017

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 33

4 POLICE-WORN BODY CAMERAS

5 **12-33-1. Definitions.** – For the purposes of this chapter:

6 (1) "Body camera" means a device, worn by an officer, that can make both audio and
7 video recordings of an interaction between an officer and a civilian.

8 (2) "Civilian" or "member of the public" means any person who is not an on-duty police
9 officer.

10 (3) "Department" means any municipal police department and the Rhode Island State
11 Police.

12 (4) "Officer" means any sworn member of a municipal police department or Rhode Island
13 State Police.

14 (5) "Subject" means any individual who appears on video footage recorded by a body
15 camera, except those who appear only incidentally.

16 **12-33-2. Use protocols.** – (a) Law enforcement agencies that acquire body cameras shall
17 issue a press release advising the public that such equipment will be in use, and shall post notice
18 on their website that such equipment will be in use.

19 (b) A chain-of-custody of any body camera audio and/or video recordings, hereafter

1 referred to as "recording(s)," shall be maintained by any department that uses body cameras.

2 (c) Only law enforcement officers with the authority to conduct searches and make
3 arrests shall be permitted to wear a body camera. Body camera use shall be limited to those on-
4 duty officers who are uniformed or operating marked police vehicles, except for SWAT officers
5 and others engaged in planned actions or uses of force.

6 (d) Body cameras shall be worn openly in a prominent location on the officer's body,
7 uniform, or clothing, and in a manner that maximizes the camera's ability to capture video footage
8 of the officer's activities. Whenever practicable, the officer's uniform shall include a notice, such
9 as a pin or light, alerting the public to the camera's presence.

10 (e) Before each shift, officers shall inspect and test their body cameras to verify that they
11 are working properly and are fully charged, and shall, whenever practicable, notify their
12 supervisor of any problems prior to interactions with the public.

13 (f) Body cameras shall not be used surreptitiously.

14 (g) The video and audio recording functions of the body camera shall be activated
15 whenever an officer is responding to a call for service or at the initiation of any other law
16 enforcement or investigative encounter between an officer and a member of the public, except
17 that when an immediate threat to the officer's life or safety makes activating the camera
18 impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity
19 to do so. The body camera shall not be deactivated until the encounter has fully concluded and the
20 officer leaves the scene.

21 (1) Officers unable to activate a body camera because of threat to the officer's life or
22 safety shall, as soon as practicable, file documentation with their supervising officer as to the
23 threat to life or safety.

24 (2) Additional arriving officers that are equipped with body cameras should activate their
25 body cameras and begin recording the situation upon their arrival, until the enforcement member
26 leaves the scene.

27 (h) As close to the inception of the encounter as reasonably possible, an officer who is
28 wearing a body camera shall notify the subject or subjects of the recording that they are being
29 recorded by a body camera.

30 (i) Notwithstanding the requirements of subsection (g) of this section:

31 (1) Prior to entering a private residence without a warrant or in non-exigent
32 circumstances, an officer shall ask the occupant if the occupant wants the officer to discontinue
33 use of the officer's body camera. If the occupant responds affirmatively, the law enforcement
34 officer shall immediately discontinue use of the body camera. In the event of conflicting

1 responses, the officer shall not discontinue use of the body camera;

2 (2) When interacting with an apparent crime victim, an officer shall, as soon as
3 practicable, ask the apparent crime victim if the apparent crime victim wants the officer to
4 discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively,
5 the law enforcement officer shall immediately discontinue use of the body camera; and

6 (3) When interacting with a person seeking to anonymously report a crime or assist in an
7 ongoing law enforcement investigation, a law enforcement officer shall immediately ask the
8 person seeking to remain anonymous if they want the officer to discontinue the use of the
9 officer's body camera. If the person seeking to remain anonymous responds affirmatively, the
10 officer shall immediately discontinue use of the body camera.

11 (j) All offers by law enforcement to discontinue the use of a body camera made pursuant
12 to subsection (i) of this section, and the responses thereto, shall be recorded by the body camera
13 before discontinuing its use.

14 **12-33-3. Body camera prohibited uses.** – (a) Body cameras shall not be deactivated
15 during raids or other planned enforcement actions.

16 (b) Body cameras, as well as other devices that can record audio and video, shall not be
17 used to gather information based in whole or in part on First Amendment-protected speech,
18 associations, or religion, or to record activity that is unrelated to a response to a call for service or
19 a law enforcement or investigative encounter between an officer and a member of the public. This
20 shall not include audio and/or video surveillance cameras operated in law enforcement vehicles
21 pursuant to §31- 21.2-5.

22 (c) Officers shall not activate a body camera while on the grounds of any public, private,
23 charter, or parochial elementary of secondary school, except when responding to an imminent
24 threat to life or health.

25 (d) Officers shall not use a personal electronic recording or imaging device while
26 performing police duties.

27 (e) Recordings shall be used for evidentiary documentation or training purposes only.
28 Only those officers acting under their official duties shall be permitted access to recordings.

29 (f) Any on-scene images/recordings and/or any other images/recordings taken by officers
30 in the course and scope of their duties shall be downloaded as soon as feasible and deleted off the
31 officer's device. This shall include recordings taken by body cameras as well as images taken
32 intentionally or inadvertently with an officer's personally-owned camera, cell phone camera, or
33 any other digital imaging device.

34 (g) No images or recordings taken by any officer in the course and scope of their duties

1 may be used, printed, copied, scanned, e-mailed, posted, shared, reproduced or distributed in any
2 manner, unless for official law enforcement purposes.

3 **12-33-4. Data retention and access.** – (a) Body camera footage shall be retained by the
4 law enforcement agency for six (6) months from the date it was recorded; thereafter the footage
5 shall be permanently deleted.

6 (b) Notwithstanding subsection (a) of this section:

7 (1) Body camera recordings shall be automatically retained for no less than three (3)
8 years if the recording captures:

9 (i) Any use of force;

10 (ii) Events leading up to and including an arrest for a felony-level offense, or events that
11 constitute a felony-level offense; or

12 (iii) An encounter about which a complaint has been registered by a subject of the video
13 footage.

14 (2) Body camera recordings shall also be retained for no less than three (3) years if a
15 longer retention period is requested by:

16 (i) The officer whose body camera created the recording, if that officer reasonably asserts
17 that the recording has evidentiary or exculpatory value;

18 (ii) Any officer who is a subject of the recording, if that officer reasonably asserts that the
19 recording has evidentiary or exculpatory value;

20 (iii) Any superior officer of an officer whose body camera made the recording or who is a
21 subject of the recording, if that superior officer reasonably asserts that the recording has
22 evidentiary or exculpatory value;

23 (iv) Any officer, if the recording is being retained solely and exclusively for police
24 training purposes, provided that such footage shall be redacted to obscure the identity of any
25 civilian appearing therein;

26 (v) Any member of the public who is a subject of the recording;

27 (vi) Any parent or legal guardian of a minor who is a subject of the recording; or

28 (vii) A deceased subject's next of kin or legally authorized designee.

29 (c) No body camera recording shall be maintained longer than necessary for use in any
30 legal or civil proceeding or internal affairs investigation in which the recording may be entered as
31 evidence.

32 (d) Any member of the public who is a subject of a body camera recording, the parent or
33 legal guardian of a minor who is the subject of a body camera recording, or a deceased subject's
34 next of kin or legally authorized designee, shall be permitted to review the specific recording in

1 which the subject appears in order to make a determination as to whether they will voluntarily
2 request it be subject to a three (3) year retention period, and shall be entitled to a copy of the
3 recording upon request. There shall be no cost for a copy of the recording.

4 (e) No officer shall review or receive an accounting of any body camera recording before
5 completing any required initial reports, statements, and interviews regarding the recorded event.
6 After any required initial reports, statements, and interviews are completed, a supervisor may
7 review recordings when necessary to evaluate the merits of a complaint by a subject of the
8 recording or a specific allegation of misconduct, or to verify the appropriate recording is being
9 preserved pursuant to subsection (b) of this section.

10 (f) Body camera footage not preserved pursuant to subsection (b) of this section shall not
11 be reviewed.

12 (g) No body camera recording shall be subject, either in real time or after the recording is
13 captured to any automated analysis or analysis of biometric indicators of any kind, including, but
14 not limited to, iris or retina patterns or facial characteristics.

15 (h) Body camera recordings shall be subject to public inspection pursuant to chapter 2 of
16 title 38 provided that recordings made public pursuant to a public records request or for another
17 legitimate law enforcement purpose shall be redacted to obscure the identities of minor children,
18 and to obscure the identities of other individuals when the release of the recording would
19 unreasonably, substantially, or seriously interfere with the individual's privacy, except that
20 unredacted recordings may be released with the written consent of the subject of the recording,
21 the parent or legal guardian of a minor who is the subject of a recording, or a deceased subject's
22 next of kin or legally authorized designee.

23 (i) Recordings preserved pursuant to subsection (b) of this section shall be public records
24 and not subject to redaction.

25 (j) Body camera recordings shall not otherwise be divulged or used by law enforcement
26 agencies for any commercial or other non-law enforcement purpose.

27 (k) Where law enforcement agencies authorize a third party to act as designated agent in
28 maintaining recordings, the agent shall not be permitted to independently access, view, or alter
29 any video footage, except to delete records as required by law.

30 **12-33-5. Enforcement.** – (a) Should any law enforcement officer, employee, or agent fail
31 to adhere to the recording or retention requirements contained in this chapter, or interfere with a
32 body camera's ability to accurately record:

33 (1) Appropriate disciplinary action shall be taken against the officer, employee or agent;

34 (2) The department shall support a rebuttable evidentiary presumption in favor of any

1 criminal defendant or civil plaintiff who reasonably asserts that, due to the noncompliance or
2 interference, body camera recordings favorable to that defendant or plaintiff was destroyed or not
3 captured.

4 (b) Body camera recordings made in contravention of this chapter shall be immediately
5 destroyed. The department and its officers shall not seek to introduce improperly-made
6 recordings as evidence in any criminal or civil legal or administrative proceeding against a
7 civilian.

8 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE - POLICE-WORN BODY CAMERAS

1 This act would mandate protocols for the use of police-worn body cameras by those law
2 enforcement agencies which choose to require their use.

3 This act would take effect upon passage.

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