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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- POLICE WORN BODY CAMERAS

Introduced By: Representative Christopher T. Millea

Date Introduced: August 27, 2020

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 hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 33

4 POLICE WORN BODY CAMERAS

5 **12-33-1. Definitions.**

6 As used in this chapter:

7 (1) "Body camera" means a device, worn by a peace officer, as defined in § 12-7-21, that
8 can make both audio and video recordings of an interaction between an officer and a civilian, any
9 member of the public, or other peace officer.

10 (2) "Civilian" or "member of the public" means any person who is not an on-duty peace
11 officer.

12 (3) "Department" means any municipal police department, the Rhode Island state police,
13 division of sheriffs, the capitol police or any other law enforcement agency with arrest powers who
14 has been certified through the Peace Officers Standards and Training (POST).

15 (4) "Officer" means any sworn member of a department as defined in this chapter.

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

18 **12-33-2. Use protocols.**

19 (a) All departments shall acquire body cameras for use by any officer in its employ.

1 (b) A chain-of-custody of all body camera recordings shall be maintained by the
2 department.

3 (c) Any officer with the authority to conduct car stops, conduct searches, make arrests or
4 otherwise interact with any civilian or member of the public shall be required to wear body cameras
5 while on duty; provided, however, that any officer engaged in under-cover police work shall not be
6 required to wear a body camera.

7 (d) Body cameras shall be worn openly in a prominent location on the officer's body,
8 uniform, or clothing, and in a manner which maximizes the camera's ability to capture video footage
9 of the officer's activities.

10 (e) Before and after each shift, officers shall inspect and test their body cameras to verify
11 that they are working properly and are fully charged, shall, whenever practicable, notify their
12 supervisor of any problems prior to interaction with the public and shall immediately replace the
13 malfunctioning body camera with one that is in working order.

14 (f) The body camera shall be activated whenever an officer is effectuating a traffic stop,
15 responding to a call for service or at the initiation of any other law enforcement or investigative
16 encounter between an officer and a member of the public, or assisting any other officer during such
17 activity, except that when an immediate threat to the officer's safety make activating the camera
18 impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to
19 do so. The body camera shall not be deactivated until the encounter has fully concluded and the
20 officer leaves the scene; provided, however, that the body camera shall remain activated during the
21 transport of any suspect or arrestee to the department.

22 (1) Officers unable to activate a body camera due to an immediate threat to their safety,
23 shall, as soon as practicable, file documentation with their supervising officer, detailing the threat
24 to their safety.

25 (g) Notwithstanding the requirements of subsection (f) of this section:

26 (1) Prior to entering a private residence without a warrant or in non-exigent circumstances,
27 an officer shall ask the occupant if they want the officer to discontinue use of the officer's body
28 camera. If the occupant responds affirmatively, the officer shall immediately discontinue use of the
29 body camera. In the event of conflicting responses, the officer shall not discontinue use of the body
30 camera;

31 (2) When interacting with an apparent crime victim, an officer shall, as soon as practicable,
32 ask the apparent crime victim if they want the officer to discontinue use of the officer's body
33 camera. If the apparent crime victim responds affirmatively, the officer shall immediately
34 discontinue use of the body camera; and

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

6 (h) All offers of law enforcement to discontinue the use of a body camera shall be recorded
7 by the body camera before discontinuing its use.

8 **12-33-3. Uses and prohibited uses of body cameras.**

9 (a) Body cameras shall not be deactivated during raids or other planned enforcement
10 actions.

11 (b) Body cameras shall not be used to gather information from activities that are based in
12 whole or in part on First Amendment protected speech associations or religion, to record activity
13 that is unrelated to a response to a call for service or a law enforcement purpose or an investigative
14 encounter between an officer and a member of the public.

15 (c) Officers shall not activate body cameras while on the grounds of any public, private,
16 charter or parochial elementary or secondary school, except when responding to an imminent threat
17 to life or health.

18 (d) Recordings shall be used for evidentiary documentation or training purposes only. Only
19 those officers acting in an official capacity and in within their official duties shall be permitted
20 access to recordings generated by body cameras.

21 (e) Any on-scene images or recordings and/or any other images or recordings taken by
22 officers in the course and scope of their duties shall be downloaded, in an un-redacted version, to
23 the department's computer system or data-base as soon as feasible and deleted from the officer's
24 device following confirmation by the officer's supervisor that the entirety of any recording(s) have
25 been preserved for evidentiary use.

26 (f) No images or recordings from an officer's body camera shall be used, printed, copied,
27 scanned, e-mailed, posted on any website, shared, reproduced or distributed to any third party or in
28 any manner, unless for official law enforcement purposes.

29 **12-33-4. Data retention and access.**

30 (a) Body camera footage shall be retained by the law enforcement agency for six (6) months
31 from the date it was recorded; thereafter, the footage may be permanently deleted, provided;
32 however, that body camera footage shall be retained as long as any footage is the subject of any
33 legal proceedings remain pending against any subject or officer involved in the event captured on
34 the recording.

1 (b) Notwithstanding subsection (a) of this section, body camera recordings shall be retained
2 for no less than three (3) years if the recording captures:

3 (1) Any use of force;
4 (2) Events leading up to and including an arrest for a felony offense, or events that
5 constitute a felony offense; or
6 (3) An encounter in which a complaint has been registered by a subject of the video footage.

7 (c) Body camera footage shall be retained longer than three (3) years if retention is
8 requested by:

9 (1) Any officer whose body camera created the recording, if the officer reasonably asserts
10 that the recording has evidentiary or exculpatory value;

11 (2) Any officer who is a subject of the recording, if the officer reasonably asserts that the
12 recording has evidentiary or exculpatory value;

13 (3) Any superior officer of an officer whose body camera made the recording or who is the
14 subject of the recording, if that superior officer reasonably asserts that the recording has evidentiary
15 or exculpatory value;

16 (4) For training purposes, provided that such footage is redacted to obscure the identity of
17 any civilian appearing therein;

18 (5) Any member of the public who is a subject of the recording;
19 (6) Any parent or legal guardian of a minor who is a subject of the recording; or
20 (7) A deceased subject's next of kin or legally authorized designee.

21 (d) No body camera image or recording shall be retained longer than necessary for use in
22 any legal proceeding or internal affairs investigation in which the recording may be entered as
23 evidence.

24 (e) Any officer, civilian, or member of the public, or their legal guardian in the case of a
25 minor or a deceased subject, that is captured on body camera footage, shall be permitted to review
26 the specific recording(s) in which they appear in order to make a determination as to whether they
27 will voluntarily request the recording(s) be subject to a three (3) year retention period, and shall be
28 entitled to a copy of the recording(s) upon request. One copy shall be provided to the person
29 requesting recording(s) at no charge.

30 (f) No officer shall review or receive an accounting of a body camera recording before
31 completing any required reports, statements or interviews regarding the recorded event. After any
32 reports, statements or interviews are completed, a supervisor may review recordings when
33 necessary to evaluate the merits of a complaint by a subject of the recording or a specific allegation
34 of misconduct, or to verify that the appropriate recording is being preserved pursuant to subsection

1 (b) of this section.

2 (g) Body camera recordings shall be subject to public inspection pursuant to chapter 2 of
3 title 38, provided that recordings made public pursuant to a public records request or for another
4 legitimate law enforcement purpose shall be redacted to obscure the identities of minor children,
5 and to obscure the identities of other individuals when the release of the recording would
6 unreasonably, substantially, or seriously interfere with the individual's privacy, except that un-
7 redacted recordings may be released with the written consent of the subject(s) of the recording or
8 any person, or the legal guardian of any person captured on the recording. If more than one person
9 is captured on the recording, all those captured must consent to an un-redacted version being
10 released.

11 (h) Recordings preserved pursuant to subsection (b) of this section shall be public records
12 and not subject to redaction.

13 (i) Body camera recordings shall not otherwise be divulged or used by law enforcement
14 agencies for any commercial or other non-law enforcement purposes.

15 (j) Where law enforcement agencies authorize a third party to act as designated agent in
16 maintaining or retaining recordings, the agent shall not be permitted to independently access, view,
17 alter, or redact any video footage, except to delete recordings consistent with this chapter.

18 **12-33-5. Enforcement.**

19 (a) Should any law enforcement officer, employee, or agent fail to adhere to the recording
20 or retention requirements contained in this chapter, or interfere with a body camera's ability to
21 accurately record:

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

24 (2) There shall be a rebuttable evidentiary presumption in favor of any criminal defendant
25 or civil plaintiff who reasonably asserts that, due to the non-compliance or interference, body
26 camera recordings favorable to that defendant or plaintiff were destroyed or not captured.

27 (b) Body camera recordings made in contravention of this chapter shall be immediately
28 destroyed and shall not otherwise be admissible in any criminal, civil or administrative proceedings
29 against any person.

30 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 require all peace officers with arrest powers in the state of Rhode Island to
2 wear and activate body cameras during any car stop, search, arrest or during any interaction with
3 any civilian or member of the public. Provided, however, that any officer engaged in under-cover
4 police work shall not be required to wear a body camera. This act would also establish protocols
5 for retention and destruction of body camera footage and establish penalties for failure to comply
6 with this chapter.

7 This act would take effect upon passage.

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