SENATE BILL 2441
By Kyle

HOUSE BILL 1706

By Gilmore

AN ACT to amend Tennessee Code Annotated, Title 38, Chapter 1, relative to body cameras for law enforcement officers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 38, Chapter 1, is amended by adding the following as a new part:

38-1-701. As used in this part:

(1) "Body camera recording" or "recording" means any audio or video recording taken by a law enforcement officer through use of a body camera;

(2) "Law enforcement agency" means a governmental unit of one (1) or more persons employed full time or part time by the state or federal government, or political subdivision of the state or federal government, for the purpose of preventing and detecting crime and enforcing laws or local ordinances and the employees of which are authorized to make arrests for crimes while acting within the scope of their authority;

(3) "Law enforcement officer" means any person authorized by law to conduct searches and effectuate arrests and who is employed by the state, a county, a municipality, or a metropolitan form of government;

(4) "Minor" means any person under eighteen (18) years of age;

(5) "Next of kin" means a person's spouse, parents, legal guardians, grandparents, siblings, and children; and

(6) "Subject of the recording" means:

(A) Any person, including a law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person, who appears or can be heard on the body camera recording; and

(B) Does not include any person who only incidentally appears or is heard on the body camera recording.

38-1-702.

(a) Any law enforcement agency that uses body cameras shall adopt a written policy for the use of the body cameras by its law enforcement officers in compliance with this part. The written policy shall be in effect before any law enforcement officers are equipped with body cameras. Law enforcement officers shall receive a copy of the written policy and training in the use of body cameras before using such cameras. The training shall include, at a minimum, instruction on this part and the agency's written policy.

(b) Only law enforcement officers with the authority to conduct searches and make arrests shall be permitted to wear a body camera. Law enforcement officers who serve an undercover role shall not be subject to this part.

(c) Any written policy adopted by a law enforcement agency pursuant to subsection (a) shall include, at a minimum, guidelines on the use of body cameras by law enforcement officers to:

(1) Ensure that body cameras are worn by law enforcement officers in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities;

(2) Provide standards for when a law enforcement officer must enable and disable recording functions of the body camera, including:

(A) A requirement that a law enforcement officer activate a body camera whenever responding to a call for service;

(B) A requirement that body cameras be activated at the initiation of any law enforcement or investigative encounter between a law enforcement officer and a member of the public, except when there is an immediate threat to the officer or another's life or safety that makes activating the body camera impossible or dangerous;

(C) A requirement that in situations as described in subdivision (c)(2)(B) in which activating a body camera is impossible or dangerous, a law enforcement officer must activate the camera at the first reasonable opportunity to do so;

(D) A requirement that a law enforcement officer must not deactivate a body camera until the encounter between a law enforcement officer and a member of the public has fully concluded and the law enforcement officer leaves the scene; and

(E) A requirement that a law enforcement officer currently at the scene or arriving thereafter who is equipped with a body camera must activate the camera and record the situation upon arrival, and that the body camera must remain on until the officer leaves the scene; and

(3) Require law enforcement officers wearing body cameras to notify the subjects of the recording that the subjects are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.

(d) Notwithstanding subsection (c), the written policy shall make exceptions to the use of body cameras in the following circumstances:

(1) Prior to entering a private residence without a warrant or in non-exigent circumstances, a law enforcement officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer's body camera. If the

occupant responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera;

(2) When interacting with an apparent crime victim, including, but not limited to, a victim of domestic abuse, as defined in § 36-3-601, or a victim of rape, as defined in § 39-13-503, a law enforcement officer shall, as soon as practicable, ask the victim if the victim wants the officer to discontinue use of the officer's body camera. If the victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera; and

(3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall, as soon as practicable, ask the person if the person wants the officer to discontinue use of the officer's body camera. If the person responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera.

(e) Requests to discontinue use of a body camera made pursuant to subsection (d), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

38-1-703.

(a) Body cameras shall not be used in a manner inconsistent with the purposes described in this part.

(b) Body cameras shall not be used to gather intelligence information based on First Amendment protected speech, association, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public.

(c) Law enforcement officers shall not activate a body camera while on the grounds of any public, private, or parochial elementary or secondary school, as defined in § 49-6-301, except when responding to an imminent threat to life or safety.

38-1-704.

(a) Any law enforcement agency providing a body camera to an officer as authorized by this part shall establish a written policy for the retention of data by the agency in compliance with this section.

(b) Except as provided in subsection (c), body camera recordings shall be retained by the law enforcement agency that employs the officer, or an authorized agent as described in § 38-1-705(d), whose body camera captured the recording, for six (6) months from the date it was recorded, after which time the recording shall be permanently deleted.

(c) Notwithstanding subsection (b):

(1) Body camera recordings shall be automatically retained for at least three (3) years if the body camera recordings involve:

(A) Any use of force;

(B) Events leading up to and including an arrest for a felony offense, or events that constitute a felony offense; or

(C) An encounter about which a complaint has been registered by a subject of the body camera recording within the six (6) months following the recording.

(2) Body camera recordings shall be retained for at least three (3) years if voluntarily requested, within six (6) months following the recording, by:

(A) The law enforcement officer using the body camera, if that officer reasonably asserts the recording has evidentiary or exculpatory value;

(B) Any law enforcement officer who is a subject of the body camera recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;

(C) Any superior officer of a law enforcement officer using a body camera or who is a subject of the recording, if that superior officer reasonably asserts the recording has evidentiary or exculpatory value;

(D) Any law enforcement officer, if the recording is being retained solely and exclusively for police training purposes;

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

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

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

(d) To effectuate subdivisions (c)(2)(E), (c)(2)(F), and (c)(2)(G), the persons specified in those subdivisions may review the specific body camera recording in order to make a determination as to whether the person will voluntarily request the recording be subject to a three-year retention period.

(e) Body camera recordings shall be part of the public record for the purpose of public inspection under § 10-7-503, except for the following:

(1) A body camera recording not subject to a minimum three-year retention period pursuant to subsection (c);

(2) A body camera recording that is subject to a minimum three-year retention period solely and exclusively pursuant to subdivision (c)(1)(C), if the subject of the body camera recording requests the body camera recordings not be made available to the public;

(3) A body camera recording that is subject to a minimum three-year retention period solely and exclusively pursuant to subdivisions (c)(2)(A), (c)(2)(B), (c)(2)(C), or (c)(2)(D); and

(4) A body camera recording that is subject to a minimum three-year retention period solely and exclusively pursuant to subdivision (c)(2)(E), (c)(2)(F), or (c)(2)(G), if the person makes a voluntary request that the body camera recording not be made available to the public.

(f) No law enforcement officer shall review, or receive an accounting of, any body camera recording that is subject to a minimum three-year retention period pursuant to subdivision (c)(1) prior to completing any required initial reports, statements, and interviews regarding the recorded event.

(g) Any body camera recordings retained beyond six (6) months solely and exclusively pursuant to subdivision (c)(2)(D) shall not be admissible as evidence in any criminal, civil, or administrative proceeding.

38-1-705.

(a) Any law enforcement agency providing a body camera to an officer as authorized by this part shall adopt a written policy for access to body camera recordings by the agency in compliance with this section.

(b) Body camera recordings that are not subject to a minimum three-year retention period pursuant to § 38-1-704 shall not be subject to automated analysis or analytics.

(c) Body camera recordings shall not be divulged, or used by any law enforcement agency, for any commercial or other non-law enforcement purpose.

(d) If a law enforcement agency authorizes a third-party to act as its authorized agent in maintaining body camera recordings, the authorized agent shall not be permitted to independently access, view, or alter any body camera recording, except to permanently delete the recording as required by law or agency retention policies.

38-1-706.

(a) If any law enforcement officer, employee, or authorized agent violates this part regarding the use of body cameras, fails to adhere to the access to recordings and retention requirements contained in this part or to any written policy enacted in compliance with this part, or intentionally interferes with a body camera's ability to accurately capture body camera recordings:

(1)

(A) The law enforcement agency shall take appropriate disciplinary action against the individual officer, employee, or agent;

(B) The law enforcement agency shall adopt appropriate standards for sanctions of an officer or employee who violates this part; and

(C) The law enforcement agency shall specify in a contract with an agent the disciplinary action that shall take place if the agent violates this part;

(2) A rebuttable evidentiary presumption shall be adopted in favor of criminal defendants who reasonably assert that exculpatory evidence was destroyed or not captured; and

(3) A rebuttable evidentiary presumption shall be adopted on behalf of civil plaintiffs suing the government, a law enforcement agency, or law enforcement officers for damages based on police misconduct who reasonably assert that evidence supporting the plaintiffs' claim was destroyed or not captured.

(b) The law enforcement agency shall adopt a written policy setting forth disciplinary action and procedures under subdivision (a)(1) in compliance with title 38, chapter 8, part 3, § 8-30-319, and any other applicable law.

(c) The rebuttable presumptions in subsection (a) may be overcome by contrary evidence or proof of exigent circumstances that made compliance with this part impossible.

(d) Any body camera recordings created in contravention of this or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal, civil, or administrative proceeding.

(e) Nothing in this part shall contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to recordings on or after the effective date.