SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 101

STATE OF NEW JERSEY

DATED: AUGUST 21, 2020

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 101.

As reported by the committee, Senate Bill No. 101 regulates the use of body cameras worn by law enforcement officers.

Under this bill, only law enforcement officers are authorized to wear a body camera in this State. A body camera is to be located on the officer where it maximizes the camera's ability to capture video footage of the officer's activities. The video and audio recording functions of the body camera are to be activated whenever the officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public. But if an immediate threat to the officer's life or safety makes activating the body worn camera impossible or dangerous, the officer is directed by the bill to activate the body camera at the first reasonable opportunity to do so. The law enforcement officer wearing the body camera is required to notify the subject of the recording that he or she is being recorded as close to the inception of the encounter as is reasonably possible.

The bill specifies that a body camera is to remain activated until the encounter has fully concluded and the law enforcement officer leaves the scene. The bill permits an officer to deactivate the camera before the conclusion of the encounter if requested by the occupant of a private residence being entered by the officer without a warrant or in non-exigent circumstances; a victim; or a person anonymously reporting a crime or assisting in an investigation.

The bill prohibits a law enforcement officer from using a body camera surreptitiously or to gather intelligence information based on First Amendment protected speech, associations, 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. A law enforcement officer also is prohibited from wearing a body camera on school grounds, except when responding to an imminent threat to life or health.

The bill requires video footage from a body camera to be retained by the law enforcement agency that employs the officer for six months from the date it was recorded. The video footage is be permanently deleted after expiration of this six-month period. But the bill makes

certain exceptions to the six-month rule. Video footage is to be retained for not less than three years if it captures images involving any use of force; events preceding and including an arrest for a crime or attempted crime; or an encounter about which a complaint has been registered by a subject of the video footage.

Video footage also is to be retained for not less than three years if a longer retention period is voluntarily requested by the law enforcement officer whose body worn camera recorded the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value; a law enforcement officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value; any superior officer of an officer whose body worn camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value; a law enforcement officer, if the video footage is being retained solely and exclusively for police training purposes; a member of the public who is a subject of the video footage; a parent or legal guardian of a minor who is a subject of the video footage; or a deceased subject's next of kin or legally authorized designee.

The bill also specifies when video footage from a body camera is exempt from the State's open public records act. Recent case law has held that police video recordings are exempt from public disclosure under the State's open public records act because they pertain to criminal investigations. Notwithstanding this law, the bill specifies that video footage from a body worn camera is not subject to public inspection only when: 1) the footage is not subject to a three-year retention period; 2) the footage constitutes a recording of an encounter about which a complaint has been registered by the subject of the footage and the subject requests the footage not be made public; 3) a law enforcement officer or superior officer reasonably asserts the video footage has evidentiary or exculpatory value or the footage is being used for police training purposes; and (4) a member of the public, parent or legal guardian, or deceased subject's next of kin requests the video footage not be made available to the public.

Further, the bill limits superior officers from viewing footage unless there's an allegation of misconduct against the officer who recorded the footage and prohibits automated analysis or analytics. Third party vendors contracted to maintain video footage are prohibited from viewing the footage other than to delete it.

Finally, the bill requires disciplinary action to be taken against any law enforcement officer, employee, or agent who fails to adhere to the recording or retention requirements contained in the bill or who intentionally interferes with a body worn camera's ability to accurately capture video footage. A rebuttable presumption in favor of criminal defendants and civil plaintiffs is established if exculpatory evidence was destroyed or not captured.

Any video footage from a body worn camera recorded in contravention of the bill's provisions or any other applicable law is to be immediately destroyed and is not to be admissible as evidence in any criminal, civil, or administrative proceeding.