**A** **BILL**

TO AMEND CHAPTER 1, TITLE 23 OF THE 1976 CODE, RELATING TO LAW ENFORCEMENT AND PUBLIC SAFETY, BY ADDING SECTION 23-1-242, TO PROHIBIT THE DELETION OR DESTRUCTION OF DATA FROM A BODY-WORN CAMERA WITH THE INTENT TO ALTER OR INFLUENCE A CRIMINAL ACTION, CRIMINAL INVESTIGATION, INTERNAL POLICE INVESTIGATION, CIVIL ACTION, OR POTENTIAL CIVIL ACTION IF NOTICE IS PROVIDED BY THE ADVERSE PARTY, OR IF LITIGATION IS REASONABLY ANTICIPATED, TO PROVIDE PENALTIES, AND TO PROVIDE EXEMPTIONS; AND TO AMEND SECTION 23-1-240(D) AND (G), RELATING TO POLICIES AND PROCEDURES FOR THE USE OF BODY-WORN CAMERAS, TO PROVIDE FOR THE CIRCUMSTANCES IN WHICH THE POLICIES AND PROCEDURES ESTABLISHED BY THE AGENCIES MUST INCLUDE FOR THE ACTIVATION OF THE RECORDINGS, AND TO PROVIDE THAT A TRIAL JUDGE MAY INSTRUCT A JURY THAT IT MAY INFER NEGLIGENCE IF AN OFFICER WEARING A BODY-WORN CAMERA FAILED TO PRODUCE VIDEO.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23-1-242 (A) It is unlawful for a person to delete, destroy, fail to preserve, or alter in a way that would compromise its evidentiary value the data from a body-worn camera as required by Section 23-1-240 with the intent to alter or influence the outcome of a criminal action, criminal investigation, internal police investigation, civil proceeding, or potential civil proceeding if notice is provided by the adverse party or if an investigation or litigation is reasonably anticipated.

(B) A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court, imprisoned for not more than one year, or both.

(C) The provisions of this section do not apply to any individual who reasonably follows the policies and procedures for body-worn camera data established by the law enforcement agency or the South Carolina Law Enforcement Training Council, or if the deletion or destruction occurs after the conclusion of the related criminal or civil actions.”

SECTION 2. A. Section 23-1-240(D) of the 1976 Code is amended to read:

“(D) State and local law enforcement agencies shall develop policies and procedures for the use of body-worn cameras pursuant to the guidelines established by the Law Enforcement Training Council. The agencies shall submit the policies and procedures to the Law Enforcement Training Council within two hundred seventy days of the effective date of this act. The Law Enforcement Training Council shall review and approve or disapprove of the policies and procedures. If the Law Enforcement Training Council disapproves of the policies and procedures, the law enforcement agency shall modify and resubmit the policies and procedures. The Law Enforcement Training Council, by three hundred sixty days from the effective date of this section, shall submit a report to the General Assembly which must include recommendations for statutory provisions necessary to ensure the provisions of this section are appropriately and efficiently managed and carried out and the fiscal impact associated with the use of body-worn cameras as required by this section, updated continuously as necessary. The policies and procedures must include the requirement that body-worn cameras must be activated in a reasonable timeframe when a uniformed officer arrives at a call for service or initiates any other law enforcement or investigative encounter between an officer and a member of the public, including, but not limited to:

(1) on the scene of all violent crimes;

(2) during traffic stops;

(3) during motor vehicle accident investigations if the parties to the motor vehicle accident are present;

(4) during contact with suspicious persons;

(5) upon encountering public drunkenness;

(6) upon encountering persons committing public disorderly conduct;

(7) during field contacts;

(8) during arrests;

(9) during contact with emotionally disturbed persons;

(10) during incidents in which weapons are present or alleged to be present;

(11) during incidents that could involve the use of force; or

(12) during an adversarial contact or a potentially adversarial contact.”

B. Section 23-1-240(G) of the 1976 Code is amended to read:

“(G)(1) Data recorded by a body‑worn camera is not a public record subject to disclosure under the Freedom of Information Act.

(2) The State Law Enforcement Division, the Attorney General, and a circuit solicitor may request and must receive data recorded by a body‑worn camera for any legitimate criminal justice purpose. A trial judge may instruct a jury that it may infer negligence if an officer wearing a body-worn camera failed to produce video.

(3) A law enforcement agency, the State Law Enforcement Division, the Attorney General, or a circuit solicitor may release data recorded by a body‑worn camera in its discretion.

(4) A law enforcement agency may request and must receive data recorded by a body‑worn camera if the recording is relevant to an internal investigation regarding misconduct or disciplinary action of a law enforcement officer.

(5) In addition to the persons who may request and must receive data recorded by a body‑worn camera provided in item (2), the following are also entitled to request and receive such data pursuant to the South Carolina Rules of Criminal Procedure, the South Carolina Rules of Civil Procedure, or a court order:

(a) a person who is the subject of the recording;

(b) a criminal defendant if the recording is relevant to a pending criminal action;

(c) a civil litigant if the recording is relevant to a pending civil action;

(d) a person whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related;

(e) a parent or legal guardian of a minor or incapacitated person described in subitem (a) or (b); and

(f) an attorney for a person described in subitems (a) through (e).”

SECTION 3. This act takes effect upon approval by the Governor.

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