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SENATE BILL NO. 1033

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 23, 2019)

(Patrons Prior to Substitute—Senators Stanley and Chase [SB 1052])

A BILL to amend the Code of Virginia by adding a section numbered 19.2-265.7, relating to body-worn camera recordings; release of recordings; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-265.7 as follows:

§ 19.2-265.7. Release of body-worn camera recordings; penalty.

A. As used in this section, "body-worn camera recording" means any audio, visual, or audiovisual recording made by a law-enforcement officer, as defined in § 9.1-101, that was created by an electronic system that creates, generates, sends, receives, stores, displays, and processes audio, visual, or audiovisual recordings, including cameras or other devices capable of creating such recordings, that may be worn about the person.

B. Upon written motion of a defendant, a court shall order the attorney for the Commonwealth to permit the defendant to inspect and to copy or photograph any body-worn camera recordings that are known by the attorney for the Commonwealth to be within the possession, custody, or control of the Commonwealth, upon a showing that the items sought may be material to the preparation of the defendant's defense and that the request is reasonable.

1. With regard to any material or evidence provided pursuant to this subsection, the Commonwealth may redact the residential address, telephone number, email address, and place of employment of any witness or victim, or any member of the witness's or victim's family, who satisfies the conditions outlined in § 19.2-11.2. The Commonwealth may redact the date of birth, driver's license number, and social security number of any person whose information is contained in material or evidence provided pursuant to this subdivision.

If the Commonwealth redacts personal identifying information pursuant to this subdivision, the defendant may file a motion seeking disclosure of the redacted information. Should the court find good cause for disclosure, it may order the Commonwealth to provide the redacted information. In its discretion, the court ordering the provision of redacted personal identifying information may order that the information be identified as "Restricted Dissemination Material" pursuant to subdivision 2.

2. If the Commonwealth satisfies the criteria outlined in this subdivision, it may designate any body-worn camera recording subject to disclosure pursuant to this subsection as Restricted Dissemination Material by prominently stamping or otherwise marking the recording or its packaging "Restricted Dissemination Material."

The Commonwealth may designate any such recording subject to disclosure pursuant to this subsection as Restricted Dissemination Material if (i) the defendant's attorney agrees to such designation or (ii) in the absence of an agreement with the defendant's attorney, the attorney for the Commonwealth certifies in writing that, upon information and belief, the designation is reasonably necessary for one or more of the following reasons: (a) the unauthorized disclosure of the designated recording may result in danger to the safety or security of a witness or victim, (b) the unauthorized disclosure of the designated recording may result in danger of a witness's being intimidated or tampered with, (c) the unauthorized disclosure of the designated recording may compromise an ongoing criminal investigation or confidential law-enforcement technique, or (d) the designated recording relates to the statement of a child victim or witness.

3. Except as otherwise provided, Restricted Dissemination Material may be disclosed only to the defendant's attorney, the agents or employees of the defendant's attorney, or any expert witness. The defendant's attorney may orally communicate the content of Restricted Dissemination Material to the defendant or may allow the defendant to view the content of Restricted Dissemination Material but shall not provide the defendant with copies of such recordings. Restricted Dissemination Material shall not otherwise be reproduced, copied, or disseminated in any way, except by leave of court. A violation of this subdivision is a Class 1 misdemeanor.

4. If the Commonwealth designates a body-worn camera recording as Restricted Dissemination Material pursuant to subdivision 2, the defendant may at any time file a motion to remove that designation from such body-worn camera recording. Should the court find that the criteria outlined in subdivision 2 that was certified in writing does not or no longer exists, the court shall order the removal of the designation from such body-worn camera recording.

5. Within 21 days of the entry of a final order by the trial court, or upon the termination of the representation of the defendant by counsel, the defendant's attorney shall return to the court all

60 originals and copies of any Restricted Dissemination Material disclosed pursuant to this subsection. The
61 court shall maintain such returned Restricted Dissemination Material under seal. Any material sealed
62 pursuant to this subdivision shall remain available for inspection by counsel of record. For good cause
63 shown, the court may enter an order allowing additional access to the sealed material as the court in
64 its discretion deems appropriate.

65 6. In any case in which a defendant is not represented by counsel, the Commonwealth may file a
66 motion seeking to limit the scope of inspection and of copying or photographing of the requested
67 body-worn camera recordings under this subsection. For good cause shown, the court may order any
68 limitation on or restriction of the inspection and the copying or photographing of the requested
69 body-worn camera recordings by a defendant who is unrepresented by counsel as the court in its
70 discretion deems appropriate.

71 C. Body-worn camera recordings shall not be considered a public record for the purpose of the
72 Virginia Public Records Act (§ 42.1-76 et seq.).

73 D. 1. Body-worn camera recordings and all metadata associated with such recordings shall be
74 retained by the law-enforcement agency that employed the law-enforcement officer who made such
75 recordings and not deleted for five years from the time of recording for all body-worn camera
76 recordings except as provided in subdivision 2.

77 2. In those instances where such recording and metadata is relevant to reasonably foreseeable or
78 ongoing litigation and the five-year period from the time of recording has elapsed, the law-enforcement
79 agency that has retained such recording and metadata shall preserve such recording and metadata for
80 as long as such litigation is ongoing or continues to be reasonably foreseeable. Such recording and
81 metadata may be deleted after the completion of all litigation and any future litigation is no longer
82 reasonably foreseeable.

83 E. All requests not described by this section for body-worn camera recordings shall be governed by
84 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).