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SENATE BILL NO. 1052

Offered January 9, 2019

Prefiled December 3, 2018

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

Patron—Chase

Referred to Committee for Courts of Justice

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 "Counsel Only Material" pursuant to this 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 Counsel Only Material by prominently stamping or otherwise marking the recording or its packaging "Counsel Only Material."

The Commonwealth may designate any such recording subject to disclosure pursuant to this subsection as Counsel Only 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 would result in an articulable threat to the safety or security of a witness or victim; (b) the unauthorized disclosure of the designated recording would result in an articulable 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 who will be 14 years of age or younger at the time of trial.

3. Except as otherwise provided, Counsel Only 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 Counsel Only Material to the defendant or may allow the defendant to view the content of Counsel Only Material but shall not provide the accused with copies of such recordings. Counsel Only Material shall not otherwise be reproduced, copied, or disseminated in any way. A violation of this subdivision is a Class 1 misdemeanor.

4. If the Commonwealth designates a body-worn camera recording as Counsel Only Material pursuant to this 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 good cause to remove the designation, it may 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

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

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

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

72 D. Body-worn camera recordings and all metadata associated with such recordings shall be retained
73 and not deleted for (i) two years from the time of recording for all body-worn camera recordings that
74 contain only traffic infractions, as defined in § 46.2-100, or Class 3 or 4 misdemeanors; (ii) five years
75 from the time of recording for all body-worn camera recordings that contain only Class 1 or 2
76 misdemeanors; (iii) 10 years from the time of recording for all body-worn camera recordings that
77 contain any felony offense other than first and second degree murder (§ 18.2-32), robbery (§ 18.2-58),
78 carjacking (§ 18.2-58.1), or any criminal sexual assault punishable as a felony under Article 7 (§
79 18.2-61 et. seq.) of Chapter 4 of Title 18.2; or (iv) 100 years from the time of recording for all
80 body-worn camera recordings that contain first and second degree murder (§ 18.2-32), robbery
81 (§ 18.2-58), carjacking (§ 18.2-58.1), or any criminal sexual assault punishable as a felony under Article
82 7 (§ 18.2-61 et. seq.) of Chapter 4 of Title 18.2.

83 E. All requests for body-worn camera recordings shall comply with the Virginia Freedom of
84 Information Act (§ 2.2-3700 et seq.).