A MODEL ACT FOR REGULATING THE USE OF WEARABLE BODY CAMERAS BY LAW ENFORCEMENT

Be it enacted by the [*NAME OF THE STATE LEGISLATIVE BODY OF THE STATE OR COMMONWEALTH*]:

SECTION 1.

(a) Only law enforcement officers with the authority to conduct searches and make arrests shall be permitted to wear a body camera. Such body cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.

(b) Both the video and audio recording functions of the body camera shall be activated whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a law enforcement officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activing the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so. The body camera shall not be deactivated until the encounter has fully concluded and the law enforcement officer leaves the scene.

(c) A law enforcement officer who is wearing a body camera shall notify the subject(s) of the recording that they are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.

(d) Notwithstanding the requirements of subsection (b):

(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, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim, if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime 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 seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera.

(e) All law enforcement offers to discontinue the 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.

(f) Body cameras shall not be used surreptitiously.

(g) Body cameras shall not be used 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.

(h) Law enforcement officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health.

(i) Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for six (6) months from the date it was recorded, after which time such footage shall be permanently deleted.

(j) Notwithstanding the retention and deletion requirements in subsection (i):

(1) Video footage shall be automatically retained for no less than three (3) years if the video footage captures images involving:

(A) Any use of force;

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

(C) An encounter about which a complaint has been registered by a subject of the video footage.

(2) Body camera video footage shall also be retained for no less than three (3) years if a longer retention period is voluntarily requested by:

(A) The law enforcement officer whose body camera recorded the video footage, if that officer reasonably

asserts the video footage has evidentiary or exculpatory value;

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

(C) Any superior officer of a law enforcement officer whose body 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;

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

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

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

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

(k) To effectuate subsections (j)(2)(E), (j)(2)(F) and (j)(2)(G), any member of the public who is a subject of video footage, the 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, shall be permitted to review that specific video footage in order to make a determination as to whether they will

voluntarily request it be subject to a three (3) year retention period.

(l) The following video footage shall be exempt from the public inspection requirements of the [*NAME OF STATE OPEN RECORDS ACT/FOIA LAW*]:

(1) Video footage not subject to a minimum three (3) year retention period pursuant to subsection (j);

(2) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection (j)(1)(C), where the subject of the video footage making the complaint requests the video footage not be made available to the public;

(3) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection (j)(2)(A), (j)(2)(B), (j)(2)(C) or (j)(2)(D); and

(4) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection (j)(2)(E), (j)(2)(F), or (j)(2)(G), where the person making the voluntary request requests the video footage not be made available to the public.

(m) Any video footage retained beyond six (6) months solely and exclusively pursuant to subsection (j)(2)(D) shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.

(n) No law enforcement officer shall review or receive an accounting of any body camera video footage that is subject to a minimum three (3) year retention period pursuant to subsection (j)(1) prior to completing any required initial reports, statements and interviews regarding the recorded event.

(o) Video footage not subject to a minimum three (3) year retention period shall not be viewed by any superior officer of a law enforcement officer whose body camera recorded the footage absent a specific allegation of misconduct, nor shall it be subject to automated analysis or analytics of any kind.

(p) Video footage shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.

(q) Where a law enforcement agency authorizes a third-party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view or alter any video footage, except to delete videos as required by law or agency retention policies.

(r) Should any law enforcement officer, employee or agent fail to adhere to the recording or retention requirements contained in this chapter, or intentionally interfere with a body camera's ability to accurately capture video footage:

(1) Appropriate disciplinary action shall be taken against the individual officer, employee or agent;

(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 and/or law enforcement officers for damages based on police misconduct who reasonably assert that evidence supporting their claim was destroyed or not captured.

(s) The disciplinary action requirement and rebuttable presumptions in subsection (r) may be overcome by contrary evidence or proof of exigent circumstances that made compliance impossible.

(t) Any body camera video footage recorded in contravention of this or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.

(u) Nothing in this chapter shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.

(v) As used in this section, "law enforcement officer" means any person authorized by law to conduct searches and effectuate arrests and who is employed by the state, or a county, municipality, or metropolitan form of government.

(w) As used this section, "subject of the video footage" means any law enforcement officer or any suspect, victim, detainee, conversant, injured party or other similarly situated person who appears on the body camera recording, and shall not include people who only incidentally appear on the recording.

SECTION 2. This act shall take effect [*DATE*].