S T A T E O F N E W Y O R K

8368--B

2015-2016 Regular Sessions

I N A S S E M B L Y

August 24, 2015

Introduced by M. of A. QUART, BICHOTTE, BUCHWALD, KIM, DILAN, BENEDETTO, BLAKE, SEPULVEDA -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law and the public officers law, in relation to excluding video camera recordings from cameras worn or used by police from being included as personnel records, and providing for the release of such recordings pursuant to the freedom of information law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 50-a of the civil rights law is amended by adding two new subdivisions 5 and 6 to read as follows:

5. A. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO RECORDINGS, AND RECORDS OF RECORDINGS, MADE BY OR OF ANY INDIVIDUAL REFERRED TO IN SUBDIVISION ONE OF THIS SECTION IN THE COURSE OF DUTY, INCLUDING RECORDINGS MADE BY BODY CAMERAS WORN BY SUCH INDIVIDUALS, DASHBOARD CAMERAS PLACED ON ANY PART OF A MOTOR VEHICLE, TRUCK, BICYCLE OR OTHER VEHICLE, CAMERAS MOUNTED ON A TASER OR OTHER WEAPON, OR ANY OTHER SUCH GOVERNMENT RECORDING DEVICE ASSOCIATED WITH SUCH INDIVIDUALS, OR THE METADATA FROM THOSE RECORDINGS.

B. ANY RECORDING, AS SPECIFIED IN PARAGRAPH A OF THIS SUBDIVISION SHALL BE GOVERNED BY ARTICLE SIX OF THE PUBLIC OFFICERS LAW.

C. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR ABRIDGE ANY OTHERWISE AVAILABLE RIGHT OF ACCESS AT LAW OR IN EQUITY TO ACCESS SUCH RECORDINGS OR METADATA.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD09301-14-6

D. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO DISALLOW RECORDINGS OR METADATA FROM BEING USED FOR DISCIPLINARY, HIRING OR OTHER PERSONNEL DECISIONS.

6. THE TERM "RECORDING", AS USED IN THIS SECTION, SHALL MEAN AN ORIGINAL PHOTOGRAPHIC RECORD, DISC, TAPE, AUDIO OR VIDEO CASSETTE, WIRE, FILM, HARD DRIVE, FLASH DRIVE, MEMORY CARD OR OTHER DATA STORAGE DEVICE OR ANY OTHER MEDIUM ON WHICH SUCH SOUNDS, IMAGES, OR BOTH SOUNDS AND IMAGES ARE OR CAN BE RECORDED OR OTHERWISE STORED, OR A COPY OR REPRODUCTION THAT DUPLICATES IN WHOLE OR IN PART THE ORIGINAL.

S 2. Section 87 of the public officers law is amended by adding a new subdivision 6 to read as follows:

6. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION AND PARAGRAPH B OF SUBDIVISION FIVE OF SECTION FIFTY-A OF THE CIVIL RIGHTS LAW, EACH AGENCY THAT MAINTAINS RECORDS, OF THE TYPE DESCRIBED IN PARAGRAPH A OF SUBDIVISION FIVE OF SECTION FIFTY-A OF THE CIVIL RIGHTS LAW, SHALL MAKE SUCH RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING, EXCEPT THAT:

(A) WHEN REQUESTED WHILE A CIVIL ACTION, CIVIL PROCEEDING, CRIMINAL PROSECUTION OR PRELIMINARY CRIMINAL PROCEEDING TO WHICH SUCH RECORDS MAY BE RELEVANT IS PENDING IN A COURT OF THIS STATE, SUCH AGENCY MAY DENY ACCESS TO SUCH RECORDS OR PORTIONS THEREOF PURSUANT TO PARAGRAPH (E) OR (F) OF SUBDIVISION TWO OF THIS SECTION, IF THE JUDGE OR JUSTICE PRESIDING IN SUCH ACTION OR PROCEEDING DETERMINES, AT THE INSTANCE OF SUCH AGENCY, AFTER REASONABLE NOTICE TO THE REQUESTER AND AN OPPORTUNITY TO BE HEARD, BY CLEAR AND CONVINCING EVIDENCE, THAT AN EXCEPTION TO DISCLOSURE SPECIFIC TO THE SITUATION OR TO A SPECIFIC INDIVIDUAL OR INDIVIDUALS EXISTS PURSUANT TO PARAGRAPH (E) OR (F) OF SUBDIVISION TWO OF THIS SECTION AND THAT SUCH EXCEPTION WARRANTS A DENIAL OF DISCLOSURE, AND THE COURT'S ORDER SETS FORTH IN DETAIL THE REASONS FOR THE COURT'S DETERMINATION;

(B) WHEN REQUESTED WHILE AN ACTION, PROCEEDING, PROSECUTION OR PRELIMINARY CRIMINAL PROCEEDING TO WHICH SUCH RECORDS MAY BE RELEVANT IS NOT PENDING IN A COURT OF THIS STATE, SUCH AGENCY MAY DENY ACCESS TO SUCH RECORDS OR PORTIONS THEREOF PURSUANT TO PARAGRAPH (E) OR (F) OF SUBDIVISION TWO OF THIS SECTION IF, AFTER REASONABLE NOTICE TO THE REQUESTER AND AN OPPORTUNITY TO BE HEARD, SUCH AGENCY DETERMINES, BY CLEAR AND CONVINCING EVIDENCE, THAT AN EXCEPTION TO DISCLOSURE SPECIFIC TO THE SITUATION OR TO A SPECIFIC INDIVIDUAL OR INDIVIDUALS EXISTS PURSUANT TO PARAGRAPH (E) OR (F) OF SUBDIVISION TWO OF THIS SECTION AND THAT SUCH EXCEPTION WARRANTS A DENIAL OF DISCLOSURE, AND THE AGENCY'S DETERMINATION PROVIDED TO THE REQUESTER SETS FORTH IN DETAIL THE REASONS FOR THE AGENCY'S DETERMINATION; AND

(C) WHEN SUCH AGENCY IS CONSIDERING AN EXCEPTION TO DISCLOSURE PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, SUCH AGENCY SHALL RELEASE SUCH RECORDS, BUT SHALL ELECTRONICALLY OR OTHERWISE VISUALLY OBSCURE THE FACIAL FEATURES, VOICE, AND OTHER PERSONAL INFORMATION OF ANY PERSON, OTHER THAN AN INDIVIDUAL REFERRED TO IN SUBDIVISION ONE OF SECTION FIFTY-A OF THE CIVIL RIGHTS LAW, WITH RESPECT TO WHOM SUCH AGENCY DETERMINES, FOR SPECIFIC REASONS APPLICABLE TO SUCH INDIVIDUAL, BY CLEAR AND CONVINCING EVIDENCE, THAT (I) SUCH RECORDING OCCURRED AT A PLACE WHERE SUCH PERSON HAD A REASONABLE EXPECTATION OF PRIVACY; AND (II) DISCLOSURE WOULD CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY. NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED AS LIMITING THE AUTHORITY OF AN AGENCY TO APPLY SUCH EXCEPTION AND VISUALLY OBSCURE THE ENTIRE IMAGE, VOICE, AND OTHER PERSONAL INFORMATION OF AN INDIVIDUAL REFERRED TO IN SUBDIVISION ONE OF SECTION FIFTY-A OF THE CIVIL RIGHTS

LAW WHEN SUCH INDIVIDUAL, AT THE TIME OF THE RECORDING, WAS SERVING IN A COVERT OR UNDERCOVER CAPACITY.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.