

[First Reprint]

ASSEMBLY, No. 4312

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 25, 2020

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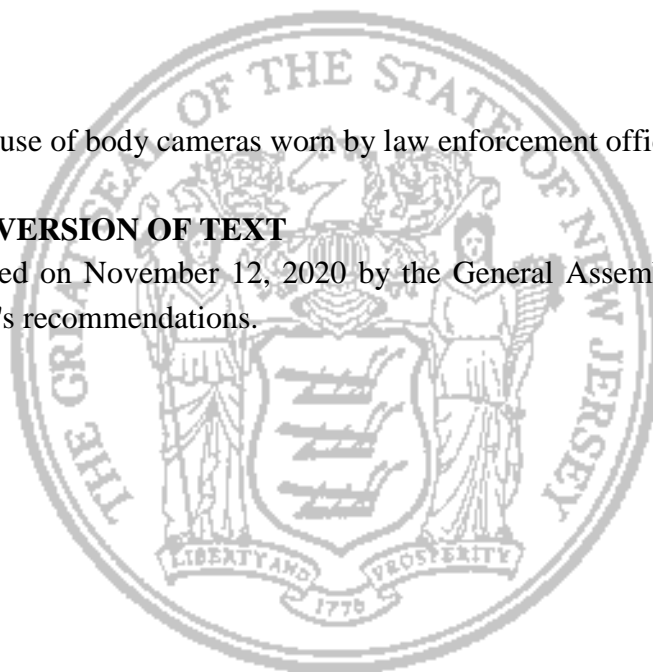
**Assemblywomen McKnight, Jasey, Timberlake, Pinkin, Vainieri Huttie,
Assemblymen Coughlin, Conaway and McKeon**

SYNOPSIS

Regulates use of body cameras worn by law enforcement officers.

CURRENT VERSION OF TEXT

As amended on November 12, 2020 by the General Assembly pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 11/16/2020)

1 AN ACT concerning law enforcement mobile video recording
2 systems and supplementing Title 40A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. For the purposes of this section:

8 “Body worn camera” means a mobile ¹audio and¹ video
9 recording system worn by a law enforcement officer ¹, but shall not
10 include a recording device worn by a law enforcement officer while
11 engaging in an undercover assignment or a recording device used
12 during a custodial interrogation conducted in a place of detention in
13 compliance with Rule 3:17 of the Rules Governing the Courts of the
14 State of New Jersey.

15 “Constructive authority” means the use of the law enforcement
16 officer’s authority to exert control over a person, directed against a
17 person who is subject to an investigative detention or arrest or
18 against any person if the officer has un-holstered a firearm or a
19 conducted energy device.

20 “Force” shall include physical, mechanical, enhanced
21 mechanical, and deadly force¹.

22 “Law enforcement officer” means a person whose public duties
23 include the power to act as an officer for the detection,
24 apprehension, arrest, and conviction of offenders against the laws of
25 this State.

26 “Mobile video recording system” shall have the same meaning as
27 set forth in section 1 of P.L.2014, c.54 (C.40A:14-118.1).

28 “School” means a public or nonpublic elementary or secondary
29 school within this State offering education in grades kindergarten
30 through 12, or any combination of grades, at which a child may
31 legally fulfill compulsory school attendance requirements.

32 “Subject of the video footage” means any law enforcement
33 officer, suspect, victim, detainee, conversant, injured party, or other
34 similarly situated person who appears on the body ¹worn¹ camera
35 recording, and shall not include a person who only incidentally
36 appears on the recording.

37 ¹“Youth facility” means a facility within this State used to house
38 or provide services to children under P.L.1951, c.138 (C.30:4C-1 et
39 seq.), including but not limited to group homes, residential
40 facilities, day care centers, and day treatment centers.¹

41 b. ¹**[**Only a law enforcement officer shall be authorized to wear
42 a body worn camera in this State.**]**¹ A body worn camera ¹used by
43 a law enforcement officer¹ shall be placed so that it maximizes the
44 camera’s ability to capture video footage of the officer's activities.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly amendments adopted in accordance with Governor's recommendations November 12, 2020.

1 c. ¹【The】 (1) Except as otherwise provided in this subsection
2 or in subsection e. of this section, the¹ video and audio recording
3 functions of a body worn camera shall be activated whenever the
4 officer is responding to a call for service or at the initiation of any
5 other law enforcement or investigative encounter between an officer
6 and a member of the public ¹, in accordance with applicable
7 guidelines or directives promulgated by the Attorney General¹ ;
8 provided however, if an immediate threat to the officer's life or
9 safety makes activating the body worn camera impossible or
10 dangerous, the officer shall activate the body worn camera at the
11 first reasonable opportunity to do so. The body worn camera shall
12 remain activated until the encounter has fully concluded and the
13 officer leaves the scene.

14 ¹(2) The video and audio recording functions of a body worn
15 camera may be deactivated, consistent with directives or guidelines
16 promulgated by the Attorney General, under the following
17 circumstances:

18 (a) when a civilian conversing with the officer requests that the
19 device be deactivated where it reasonably appears that the person
20 will not provide information or otherwise cooperate with the officer
21 unless that request is respected;

22 (b) when a person, other than an arrestee, is seeking emergency
23 medical services for themselves or another person and requests that
24 the device be deactivated;

25 (c) while the officer is participating in a discussion pertaining to
26 criminal investigation strategy and planning, provided that the
27 discussion is not conducted in the immediate presence of a civilian
28 and further provided that the officer is not actively engaged in the
29 collection of physical evidence; or

30 (d) when specifically authorized to do so by an assistant
31 prosecutor or an assistant or deputy attorney general for good and
32 sufficient cause as determined by the assistant prosecutor or
33 assistant or deputy attorney general.

34 (3) Unless the officer is actively engaged in investigating the
35 commission of a criminal offense, or is responding to an emergency
36 or call for service, or reasonably believes that he or she will be
37 required to use constructive authority or force, the officer shall not
38 activate the video and audio recording functions of a body worn
39 camera, or shall deactivate a device that has been activated, while
40 the officer:

41 (a) is in a school or youth facility or on school or youth facility
42 property under circumstances where minor children would be in
43 view of the device;

44 (b) is in a patient care area of a healthcare facility, medical
45 office, or substance abuse treatment facility under circumstances
46 where patients would be in view of the device; or

1 (c) is in a place of worship under circumstances where
2 worshippers would be in view of the device.

3 (4) The officer shall not activate the video and audio recording
4 functions of a body worn camera, or shall deactivate a device that
5 has been activated, if the officer knows or reasonably believes that
6 the recording would risk revealing the identity of an individual as
7 an undercover officer or confidential informant or otherwise would
8 pose a risk to the safety of an undercover officer or confidential
9 informant, unless such activation is expressly authorized by a
10 supervisor, or unless the exigency of the situation and danger posed
11 to an officer require that the encounter or incident be recorded, in
12 which event the officer shall inform his or her supervisor that the
13 recording risks revealing the identity of an individual as an
14 undercover officer or confidential informant.

15 (5) An officer shall not activate a body worn camera while in a
16 courtroom during court proceedings, unless the officer is
17 responding to a call for service or is authorized to use constructive
18 force or authority.

19 (6) If the body worn camera model selected by a law
20 enforcement agency produces radio-frequency interference while
21 activated or while in standby mode, the device shall be deactivated
22 while in the area where an electronic alcohol breath testing device
23 is being used, or, as necessary, shall be removed from the area
24 where such device is being used. Nothing herein shall be construed
25 to preclude the use of a body worn camera to record the behavior of
26 a person arrested for driving while intoxicated other than while the
27 person is in the breath-testing area while the electronic breath
28 testing device is being operated. If this provision requires
29 deactivation of a body worn camera, the officer shall narrate the
30 reasons for deactivation, and the device shall be re-activated when
31 safe and practicable to do so following the completion of the breath
32 testing operation.¹

33 d. A law enforcement officer who is wearing a body worn
34 camera shall notify the subject of the recording that the subject is
35 being recorded by the body worn camera ¹unless it is unsafe or
36 infeasible to provide such notification. Such notification shall be
37 made¹ as close to the inception of the encounter as is reasonably
38 possible. ¹If the officer does not provide the required notification
39 because it is unsafe or infeasible to do so, the officer shall
40 document the reasons for that decision in a report or by narrating
41 the reasons on the body worn camera recording, or both. The
42 failure to verbally notify a person pursuant to this section shall not
43 affect the admissibility of any statement or evidence.¹

44 e. Notwithstanding the requirements of subsection c. of this
45 section:

46 (1) prior to entering a private residence ¹[without a warrant or
47 in non-exigent circumstances]¹ , a law enforcement officer shall

1 '[ask] notify' the occupant '[whether] that' the occupant
2 '[wishes] is being recorded by the body worn camera and, if the
3 occupant requests' the officer to discontinue use of the officer's
4 body worn camera '[; if the occupant responds affirmatively]', the
5 officer shall immediately discontinue use of the body worn camera
6 'unless the officer is actively engaged in investigating the
7 commission of a criminal offense, or is responding to an
8 emergency, or reasonably believes that the officer will be required
9 to use constructive authority or force' ;

10 (2) when interacting with an apparent crime victim, a law
11 enforcement officer shall, as soon as practicable, '[ask] notify' the
12 'apparent crime' victim '[whether the victim wants] that he or she
13 is being recorded by the body worn camera and, if the apparent
14 crime victim requests' the officer to discontinue use of the body
15 worn camera '[; if the victim responds affirmatively]' , the officer
16 shall immediately discontinue use of the body worn camera; and

17 (3) when interacting with a person seeking to anonymously
18 report a crime or assist in an ongoing law enforcement
19 investigation, a law enforcement officer 'if the person requests
20 that the officer discontinue use of the body worn camera,' shall,
21 '[as soon as practicable, ask the person seeking to remain
22 anonymous whether the person wants the officer to discontinue use
23 of the body worn camera; if the person responds affirmatively, the
24 officer shall immediately] evaluate the circumstances and, if
25 appropriate,' discontinue use of the body worn camera.

26 f. '[An offer] A request' to discontinue the use of a body
27 worn camera made '[by] to' a law enforcement officer pursuant to
28 subsection e. of this section and the response to the '[offer]
29 request' shall be recorded by the recording system prior to
30 discontinuing use of the recording system.

31 g. A body worn camera shall not be used surreptitiously.

32 h. A body worn camera shall not be used to gather intelligence
33 information based on First Amendment protected speech,
34 associations, or religion, or to record activity that is unrelated to a
35 response to a call for service or a law enforcement or investigative
36 encounter between a law enforcement officer and a member of the
37 public 'provided that nothing in this subsection shall be construed
38 to prohibit activation of video and audio recording functions of a
39 body worn camera as authorized under this law and in accordance
40 with any applicable guidelines or directives promulgated by the
41 Attorney General' .

42 i. '[A law enforcement officer shall not activate a body worn
43 camera while on school grounds, except when the officer is
44 responding to an imminent threat to life or health.] Every law
45 enforcement agency shall promulgate and adhere to a policy,
46 standing operating procedure, directive, or order which meets the

1 requirements of subsection j. of this act and any applicable
2 guideline or directive promulgated by the Attorney General that
3 specifies the period of time during which a body worn camera
4 recording shall be retained.¹

5 j. ¹Video footage from a A¹ body worn camera ¹recording¹
6 shall be retained by the law enforcement agency that employs the
7 officer for ¹six months from the date it was recorded ¹a retention
8 period consistent with the provisions of this section¹, after which
9 time the ¹footage ¹recording¹ shall be permanently deleted
10 ¹except. A body worn camera recording shall be retained for not
11 less than 180 days from the date it was recorded, which minimum
12 time frame for retention shall be applicable to all contracts for
13 retention of body worn camera recordings executed by or on behalf
14 of a law enforcement agency on or after the effective date of this
15 act, and shall be subject to the following additional retention
16 periods¹:

17 (1) ¹the video footage ¹a body worn camera recording¹ shall
18 automatically be retained for not less than three years if it captures
19 images involving ¹:

20 (a) any use of force;

21 (b) events preceding and including an arrest for a crime or
22 attempted crime; or

23 (c) ¹an encounter about which a complaint has been registered
24 by a subject of the ¹video footage. ¹body worn camera recording;¹

25 (2) ¹the video footage subject to any applicable retention
26 periods established in paragraph (3) of this subsection to the extent
27 such retention period is longer, a body worn camera recording¹
28 shall be retained for not less than three years if ¹a longer retention
29 period is¹ voluntarily requested by:

30 (a) the law enforcement officer whose body worn camera
31 ¹recorded the video footage made the video recording¹, if that
32 officer reasonably asserts the ¹video footage ¹recording¹ has
33 evidentiary or exculpatory value;

34 (b) a law enforcement officer who is a subject of the ¹video
35 footage ¹body worn camera recording¹, if that officer reasonably
36 asserts the ¹video footage ¹recording¹ has evidentiary or
37 exculpatory value;

38 (c) any ¹superior officer immediate supervisor¹ of a law
39 enforcement officer whose body worn camera ¹recorded the video
40 footage made the recording¹ or who is a subject of the ¹video
41 footage ¹body worn camera recording¹, if that ¹superior officer
42 immediate supervisor¹ reasonably asserts the ¹video footage
43 ¹recording¹ has evidentiary or exculpatory value;

1 (d) any law enforcement officer, if the ¹【video footage】 body
2 worn camera recording¹ is being retained solely and exclusively for
3 police training purposes;

4 (e) any member of the public who is a subject of the ¹【video
5 footage】 body worn camera recording¹ ;

6 (f) any parent or legal guardian of a minor who is a subject of
7 the ¹【video footage】 body worn camera recording¹ ; or

8 (g) a deceased subject's next of kin or legally authorized
9 designee.

10 ¹(3) Notwithstanding the provisions of paragraph (1) or (2) of
11 this subsection, a body worn camera recording shall be subject to
12 the following additional retention requirements:

13 (a) when a body worn camera recording pertains to a criminal
14 investigation or otherwise records information that may be subject
15 to discovery in a prosecution, the recording shall be treated as
16 evidence and shall be kept in accordance with the retention period
17 for evidence in a criminal prosecution;

18 (b) when a body worn camera records an arrest that did not result
19 in an ongoing prosecution, or records the use of police force, the
20 recording shall be kept until the expiration of the statute of
21 limitations for filing a civil complaint against the officer or the
22 employing law enforcement agency;

23 (c) when a body worn camera records an incident that is the
24 subject of an internal affairs complaint, the recording shall be kept
25 pending final resolution of the internal affairs investigation and any
26 resulting administrative action.¹

27 k. To effectuate subparagraphs (e), (f), and (g) of paragraph (2)
28 of subsection j. of this section, the member of the public, parent or
29 legal guardian, or next of kin or designee shall be permitted to
30 review the ¹【video footage】 body worn camera recording in
31 accordance with the provisions of P.L.1963, c.73 (C.47:1A-1 et
32 seq.)¹ to determine whether to request a three-year retention period.

33 l. Notwithstanding that a criminal investigatory record does
34 not constitute a government record under section 1 of P.L.1995,
35 c.23 (C.47:1A-1.1), only the following ¹【video footage】 body worn
36 camera recordings¹ shall be exempt from public inspection:

37 (1) ¹【video footage】 body worn camera recordings¹ not subject
38 to a minimum three-year retention period ¹or additional retention
39 requirements¹ pursuant to subsection j. of this section;

40 (2) ¹【video footage】 body worn camera recordings¹ subject to a
41 minimum three-year retention period solely and exclusively
42 pursuant to ¹【subparagraph (c) of】¹ paragraph (1) of subsection j.
43 of this section if the subject of the ¹【video footage】 body worn
44 camera recording¹ making the complaint requests the ¹【video
45 footage】 body worn camera recording¹ not be made available to the
46 public;

1 (3) ¹**video footage** body worn camera recordings¹ subject to a
2 minimum three-year retention period solely and exclusively
3 pursuant to subparagraph (a), (b), (c), or (d) of paragraph (2) of
4 subsection j. of this section; and

5 (4) ¹**video footage** body worn camera recordings¹ subject to a
6 minimum three-year retention period solely and exclusively
7 pursuant to subparagraph (e), (f), or (g) of paragraph (2) of
8 subsection j. of this section if a member, parent or legal guardian, or
9 next of kin or designee requests the ¹**video footage** body worn
10 camera recording¹ not be made available to the public.

11 m. Any ¹**video footage** body worn camera recording¹ retained
12 beyond ¹**six months** 180 days¹ solely and exclusively pursuant to
13 subparagraph (d) of paragraph (2) of subsection j. of this section
14 shall not be admissible as evidence in any criminal or civil legal or
15 administrative proceeding.

16 n. A law enforcement officer shall not review or receive an
17 accounting ¹**of** a¹ body worn camera ¹**video footage** recording¹
18 that is subject to a minimum three-year retention period pursuant to
19 paragraph (1) ¹**or paragraph (3)**¹ of subsection j. of this section
20 prior to ¹**completing** creating¹ any required initial reports,
21 statements, and interviews regarding the recorded event ¹; provided
22 that nothing in this paragraph is intended to prevent the officer from
23 considering, reviewing or receiving an accounting of such a body
24 worn camera recording subsequent to the creation of any required
25 initial reports, statements, and interviews regarding the recorded
26 event¹ .

27 ¹**o.** Video footage not subject to a minimum three-year retention
28 period shall not be viewed by any superior officer of a law
29 enforcement officer whose body worn camera recorded the footage
30 absent a specific allegation of misconduct, nor shall it be subject to
31 any type of automated analysis or analytics.

32 **Video footage** ¹**o.** Body worn camera recordings¹ shall
33 not be divulged or used by any law enforcement agency for any
34 commercial or other non-law enforcement purpose.

35 ¹**q.** ¹**p.** If a law enforcement agency authorizes a third-party
36 to act as its agent in maintaining ¹**footage** recordings¹ from a
37 body worn camera, the agent shall be prohibited from independently
38 accessing, viewing, or altering any ¹**video footage** recordings¹,
39 except to delete ¹**videos** recordings¹ as required by law or agency
40 retention policies.

41 ¹**r.** ¹**q.** If a law enforcement officer, employee, or agent fails
42 to adhere to the recording or retention requirements contained in
43 this act, or intentionally interferes with a body worn camera's
44 ability to accurately capture ¹**video footage** audio or video
45 recordings¹ :

1 (1) **1** [appropriate disciplinary action shall be taken against] **1** the
2 officer, employee, or agent shall be subject to appropriate
3 disciplinary action¹;

4 (2) there shall be a rebuttable presumption that exculpatory
5 evidence was destroyed or not captured¹ in favor of a criminal
6 defendant who reasonably asserts that exculpatory evidence was
7 destroyed or not captured; and

8 (3) there shall be a rebuttable presumption that evidence
9 supporting the plaintiff's claim was destroyed or not captured¹ in
10 favor of a civil plaintiff suing the government, a law enforcement
11 agency, or a law enforcement officer for damages based on police
12 misconduct if the plaintiff reasonably asserts that evidence
13 supporting the plaintiff's claim was destroyed or not captured.

14 **1** [s. The disciplinary action requirement and rebuttable
15 presumptions contained in subsection r. of this section may be
16 overcome by contrary evidence or proof of exigent circumstances
17 that make compliance impossible.

18 **t. r.**¹ Any **1** [video footage] recordings¹ from a body worn
19 camera recorded in contravention of this or any other applicable law
20 shall be immediately destroyed and shall not be admissible as
21 evidence in any criminal, civil, or administrative proceeding.

22 **1** [u.] s.¹ Nothing in this act shall be deemed to contravene any
23 laws governing the maintenance and destruction of evidence in a
24 criminal investigation or prosecution.

25

26 2. This act shall take effect on the first day of the seventh
27 month after enactment.