

ASSEMBLY, No. 5728

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 17, 2021

Sponsored by:

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

Concerns body worn cameras for law enforcement officers.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning body worn cameras and amending P.L.2020,
2 c.128 and P.L.2020, c.129.

3

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

6

7 1. Section 1 of P.L.2020, c.128 (C.40A:14-118.3) is amended
8 to read as follows:

9 1. a. Notwithstanding the provisions of any other law to the
10 contrary and subject to the limit of funds appropriated or otherwise
11 made available for this purpose, every uniformed State, county, and
12 municipal patrol law enforcement officer shall wear a body worn
13 camera that electronically records audio and video while acting in
14 the performance of the officer's official duties and notwithstanding
15 the provisions of any other law to the contrary or the limits of any
16 appropriation, every State, county, and municipal operational
17 detective, while on patrol, shall wear a body worn camera that
18 electronically records audio and video while acting in the
19 performance of the officer's official duties, except:

20 (1) while engaging in an undercover assignment;

21 (2) when assigned to non-uniformed duties which are not
22 included in the duties of an operational detective as defined in this
23 section;

24 (3) while serving in an administrative position within the
25 department;

26 (4) while meeting with a confidential informant;

27 (5) **【while engaging in union representation of a member of the**
28 **collective bargaining group;】** (Deleted by amendment, P.L. , c.)
29 (pending before the Legislature as this bill)

30 (6) **【when directed by the Chief or a superior officer for a lawful**
31 **purpose;】** (Deleted by amendment, P.L. , c.) (pending before the
32 L Legislature as this bill)

33 (7) a detective or investigator of a county prosecutor's office or
34 Division of Criminal Justice who is assigned to non-uniformed
35 duties which are not included in the duties of an operational
36 detective as defined in this section when authorized by the County
37 Prosecutor or Attorney General; **【or】**

38 (8) as may be otherwise provided in accordance with guidelines
39 or directives promulgated by the Attorney General;

40 (9) while assigned to conduct surveillance activities;

41 (10) while installing electronic surveillance equipment; or

42 (11) an officer or detective who is appointed as a liaison or
43 member of a task force operation where the lead law enforcement
44 agency is not subject to the provisions of this section.

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.

1 Operational detectives required to wear a body worn camera
2 pursuant to this subsection may conceal the body worn camera.

3 b. In addition to funding provided through the annual
4 appropriations act, the body worn cameras required by subsection a.
5 of this section may be funded by forfeiture funds collected
6 pursuant to N.J.S.2C:64-6, in an amount to be determined by the
7 Attorney General, or any other source of funding made available
8 for this purpose, including but not limited to federal grants.

9 c. For the purposes of this section **[,]**:

10 **["body"]** "Body worn camera" means a mobile video recording
11 system worn by a law enforcement officer.

12 "Operational Detective" means a non-uniformed law
13 enforcement officer who is deployed outside of a law enforcement
14 station, barracks, or other law enforcement facility to engage in the
15 detection, apprehension, arrest, and conviction of offenders against
16 the laws of this State.

17 (cf: P.L.2020, c.128, s.1)

18
19 2. Section 1 of P.L.2020, c.129 (C.40A:14-118.5) is amended
20 to read as follows:

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

22 "Body worn camera" means a mobile audio and video recording
23 system worn by a law enforcement officer, but shall not include a
24 recording device worn by a law enforcement officer while engaging
25 in an undercover assignment or a recording device used during a
26 custodial interrogation conducted in a place of detention in
27 compliance with Rule 3:17 of the Rules Governing the Courts of the
28 State of New Jersey.

29 "Constructive authority" means the use of the law enforcement
30 officer's authority to exert control over a person, directed against a
31 person who is subject to an investigative detention or arrest or
32 against any person if the officer has un-holstered a firearm or a
33 conducted energy device.

34 "Force" shall include physical, mechanical, enhanced
35 mechanical, and deadly force.

36 "Law enforcement officer" means a person whose public duties
37 include the power to act as an officer for the detection,
38 apprehension, arrest, and conviction of offenders against the laws of
39 this State.

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

42 "School" means a public or nonpublic elementary or secondary
43 school within this State offering education in grades kindergarten
44 through 12, or any combination of grades, at which a child may
45 legally fulfill compulsory school attendance requirements.

46 "Subject of the video footage" means any law enforcement
47 officer, suspect, victim, detainee, conversant, injured party, or other
48 similarly situated person who appears on the body worn camera

1 recording, and shall not include a person who only incidentally
2 appears on the recording.

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

7 b. A body worn camera used by a law enforcement officer shall
8 be placed so that it maximizes the camera's ability to capture video
9 footage of the officer's activities.

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

23 (2) The video and audio recording functions of a body worn
24 camera may be deactivated, consistent with directives or guidelines
25 promulgated by the Attorney General, under the following
26 circumstances:

27 (a) when a civilian conversing with the officer requests that the
28 device be deactivated where it reasonably appears that the person
29 will not provide information or otherwise cooperate with the officer
30 unless that request is respected;

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

34 (c) while the officer is participating in a discussion pertaining to
35 criminal investigation strategy and planning, provided that the
36 discussion is not conducted in the immediate presence of a civilian
37 and further provided that the officer is not actively engaged in the
38 collection of physical evidence; **[or]**

39 (d) when specifically authorized to do so by an assistant
40 prosecutor or an assistant or deputy attorney general for good and
41 sufficient cause as determined by the assistant prosecutor or
42 assistant or deputy attorney general; or

43 (e) when an operational detective, as defined in section 1 of
44 P.L.2020, c.128 (C.40A:14-118.3), is developing intelligence from
45 a prospective confidential informant in order to protect the identity
46 of the potential informant.

47 (3) Unless the officer is actively engaged in investigating the
48 commission of a criminal offense, or is responding to an emergency
49 or call for service, or reasonably believes that he or she will be

1 required to use constructive authority or force, the officer shall not
2 activate the video and audio recording functions of a body worn
3 camera, or shall deactivate a device that has been activated, while
4 the officer:

5 (a) is in a school or youth facility or on school or youth facility
6 property under circumstances where minor children would be in
7 view of the device;

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

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

13 (4) The officer shall not activate the video and audio recording
14 functions of a body worn camera, or shall deactivate a device that
15 has been activated, if the officer knows or reasonably believes that
16 the recording would risk revealing the identity of an individual as
17 an undercover officer or confidential informant or otherwise would
18 pose a risk to the safety of an undercover officer or confidential
19 informant, unless such activation is expressly authorized by a
20 supervisor, or unless the exigency of the situation and danger posed
21 to an officer require that the encounter or incident be recorded, in
22 which event the officer shall inform his or her supervisor that the
23 recording risks revealing the identity of an individual as an
24 undercover officer or confidential informant.

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

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

43 d. A law enforcement officer who is wearing a body worn
44 camera shall notify the subject of the recording that the subject is
45 being recorded by the body worn camera unless it is unsafe or
46 infeasible to provide such notification. Such notification shall be
47 made as close to the inception of the encounter as is reasonably
48 possible. If the officer does not provide the required notification
49 because it is unsafe or infeasible to do so, the officer shall

1 document the reasons for that decision in a report or by narrating
2 the reasons on the body worn camera recording, or both. The
3 failure to verbally notify a person pursuant to this section shall not
4 affect the admissibility of any statement or evidence.

5 e. Notwithstanding the requirements of subsection c. of this
6 section:

7 (1) prior to entering a private residence, a law enforcement
8 officer shall notify the occupant that the occupant is being recorded
9 by the body worn camera and, if the occupant requests the officer to
10 discontinue use of the officer's body worn camera, the officer shall
11 immediately discontinue use of the body worn camera unless the
12 officer is actively engaged in investigating the commission of a
13 criminal offense, or is responding to an emergency, or reasonably
14 believes that the officer will be required to use constructive
15 authority or force;

16 (2) when interacting with an apparent crime victim, a law
17 enforcement officer shall, as soon as practicable, notify the apparent
18 crime victim that he or she is being recorded by the body worn
19 camera and, if the apparent crime victim requests the officer to
20 discontinue use of the body worn camera, the officer shall
21 immediately discontinue use of the body worn camera; and

22 (3) when interacting with a person seeking to anonymously
23 report a crime or assist in an ongoing law enforcement
24 investigation, a law enforcement officer, if the person requests that
25 the officer discontinue use of the body worn camera, shall, evaluate
26 the circumstances and, if appropriate, discontinue use of the body
27 worn camera.

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

32 g. A body worn camera shall not be used surreptitiously, except
33 that an operational detective, as defined in section 1 of P.L.2020,
34 c.128 (C.40A:14-118.3), may conceal a body worn camera pursuant
35 to section 1 of P.L.2020, c.128 (C.40A:14-118.3).

36 h. **【**A body worn camera shall not be used to gather
37 intelligence information based on First Amendment protected
38 speech, associations, or religion, or to record activity that is
39 unrelated to a response to a call for service or a law enforcement or
40 investigative encounter between a law enforcement officer and a
41 member of the public, provided that nothing in this subsection shall
42 be construed to prohibit activation of video and audio recording
43 functions of a body worn camera as authorized under this law and in
44 accordance with any applicable guidelines or directives
45 promulgated by the Attorney General.**】** (Deleted by amendment,
46 P.L. , c.) (pending before the Legislature as this bill)

47 i. Every law enforcement agency shall promulgate and adhere
48 to a policy, standing operating procedure, directive, or order which
49 meets the requirements of subsection j. of this act and any

1 applicable guideline or directive promulgated by the Attorney
2 General that specifies the period of time during which a body worn
3 camera recording shall be retained.

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

14 (1) a body worn camera recording shall automatically be
15 retained for not less than three years if it captures images involving
16 an encounter about which a complaint has been registered by a
17 subject of the body worn camera recording;

18 (2) subject to any applicable retention periods established in
19 paragraph (3) of this subsection to the extent such retention period
20 is longer, a body worn camera recording shall be retained for not
21 less than three years if voluntarily requested by:

22 (a) the law enforcement officer whose body worn camera made
23 the video recording, if that officer reasonably asserts the recording
24 has evidentiary or exculpatory value;

25 (b) a law enforcement officer who is a subject of the body worn
26 camera recording, if that officer reasonably asserts the recording
27 has evidentiary or exculpatory value;

28 (c) any immediate supervisor of a law enforcement officer
29 whose body worn camera made the recording or who is a subject of
30 the body worn camera recording, if that immediate supervisor
31 reasonably asserts the recording has evidentiary or exculpatory
32 value;

33 (d) any law enforcement officer, if the body worn camera
34 recording is being retained solely and exclusively for police training
35 purposes;

36 (e) any member of the public who is a subject of the body worn
37 camera recording;

38 (f) any parent or legal guardian of a minor who is a subject of
39 the body worn camera recording; or

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

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

45 (a) when a body worn camera recording pertains to a criminal
46 investigation or otherwise records information that may be subject
47 to discovery in a prosecution, the recording shall be treated as
48 evidence and shall be kept in accordance with the retention period
49 for evidence in a criminal prosecution;

- 1 (b) when a body worn camera records an arrest that did not
2 result in an ongoing prosecution, or records the use of police force,
3 the recording shall be kept until the expiration of the statute of
4 limitations for filing a civil complaint against the officer or the
5 employing law enforcement agency;
- 6 (c) when a body worn camera records an incident that is the
7 subject of an internal affairs complaint, the recording shall be kept
8 pending final resolution of the internal affairs investigation and any
9 resulting administrative action.
- 10 k. To effectuate subparagraphs (e), (f), and (g) of paragraph (2)
11 of subsection j. of this section, the member of the public, parent or
12 legal guardian, or next of kin or designee shall be permitted to
13 review the body worn camera recording in accordance with the
14 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) to determine
15 whether to request a three-year retention period.
- 16 l. Notwithstanding that a criminal investigatory record does
17 not constitute a government record under section 1 of P.L.1995,
18 c.23 (C.47:1A-1.1), only the following body worn camera
19 recordings shall be exempt from public inspection:
- 20 (1) body worn camera recordings not subject to a minimum
21 three-year retention period or additional retention requirements
22 pursuant to subsection j. of this section;
- 23 (2) body worn camera recordings subject to a minimum three-
24 year retention period solely and exclusively pursuant to paragraph
25 (1) of subsection j. of this section if the subject of the body worn
26 camera recording making the complaint requests the body worn
27 camera recording not be made available to the public;
- 28 (3) body worn camera recordings subject to a minimum three-
29 year retention period solely and exclusively pursuant to
30 subparagraph (a), (b), (c), or (d) of paragraph (2) of subsection j. of
31 this section; and
- 32 (4) body worn camera recordings subject to a minimum three-
33 year retention period solely and exclusively pursuant to
34 subparagraph (e), (f), or (g) of paragraph (2) of subsection j. of this
35 section if a member, parent or legal guardian, or next of kin or
36 designee requests the body worn camera recording not be made
37 available to the public.
- 38 m. Any body worn camera recording retained beyond 180 days
39 solely and exclusively pursuant to subparagraph (d) of paragraph
40 (2) of subsection j. of this section shall not be admissible as
41 evidence in any criminal or civil legal or administrative proceeding.
- 42 n. A law enforcement officer shall not be permitted to review
43 or receive an accounting of a body worn camera recording from the
44 officer's assigned body worn camera that is subject to a minimum
45 three-year retention period pursuant to paragraph (1) or paragraph
46 (3) of **【subsubsection】** subsection j. of this section prior to creating
47 any required initial reports, statements, and interviews regarding the
48 recorded event; provided that nothing in this paragraph is intended
49 to prevent the officer from considering, reviewing or receiving an

1 accounting of such a body worn camera recording subsequent to the
2 creation of any required initial reports, statements, and interviews
3 regarding the recorded event.

4 o. Body worn camera recordings shall not be divulged or used
5 by any law enforcement agency for any commercial or other non-
6 law enforcement purpose.

7 p. If a law enforcement agency authorizes a third-party to act
8 as its agent in maintaining recordings from a body worn camera, the
9 agent shall be prohibited from independently accessing, viewing, or
10 altering any recordings, except to delete recordings as required by
11 law or agency retention policies.

12 q. If a law enforcement officer, employee, or agent fails to
13 adhere to the recording or retention requirements contained in this
14 act, or intentionally interferes with a body worn camera's ability to
15 accurately capture audio or video recordings:

16 (1) the officer, employee, or agent shall be subject to
17 appropriate disciplinary action;

18 (2) there shall be a rebuttable presumption that exculpatory
19 evidence was destroyed or not captured in favor of a criminal
20 defendant who reasonably asserts that exculpatory evidence was
21 destroyed or not captured; and

22 (3) there shall be a rebuttable presumption that evidence
23 supporting the plaintiff's claim was destroyed or not captured in
24 favor of a civil plaintiff suing the government, a law enforcement
25 agency, or a law enforcement officer for damages based on police
26 misconduct if the plaintiff reasonably asserts that evidence
27 supporting the plaintiff's claim was destroyed or not captured.

28 r. Any recordings from a body worn camera recorded in
29 contravention of this or any other applicable law shall be
30 immediately destroyed and shall not be admissible as evidence in
31 any criminal, civil, or administrative proceeding.

32 s. Nothing in this act shall be deemed to contravene any laws
33 governing the maintenance and destruction of evidence in a
34 criminal investigation or prosecution.

35 (cf: P.L.2020, c.129, s.1)

36
37 3. This act shall take effect on the first day of the seventh
38 month after enactment.

41 STATEMENT

42
43 This bill concerns body worn cameras for law enforcement
44 officers. Under current law, subject to the limit of funds
45 appropriated or otherwise made available, every uniformed State,
46 county, and municipal patrol law enforcement officer, with certain
47 exceptions, is required to wear a body worn camera that
48 electronically records audio and video while acting in the
49 performance of the officer's official duties.

1 This bill requires every State, county, and municipal operational
2 detective, while on patrol, to also wear a body worn camera,
3 without being subject to the limit of any appropriation. This bill
4 defines an “operational detective” as a non-uniformed law
5 enforcement officer this is deployed outside of a law enforcement
6 station, barracks, or other law enforcement facility to engage in the
7 detection, apprehension, arrest, and conviction of offenders against
8 the laws of this State.

9 As set forth above, there are certain exceptions to the
10 requirement to wear a body worn camera under current law. This
11 bill removes the following exceptions to this requirement: 1) while
12 engaging in union representation of a member of the collective
13 bargaining group; and 2) when directed by the Chief or a superior
14 officer for a lawful purpose. The bill also provides that certain
15 exceptions only apply when the officer or detective is assigned to
16 non-uniformed duties which are not included in the definition of an
17 operational detective.

18 In addition, the bill adds the following exceptions to the
19 requirement to wear a body worn camera: 1) while assigned to
20 conduct surveillance activities; 2) while installing electronic
21 surveillance equipment; or 3) an officer or detective who is
22 appointed as a liaison or member of a task force operation where
23 the lead law enforcement agency is not subject to the provisions of
24 this bill.

25 The bill also provides that an operational detective that is
26 required to wear a body worn camera may conceal the camera.

27 Under current law, the video and audio recording functions of a
28 body worn camera may be deactivated, consistent with directives or
29 guidelines promulgated by the Attorney General, under certain
30 circumstances. This bill provides that the video and audio
31 recording functions of the body worn camera also may be
32 deactivated, consistent with directives or guidelines promulgated by
33 the Attorney General, when an operational detective is developing
34 intelligence from a prospective confidential informant in order to
35 protect the identity of the potential informant.

36 Under current law, a body worn camera is not to be used to
37 gather intelligence information based on First Amendment
38 protected speech, associations, or religion, or to record activity that
39 is unrelated to a response to a call for service or a law enforcement
40 or investigative encounter between a law enforcement officer and a
41 member of the public, provided this does not prohibit activation of
42 video and audio recording functions of a body worn camera as
43 authorized under law and in accordance with any applicable
44 guidelines or directives promulgated by the Attorney General. This
45 bill removes this provision.

46 Finally, the bill clarifies that a law enforcement officer is not to
47 be permitted to review or receive an accounting of a body worn
48 camera recording from the officer’s assigned body worn camera
49 that is subject to a certain retention period prior to creating any

- 1 required initial reports, statements, and interviews regarding the
- 2 recorded event. Under current law, the officer is not to review or
- 3 receive an accounting of a body worn camera recording.