

[Third Reprint]

ASSEMBLY, No. 5864

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 14, 2021

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Assemblymen Karabinchak, Dancer, Assemblywoman Downey, Senators
Schepisi, Stack, A.M.Bucco and Greenstein**

SYNOPSIS

Allows law enforcement officers to review body worn camera recordings prior to creating initial report.

CURRENT VERSION OF TEXT

As amended on November 8, 2021 by the General Assembly pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT concerning body worn cameras for law enforcement
2 officers and amending 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.129 (C.40A:14-118.5) is amended
8 to read as follows:

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

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

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

22 "Force" shall include physical, mechanical, enhanced
23 mechanical, and deadly force.

24 "Law enforcement officer" means a person whose public duties
25 include the power to act as an officer for the detection,
26 apprehension, arrest, and conviction of offenders against the laws of
27 this State. ²This term shall not include a correctional police officer.²

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

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

34 "Subject of the video footage" means any law enforcement
35 officer, suspect, victim, detainee, conversant, injured party, or other
36 similarly situated person who appears on the body worn camera
37 recording, and shall not include a person who only incidentally
38 appears on the recording.

39 "Youth facility" means a facility within this State used to house
40 or provide services to children under P.L.1951, c.138 (C.30:4C-
41 1 et seq.), including but not limited to group homes, residential
42 facilities, day care centers, and day treatment centers.

43 b. A body worn camera used by a law enforcement officer shall
44 be placed so that it maximizes the camera's ability to capture video
45 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 AHS committee amendments adopted June 14, 2021.

²Senate floor amendments adopted June 24, 2021.

³Assembly amendments adopted in accordance with Governor's recommendations November 8, 2021.

1 c. (1) Except as otherwise provided in this subsection or in
2 subsection e. of this section, the 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, in accordance with applicable
7 guidelines or directives promulgated by the Attorney General;
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 (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

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

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

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

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

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

42 e. Notwithstanding the requirements of subsection c. of this
43 section:

44 (1) prior to entering a private residence, a law enforcement
45 officer shall notify the occupant that the occupant is being recorded
46 by the body worn camera and, if the occupant requests the officer to
47 discontinue use of the officer's body worn camera, the officer shall
48 immediately discontinue use of the body worn camera unless the

1 officer is actively engaged in investigating the commission of a
2 criminal offense, or is responding to an emergency, or reasonably
3 believes that the officer will be required to use constructive
4 authority or force;

5 (2) when interacting with an apparent crime victim, a law
6 enforcement officer shall, as soon as practicable, notify the apparent
7 crime victim that he or she is being recorded by the body worn
8 camera and, if the apparent crime victim requests the officer to
9 discontinue use of the body worn camera, the officer shall
10 immediately discontinue use of the body worn camera; and

11 (3) when interacting with a person seeking to anonymously
12 report a crime or assist in an ongoing law enforcement
13 investigation, a law enforcement officer, if the person requests that
14 the officer discontinue use of the body worn camera, shall, evaluate
15 the circumstances and, if appropriate, discontinue use of the body
16 worn camera.

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

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

22 h. A body worn camera shall not be used to gather intelligence
23 information based on First Amendment protected speech,
24 associations, or religion, or to record activity that is unrelated to a
25 response to a call for service or a law enforcement or investigative
26 encounter between a law enforcement officer and a member of the
27 public, provided that nothing in this subsection shall be construed to
28 prohibit activation of video and audio recording functions of a body
29 worn camera as authorized under this law and in accordance with
30 any applicable guidelines or directives promulgated by the Attorney
31 General.

32 i. Every law enforcement agency shall promulgate and adhere
33 to a policy, standing operating procedure, directive, or order which
34 meets the requirements of subsection j. of this act and any
35 applicable guideline or directive promulgated by the Attorney
36 General that specifies the period of time during which a body worn
37 camera recording shall be retained.

38 j. A body worn camera recording shall be retained by the law
39 enforcement agency that employs the officer for a retention period
40 consistent with the provisions of this section, after which time the
41 recording shall be permanently deleted. A body worn camera
42 recording shall be retained for not less than 180 days from the date
43 it was recorded, which minimum time frame for retention shall be
44 applicable to all contracts for retention of body worn camera
45 recordings executed by or on behalf of a law enforcement agency
46 on or after the effective date of this act, and shall be subject to the
47 following additional retention periods:

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

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

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

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

15 (c) any immediate supervisor of a law enforcement officer
16 whose body worn camera made the recording or who is a subject of
17 the body worn camera recording, if that immediate supervisor
18 reasonably asserts the recording has evidentiary or exculpatory
19 value;

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

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

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

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

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

32 (a) when a body worn camera recording pertains to a criminal
33 investigation or otherwise records information that may be subject
34 to discovery in a prosecution, the recording shall be treated as
35 evidence and shall be kept in accordance with the retention period
36 for evidence in a criminal prosecution;

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

42 (c) when a body worn camera records an incident that is the
43 subject of an internal affairs complaint, the recording shall be kept
44 pending final resolution of the internal affairs investigation and any
45 resulting administrative action.

46 k. To effectuate subparagraphs (e), (f), and (g) of paragraph (2)
47 of subsection j. of this section, the member of the public, parent or
48 legal guardian, or next of kin or designee shall be permitted to

1 review the body worn camera recording in accordance with the
2 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) to determine
3 whether to request a three-year retention period.

4 l. Notwithstanding that a criminal investigatory record does
5 not constitute a government record under section 1 of P.L.1995,
6 c.23 (C.47:1A-1.1), only the following body worn camera
7 recordings shall be exempt from public inspection:

8 (1) body worn camera recordings not subject to a minimum
9 three-year retention period or additional retention requirements
10 pursuant to subsection j. of this section;

11 (2) body worn camera recordings subject to a minimum three-
12 year retention period solely and exclusively pursuant to paragraph
13 (1) of subsection j. of this section if the subject of the body worn
14 camera recording making the complaint requests the body worn
15 camera recording not be made available to the public;

16 (3) body worn camera recordings subject to a minimum three-
17 year retention period solely and exclusively pursuant to
18 subparagraph (a), (b), (c), or (d) of paragraph (2) of subsection j. of
19 this section; and

20 (4) body worn camera recordings subject to a minimum three-
21 year retention period solely and exclusively pursuant to
22 subparagraph (e), (f), or (g) of paragraph (2) of subsection j. of this
23 section if a member, parent or legal guardian, or next of kin or
24 designee requests the body worn camera recording not be made
25 available to the public.

26 m. Any body worn camera recording retained beyond 180 days
27 solely and exclusively pursuant to subparagraph (d) of paragraph
28 (2) of subsection j. of this section shall not be admissible as
29 evidence in any criminal or civil legal or administrative proceeding.

30 n. ¹~~1~~**[A]** (1) ³~~3~~**[Except as provided in paragraph (2) of this**
31 **subsection, a¹]** ³~~3~~**A** law enforcement officer shall **[not] be permitted**
32 **to review [or] ³[and] or³ receive an accounting of a body worn**
33 **camera recording ³prior to that officer creating any required**
34 **substantive initial report, providing a statement, or submitting to an**
35 **interview³ [that is subject to a minimum three-year retention period**
36 **pursuant to paragraph (1) or paragraph (3) of subsection j. of this**
37 **section] ³[²of a routine police stop or house call² prior to creating**
38 **any required initial reports, statements, and interviews]³ regarding**
39 **the recorded event ³, except under the following circumstances:³;**
40 **provided that nothing in this paragraph is intended to prevent the**
41 **officer from considering, reviewing or receiving an accounting of**
42 **such a body worn camera recording subsequent to the creation of**
43 **any required initial reports, statements, and interviews regarding the**
44 **recorded event].**

45 ³~~3~~**[¹(2) A law enforcement officer shall not be permitted to**
46 **review and receive an accounting of a body worn camera recording**
47 **prior to creating any required initial reports, statements, and**

1 interviews regarding the recorded event if the body worn camera
2 recording contains images involving:

3 (a) an encounter about which a complaint has been ²verbally
4 expressed or formally² registered by a subject of the body worn
5 camera recording;

6 (b) ³(a) the use of ³~~any~~² police³ force ³by the officer
7 where the officer knows or should know that the use of force
8 resulted in significant or serious bodily injury or death³ ²[resulting
9 in death or serious bodily injury]²;

10 ³[(c)] (b) the discharge of a firearm ³or any other use of deadly
11 force³ by ³[a] the³ law enforcement officer;

12 ³[(d)] (c) the death of a person while in ³[police] law
13 enforcement³ custody; ³[or]

14 (d) the death of a person during an encounter with a law
15 enforcement officer;³

16 (e) an incident that ³[is] that officer knows or has been advised
17 is or will be³ the subject of an internal affairs complaint ²relating to
18 the ³officer's³ use of force, bias, or dishonesty² ³[.]; or

19 (f) an incident the officer knows or has been advised is or will be
20 the subject of a citizen complaint related to the officer's use of
21 force, bias, or dishonesty.³

22 ³[(3) Nothing in paragraph (2) of this subsection is intended to
23 prevent the officer from considering, reviewing, or receiving an
24 accounting of such a body worn camera recording subsequent to the
25 creation of any required initial reports, statements, and interviews
26 regarding the recorded event.¹

27 ²(4) Prior to preparing an initial report or statement, a person
28 who is the subject of a police report created by a law enforcement
29 officer, for which a relevant body worn camera recording exists,
30 shall be permitted to review and receive an accounting of the
31 recording, if the law enforcement officer who created the report also
32 was permitted to review and receive an accounting of the recording
33 pursuant to paragraphs (1) and (2) of this subsection.]

34 (2) In the event a law enforcement officer reviews or receives an
35 accounting of a body worn camera recording prior to the creation of
36 any report, statement, or interview, the law enforcement officer
37 shall be required to acknowledge that prior review or receipt either
38 verbally or in writing within each such report, statement, or
39 interview.

40 (3)³ Nothing in this subsection shall ³be construed to³ require a
41 law enforcement officer to review a body worn camera recording
42 prior to creating any required initial reports, statements, and
43 interviews regarding the recorded event ³, nor to prevent a law
44 enforcement officer from reviewing or receiving an accounting of
45 such a body worn camera recording subsequent to the creation of

1 any required initial report, statement, or interview regarding the
2 recorded event^{3 2}.

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

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

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

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

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

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

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

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

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

35

36 2. This act shall take effect immediately.