

P.L. 2021, CHAPTER 472, *approved January 18, 2022*
Assembly, No. 5864 (*Third Reprint*)

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-

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 1 et seq.), including but not limited to group homes, residential
2 facilities, day care centers, and day treatment centers.

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

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

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

23 (a) when a civilian conversing with the officer requests that the
24 device be deactivated where it reasonably appears that the person
25 will not provide information or otherwise cooperate with the officer
26 unless that request is respected;

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

30 (c) while the officer is participating in a discussion pertaining to
31 criminal investigation strategy and planning, provided that the
32 discussion is not conducted in the immediate presence of a civilian
33 and further provided that the officer is not actively engaged in the
34 collection of physical evidence; or

35 (d) when specifically authorized to do so by an assistant
36 prosecutor or an assistant or deputy attorney general for good and
37 sufficient cause as determined by the assistant prosecutor or
38 assistant or deputy attorney general.

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

46 (a) is in a school or youth facility or on school or youth facility
47 property under circumstances where minor children would be in
48 view of the device;

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

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

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

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

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

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

47 e. Notwithstanding the requirements of subsection c. of this
48 section:

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

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

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

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

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

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

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

43 j. A body worn camera recording shall be retained by the law
44 enforcement agency that employs the officer for a retention period
45 consistent with the provisions of this section, after which time the
46 recording shall be permanently deleted. A body worn camera
47 recording shall be retained for not less than 180 days from the date
48 it was recorded, which minimum time frame for retention shall be

1 applicable to all contracts for retention of body worn camera
2 recordings executed by or on behalf of a law enforcement agency
3 on or after the effective date of this act, and shall be subject to the
4 following additional retention periods:

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

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

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

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

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

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

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

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

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

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

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

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

46 (c) when a body worn camera records an incident that is the
47 subject of an internal affairs complaint, the recording shall be kept

1 pending final resolution of the internal affairs investigation and any
2 resulting administrative action.

3 k. To effectuate subparagraphs (e), (f), and (g) of paragraph (2)
4 of subsection j. of this section, the member of the public, parent or
5 legal guardian, or next of kin or designee shall be permitted to
6 review the body worn camera recording in accordance with the
7 provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) to determine
8 whether to request a three-year retention period.

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

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

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

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

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

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

35 n. ¹**[A]** (1) ³**[Except as provided in paragraph (2) of this**
36 **subsection, a¹ A³ law enforcement officer shall [not] be permitted**
37 **to review [or] ³**[and] or³ receive an accounting of a body worn****
38 **camera recording ³prior to that officer creating any required**
39 **substantive initial report, providing a statement, or submitting to an**
40 **interview³ [that is subject to a minimum three-year retention period**
41 **pursuant to paragraph (1) or paragraph (3) of subsection j. of this**
42 **section] ³**[²of a routine police stop or house call² prior to creating****
43 **any required initial reports, statements, and interviews]³ regarding**
44 **the recorded event ³, except under the following circumstances:³;**
45 provided that nothing in this paragraph is intended to prevent the
46 officer from considering, reviewing or receiving an accounting of
47 such a body worn camera recording subsequent to the creation of

1 any required initial reports, statements, and interviews regarding the
2 recorded event].

3 ³[(2) A law enforcement officer shall not be permitted to
4 review and receive an accounting of a body worn camera recording
5 prior to creating any required initial reports, statements, and
6 interviews regarding the recorded event if the body worn camera
7 recording contains images involving:

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

11 (b)] (a)³ the use of ³[²any² police]³ force ³by the officer
12 where the officer knows or should know that the use of force
13 resulted in significant or serious bodily injury or death³ ²[resulting
14 in death or serious bodily injury]²;

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

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

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

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

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

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

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

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

45 (3)³ Nothing in this subsection shall ³be construed to³ require a
46 law enforcement officer to review a body worn camera recording

1 prior to creating any required initial reports, statements, and
2 interviews regarding the recorded event ³, nor to prevent a law
3 enforcement officer from reviewing or receiving an accounting of
4 such a body worn camera recording subsequent to the creation of
5 any required initial report, statement, or interview regarding the
6 recorded event^{3,2}.

7 o. Body worn camera recordings shall not be divulged or used
8 by any law enforcement agency for any commercial or other non-
9 law enforcement purpose.

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

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

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

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

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

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

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

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

39
40 2. This act shall take effect immediately.

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