

SENATE, No. 101

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Regulates use of body cameras worn by law enforcement officers.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 8/25/2020)

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 video recording system
9 worn by a law enforcement officer.

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

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

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

20 “Subject of the video footage” means any law enforcement
21 officer, suspect, victim, detainee, conversant, injured party, or other
22 similarly situated person who appears on the body camera
23 recording, and shall not include a person who only incidentally
24 appears on the recording.

25 b. Only a law enforcement officer shall be authorized to wear a
26 body worn camera in this State. A body worn camera shall be
27 placed so that it maximizes the camera’s ability to capture video
28 footage of the officer's activities.

29 c. The video and audio recording functions of a body worn
30 camera shall be activated whenever the officer is responding to a
31 call for service or at the initiation of any other law enforcement or
32 investigative encounter between an officer and a member of the
33 public; provided however, if an immediate threat to the officer's life
34 or safety makes activating the body worn camera impossible or
35 dangerous, the officer shall activate the body worn camera at the
36 first reasonable opportunity to do so. The body worn camera shall
37 remain activated until the encounter has fully concluded and the
38 officer leaves the scene.

39 d. A law enforcement officer who is wearing a body worn
40 camera shall notify the subject of the recording that the subject is
41 being recorded by the body worn camera as close to the inception of
42 the encounter as is reasonably possible.

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

45 (1) prior to entering a private residence without a warrant or in
46 non-exigent circumstances, a law enforcement officer shall ask the
47 occupant whether the occupant wishes the officer to discontinue use
48 of the officer's body worn camera; if the occupant responds

1 affirmatively, the officer shall immediately discontinue use of the
2 body worn camera;

3 (2) when interacting with an apparent crime victim, a law
4 enforcement officer shall, as soon as practicable, ask the victim
5 whether the victim wants the officer to discontinue use of the body
6 worn camera; if the victim responds affirmatively, the officer shall
7 immediately discontinue use of the body worn camera; and

8 (3) when interacting with a person seeking to anonymously
9 report a crime or assist in an ongoing law enforcement
10 investigation, a law enforcement officer shall, as soon as
11 practicable, ask the person seeking to remain anonymous whether
12 the person wants the officer to discontinue use of the body worn
13 camera; if the person responds affirmatively, the officer shall
14 immediately discontinue use of the body worn camera.

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

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

20 h. A body worn camera shall not be used to gather intelligence
21 information based on First Amendment protected speech,
22 associations, or religion, or to record activity that is unrelated to a
23 response to a call for service or a law enforcement or investigative
24 encounter between a law enforcement officer and a member of the
25 public.

26 i. A law enforcement officer shall not activate a body worn
27 camera while on school grounds, except when the officer is
28 responding to an imminent threat to life or health.

29 j. Video footage from a body worn camera shall be retained by
30 the law enforcement agency that employs the officer for six months
31 from the date it was recorded, after which time the footage shall be
32 permanently deleted except:

33 (1) the video footage shall automatically be retained for not less
34 than three years if it captures images involving:

35 (a) any use of force;

36 (b) events preceding and including an arrest for a crime or
37 attempted crime; or

38 (c) an encounter about which a complaint has been registered by
39 a subject of the video footage.

40 (2) the video footage shall be retained for not less than three
41 years if a longer retention period is voluntarily requested by:

42 (a) the law enforcement officer whose body worn camera
43 recorded the video footage, if that officer reasonably asserts the
44 video footage has evidentiary or exculpatory value;

45 (b) a law enforcement officer who is a subject of the video
46 footage, if that officer reasonably asserts the video footage has
47 evidentiary or exculpatory value;

- 1 (c) any superior officer of a law enforcement officer whose body
2 worn camera recorded the video footage or who is a subject of the
3 video footage, if that superior officer reasonably asserts the video
4 footage has evidentiary or exculpatory value;
- 5 (d) any law enforcement officer, if the video footage is being
6 retained solely and exclusively for police training purposes;
- 7 (e) any member of the public who is a subject of the video
8 footage;
- 9 (f) any parent or legal guardian of a minor who is a subject of
10 the video footage; or
- 11 (g) a deceased subject's next of kin or legally authorized
12 designee.
- 13 k. To effectuate subparagraphs (e), (f), and (g) of paragraph (2)
14 of subsection j. of this section, the member of the public, parent or
15 legal guardian, or next of kin or designee shall be permitted to
16 review the video footage to determine whether to request a three-
17 year retention period.
- 18 l. Notwithstanding that a criminal investigatory record does not
19 constitute a government record under section 1 of P.L.1995, c.23
20 (C.47:1A-1.1), only the following video footage shall be exempt
21 from public inspection:
- 22 (1) video footage not subject to a minimum three-year retention
23 period pursuant to subsection j. of this section;
- 24 (2) video footage subject to a minimum three-year retention
25 period solely and exclusively pursuant to subparagraph (c) of
26 paragraph (1) of subsection j. of this section if the subject of the
27 video footage making the complaint requests the video footage not
28 be made available to the public;
- 29 (3) video footage subject to a minimum three-year retention
30 period solely and exclusively pursuant to subparagraph (a), (b), (c),
31 or (d) of paragraph (2) of subsection j. of this section; and
- 32 (4) video footage subject to a minimum three-year retention
33 period solely and exclusively pursuant to subparagraph (e), (f), or
34 (g) of paragraph (2) of subsection j. of this section if a member,
35 parent or legal guardian, or next of kin or designee requests the
36 video footage not be made available to the public.
- 37 m. Any video footage retained beyond six months solely and
38 exclusively pursuant to subparagraph (d) of paragraph (2) of
39 subsection j. of this section shall not be admissible as evidence in
40 any criminal or civil legal or administrative proceeding.
- 41 n. A law enforcement officer shall not review or receive an
42 accounting of body worn camera video footage that is subject to a
43 minimum three-year retention period pursuant to paragraph (1) of
44 subsection j. of this section prior to completing any required
45 initial reports, statements, and interviews regarding the recorded
46 event.
- 47 o. Video footage not subject to a minimum three-year retention
48 period shall not be viewed by any superior officer of a law

1 enforcement officer whose body worn camera recorded the footage
2 absent a specific allegation of misconduct, nor shall it be subject to
3 any type of automated analysis or analytics.

4 p. Video footage shall not be divulged or used by any law
5 enforcement agency for any commercial or other non-law
6 enforcement purpose.

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

12 r. 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 video footage:

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

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

26 s. The disciplinary action requirement and rebuttable
27 presumptions contained in subsection r. of this section may be
28 overcome by contrary evidence or proof of exigent circumstances
29 that make compliance impossible.

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

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

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

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41

42 STATEMENT

43

44 This bill regulates the use of body cameras worn by law
45 enforcement officers.

46 Under the bill, only law enforcement officers are authorized to
47 wear a body camera in this State. A body camera is to be located
48 on the officer where it maximizes the camera's ability to capture

1 video footage of the officer's activities. The video and audio
2 recording functions of the body camera are to be activated
3 whenever the officer is responding to a call for service or at the
4 initiation of any other law enforcement or investigative encounter
5 between an officer and a member of the public. But if an immediate
6 threat to the officer's life or safety makes activating the body worn
7 camera impossible or dangerous, the officer is directed by the bill to
8 activate the body camera at the first reasonable opportunity to do
9 so. The law enforcement officer wearing the body camera is
10 required to notify the subject of the recording that he or she is being
11 recorded as close to the inception of the encounter as is reasonably
12 possible.

13 The bill specifies that a body camera is to remain activated until
14 the encounter has fully concluded and the law enforcement officer
15 leaves the scene. The bill permits an officer to deactivate the
16 camera before the conclusion of the encounter if requested by the
17 occupant of a private residence being entered by the officer without
18 a warrant or in non-exigent circumstances; a victim; or a person
19 anonymously reporting a crime or assisting in an investigation.

20 The bill prohibits a law enforcement officer from using a body
21 camera surreptitiously or to gather intelligence information based
22 on First Amendment protected speech, associations, or religion, or
23 to record activity that is unrelated to a response to a call for service
24 or a law enforcement or investigative encounter between a law
25 enforcement officer and a member of the public. A law
26 enforcement officer also is prohibited from wearing a body camera
27 on school grounds, except when responding to an imminent threat
28 to life or health.

29 The bill requires video footage from a body camera to be
30 retained by the law enforcement agency that employs the officer for
31 six months from the date it was recorded. The video footage is to be
32 permanently deleted after expiration of this six-month period. But
33 the bill makes certain exceptions to the six-month rule. Video
34 footage is to be retained for not less than three years if it captures
35 images involving any use of force; events preceding and including
36 an arrest for a crime or attempted crime; or an encounter about
37 which a complaint has been registered by a subject of the video
38 footage.

39 Video footage also is to be retained for not less than three years
40 if a longer retention period is voluntarily requested by the law
41 enforcement officer whose body worn camera recorded the video
42 footage, if that officer reasonably asserts the video footage has
43 evidentiary or exculpatory value; a law enforcement officer who is
44 a subject of the video footage, if that officer reasonably asserts the
45 video footage has evidentiary or exculpatory value; any superior
46 officer of an officer whose body worn camera recorded the video
47 footage or who is a subject of the video footage, if that superior
48 officer reasonably asserts the video footage has evidentiary or

1 exculpatory value; a law enforcement officer, if the video footage is
2 being retained solely and exclusively for police training purposes; a
3 member of the public who is a subject of the video footage; a parent
4 or legal guardian of a minor who is a subject of the video footage;
5 or a deceased subject's next of kin or legally authorized designee.

6 The bill also specifies when video footage from a body camera is
7 exempt from the State's open public records act. Recent case law
8 has held that police video recordings are exempt from public
9 disclosure under the State's open public records act because they
10 pertain to criminal investigations. Notwithstanding this law, the bill
11 specifies that video footage from a body worn camera is not subject
12 to public inspection only when: 1) the footage is not subject to a
13 three-year retention period; 2) the footage constitutes a recording of
14 an encounter about which a complaint has been registered by the
15 subject of the footage and the subject requests the footage not be
16 made public; 3) a law enforcement officer or superior officer
17 reasonably asserts the video footage has evidentiary or exculpatory
18 value or the footage is being used for police training purposes; and
19 (4) a member of the public, parent or legal guardian, or deceased
20 subject's next of kin requests the video footage not be made
21 available to the public.

22 Further, the bill limits superior officers from viewing footage
23 unless there's an allegation of misconduct against the officer who
24 recorded the footage and prohibits automated analysis or analytics.
25 Third party vendors contracted to maintain video footage are
26 prohibited from viewing the footage other than to delete it.

27 Finally, the bill requires disciplinary action to be taken against
28 any law enforcement officer, employee, or agent who fails to adhere
29 to the recording or retention requirements contained in the bill or
30 who intentionally interferes with a body worn camera's ability to
31 accurately capture video footage. A rebuttable presumption in
32 favor of criminal defendants and civil plaintiffs is established if
33 exculpatory evidence was destroyed or not captured.

34 Any video footage from a body worn camera recorded in
35 contravention of the bill's provisions or any other applicable law is
36 to be immediately destroyed and is not to be admissible as evidence
37 in any criminal, civil, or administrative proceeding.