

[First Reprint]

SENATE, No. 3939

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JUNE 10, 2021

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Senator JOSEPH P. CRYAN

District 20 (Union)

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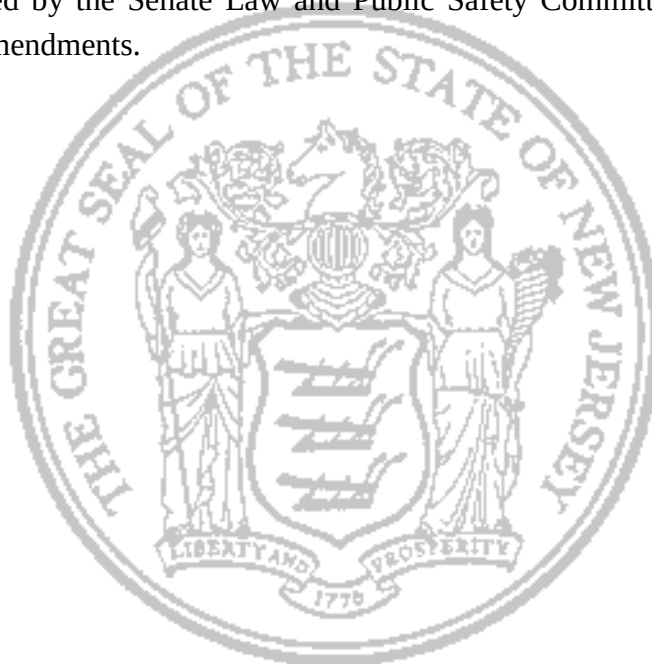
Senators Schepisi, Stack, A.M.Bucco and Greenstein

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee on June 21, 2021, with amendments.



(Sponsorship Updated As Of: 6/17/2021)

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. ¹This term shall not include a correctional police officer.¹

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:

¹Senate SLP committee amendments adopted June 21, 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

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.

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 unless it is unsafe or
36 infeasible to provide such notification. Such notification shall be
37 made as close to the inception of the encounter as is reasonably
38 possible. If 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.

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

46 (1) prior to entering a private residence, a law enforcement
47 officer shall notify the occupant that the occupant is being recorded
48 by the body worn camera and, if the occupant requests the officer to

1 discontinue use of the officer's body worn camera, the officer shall
2 immediately discontinue use of the body worn camera unless the
3 officer is actively engaged in investigating the commission of a
4 criminal offense, or is responding to an emergency, or reasonably
5 believes that the officer will be required to use constructive
6 authority or force;

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

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

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

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

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

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

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

1 on or after the effective date of this act, and shall be subject to the
2 following additional retention periods:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 n. ¹**[A]** (1) Except as provided in paragraph (2) of this
34 subsection, a¹ law enforcement officer shall **[not]** be permitted to
35 review **[or]** and receive an accounting of a body worn camera
36 recording **[that is subject to a minimum three-year retention period**
37 **pursuant to paragraph (1) or paragraph (3) of subsection j. of**
38 **this section]** ¹of a routine police stop or house call¹ prior to
39 creating any required initial reports, statements, and interviews
40 regarding the recorded event**];** provided that nothing in this
41 paragraph is intended to prevent the officer from considering,
42 reviewing or receiving an accounting of such a body worn camera
43 recording subsequent to the creation of any required initial reports,
44 statements, and interviews regarding the recorded event**].**

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

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

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

6 (b) the use of any police force;

7 (c) the discharge of a firearm by a law enforcement officer;

8 (d) the death of a person while in police custody; or

9 (e) an incident that is the subject of an internal affairs complaint
10 relating to the use of force, bias, or dishonesty.

11 (3) Nothing in paragraph (2) of this subsection is intended to
12 prevent the officer from considering, reviewing, or receiving an
13 accounting of such a body worn camera recording subsequent to the
14 creation of any required initial reports, statements, and interviews
15 regarding the recorded event.

16 Nothing in this subsection shall require a law enforcement
17 officer to review a body worn camera recording prior to creating
18 any required initial reports, statements, and interviews regarding the
19 recorded event.¹

20 o. Body worn camera recordings shall not be divulged or used
21 by any law enforcement agency for any commercial or other non-
22 law enforcement purpose.

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

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

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

34 (2) there shall be a rebuttable presumption that exculpatory
35 evidence was destroyed or not captured in favor of a criminal
36 defendant who reasonably asserts that exculpatory evidence was
37 destroyed or not captured; and

38 (3) there shall be a rebuttable presumption that evidence
39 supporting the plaintiff's claim was destroyed or not captured in
40 favor of a civil plaintiff suing the government, a law enforcement
41 agency, or a law enforcement officer for damages based on police
42 misconduct if the plaintiff reasonably asserts that evidence
43 supporting the plaintiff's claim was destroyed or not captured.

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

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

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

5

6 2. This act shall take effect immediately.