

[First Reprint]

**ASSEMBLY, No. 5864**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED JUNE 14, 2021

**Sponsored by:**

**Assemblywoman SHANIQUE SPEIGHT**

**District 29 (Essex)**

**Assemblywoman ELIANA PINTOR MARIN**

**District 29 (Essex)**

**Assemblywoman ANNETTE CHAPARRO**

**District 33 (Hudson)**

**Assemblywoman ANGELA V. MCKNIGHT**

**District 31 (Hudson)**

**Assemblyman WAYNE P. DEANGELO**

**District 14 (Mercer and Middlesex)**

**Assemblyman BRIAN BERGEN**

**District 25 (Morris and Somerset)**

**Co-Sponsored by:**

**Assemblymen Stanley, McClellan, Assemblywoman Stanfield,  
Assemblymen Karabinchak, Dancer and Assemblywoman Downey**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Assembly Homeland Security and State Preparedness Committee on June 14, 2021, with amendments.

(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 to  
8 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 in  
13 an undercover assignment or a recording device used during a  
14 custodial interrogation conducted in a place of detention in compliance  
15 with Rule 3:17 of the Rules Governing the Courts of the State of New  
16 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 against  
20 any person if the officer has un-holstered a firearm or a conducted  
21 energy device.

22 "Force" shall include physical, mechanical, enhanced mechanical,  
23 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, apprehension,  
26 arrest, and conviction of offenders against the laws of this State.

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

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

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

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

42 b. A body worn camera used by a law enforcement officer shall  
43 be placed so that it maximizes the camera's ability to capture video  
44 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:

<sup>1</sup>Assembly AHS committee amendments adopted June 14, 2021.

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

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

17 (a) when a civilian conversing with the officer requests that the  
18 device be deactivated where it reasonably appears that the person will  
19 not provide information or otherwise cooperate with the officer unless  
20 that request is respected;

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

24 (c) while the officer is participating in a discussion pertaining to  
25 criminal investigation strategy and planning, provided that the  
26 discussion is not conducted in the immediate presence of a civilian and  
27 further provided that the officer is not actively engaged in the  
28 collection of physical evidence; or

29 (d) when specifically authorized to do so by an assistant prosecutor  
30 or an assistant or deputy attorney general for good and sufficient cause  
31 as determined by the assistant prosecutor or assistant or deputy  
32 attorney general.

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

39 (a) is in a school or youth facility or on school or youth facility  
40 property under circumstances where minor children would be in view  
41 of the device;

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

45 (c) is in a place of worship under circumstances where  
46 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 has  
3 been activated, if the officer knows or reasonably believes that the  
4 recording would risk revealing the identity of an individual as an  
5 undercover officer or confidential informant or otherwise would pose a  
6 risk to the safety of an undercover officer or confidential informant,  
7 unless such activation is expressly authorized by a supervisor, or  
8 unless the exigency of the situation and danger posed to an officer  
9 require that the encounter or incident be recorded, in which event the  
10 officer shall inform his or her supervisor that the recording risks  
11 revealing the identity of an individual as an undercover officer or  
12 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 responding to  
15 a call for service or is authorized to use constructive force or authority.

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

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

40 e. Notwithstanding the requirements of subsection c. of this  
41 section:

42 (1) prior to entering a private residence, a law enforcement officer  
43 shall notify the occupant that the occupant is being recorded by the  
44 body worn camera and, if the occupant requests the officer to  
45 discontinue use of the officer's body worn camera, the officer shall  
46 immediately discontinue use of the body worn camera unless the  
47 officer is actively engaged in investigating the commission of a  
48 criminal offense, or is responding to an emergency, or reasonably

- 1 believes that the officer will be required to use constructive authority  
2 or force;
- 3 (2) when interacting with an apparent crime victim, a law  
4 enforcement officer shall, as soon as practicable, notify the apparent  
5 crime victim that he or she is being recorded by the body worn camera  
6 and, if the apparent crime victim requests the officer to discontinue use  
7 of the body worn camera, the officer shall immediately discontinue use  
8 of the body worn camera; and
- 9 (3) when interacting with a person seeking to anonymously report  
10 a crime or assist in an ongoing law enforcement investigation, a law  
11 enforcement officer, if the person requests that the officer discontinue  
12 use of the body worn camera, shall, evaluate the circumstances and, if  
13 appropriate, discontinue use of the body worn camera.
- 14 f. A request to discontinue the use of a body worn camera made  
15 to a law enforcement officer pursuant to subsection e. of this section  
16 and the response to the request shall be recorded by the recording  
17 system prior to discontinuing use of the recording system.
- 18 g. A body worn camera shall not be used surreptitiously.
- 19 h. A body worn camera shall not be used to gather intelligence  
20 information based on First Amendment protected speech, associations,  
21 or religion, or to record activity that is unrelated to a response to a call  
22 for service or a law enforcement or investigative encounter between a  
23 law enforcement officer and a member of the public, provided that  
24 nothing in this subsection shall be construed to prohibit activation of  
25 video and audio recording functions of a body worn camera as  
26 authorized under this law and in accordance with any applicable  
27 guidelines or directives promulgated by the Attorney General.
- 28 i. Every law enforcement agency shall promulgate and adhere to  
29 a policy, standing operating procedure, directive, or order which meets  
30 the requirements of subsection j. of this act and any applicable  
31 guideline or directive promulgated by the Attorney General that  
32 specifies the period of time during which a body worn camera  
33 recording shall be retained.
- 34 j. A body worn camera recording shall be retained by the law  
35 enforcement agency that employs the officer for a retention period  
36 consistent with the provisions of this section, after which time the  
37 recording shall be permanently deleted. A body worn camera  
38 recording shall be retained for not less than 180 days from the date it  
39 was recorded, which minimum time frame for retention shall be  
40 applicable to all contracts for retention of body worn camera  
41 recordings executed by or on behalf of a law enforcement agency on or  
42 after the effective date of this act, and shall be subject to the following  
43 additional retention periods:
- 44 (1) a body worn camera recording shall automatically be retained  
45 for not less than three years if it captures images involving an  
46 encounter about which a complaint has been registered by a subject of  
47 the body worn camera recording;

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

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

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

11 (c) any immediate supervisor of a law enforcement officer whose  
12 body worn camera made the recording or who is a subject of the body  
13 worn camera recording, if that immediate supervisor reasonably  
14 asserts the recording has evidentiary or exculpatory value;

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

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

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

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

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

26 (a) when a body worn camera recording pertains to a criminal  
27 investigation or otherwise records information that may be subject to  
28 discovery in a prosecution, the recording shall be treated as evidence  
29 and shall be kept in accordance with the retention period for evidence  
30 in a criminal prosecution;

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

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

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

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

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

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

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

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

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

25 n. <sup>1</sup>**[A]** (1) Except as provided in paragraph (2) of this  
26 subsection, a<sup>1</sup> law enforcement officer shall **[not]** be permitted to  
27 review **[or]** **and** receive an accounting of a body worn camera  
28 recording **[that is subject to a minimum three-year retention period**  
29 pursuant to paragraph (1) or paragraph (3) of subsection j. of this  
30 section<sup>1</sup> prior to creating any required initial reports, statements, and  
31 interviews regarding the recorded event **;** provided that nothing in this  
32 paragraph is intended to prevent the officer from considering,  
33 reviewing or receiving an accounting of such a body worn camera  
34 recording subsequent to the creation of any required initial reports,  
35 statements, and interviews regarding the recorded event<sup>1</sup>.

36 <sup>1</sup>(2) A law enforcement officer shall not be permitted to review  
37 and receive an accounting of a body worn camera recording prior to  
38 creating any required initial reports, statements, and interviews  
39 regarding the recorded event if the body worn camera recording  
40 contains images involving:

41 (a) an encounter about which a complaint has been registered by a  
42 subject of the body worn camera recording;

43 (b) the use of police force resulting in death or serious bodily  
44 injury;

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

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

47 (e) an incident that is the subject of an internal affairs complaint.

1       (3) Nothing in paragraph (2) of this subsection is intended to  
2 prevent the officer from considering, reviewing, or receiving an  
3 accounting of such a body worn camera recording subsequent to the  
4 creation of any required initial reports, statements, and interviews  
5 regarding the recorded event.<sup>1</sup>

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

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

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

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

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

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

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

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

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

38  
39       2. This act shall take effect immediately.