

P.L. 2020, CHAPTER 129, *approved November 24, 2020*
Assembly, No. 4312 (*First Reprint*)

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 ¹audio and¹ video
9 recording system worn by a law enforcement officer ¹, but shall not
10 include a recording device worn by a law enforcement officer while
11 engaging in an undercover assignment or a recording device used
12 during a custodial interrogation conducted in a place of detention in
13 compliance with Rule 3:17 of the Rules Governing the Courts of the
14 State of New Jersey.
15 “Constructive authority” means the use of the law enforcement
16 officer’s authority to exert control over a person, directed against a
17 person who is subject to an investigative detention or arrest or
18 against any person if the officer has un-holstered a firearm or a
19 conducted energy device.
20 “Force” shall include physical, mechanical, enhanced
21 mechanical, and deadly force¹ .
22 “Law enforcement officer” means a person whose public duties
23 include the power to act as an officer for the detection,
24 apprehension, arrest, and conviction of offenders against the laws of
25 this State.
26 “Mobile video recording system” shall have the same meaning as
27 set forth in section 1 of P.L.2014, c.54 (C.40A:14-118.1).
28 “School” means a public or nonpublic elementary or secondary
29 school within this State offering education in grades kindergarten
30 through 12, or any combination of grades, at which a child may
31 legally fulfill compulsory school attendance requirements.
32 “Subject of the video footage” means any law enforcement
33 officer, suspect, victim, detainee, conversant, injured party, or other
34 similarly situated person who appears on the body ¹worn¹ camera
35 recording, and shall not include a person who only incidentally
36 appears on the recording.
37 ¹“Youth facility” means a facility within this State used to house
38 or provide services to children under P.L.1951, c.138 (C.30:4C-1 et

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 amendments adopted in accordance with Governor's recommendations November 12, 2020.

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

3 b. ¹**【Only a law enforcement officer shall be authorized to wear**
4 **a body worn camera in this State.】**¹ A body worn camera ¹used by
5 a law enforcement officer¹ shall be placed so that it maximizes the
6 camera's ability to capture video footage of the officer's activities.

7 c. ¹**【The】** (1) Except as otherwise provided in this subsection
8 or in subsection e. of this section, the¹ video and audio recording
9 functions of a body worn camera shall be activated whenever the
10 officer is responding to a call for service or at the initiation of any
11 other law enforcement or investigative encounter between an officer
12 and a member of the public ¹, in accordance with applicable
13 guidelines or directives promulgated by the Attorney General¹ ;
14 provided however, if an immediate threat to the officer's life or
15 safety makes activating the body worn camera impossible or
16 dangerous, the officer shall activate the body worn camera at the
17 first reasonable opportunity to do so. The body worn camera shall
18 remain activated until the encounter has fully concluded and the
19 officer leaves the scene.

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

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

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

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

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

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

1 (a) is in a school or youth facility or on school or youth facility
2 property under circumstances where minor children would be in
3 view of the device;

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

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

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

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

25 (6) If the body worn camera model selected by a law
26 enforcement agency produces radio-frequency interference while
27 activated or while in standby mode, the device shall be deactivated
28 while in the area where an electronic alcohol breath testing device
29 is being used, or, as necessary, shall be removed from the area
30 where such device is being used. Nothing herein shall be construed
31 to preclude the use of a body worn camera to record the behavior of
32 a person arrested for driving while intoxicated other than while the
33 person is in the breath-testing area while the electronic breath
34 testing device is being operated. If this provision requires
35 deactivation of a body worn camera, the officer shall narrate the
36 reasons for deactivation, and the device shall be re-activated when
37 safe and practicable to do so following the completion of the breath
38 testing operation.¹

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 ¹unless it is unsafe or
42 infeasible to provide such notification. Such notification shall be
43 made¹ as close to the inception of the encounter as is reasonably
44 possible. ¹If the officer does not provide the required notification
45 because it is unsafe or infeasible to do so, the officer shall
46 document the reasons for that decision in a report or by narrating
47 the reasons on the body worn camera recording, or both. The

1 failure to verbally notify a person pursuant to this section shall not
2 affect the admissibility of any statement or evidence.¹

3 e. Notwithstanding the requirements of subsection c. of this
4 section:

5 (1) prior to entering a private residence ¹~~["without a warrant or~~
6 ~~in non-exigent circumstances]~~¹, a law enforcement officer shall
7 ¹~~["ask]~~ notify¹ the occupant ¹~~["whether]~~ that¹ the occupant
8 ¹~~["wishes]~~ is being recorded by the body worn camera and, if the
9 occupant requests¹ the officer to discontinue use of the officer's
10 body worn camera ¹~~["; if the occupant responds affirmatively]~~¹, the
11 officer shall immediately discontinue use of the body worn camera
12 ¹unless the officer is actively engaged in investigating the
13 commission of a criminal offense, or is responding to an
14 emergency, or reasonably believes that the officer will be required
15 to use constructive authority or force¹ ;

16 (2) when interacting with an apparent crime victim, a law
17 enforcement officer shall, as soon as practicable, ¹~~["ask]~~ notify¹ the
18 ¹apparent crime¹ victim ¹~~["whether the victim wants]~~ that he or she
19 is being recorded by the body worn camera and, if the apparent
20 crime victim requests¹ the officer to discontinue use of the body
21 worn camera ¹~~["; if the victim responds affirmatively]~~¹, the officer
22 shall immediately discontinue use of the body worn camera; and

23 (3) when interacting with a person seeking to anonymously
24 report a crime or assist in an ongoing law enforcement
25 investigation, a law enforcement officer ¹, if the person requests
26 that the officer discontinue use of the body worn camera,¹ shall,
27 ¹~~["as soon as practicable, ask the person seeking to remain~~
28 ~~anonymous whether the person wants the officer to discontinue use~~
29 ~~of the body worn camera; if the person responds affirmatively, the~~
30 ~~officer shall immediately]~~ evaluate the circumstances and, if
31 appropriate,¹ discontinue use of the body worn camera.

32 f. ¹~~["An offer]~~ A request¹ to discontinue the use of a body
33 worn camera made ¹~~["by]~~ to¹ a law enforcement officer pursuant to
34 subsection e. of this section and the response to the ¹~~["offer]~~
35 request¹ shall be recorded by the recording system prior to
36 discontinuing use of the recording system.

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

38 h. A body worn camera shall not be used to gather intelligence
39 information based on First Amendment protected speech,
40 associations, or religion, or to record activity that is unrelated to a
41 response to a call for service or a law enforcement or investigative
42 encounter between a law enforcement officer and a member of the
43 public ¹, provided that nothing in this subsection shall be construed
44 to prohibit activation of video and audio recording functions of a
45 body worn camera as authorized under this law and in accordance

1 with any applicable guidelines or directives promulgated by the
2 Attorney General¹ .

3 i. ¹**["A law enforcement officer shall not activate a body worn**
4 **camera while on school grounds, except when the officer is**
5 **responding to an imminent threat to life or health.]** Every law
6 enforcement agency shall promulgate and adhere to a policy,
7 standing operating procedure, directive, or order which meets the
8 requirements of subsection j. of this act and any applicable
9 guideline or directive promulgated by the Attorney General that
10 specifies the period of time during which a body worn camera
11 recording shall be retained.¹

12 j. ¹**["Video footage from a]** A¹ **body worn camera** 'recording'
13 shall be retained by the law enforcement agency that employs the
14 officer for ¹**["six months from the date it was recorded]** a retention
15 period consistent with the provisions of this section¹ , after which
16 time the ¹**["footage]** recording¹ shall be permanently deleted
17 ¹**["except]** . A body worn camera recording shall be retained for not
18 less than 180 days from the date it was recorded, which minimum
19 time frame for retention shall be applicable to all contracts for
20 retention of body worn camera recordings executed by or on behalf
21 of a law enforcement agency on or after the effective date of this
22 act, and shall be subject to the following additional retention
23 periods¹ :

24 (1) ¹**["the video footage]** a body worn camera recording¹ shall
25 automatically be retained for not less than three years if it captures
26 images involving ¹**["**:

27 (a) any use of force;

28 (b) events preceding and including an arrest for a crime or
29 attempted crime; or

30 (c) ¹**["** an encounter about which a complaint has been registered
31 by a subject of the ¹**["video footage.]** body worn camera recording;¹

32 (2) ¹**["the video footage]** subject to any applicable retention
33 periods established in paragraph (3) of this subsection to the extent
34 such retention period is longer, a body worn camera recording¹
35 shall be retained for not less than three years if ¹**["a longer retention**
36 **period is]**¹ voluntarily requested by:

37 (a) the law enforcement officer whose body worn camera
38 ¹**["recorded the video footage]** made the video recording¹ , if that
39 officer reasonably asserts the ¹**["video footage]** recording¹ has
40 evidentiary or exculpatory value;

41 (b) a law enforcement officer who is a subject of the ¹**["video**
42 **footage]** body worn camera recording¹ , if that officer reasonably
43 asserts the ¹**["video footage]** recording¹ has evidentiary or
44 exculpatory value;

1 (c) any ¹['superior officer'] immediate supervisor¹ of a law
2 enforcement officer whose body worn camera ¹['recorded the video
3 footage'] made the recording¹ or who is a subject of the ¹['video
4 footage'] body worn camera recording¹ , if that ¹['superior officer']
5 immediate supervisor¹ reasonably asserts the ¹['video footage']
6 recording¹ has evidentiary or exculpatory value;

7 (d) any law enforcement officer, if the ¹['video footage'] body
8 worn camera recording¹ is being retained solely and exclusively for
9 police training purposes;

10 (e) any member of the public who is a subject of the ¹['video
11 footage'] body worn camera recording¹ ;

12 (f) any parent or legal guardian of a minor who is a subject of
13 the ¹['video footage'] body worn camera recording¹ ; or

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

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

19 (a) when a body worn camera recording pertains to a criminal
20 investigation or otherwise records information that may be subject
21 to discovery in a prosecution, the recording shall be treated as
22 evidence and shall be kept in accordance with the retention period
23 for evidence in a criminal prosecution;

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

29 (c) when a body worn camera records an incident that is the
30 subject of an internal affairs complaint, the recording shall be kept
31 pending final resolution of the internal affairs investigation and any
32 resulting administrative action.¹

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

39 l. Notwithstanding that a criminal investigatory record does
40 not constitute a government record under section 1 of P.L.1995,
41 c.23 (C.47:1A-1.1), only the following ¹['video footage'] body worn
42 camera recordings¹ shall be exempt from public inspection:

43 (1) ¹['video footage'] body worn camera recordings¹ not subject
44 to a minimum three-year retention period ¹or additional retention
45 requirements¹ pursuant to subsection j. of this section;

1 (2) ¹['video footage] body worn camera recordings¹ subject to a
2 minimum three-year retention period solely and exclusively
3 pursuant to ¹['subparagraph (c) of']¹ paragraph (1) of subsection j.
4 of this section if the subject of the ¹['video footage] body worn
5 camera recording¹ making the complaint requests the ¹['video
6 footage] body worn camera recording¹ not be made available to the
7 public;

8 (3) ¹['video footage] body worn camera recordings¹ subject to a
9 minimum three-year retention period solely and exclusively
10 pursuant to subparagraph (a), (b), (c), or (d) of paragraph (2) of
11 subsection j. of this section; and

12 (4) ¹['video footage] body worn camera recordings¹ subject to a
13 minimum three-year retention period solely and exclusively
14 pursuant to subparagraph (e), (f), or (g) of paragraph (2) of
15 subsection j. of this section if a member, parent or legal guardian, or
16 next of kin or designee requests the ¹['video footage] body worn
17 camera recording¹ not be made available to the public.

18 m. Any ¹['video footage] body worn camera recording¹ retained
19 beyond ¹['six months] 180 days¹ solely and exclusively pursuant to
20 subparagraph (d) of paragraph (2) of subsection j. of this section
21 shall not be admissible as evidence in any criminal or civil legal or
22 administrative proceeding.

23 n. A law enforcement officer shall not review or receive an
24 accounting ¹['of] a¹ body worn camera ¹['video footage] recording¹
25 that is subject to a minimum three-year retention period pursuant to
26 paragraph (1) ¹['or paragraph (3)']¹ of subsection j. of this section
27 prior to ¹['completing] creating¹ any required initial reports,
28 statements, and interviews regarding the recorded event ¹['; provided
29 that nothing in this paragraph is intended to prevent the officer from
30 considering, reviewing or receiving an accounting of such a body
31 worn camera recording subsequent to the creation of any required
32 initial reports, statements, and interviews regarding the recorded
33 event¹ .

34 ¹['o. Video footage not subject to a minimum three-year retention
35 period shall not be viewed by any superior officer of a law
36 enforcement officer whose body worn camera recorded the footage
37 absent a specific allegation of misconduct, nor shall it be subject to
38 any type of automated analysis or analytics.

39 p. Video footage] o. Body worn camera recordings¹ shall
40 not be divulged or used by any law enforcement agency for any
41 commercial or other non-law enforcement purpose.

42 ¹['q.] p.¹ If a law enforcement agency authorizes a third-party
43 to act as its agent in maintaining ¹['footage] recordings¹ from a
44 body worn camera, the agent shall be prohibited from independently
45 accessing, viewing, or altering any ¹['video footage] recordings¹,

1 except to delete **‘[videos] recordings’**¹ as required by law or agency
2 retention policies.

3 **‘[r.] q.’**¹ If a law enforcement officer, employee, or agent fails
4 to adhere to the recording or retention requirements contained in
5 this act, or intentionally interferes with a body worn camera’s
6 ability to accurately capture **‘[video footage] audio or video**
7 **recordings’**¹ :

8 (1) **‘[appropriate disciplinary action shall be taken against]’**¹ the
9 officer, employee, or agent **‘shall be subject to appropriate**
10 **disciplinary action’**¹;

11 (2) there shall be a rebuttable presumption **‘that exculpatory**
12 **evidence was destroyed or not captured’**¹ in favor of a criminal
13 defendant who reasonably asserts that exculpatory evidence was
14 destroyed or not captured; and

15 (3) there shall be a rebuttable presumption **‘that evidence**
16 **supporting the plaintiff’s claim was destroyed or not captured’**¹ in
17 favor of a civil plaintiff suing the government, a law enforcement
18 agency, or a law enforcement officer for damages based on police
19 misconduct if the plaintiff reasonably asserts that evidence
20 supporting the plaintiff’s claim was destroyed or not captured.

21 **‘[s. The disciplinary action requirement and rebuttable**
22 **presumptions contained in subsection r. of this section may be**
23 **overcome by contrary evidence or proof of exigent circumstances**
24 **that make compliance impossible.**¹

25 **t.] r.’**¹ Any **‘[video footage] recordings’**¹ from a body worn
26 camera recorded in contravention of this or any other applicable law
27 shall be immediately destroyed and shall not be admissible as
28 evidence in any criminal, civil, or administrative proceeding.

29 **‘[u.] s.’**¹ Nothing in this act shall be deemed to contravene any
30 laws governing the maintenance and destruction of evidence in a
31 criminal investigation or prosecution.

32

33 2. This act shall take effect on the first day of the seventh
34 month after enactment.

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39 Regulates use of body cameras worn by law enforcement
40 officers.