

ASSEMBLY HOMELAND SECURITY AND STATE  
PREPAREDNESS COMMITTEE

A M E N D M E N T S

to

**ASSEMBLY, No. 5864**

(Sponsored by Assemblywoman SPEIGHT)

REPLACE SECTION 1 TO READ:

1. Section 1 of P.L.2020, c.129 (C.40A:14-118.5) is amended to read as follows:

1. a. For the purposes of this section:

"Body worn camera" means a mobile audio and video recording system worn by a law enforcement officer, but shall not include a recording device worn by a law enforcement officer while engaging in an undercover assignment or a recording device used during a custodial interrogation conducted in a place of detention in compliance with Rule 3:17 of the Rules Governing the Courts of the State of New Jersey.

"Constructive authority" means the use of the law enforcement officer's authority to exert control over a person, directed against a person who is subject to an investigative detention or arrest or against any person if the officer has un-holstered a firearm or a conducted energy device.

"Force" shall include physical, mechanical, enhanced mechanical, and deadly force.

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

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

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

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

"Youth facility" means a facility within this State used to house or provide services to children under P.L.1951, c.138 (C.30:4C-1 et seq.),

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) prior to entering a private residence, a law enforcement officer shall notify the occupant that the occupant is being recorded by the body worn camera and, if the occupant requests the officer to discontinue use of the officer's body worn camera, the officer shall immediately discontinue use of the body worn camera unless the officer is actively engaged in investigating the commission of a criminal offense, or is

responding to an emergency, or reasonably believes that the officer will be required to use constructive authority or force;

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

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

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

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

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

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

j. A body worn camera recording shall be retained by the law enforcement agency that employs the officer for a retention period consistent with the provisions of this section, after which time the recording shall be permanently deleted. A body worn camera recording shall be retained for not less than 180 days from the date it was recorded, which minimum time frame for retention shall be applicable to all contracts for retention of body worn camera recordings executed by or on behalf of a law enforcement agency on or after the effective date of this act, and shall be subject to the following additional retention periods:

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

(2) subject to any applicable retention periods established in paragraph (3) of this subsection to the extent such retention period is

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longer, a body worn camera recording shall be retained for not less than three years if voluntarily requested by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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