

ASSEMBLY BILL NO. 4312

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 4312 with my recommendations for reconsideration.

This bill would regulate the usage of body worn cameras by law enforcement officers by outlining the circumstances under which a body worn camera may be deactivated, restricting the use of body worn cameras in certain circumstances, and specifying the retention period for recorded footage.

I commend the sponsors of this legislation for their efforts to establish uniform statutory standards applicable to the use of body worn cameras by the thousands of law enforcement officers statewide. Body worn cameras are an important tool in promoting transparency and accountability in policing in our communities, and maintaining well-considered, effective standards is a critical component toward achieving those ends. The sponsors rightly recognize the importance of establishing parameters on how and when law enforcement officers in New Jersey use body worn cameras in carrying out their official duties. However, there are nuances in the use of body worn cameras reflected in applicable Attorney General guidelines that should be incorporated into this bill to enhance the utility and effectiveness of this technology in the context of policing. These provisions in the Attorney General guidelines take into account the needs of the community and individual residents while at the same time giving due regard to relevant law enforcement practices and practical considerations. Consequently, I am returning Assembly Bill No. 4312 and recommending salutary amendments to increase the effectiveness of the uniform statewide standards that law enforcement officers and

agencies will adhere to in their use of body worn cameras in the performance of their duties.

I am recommending several revisions to clarify the circumstances in which deactivation of the camera is required to protect the privacy of civilians, such as when a civilian other than an arrestee seeks medical attention or when a civilian wishes to remain anonymous in order to provide information to law enforcement. To further protect the privacy interests of our residents, I also recommend limiting the use of body worn cameras in situations when an officer is in a sensitive location such as a school, medical facility, or a place of worship. Cameras should only be activated in these areas when an officer is investigating a criminal offense or responding to an emergency or call for service, or when an officer reasonably believes that he or she will need to use constructive authority or force.

I also recommend revising the bill's default retention provisions that require recordings to be retained by law enforcement agencies for six months from the date they were recorded. Body worn camera recordings have tremendous value as a potential source of crucial evidence for use in investigations and court proceedings. Recordings can also be used to support or dispel a civilian's claim against a law enforcement officer. The current statewide retention policy for body worn camera recordings is 90 days, but the need for evidence captured in recordings may not arise until after that period has elapsed. For instance, a potential complainant may, due to health considerations, be unable to file a complaint within 90 days of an incident captured by a body worn camera recording. For this reason, I support requiring body worn camera recordings to be retained for a minimum of 180 days.

However, the new retention period should be prospective. As written, the bill's six-month requirement would go into effect regardless of whether there are existing agreements concerning the maintenance and storage of body worn camera footage. This would likely force some of the more than 200 law enforcement agencies currently using body worn cameras to incur additional costs and to renegotiate their existing contracts with vendors to meet the obligations of the bill. In order to avoid substantial disruption to these agencies currently using body worn cameras, I am recommending revisions that would allow existing contracts between law enforcement agencies and vendors to expire before agencies are required to retain recordings for the longer period.

Finally, my recommended changes remove the restrictions on supervisors' ability to view body worn camera recordings. Having body cameras can be a valuable tool for supervisors striving to ensure officers are properly trained and carrying out their duties appropriately. As written, the bill prohibits any superior officer from viewing footage absent a specific allegation of misconduct. Supervisors should be encouraged to proactively spot-check footage for compliance and identify potential problems that need correction. This aspect of body worn cameras is significant to many law enforcement agencies, who use the recordings not only to monitor officer performance (which may reveal both non-compliant and exemplary conduct), but for providing training and direction to strengthen officer performance and address internal agency problems. A number of law enforcement agencies in the State currently use body worn camera recordings for this purpose because they recognize it is an essential tool to help the agency and its officers maintain the high quality of the public services they provide.

I look forward to continuing to work with my colleagues in the Legislature to promote police accountability and confidence in our law enforcement institutions, and the codification of uniform statewide standards for the use of body worn cameras by our law enforcement officers is an important step in that direction. I am heartened in the belief that we will continue on our path to more transparent, more accountable policing.

Therefore, I herewith return Assembly Bill No. 4312 and recommend that it be amended as follows:

Page 2, Section 1, Line 8: After "mobile" insert "audio and"

Page 2, Section 1, Line 9: After "officer" insert ", 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."

Page 2, Section 1, Line 22: After "body" insert "worn"

Page 2, Section 1, Line 24: After "recording." insert "'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.), including but not limited to group homes, residential facilities, day care centers, and day treatment centers."

- Page 2, Section 1, Lines 25-26: Delete "Only a law enforcement officer shall be authorized to wear a body worn camera in this State."
- Page 2, Section 1, Line 26: After "camera" insert "used by a law enforcement officer"
- Page 2, Section 1, Line 29: Delete "The" and insert "(1) Except as otherwise provided in this subsection or in subsection e. of this section, the"
- Page 2, Section 1, Line 33: After "public" insert ", in accordance with applicable guidelines or directives promulgated by the Attorney General"
- Page 2, Section 1, Line 38: After "scene." insert "(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

(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."

Page 2, Section 1, Line 41:

After "camera" insert "unless it is unsafe or infeasible to provide such notification. Such notification shall be made"

Page 2, Section 1, Line 42:

After "possible." insert "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."

Page 2, Section 1, Lines 45-46:

Delete "without a warrant or in non-exigent circumstances"

Page 2, Section 1, Line 46:

Delete "ask" and insert "notify"

Page 2, Section 1, Line 47: Delete "whether" insert "that"

Page 2, Section 1, Line 47: Delete "wishes" and insert "is being recorded by the body worn camera and, if the occupant requests"

Page 2, Section 1, Line 48: Delete "; if the occupant responds"

Page 3, Section 1, Line 1: Delete "affirmatively"

Page 3, Section 1, Line 2: After "camera" insert "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"

Page 3, Section 1, Line 4: Delete "ask" and insert "notify"

Page 3, Section 1, Line 4: After "the" insert "apparent crime"

Page 3, Section 1, Line 5: Delete "whether the victim wants" and insert "that he or she is being recorded by the body worn camera and, if the apparent crime victim requests"

Page 3, Section 1, Line 6: Delete "; if the victim responds affirmatively"

Page 3, Section 1, Line 10: After "officer" insert ", if the person requests that the officer discontinue use of the body worn camera,"

Page 3, Section 1, Line 10: Delete ", as soon as"

Page 3, Section 1, Lines 11-13: Delete in their entirety

Page 3, Section 1, Line 14: Delete "immediately" and insert "evaluate the circumstances and, if appropriate,"

Page 3, Section 1, Line 15: Delete "An offer" and insert "A request"

Page 3, Section 1, Line 16: Delete "by" and insert "to"

Page 3, Section 1, Line 17: Delete "offer" and insert "request"

Page 3, Section 1, Line 25: After "public" insert ", 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"

Page 3, Section 1, Line 26:

Delete "A law enforcement officer shall not activate a body worn"

Page 3, Section 1, Lines 27-28:

Delete in their entirety and insert "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."

Page 3, Section 1, Line 29:

Delete "Video footage from a" and insert "A"

Page 3, Section 1, Line 29:

After "camera" insert "recording"

Page 3, Section 1, Lines 30-31:

Delete "six months from the date it was recorded" and insert "a retention period consistent with the provisions of this section"

Page 3, Section 1, Line 31:

Delete "footage" and insert "recording"

Page 3, Section 1, Line 32:

Delete "except" and insert ". 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"

Page 3, Section 1, Line 33:

Delete "the video footage" and insert "a body worn camera recording"

Page 3, Section 1, Line 34:

Delete ":"

Page 3, Section 1, Lines 35-37:

Delete in their entirety

Page 3, Section 1, Line 38:

Delete "(c)"

Page 3, Section 1, Line 39:

Delete "video footage." and insert "body worn camera recording;"

- Page 3, Section 1, Line 40: Delete "the video footage" and insert "subject to any applicable retention periods established in paragraph (3) of this subsection to the extent such retention period is longer, a body worn camera recording"
- Page 3, Section 1, Line 41: Delete "a longer retention period is"
- Page 3, Section 1, Line 43: Delete "recorded the video footage" and insert "made the video recording"
- Page 3, Section 1, Line 44: Delete "video footage" and insert "recording"
- Page 3, Section 1, Lines 45-46: Delete "video footage" and insert "body worn camera recording"
- Page 3, Section 1, Line 46: After "the" delete "video footage" and insert "recording"
- Page 4, Section 1, Line 1: Delete "superior officer" and insert "immediate supervisor"
- Page 4, Section 1, Line 2: Delete "recorded the video footage" and insert "made the recording"
- Page 4, Section 1, Line 3: Delete "video footage" and insert "body worn camera recording"
- Page 4, Section 1, Line 3: Delete "superior officer" and insert "immediate supervisor"
- Page 4, Section 1, Line 4: Delete "video footage" and insert "recording"
- Page 4, Section 1, Line 5: Delete "video footage" and insert "body worn camera recording"
- Page 4, Section 1, Lines 7-8: Delete "video footage" and insert "body worn camera recording"
- Page 4, Section 1, Line 10: Delete "video footage" and insert "body worn camera recording"
- Page 4, Section 1, Line 12: After "designee." insert "(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."

Page 4, Section 1, Line 16:

Delete "video footage" and insert "body worn camera recording in accordance with the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.)"

Page 4, Section 1, Line 20:

Delete "video footage" and insert "body worn camera recordings"

Page 4, Section 1, Line 22:

Delete "video footage" and insert "body worn camera recordings"

Page 4, Section 1, Line 23:

After "period" insert "or additional retention requirements"

Page 4, Section 1, Line 24:

Delete "video footage" and insert "body worn camera recordings"

Page 4, Section 1, Line 25:

Delete "subparagraph (c) of"

Page 4, Section 1, Line 27:

Before "making" delete "video footage" and insert "body worn camera recording"

Page 4, Section 1, Line 27:

Before "not" delete "video footage" and insert "body worn camera recording"

Page 4, Section 1, Line 29:

Delete "video footage" and insert "body worn camera recordings"

Page 4, Section 1, Line 32:

Delete "video footage" and insert "body worn camera recordings"

<u>Page 4, Section 1, Line 36:</u>	Delete "video footage" and insert "body worn camera recording"
<u>Page 4, Section 1, Line 37:</u>	Delete "video footage" and insert "body worn camera recording"
<u>Page 4, Section 1, Line 37:</u>	Delete "six months" and insert "180 days"
<u>Page 4, Section 1, Line 42:</u>	After "of" insert "a"
<u>Page 4, Section 1, Line 42:</u>	Delete "video footage" and insert "recording"
<u>Page 4, Section 1, Line 43:</u>	After "(1)" insert "or paragraph (3)"
<u>Page 4, Section 1, Line 44:</u>	Delete "completing" and insert "creating"
<u>Page 4, Section 1, Line 46:</u>	After "event" insert "; 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"
<u>Page 4, Section 1, Lines 47-48:</u>	Delete in their entirety
<u>Page 5, Section 1, Lines 1-3:</u>	Delete in their entirety
<u>Page 5, Section 1, Line 4:</u>	Delete "p. Video footage" and insert "o. Body worn camera recordings"
<u>Page 5, Section 1, Line 7:</u>	Delete "q." and insert "p."
<u>Page 5, Section 1, Line 8:</u>	Delete "footage" and insert "recordings"
<u>Page 5, Section 1, Line 10:</u>	Delete "video footage" and insert "recordings"
<u>Page 5, Section 1, Line 10:</u>	Delete "videos" and insert "recordings"
<u>Page 5, Section 1, Line 12:</u>	Delete "r." and insert "q."
<u>Page 5, Section 1, Line 15:</u>	Delete "video footage" and insert "audio or video recordings"
<u>Page 5, Section 1, Line 16:</u>	Delete "appropriate disciplinary action shall be taken against"
<u>Page 5, Section 1, Line 17:</u>	After "agent" insert "shall be subject to appropriate disciplinary action"

Page 5, Section 1, Line 18: After "presumption" insert "that exculpatory evidence was destroyed or not captured"

Page 5, Section 1, Line 21: After "presumption" insert "that evidence supporting the plaintiff's claim was destroyed or not captured"

Page 5, Section 1, Lines 26-29: Delete in their entirety

Page 5, Section 1, Line 30: Delete "t." and insert "r."

Page 5, Section 1, Line 30: Delete "video footage" and insert "recordings"

Page 5, Section 1, Line 34: Delete "u." and insert "s."

[seal]

Respectfully,
/s/ Philip D. Murphy
Governor

Attest:
/s/ Parimal Garg
Chief Counsel to the Governor