

# HB5389



## 101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5389

by Rep. Justin Slaughter

### SYNOPSIS AS INTRODUCED:

50 ILCS 706/10-20

Amends the Law Enforcement Officer-Worn Body Camera Act. Provides that if the subject of the encounter captured on the recording made by the officer-worn body camera is not arrested or issued a summons as a result of the encounter, the law enforcement officer, during the encounter, must inform the subject of the encounter how he or she may obtain a copy of the recording. Effective immediately.

LRB101 17512 RLC 66923 b

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Law Enforcement Officer-Worn Body Camera Act  
5 is amended by changing Section 10-20 as follows:

6 (50 ILCS 706/10-20)

7 Sec. 10-20. Requirements.

8 (a) The Board shall develop basic guidelines for the use of  
9 officer-worn body cameras by law enforcement agencies. The  
10 guidelines developed by the Board shall be the basis for the  
11 written policy which must be adopted by each law enforcement  
12 agency which employs the use of officer-worn body cameras. The  
13 written policy adopted by the law enforcement agency must  
14 include, at a minimum, all of the following:

15 (1) Cameras must be equipped with pre-event recording,  
16 capable of recording at least the 30 seconds prior to  
17 camera activation, unless the officer-worn body camera was  
18 purchased and acquired by the law enforcement agency prior  
19 to July 1, 2015.

20 (2) Cameras must be capable of recording for a period  
21 of 10 hours or more, unless the officer-worn body camera  
22 was purchased and acquired by the law enforcement agency  
23 prior to July 1, 2015.

1           (3) Cameras must be turned on at all times when the  
2 officer is in uniform and is responding to calls for  
3 service or engaged in any law enforcement-related  
4 encounter or activity, that occurs while the officer is on  
5 duty.

6           (A) If exigent circumstances exist which prevent  
7 the camera from being turned on, the camera must be  
8 turned on as soon as practicable.

9           (B) Officer-worn body cameras may be turned off  
10 when the officer is inside of a patrol car which is  
11 equipped with a functioning in-car camera; however,  
12 the officer must turn on the camera upon exiting the  
13 patrol vehicle for law enforcement-related encounters.

14           (4) Cameras must be turned off when:

15           (A) the victim of a crime requests that the camera  
16 be turned off, and unless impractical or impossible,  
17 that request is made on the recording;

18           (B) a witness of a crime or a community member who  
19 wishes to report a crime requests that the camera be  
20 turned off, and unless impractical or impossible that  
21 request is made on the recording; or

22           (C) the officer is interacting with a confidential  
23 informant used by the law enforcement agency.

24           However, an officer may continue to record or resume  
25 recording a victim or a witness, if exigent circumstances  
26 exist, or if the officer has reasonable articulable

1 suspicion that a victim or witness, or confidential  
2 informant has committed or is in the process of committing  
3 a crime. Under these circumstances, and unless impractical  
4 or impossible, the officer must indicate on the recording  
5 the reason for continuing to record despite the request of  
6 the victim or witness.

7 (4.5) Cameras may be turned off when the officer is  
8 engaged in community caretaking functions. However, the  
9 camera must be turned on when the officer has reason to  
10 believe that the person on whose behalf the officer is  
11 performing a community caretaking function has committed  
12 or is in the process of committing a crime. If exigent  
13 circumstances exist which prevent the camera from being  
14 turned on, the camera must be turned on as soon as  
15 practicable.

16 (5) The officer must provide notice of recording to any  
17 person if the person has a reasonable expectation of  
18 privacy and proof of notice must be evident in the  
19 recording. If exigent circumstances exist which prevent  
20 the officer from providing notice, notice must be provided  
21 as soon as practicable.

22 (6) For the purposes of redaction, labeling, or  
23 duplicating recordings, access to camera recordings shall  
24 be restricted to only those personnel responsible for those  
25 purposes. The recording officer and his or her supervisor  
26 may access and review recordings prior to completing

1 incident reports or other documentation, provided that the  
2 officer or his or her supervisor discloses that fact in the  
3 report or documentation.

4 (7) Recordings made on officer-worn cameras must be  
5 retained by the law enforcement agency or by the camera  
6 vendor used by the agency, on a recording medium for a  
7 period of 90 days.

8 (A) Under no circumstances shall any recording  
9 made with an officer-worn body camera be altered,  
10 erased, or destroyed prior to the expiration of the  
11 90-day storage period.

12 (B) Following the 90-day storage period, any and  
13 all recordings made with an officer-worn body camera  
14 must be destroyed, unless any encounter captured on the  
15 recording has been flagged. An encounter is deemed to  
16 be flagged when:

17 (i) a formal or informal complaint has been  
18 filed;

19 (ii) the officer discharged his or her firearm  
20 or used force during the encounter;

21 (iii) death or great bodily harm occurred to  
22 any person in the recording;

23 (iv) the encounter resulted in a detention or  
24 an arrest, excluding traffic stops which resulted  
25 in only a minor traffic offense or business  
26 offense;

1           (v) the officer is the subject of an internal  
2           investigation or otherwise being investigated for  
3           possible misconduct;

4           (vi) the supervisor of the officer,  
5           prosecutor, defendant, or court determines that  
6           the encounter has evidentiary value in a criminal  
7           prosecution; or

8           (vii) the recording officer requests that the  
9           video be flagged for official purposes related to  
10          his or her official duties.

11          (C) Under no circumstances shall any recording  
12          made with an officer-worn body camera relating to a  
13          flagged encounter be altered or destroyed prior to 2  
14          years after the recording was flagged. If the flagged  
15          recording was used in a criminal, civil, or  
16          administrative proceeding, the recording shall not be  
17          destroyed except upon a final disposition and order  
18          from the court.

19          (8) Following the 90-day storage period, recordings  
20          may be retained if a supervisor at the law enforcement  
21          agency designates the recording for training purposes. If  
22          the recording is designated for training purposes, the  
23          recordings may be viewed by officers, in the presence of a  
24          supervisor or training instructor, for the purposes of  
25          instruction, training, or ensuring compliance with agency  
26          policies.

1           (9) Recordings shall not be used to discipline law  
2 enforcement officers unless:

3           (A) a formal or informal complaint of misconduct  
4 has been made;

5           (B) a use of force incident has occurred;

6           (C) the encounter on the recording could result in  
7 a formal investigation under the Uniform Peace  
8 Officers' Disciplinary Act; or

9           (D) as corroboration of other evidence of  
10 misconduct.

11           Nothing in this paragraph (9) shall be construed to  
12 limit or prohibit a law enforcement officer from being  
13 subject to an action that does not amount to discipline.

14           (10) The law enforcement agency shall ensure proper  
15 care and maintenance of officer-worn body cameras. Upon  
16 becoming aware, officers must as soon as practical document  
17 and notify the appropriate supervisor of any technical  
18 difficulties, failures, or problems with the officer-worn  
19 body camera or associated equipment. Upon receiving  
20 notice, the appropriate supervisor shall make every  
21 reasonable effort to correct and repair any of the  
22 officer-worn body camera equipment.

23           (11) No officer may hinder or prohibit any person, not  
24 a law enforcement officer, from recording a law enforcement  
25 officer in the performance of his or her duties in a public  
26 place or when the officer has no reasonable expectation of

1 privacy. The law enforcement agency's written policy shall  
2 indicate the potential criminal penalties, as well as any  
3 departmental discipline, which may result from unlawful  
4 confiscation or destruction of the recording medium of a  
5 person who is not a law enforcement officer. However, an  
6 officer may take reasonable action to maintain safety and  
7 control, secure crime scenes and accident sites, protect  
8 the integrity and confidentiality of investigations, and  
9 protect the public safety and order.

10 (b) Recordings made with the use of an officer-worn body  
11 camera are not subject to disclosure under the Freedom of  
12 Information Act, except that:

13 (1) if the subject of the encounter has a reasonable  
14 expectation of privacy, at the time of the recording, any  
15 recording which is flagged, due to the filing of a  
16 complaint, discharge of a firearm, use of force, arrest or  
17 detention, or resulting death or bodily harm, shall be  
18 disclosed in accordance with the Freedom of Information Act  
19 if:

20 (A) the subject of the encounter captured on the  
21 recording is a victim or witness; and

22 (B) the law enforcement agency obtains written  
23 permission of the subject or the subject's legal  
24 representative;

25 (2) except as provided in paragraph (1) of this  
26 subsection (b), any recording which is flagged due to the



1 filing of a complaint, discharge of a firearm, use of  
2 force, arrest or detention, or resulting death or bodily  
3 harm shall be disclosed in accordance with the Freedom of  
4 Information Act; ~~and~~

5 (3) upon request, the law enforcement agency shall  
6 disclose, in accordance with the Freedom of Information  
7 Act, the recording to the subject of the encounter captured  
8 on the recording or to the subject's attorney, or the  
9 officer or his or her legal representative; and

10 (4) if the subject of the encounter captured on the  
11 recording is not arrested or issued a summons as a result  
12 of the encounter, the law enforcement officer, during the  
13 encounter, must inform the subject of the encounter how he  
14 or she may obtain a copy of the recording made by the  
15 officer-worn body camera.

16 For the purposes of paragraph (1) of this subsection (b),  
17 the subject of the encounter does not have a reasonable  
18 expectation of privacy if the subject was arrested as a result  
19 of the encounter. For purposes of subparagraph (A) of paragraph  
20 (1) of this subsection (b), "witness" does not include a person  
21 who is a victim or who was arrested as a result of the  
22 encounter.

23 Only recordings or portions of recordings responsive to the  
24 request shall be available for inspection or reproduction. Any  
25 recording disclosed under the Freedom of Information Act shall  
26 be redacted to remove identification of any person that appears

1 on the recording and is not the officer, a subject of the  
2 encounter, or directly involved in the encounter. Nothing in  
3 this subsection (b) shall require the disclosure of any  
4 recording or portion of any recording which would be exempt  
5 from disclosure under the Freedom of Information Act.

6 (c) Nothing in this Section shall limit access to a camera  
7 recording for the purposes of complying with Supreme Court  
8 rules or the rules of evidence.

9 (Source: P.A. 99-352, eff. 1-1-16; 99-642, eff. 7-28-16.)

10 Section 99. Effective date. This Act takes effect upon  
11 becoming law.