



## **A MODEL ACT FOR REGULATING THE USE OF WEARABLE BODY CAMERAS BY LAW ENFORCEMENT**

### **Using this document**

1. This Model Act recognizes that the costs associated with the use of body worn cameras will be extensive and that the use should not be an unfunded mandate by the State, but left up to each community to evaluate their costs versus their benefits so that they may choose whether to implement a body worn camera program.
2. This Model Act represents an effort to identify appropriate State measures to deal with body worn cameras in conjunction with Public Records Laws, wiretapping laws, and the costs associated with storing, retrieving and redacting video footage captured by body worn cameras.
3. If body worn cameras are to be an effective tool to record interactions between police and members of the community, they must be activated during those interactions. While there can be no privacy expectations where a police officer is viewing what the body worn camera is recording, requirements to release those recordings to the public are intrusive and voyeuristic such that this Model protects against their release.
4. Where intercepting oral communications are illegal, this Model excepts the communications recorded by body worn cameras from those laws.
5. Each community must recognize that the most significant cost of operating a body worn camera program will rest with the storage, retrieval and redaction of video and audio footage captured by the cameras. Laws such as HIPPA may restrict what may be released and considerations regarding a

person’s privacy as well as the need for the police to protect undercover officers, confidential informants, juveniles and witnesses must inform decisions as to whether video and audio recordings of police interactions with members of the community should be released to the public. This Model Act attempts to strike that balance.

- 6. This Model Act allows police management to appropriately act to correct incidents of misconduct or violations of policy based upon observations of video and audio footage captured by the body worn cameras. This Model Act limits activation of body worn cameras to times when the officer is interacting with members of the community. Should a department require activation of the body worn camera for a full shift, consideration may be given to limiting the use of the recordings during the officer’s down time to coaching rather than discipline and this issue is not addressed in this Model Act.
- 7. A State enacting this Model should carefully evaluate how its public information laws, record retention laws and wiretapping laws are affected and modify those laws to restrict unfettered access to video and audio recordings made by body worn cameras, insure that police are not hampered or put at risk by requirements to notify individuals that the cameras are in use and fully evaluate the cost of storage, retrieval and redaction to allow recovery of those costs where appropriate and limit the length of time a department must store the recordings.



## A MODEL ACT FOR REGULATING THE USE OF WEARABLE BODY WORN CAMERAS BY LAW ENFORCEMENT

Be it enacted by the *[NAME OF THE STATE LEGISLATIVE BODY OF THE STATE OR COMMONWEALTH]*:

### SECTION 1.

The State shall not require a local law enforcement or correctional agency funded in whole in or in part by a local government to provide body worn cameras to officers employed by the agency, nor shall the state require any officer of such local police or correctional agency to wear such cameras. This Act supersedes and shall prevail over any conflicting provisions of law relating to the recording of communications and the law relating to the storage and release of public records and shall be interpreted to further the use of body worn cameras while at the same time limit the disclosure of the video footage as provided in this Act.

### SECTION 2.

1. Only law enforcement officers with the authority to conduct searches and make arrests or correctional officers shall be permitted to wear a body camera. Such body worn cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.

***Comment:*** *This provision is enabling and does not require an agency to use body worn cameras. In addition, this provision allows local departments to determine to whom they will*

*issue body worn cameras for use. Thus, there is no need to except undercover officers, as the local departments will have control over how the cameras are issued and to whom.*

- 2. When use of a body camera has been authorized by a law enforcement agency, both the video and audio recording functions of the body camera shall be activated and unless a different requirement is included within the department’s policies shall not be deactivated until the encounter has fully concluded and the law enforcement officer leaves the scene:
  - a. whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a law enforcement officer and a member of the public, except:
    - a. when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so; or
    - b. as provided under this Act.
- 3. When use of a body camera has been authorized by a correctional department, both the video and audio recording functions of the body camera shall be activated whenever a correctional officer is in contact with a person within a correctional facility other than another correctional officer or when outside a correctional facility whenever the officer has responsibility for a person in custody. The body camera shall not be deactivated except as provided under the correctional facility’s policy.

**Comment:** *So far the focus of body camera interest has been on police officers. Correctional officers are often accused of excessive force and other improper activities that video and audio footage of the event could confirm or refute. As this Act is permissive, a correctional agency can determine if the use of body worn cameras fit within its penological goals. Other models seek to limit the use of body worn cameras on school property by statute. If there is to be a limitation it should be pursuant to law enforcement policies and this model carves out no exception for recording events on school property; instead appropriate redaction polices should be considered to protect a juvenile’s identity when appropriate. Students whether adult or juvenile often violate the law, can be violent and author false claims against the police. If body worn cameras are to be an effective tool for the public use to protect against police abuse, they must be turned on and the video footage retained for the purposes included in this Act regardless of the location where the video footage is obtained.*

- 4. A law enforcement officer who is wearing a body camera is not required to

notify the subject(s) of the recording that the subject(s) is/are being recorded by a body camera unless the officer determines it is safe to do so for the officer and members of the public.

***Comment: As body camera use becomes more prevalent members of the public should expect that their interactions with the police will be recorded. There can be no expectation of privacy in these interactions as the courts have recognized the right of the public to record police activity and it would be curious to believe that those decisions only apply to the public's right to record the police. Often officers are required to approach suicidal, homicidal and mentally disabled persons whose response to notification that they are being recorded could cause adverse and violent reactions. The police officer on the scene should make the determination if notice furthers the law enforcement goals of the encounter.***

5. Notwithstanding the requirements of subsection (4):
  - a. When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim, if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera, unless the law enforcement officer believes it is necessary to continue taping the event, for the officer's safety, the safety of others or to insure an accurate account of the event; and

***Comment: An officer should make the determination if the encounter should be recorded to protect the officer from false claims or to ensure that the witness statement is accurate.***

- b. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the law enforcement shall immediately discontinue use of the body camera, unless the law enforcement officer believes it is necessary to continue taping the event,

for the officer’s safety, the safety of others or to insure an accurate account of the event. Law enforcement agencies using body worn cameras must adopt policies for protecting the anonymity of persons recorded who have asked to remain anonymous and those recordings are not a public record under any law in this State.

**Comment:** *An officer should make the determination if the encounter should be recorded to protect the officer from false claims, to ensure the accuracy of the statements and reports. Appropriate policies need to be implemented to protect confidential informants and others who wish to remain anonymous just as those policies are implemented for other reports and records involving confidential informants and others seeking anonymity. It is not inconceivable that criminals have the ability illegally to access or hack police records.*

- 6. All law enforcement offers to discontinue the use of a body camera made pursuant to subsection (5), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera and retained according to the department’s policies. A law enforcement officer shall not be liable under the laws of this State or otherwise based upon the officer’s determination to continue taping the event under Section 5.
  
- 7. For purposes of this Act, body worn cameras shall not be hidden on a uniform or disguised in any manner. Use of body worn cameras that are incorporated in glasses, pens or other items that an officer may wear or carry are not considered hidden or disguised where a department makes available and publishes to the public a list of the types of body worn cameras it uses.

**Comment:** *Other models prohibit use of a body camera “surreptitiously” which creates potential ambiguity of interpretation. IMLA proposes to clarify that body worn cameras must be worn openly and not disguised or hidden. It is not intended for this provision to prevent undercover officers to use body wires, cameras or other recording devices pursuant to federal and state law allowing such use.*

- 8. Body worn cameras shall not be used 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.

**Comment:** *If body worn cameras are to be an effective tool for the public use to protect against police abuse, they must be turned on and the video footage retained for the purposes included in this Act without creating ambiguities as to the*

*purposes for which the video footage may have been acquired as proposed in other models.*

- 9. Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for thirty (30) days from the date it was recorded, after which time such footage shall be permanently deleted unless associated with an ongoing investigation or for good cause.

*Comment: The cost of storing and retrieving data can be significant. Reports from large cities are multi-million dollar costs for contracts to store video footage for from three to five years. Analysts link the storage costs to profit centers for companies that sell body worn cameras and estimate significant profits over the coming years. Each day data is stored adds to the cost, so a reasonable storage period for video footage that has not been linked to any incident helps keep the costs of this program down.*

- 10. Notwithstanding the retention and deletion requirements in subsection (9):
  - a. Video footage shall be automatically retained for no less than this state’s statute of limitations if the video footage captures images involving:
    - a. Any use of force;
    - b. Events leading up to and including an arrest for a felony-level offense or events that constitute a felony-level offense; except as may be permitted under a policy adopted by the legislative body having supervisory control of the police department; or
    - c. An encounter about which a complaint has been registered by a subject of the video footage.
  - b. Body camera video footage shall also be retained for the period of time that meets this State’s statute of limitations if a longer retention period is voluntarily requested by:
    - a. The law enforcement officer whose body camera recorded the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;
    - b. Any law enforcement officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

- c. Any superior officer of a law enforcement officer whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary, educational or exculpatory value;
- d. Any law enforcement officer, if the video footage is being retained solely and exclusively for police training purposes;
- e. Any member of the public who is a subject of the video footage if that person reasonably asserts that the video footage has evidentiary or exculpatory value;
- f. Any parent or legal guardian of a minor who is a subject of the video footage if that parent or guardian reasonably asserts that the video footage has evidentiary or exculpatory value; or
- g. A deceased subject's next of kin or legally authorized designee if that person reasonably asserts that the video footage has evidentiary or exculpatory value.

11. To effectuate subsections (10)(b)(v), (10)(b)(vi) and (10)(b)(vii), any member of the public who is a subject of video footage, the parent or legal guardian of a minor who is a subject of the video footage, or a deceased subject's next of kin or legally authorized designee, shall be permitted pursuant to a police department's policy regarding access to the video footage to review that specific video footage in order to make a determination as to whether they will voluntarily request it be subject to a longer retention period. A law enforcement agency may limit access under this section to video footage for matters under investigation; however, the department must retain the video until it gives the person authorized to request the retention a reasonable opportunity to review the video footage for the purposes of this section. A law enforcement agency may request a person seeking access under this section to submit a written request and provide the following information:

- 1. the date and approximate time of the recording;
- 2. the specific location where the recording occurred; and
- 3. the name of one or more persons known to be a subject of the recording.

12. The following video footage shall be exempt from the public inspection requirements of



the [NAME OF STATE OPEN RECORDS ACT/FOIA LAW]:

- a. Video footage not subject to a minimum retention period pursuant to subsection (10);
- b. Video footage that is subject to a minimum retention period solely and exclusively pursuant to subsection (10)(a)(iii), where the subject of the video footage making the complaint requests the video footage not be made available to the public;
- c. Video footage that is subject to a minimum retention period solely and exclusively pursuant to subsection (10)(b)(i), (10)(b)(ii), (10)(b)(iii) or (10)(b)(iv);
- d. Video footage that is subject to a minimum retention period solely and exclusively pursuant to subsection (10)(b)(v), (10)(b)(vi), or (10)(b)(vii), where the person making the voluntary request requests the video footage not be made available to the public;
- e. Video footage from:
  - a. within the interior of a private residence;
  - b. within the interior of a facility that offers health care, mental health care, or social services; or
  - c. within a place that a reasonable person would expect to be private; and
- f. Video footage from within a school building or on school property.

**Comment:** Subsection “5” is derived from Laws of Florida, Chapter 2015-41. Subsection “6” attempts to address the privacy concern expressed in other models regarding video’s made on school property.

- g. If there are conflicting requests to release the video footage or to not make the video footage available to the public, the law enforcement agency in its sole judgment shall determine if the public interest or law enforcement purposes are served best by releasing the video footage or not doing so.
- h. Whenever a person entitled to request and receive copies of video footage from a body camera, applies for the video footage that person must pay the costs of retrieval and if any, the costs of redacting confidential or exempt

material from the video footage and must pay a deposit based on the estimate of that cost before the law enforcement agency can be required to comply with the request. A law enforcement agency in addition to the deposit may require a person seeking video footage under this section to submit a written request and provide the following information:

- 1. the date and approximate time of the recording;
- 2. the specific location where the recording occurred; and
- 3. the name of one or more persons known to be a subject of the recording.

13. Any video footage retained beyond thirty (30) days solely and exclusively pursuant to subsection (10)(b)(iv) shall not be admissible as evidence in any criminal or civil legal or administrative proceeding unless following an *in camera* review a court or other adjudicatory body having jurisdiction determines the video footage is necessary to a fair determination of the matter before the tribunal.

14. No law enforcement officer shall be prevented an opportunity to review or receive an accounting of any body camera video footage that is subject to a minimum three (3) year retention period pursuant to subsection (10)(a) prior to completing any required initial reports, statements and interviews regarding the recorded event.

***Comment:*** *In another model, the model attempts to deprive a police officer with the opportunity to review body camera video footage prior to writing reports or giving statements regarding an incident. As the body camera video footage is intended to provide reliable information regarding an event, depriving a police officer access to that information serves only to set the officer up for claims of error, mistake or abuse without any justification.*

15. Video footage obtained under Section 2 of this Section may be used by the department for training, discipline and analysis including subjecting the recordings to automated analysis or analytics.

16. Video footage shall not be divulged or used by any law enforcement agency

for any commercial or other non-law enforcement purpose, but may be released to the public in the agency’s discretion if not required to be released.

17. Where a law enforcement agency authorizes a third-party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view or alter any video footage, except to retrieve or delete videos as required by law or agency retention policies. For evidentiary purposes no chain of custody is required; however, for body camera recordings to be received in evidence proof must be offered through direct testimony or through inferences based on all of the facts:

- a. that the camera and recording system in question were properly maintained; and
- b. that the camera and recording system were properly operating when the recording was made, ; and
- c. that the recording has not been edited or enhanced.

18. Should any law enforcement officer, employee or agent fail to adhere to the recording or retention requirements contained in this Act, or intentionally interfere with a body camera's ability to accurately capture video footage; appropriate disciplinary action shall be taken against the individual officer, employee or agent.

19. Should any person intentionally interfere with a body camera's ability to accurately capture video footage or erase or otherwise tamper with body camera video footage in violation of this Act:

- a. A rebuttable evidentiary presumption shall be adopted in favor of the non-responsible party who reasonably asserts that evidence was destroyed or not captured; and
- b. A rebuttable evidentiary presumption shall be adopted on behalf of the non-responsible party who reasonably asserts that evidence supporting their claim was destroyed or not captured.

**Comment:** Distinctions should be made between negligent and intentional misconduct. With the amount of data that will be required to be stored under this Act, it is likely that some data will be corrupted, lost or otherwise become

*unavailable due to technological glitches or software failures and those failures should not penalize the public.*

- 20. The disciplinary action requirement and rebuttable presumptions in subsection (18) and (19) may be overcome by contrary evidence or proof of exigent circumstances that made compliance impossible.
- 21. Nothing in this Act shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.
- 22. As used in this section, "law enforcement officer" means any person authorized by law to conduct searches and effectuate arrests and who is employed by the state, or a county, municipality, or metropolitan form of government.
- 23. As used in this section, "subject of the video footage" means any law enforcement officer or any suspect, victim, detainee, conversant, injured party or other similarly situated person who appears on the body camera recording, and shall not include people who only incidentally appear on the recording.
- 24. As used in this section "video footage" includes both a video recording and any audio recording that a body camera records and which is in a format that allows storage and retrieval.

**SECTION 3.**

A law enforcement agency or correctional department may apply to the office of the Governor for a grant to defray the cost of implementing this subchapter and to equip law enforcement or correctional officers with body worn cameras. The office of the Governor shall set deadlines for applications for grants under this Act. The office of the Governor shall create and implement a grant program under which matching funds from federal, state, local and other funding sources may be required as a condition of the grant. A law enforcement agency that receives a grant under this section may be required to match 10% of the grant money.

**SECTION 4. This act shall take effect [DATE].**