

# Law Enforcement Officer-Worn Body Camera Act

50 ILCS 706/1 *et seq.*

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## TOPICS TO BE COVERED

- When Body Cameras are Required
- Use and Preservation of Footage
- Reporting to Illinois Law Enforcement Training Standards Board
- Freedom of Information Act

# Law Enforcement Officer-Worn Body Camera Act

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Action Items for Municipalities and  
Law Enforcement Agencies



# Action Item #1

## Obtain Cameras and Implement Use on Time



### Mandatory Deadlines for Implementation:

- Municipalities 100,000-500,000:
  - January 1, 2023
- Municipalities 50,000-100,000:
  - January 1, 2024
- Municipalities <50,000; state agencies with law enforcement; all other law enforcement agencies:
  - January 1, 2025

# Camera Equipment and Maintenance



## CAMERAS MUST BE CAPABLE OF:

- Recording at least 30 seconds prior to camera activation
- Recording for at least 10 hours

## CAMERA MAINTENANCE

- Agency is responsible for proper care and maintenance
- Notify Supervisor of technical issues, failures as soon as practicable
- Upon notice, supervisor must make every reasonable effort to correct and repair the equipment

# Action Item #2

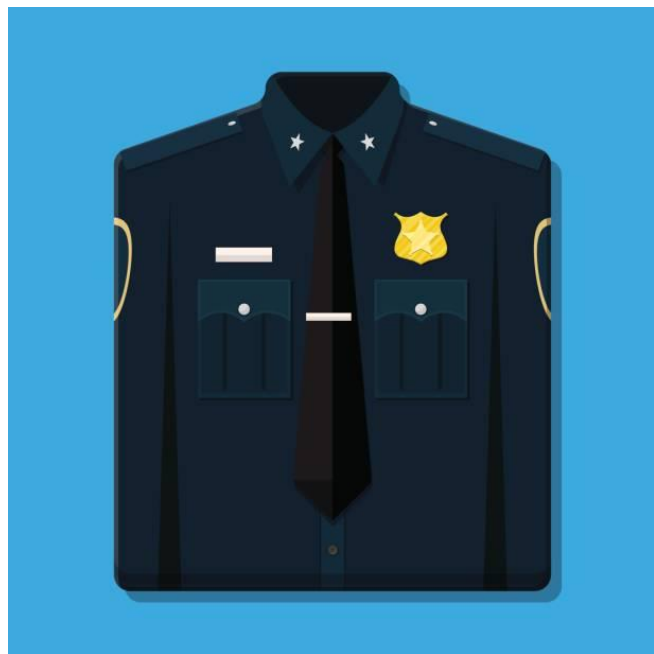
## Adopt a Policy



### Municipalities and Other Law Enforcement Agencies Must Adopt a Written Body Camera Policy

- Must at a minimum include all of the requirements set forth in the Illinois Law Enforcement Officer-Worn Body Camera Act

# Camera Use



## CAMERAS MUST BE TURNED ON WHEN:

- Officer is in uniform; and
- Responding to calls for service or involved in a law enforcement-related encounter or activity that occurs while on duty.

## OFFICER MUST PROVIDE NOTICE:

- Reasonable expectation of privacy
- Notice must be on the recording
- Exigent circumstances – as soon as practicable

# Camera Use



## CAMERAS MAY BE TURNED OFF WHEN:

- Inside patrol car with a functional in-car camera;
- Inside a correctional facility or courthouse equipped with cameras;
- Engaged in a community caretaking function (unless officer reasonably calculates a crime has or is being committed).

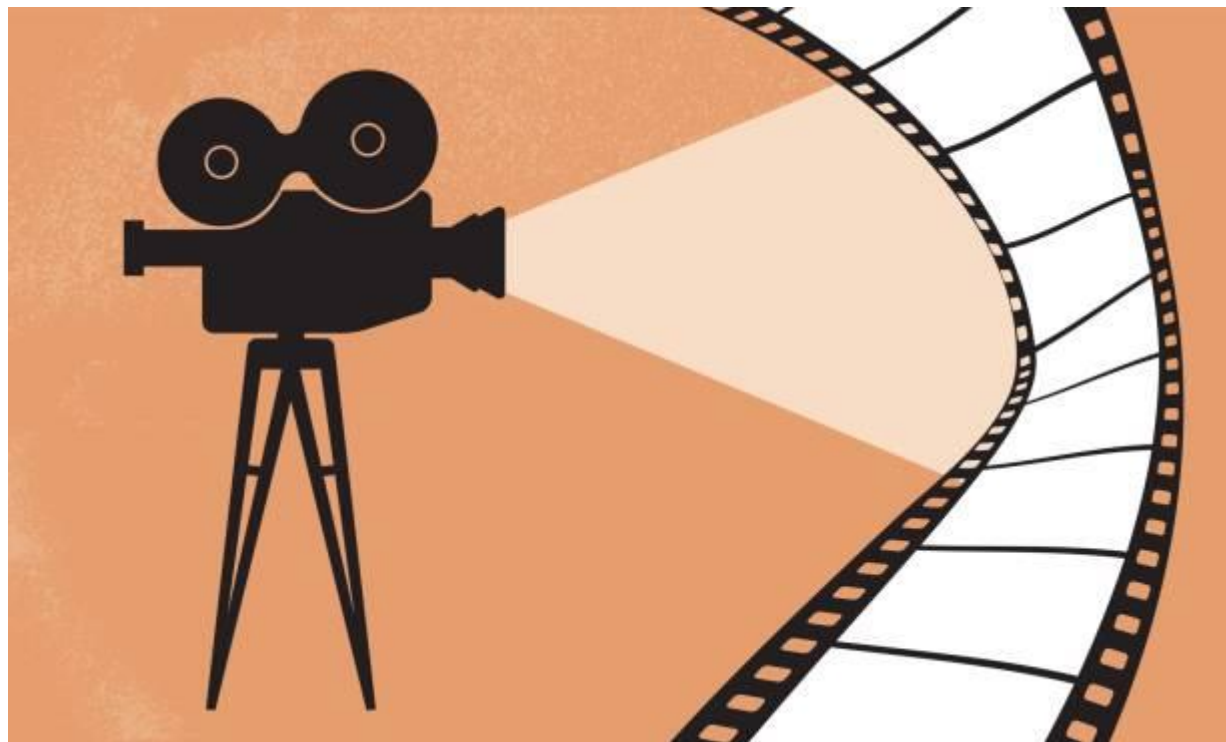
# Camera Use



## CAMERAS MUST BE TURNED OFF WHEN:

- Victim requests camera to be turned off (unless impractical or impossible);
- Witness or community member reporting crime requests camera to be turned off (unless impractical or impossible);
- Interacting with confidential informant;
- Officer of Revenue Department – facility or interview.

# Retention of Recordings



- Recordings must be retained for at 90 days, unless “flagged”
- Flagged recordings must be kept for 2 years or until the final order in a criminal, civil, or administrative proceeding, whichever is longer.
- Training Purposes – only viewed by officers for training in presence of a supervisor



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# Flagged Recordings

- A formal or informal complaint filed;
- Officer discharged firearm or used force;
- Death or great bodily harm;
- Detention or arrest (excluding traffic stops resulting in minor or business offenses);
- Evidentiary value in criminal prosecution;
- Recording officer requests it for official reason related to official duties.
- Officer subject to internal/misconduct investigation

# Preservation of Recordings

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**Recordings MUST NOT be erased, altered, or destroyed during retention period:**

If it happens, a written report must be retained for one year with name of person, reason why, and any other relevant information.

**Labels/Titles/Tags:** Effective January 1, 2022, adding labels, titles, and tags to recording does not constitute alteration.

# Who Can Access and Review Recordings?

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**Personnel responsible for redaction, labeling, or duplicating recordings**

**Detectives or investigators directly involved – but may not alter or delete**

**Recording officer's field training officer for training purposes**

**Officer or Supervisor....**

# Internal Use of Recordings

**Training Purposes:** Recordings may only be viewed by officers for training in presence of a supervisor.

**Discipline:**

**Recordings shall not be used to discipline unless:**

- Complaint has been made;
- Use of force incident occurred;
- Could result in investigation under Uniform Peace Officer's Disciplinary Act;
- Corroboration of other evidence of misconduct.

**Completing Reports:**

**Officer or Supervisor may review a recording prior to completing a report, provided the review is disclosed in the finished report...**

**EXCEPT...an officer may not access or review a recording prior to completing a report when:**

- Officer-involved shooting, use of deadly force, or use of force resulting in great bodily harm; or
- Officer is ordered to write a report in response or during misconduct investigation against the officer
- Supplemental reports may be filed after reviewing the recording, must note review

# Annual Report and Record Keeping



- Annual report must be submitted the Illinois Law Enforcement Training Standards Board on or before May 1 each year.
- The report must include:
  - Description the agency, number of officers using cameras, number of cameras;
  - Any technical issues and how those issues were remedied, and any accidental deletion reports;
  - A brief description of the process used by supervisors to review footage;
  - Information for every recording used in prosecutions of conservation, criminal, or traffic offenses or municipal ordinance violations, including time, date, location and precinct of the incident, offense(s) charged and the date charges were filed.
- On or before July 30 of each year, the Board will analyze the law enforcement agency reports and provide an annual report to the General Assembly and the Governor.

# Penalties for Noncompliance

## 720 ILCS 5/33-9

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### Class 3 Felony

An officer or person acting under the color of law commits the offense of “law enforcement misconduct” if, in the performance of their official duties with the intent to prevent the apprehension of or obstruct the prosecution or defense of any person, they knowingly and intentionally fail to comply with (3), (5), (6), (7) of subsection (a) of the Officer Worn Body Camera Act.

- (a-3) Cameras must be on when on duty and in uniform and responding to calls for service.
- (a-5) Officer must provide notice of recording if person has reasonable expectation of privacy.
- (a-6) Redaction, labeling, or duplicating recordings, access must be restricted to personnel responsible. The recording officer and supervisor may access and review recordings prior to completing an incident report.
- (a-7) Recordings made on body cameras must be retained for 90 days

# Body Camera Footage and the Freedom of Information Act



# Freedom of Information Act

## GENERAL RULE

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All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

5 ILCS 140/1.2



# Body Camera Footage is subject to FOIA... sometimes

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The Officer-Worn Body Camera Act provides that “recordings made with the use of an officer-worn body camera are **not** subject to disclosure under the Freedom of Information Act”

unless certain exceptions apply.

50 ILCS 706/10-20(b).

# Subjects of the Footage

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Subjects are entitled to footage of the encounter, whether footage is flagged or unflagged

Requests for footage may be made through counsel

Who is the “subject”?

What is the “encounter”?





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# Third-Party Requests for Footage

**Flagged Footage may be provided to third parties if flagged for reason of:**

- Filing a complaint
- Discharge of a firearm
- Use of force, arrest, or detention
- Encounter resulted in death or bodily harm

**But only if the subject of the encounter has no reasonable expectation of privacy or has waived that privacy right.**

**A law enforcement agency must deny third-party requests for unflagged footage under 7.55(cc) of FOIA**

Private  
Do Not Enter

## Reasonable Expectation of Privacy

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If the subject of a recording is a victim or a witness and has a reasonable expectation of privacy, footage may only be provided to third parties where the law enforcement agency has obtained written permission from the subject or the subject's legal representative.

If the subject of the recording is arrested as a result of the encounter captured on film, the subject has no reasonable expectation of privacy.

# DISCLOSURE OF BODY CAMERA FOOTAGE

## GUIDING PRINCIPLES

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- Only disclose recordings or portions of recordings responsive to the request.
- Any recording disclosed under the Freedom of Information Act must be redacted to remove identification of any person that appears on the recording and is not the officer, a subject of the encounter, or directly involved in the encounter.
- All applicable FOIA exemptions apply.



# Freedom of Information Act

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## KEY EXEMPTIONS

- Private information
- Personal information
- Records created for law enforcement purposes, but only to the extent that disclosure would:
  - Interfere with pending or reasonably contemplated law enforcement proceedings;
  - Interfere with active administrative enforcement proceedings;
  - Create a substantial likelihood that a person will be deprived of a fair trial;
  - Unavoidably disclose the identity of a confidential source or person who provides information to law enforcement;
  - Disclose unique and specialized investigative techniques;
  - Endanger the life or physical safety of law enforcement or any other person;or
- Obstruct an ongoing criminal investigation.

# Body Camera Footage and FOIA: Hypotheticals

# Freedom of Information Act

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## UNDULY BURDENSOME

When is a request unduly burdensome?

- “Compliance with the request would be unduly burdensome for the complying public body and there is no way to narrow the request and the burden on the public body outweighs the public interest in the information.” 5 ILCS 140/3
- "A request that is overly broad and requires the public body to locate, review, redact and arrange for inspection of a vast quantity of material that is largely unnecessary to the appellants' purpose constitutes an undue burden." *National Association of Criminal Defense Lawyers v. Chicago Police Department*

# What we're seeing

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- Municipalities are receiving a growing number of requests for body camera footage
- These requests are time-intensive and challenging
- “Unduly burdensome” does not provide relief for high volume of reasonable, but time-intensive, FOIA requests

**THANK YOU**

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