

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 972
Committee Substitute Favorable 6/8/16
PROPOSED COMMITTEE SUBSTITUTE H972-PCS30528-SA-115

Short Title: Law Enforcement Recordings/No Public Record.

(Public)

Sponsors:

Referred to:

April 27, 2016

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT RECORDINGS MADE BY LAW ENFORCEMENT AGENCIES ARE NOT PUBLIC RECORDS, TO ESTABLISH WHETHER, TO WHOM, AND WHAT PORTIONS OF A RECORDING MAY BE DISCLOSED OR A COPY RELEASED, TO ESTABLISH THE PROCEDURE FOR CONTESTING A REFUSAL TO DISCLOSE A RECORDING OR TO OBTAIN A COPY OF A RECORDING, AND TO DIRECT STATE OR LOCAL LAW ENFORCEMENT AGENCIES TO PROVIDE, UPON REQUEST, ACCESS TO A METHOD TO VIEW AND ANALYZE RECORDINGS TO THE STATE BUREAU OF INVESTIGATION AND THE NORTH CAROLINA STATE CRIME LABORATORY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-1.4A. Law enforcement agency recordings.

(a) Definitions. – The following definitions apply in this section:

- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
- (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's



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1 surviving spouse, parent, or adult child; the deceased person's attorney; or the
2 parent or guardian of a surviving minor child of the deceased.

3 (6) Recording. – A visual, audio, or visual and audio recording captured by a
4 body-worn camera, a dashboard camera, or any other video or audio recording
5 device operated by or on behalf of a law enforcement agency or law
6 enforcement agency personnel when carrying out law enforcement
7 responsibilities. This term does not include any video or audio recordings of
8 interviews regarding agency internal investigations or interviews or
9 interrogations of suspects or witnesses.

10 (7) Release. – To provide a copy of a recording.

11 (b) Public Record and Personnel Record Classification. – Recordings are not public
12 records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of
13 Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

14 (c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be
15 disclosed only as provided by this section. A person requesting disclosure of a recording must
16 make a written request to the head of the custodial law enforcement agency that states the date and
17 approximate time of the activity captured in the recording or otherwise identifies the activity with
18 reasonable particularity sufficient to identify the recording to which the request refers.

19 The head of the custodial law enforcement agency may only disclose a recording to the
20 following:

21 (1) A person whose image or voice is in the recording.

22 (2) A personal representative of an adult person whose image or voice is in the
23 recording, if the adult person has consented to the disclosure.

24 (3) A personal representative of a minor or of an adult person under lawful
25 guardianship whose image or voice is in the recording.

26 (4) A personal representative of a deceased person whose image or voice is in the
27 recording.

28 (5) A personal representative of an adult person who is incapacitated and unable to
29 provide consent to disclosure.

30 When disclosing the recording, the law enforcement agency shall disclose only those portions of
31 the recording that are relevant to the person's request. A person who receives disclosure pursuant
32 to this subsection shall not record or copy the recording.

33 (d) Disclosure; Factors for Consideration. – Upon receipt of the written request for
34 disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the
35 portion of the recording relevant to the person's request or notify the requestor of the custodial law
36 enforcement agency's decision not to disclose the recording to the requestor.

37 The custodial law enforcement agency may consider any of the following factors in
38 determining if a recording is disclosed:

39 (1) If the person requesting disclosure of the recording is a person authorized to
40 receive disclosure pursuant to subsection (c) of this section.

41 (2) If the recording contains information that is otherwise confidential or exempt
42 from disclosure or release under State or federal law.

43 (3) If disclosure would reveal information regarding a person that is of a highly
44 sensitive personal nature.

45 (4) If disclosure may harm the reputation or jeopardize the safety of a person.

46 (5) If disclosure would create a serious threat to the fair, impartial, and orderly
47 administration of justice.

48 (6) If confidentiality is necessary to protect either an active or inactive internal or
49 criminal investigation or potential internal or criminal investigation.

50 (e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant
51 to subsection (d) of this section, or has failed to provide disclosure more than three business days

1 after the request for disclosure, the person seeking disclosure may apply to the superior court in
2 any county where any portion of the recording was made for a review of the denial of disclosure.
3 The court may conduct an in camera review of the recording. The court may order the disclosure
4 of the recording only if the court finds that the law enforcement agency abused its discretion in
5 denying the request for disclosure. The court may only order disclosure of those portions of the
6 recording that are relevant to the person's request. A person who receives disclosure pursuant to
7 this subsection shall not record or copy the recording. An order issued pursuant to this subsection
8 may not order the release of the recording.

9 In any proceeding pursuant to this subsection, the following persons shall be notified and those
10 persons, or their designated representative, shall be given an opportunity to be heard at any
11 proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency
12 personnel whose image or voice is in the recording and the head of that person's employing law
13 enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection
14 shall be set down for hearing as soon as practicable and subsequent proceedings in such actions
15 shall be accorded priority by the trial and appellate courts.

16 (f) Release of Recordings; General; Court Order Required. – Recordings in the custody of
17 a law enforcement agency shall only be released pursuant to court order. Any custodial law
18 enforcement agency or any person requesting release of a recording may file an action in the
19 superior court in any county where any portion of the recording was made for an order releasing
20 the recording. The request for release must state the date and approximate time of the activity
21 captured in the recording, or otherwise identify the activity with reasonable particularity sufficient
22 to identify the recording to which the action refers. The court may conduct an in camera review of
23 the recording. In determining whether to order the release of all or a portion of the recording, in
24 addition to any other standards the court deems relevant, the court shall consider the applicability
25 of all of the following standards:

- 26 (1) Release is necessary to advance a compelling public interest.
- 27 (2) The recording contains information that is otherwise confidential or exempt
28 from disclosure or release under State or federal law.
- 29 (3) The person requesting release is seeking to obtain evidence to determine legal
30 issues in a current or potential court proceeding.
- 31 (4) Release would reveal information regarding a person that is of a highly
32 sensitive personal nature.
- 33 (5) Release may harm the reputation or jeopardize the safety of a person.
- 34 (6) Release would create a serious threat to the fair, impartial, and orderly
35 administration of justice.
- 36 (7) Confidentiality is necessary to protect either an active or inactive internal or
37 criminal investigation or potential internal or criminal investigation.
- 38 (8) There is good cause shown to release all portions of a recording.

39 The court shall release only those portions of the recording that are relevant to the person's
40 request.

41 In any proceeding pursuant to this subsection, the following persons shall be notified and those
42 persons, or their designated representative, shall be given an opportunity to be heard at any
43 proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency
44 personnel whose image or voice is in the recording and the head of that person's employing law
45 enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection
46 shall be set down for hearing as soon as practicable and subsequent proceedings in such actions
47 shall be accorded priority by the trial and appellate courts.

48 (g) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the
49 requirements of subsections (c) and (f) of this section, a custodial law enforcement agency shall
50 disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii)

1 in order to comply with discovery requirements in a criminal prosecution, or (iii) any other law
2 enforcement purpose, and may disclose or release a recording for any of the following purposes:

3 (1) For law enforcement training purposes.

4 (2) Within the custodial law enforcement agency for any administrative, training,
5 or law enforcement purpose.

6 (3) To another law enforcement agency for law enforcement purposes.

7 (h) Retention of Recordings. – Any recording subject to the provisions of this section shall
8 be retained for at least the period of time required by the applicable records retention and
9 disposition schedule developed by the Department of Natural and Cultural Resources, Division of
10 Archives and Records.

11 (i) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras
12 or dashboard cameras shall adopt a policy applicable to the use of those cameras.

13 (j) No civil liability shall arise from compliance with the provisions of this section,
14 provided that the acts or omissions are made in good faith and do not constitute gross negligence,
15 willful or wanton misconduct, or intentional wrongdoing.

16 (k) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost
17 incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of
18 making the copy.

19 (l) Attorney Fees. – The court may not award attorney fees to any party in any action
20 brought pursuant to this section."

21 **SECTION 2.(a)** Article 23 of Chapter 153A of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 153A-458. SBI and State Crime Laboratory access to view and analyze recordings.**

24 The local law enforcement agency of any county that uses the services of the State Bureau of
25 Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by
26 G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording
27 upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory."

28 **SECTION 2.(b)** Article 21 of Chapter 160 of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 160A-490.1. SBI and State Crime Laboratory access to view and analyze recordings.**

31 The local law enforcement agency of any city that uses the services of the State Bureau of
32 Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by
33 G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording
34 upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory."

35 **SECTION 2.(c)** Article 9 of Chapter 114 of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 114-64. SBI and State Crime Laboratory access to view and analyze recordings.**

38 Any State or local law enforcement agency that uses the services of the State Bureau of
39 Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by
40 G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording
41 upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory."

42 **SECTION 2.(d)** Chapter 15A of the General Statutes is amended by adding a new
43 Article to read:

44 "Article 8A.

45 "SBI and State Crime Laboratory Access to View and Analyze Recordings.

46 **"§ 15A-220. SBI and State Crime Laboratory access to view and analyze recordings.**

47 Any State or local law enforcement agency that uses the services of the State Bureau of
48 Investigation or the North Carolina State Crime Laboratory to analyze a recording covered by
49 G.S. 132-1.4A shall, at no cost, provide access to a method to view and analyze the recording
50 upon request of the State Bureau of Investigation or the North Carolina State Crime Laboratory."

1 **SECTION 3.** This act becomes effective October 1, 2016, and applies to all requests
2 made on or after that date for the disclosure or release of a recording.