

**JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY
BODY-WORN CAMERA SUBCOMMITTEE**

**Recommendations to the Full Committee
April 13, 2016**

The Body-worn Camera Subcommittee met three times. The Subcommittee heard from various stakeholders, including State and local law-enforcement agencies, law enforcement associations, the Conference of District Attorneys, the Criminal Defense Bar, the ACLU, and the School of Government. A period for public comment was provided at the last meeting.

The Subcommittee finds that:

1. The State should not mandate the use of body-worn cameras. The decision to use body-worn cameras should be left up to the head law enforcement officer of each individual agency, in consultation with their local government.

The Subcommittee makes the following legislative proposal:

1. AN ACT TO PROVIDE THAT BODY-WORN CAMERA AND DASHBOARD CAMERA RECORDINGS ARE NOT PUBLIC RECORDS, TO ESTABLISH WHEN AND TO WHOM A RECORDING MAY BE DISCLOSED OR A COPY RELEASED, TO ESTABLISH THE PROCEDURE FOR CONTESTING A REFUSAL TO DISCLOSE A RECORDING OR COPY, TO DIRECT ANY LOCAL GOVERNMENT THAT USES BODY-WORN OR DASH BOARD CAMERAS TO PROVIDE A FREE COPY OF THE SOFTWARE THAT OPERATES THE RECORDING SYSTEM TO THE STATE BUREAU OF INVESTIGATION AND THE NORTH CAROLINA STATE CRIME LABORATORY, AND TO DIRECT THE CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION TO DEVELOP BEST PRACTICES FOR THE USE OF BODY-WORN CAMERAS. (see attachment)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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BILL DRAFT 2015-LHz-181D [v.4] (04/01)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Body-worn & Dashboard Cameras/No Public Record.

(Public)

Sponsors: Representatives Faircloth and McNeill (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT BODY-WORN CAMERA AND DASHBOARD CAMERA RECORDINGS ARE NOT PUBLIC RECORDS, TO ESTABLISH WHEN AND TO WHOM A RECORDING MAY BE DISCLOSED OR A COPY RELEASED, TO ESTABLISH THE PROCEDURE FOR CONTESTING A REFUSAL TO DISCLOSE A RECORDING OR COPY, TO DIRECT ANY LOCAL GOVERNMENT THAT USES BODY-WORN OR DASH BOARD CAMERAS TO PROVIDE A FREE COPY OF THE SOFTWARE THAT OPERATES THE RECORDING SYSTEM TO THE STATE BUREAU OF INVESTIGATION AND THE NORTH CAROLINA STATE CRIME LABORATORY, AND TO DIRECT THE CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION TO DEVELOP BEST PRACTICES FOR THE USE OF BODY-WORN CAMERAS.

Whereas, the General Assembly recognizes the great professionalism of our law enforcement officers; and

Whereas, the General Assembly recognizes the decision to utilize enforcement body-worn cameras and dashboard cameras by some of our State law enforcement agencies, Sheriff's Offices, and police departments; and

Whereas, the General Assembly also recognizes the importance of the public having confidence and trust in our State and local law enforcement agencies; and

Whereas, the General Assembly seeks to protect and strengthen the long-standing and necessary relationship of trust and transparency between our law enforcement officers and citizens; and

Whereas, the General Assembly acknowledges the use of body-worn cameras and dashboard cameras by law enforcement officers is a tool that may assist toward that end; and

Whereas, the General Assembly also recognizes that the privacy rights of our dedicated law enforcement professionals and private citizens that may appear in the recording of a law enforcement body-worn camera or dashboard camera are areas of deep importance; Now, therefore;

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. Body-worn camera and dashboard recordings.

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



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- (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 a law enforcement officer's uniform or person and positioned in a way that allows the camera or device to capture interactions the law enforcement officer has with the public.
- (2) Dashboard Camera.—A device or system installed or used in a law enforcement vehicle that electronically records images depicting activities that take place during a traffic stop, vehicle pursuit, vehicle search, and other interaction with the public that is within the range of the camera. This term does not include body-worn cameras.
- (3) "Disclose" or "disclosure".—To make a recording available for viewing by the person requesting disclosure.
- (4) Personal representative.—A parent, court-appointed guardian, or attorney of, or a person holding a power of attorney for, a person recorded by a body-worn camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.
- (5) Recording.—A visual, audio, or visual and audio recording captured by a body-worn camera or a dashboard camera.

(b) Public record and personnel record classification.—Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records unless determined otherwise by the head law enforcement officer of the law enforcement agency that has custody of the recording. If a recording is determined by a head law enforcement officer to be a personnel record the recording is subject to the provisions of Chapter 126 of the General Statutes, Part 4 of Article 7 of Chapter 160A of the General Statutes, or Part 4 of Article 5 of Chapter 153A of the General Statutes.

(c) Disclosure of recordings.—Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. The head law enforcement officer of a custodial law enforcement agency shall determine whether, to whom, and what portions of a recording may be disclosed and whether a copy of the recording may be released. A law enforcement agency is not required to consider a request for the disclosure or release of a copy of recording unless the person requesting disclosure or copy of a recording states the date and approximate time of the incident or encounter captured by the body-worn camera or dashboard camera or otherwise identifies the incident or encounter with reasonable particularity.

There is a presumption that a custodial law enforcement agency will disclose a recording or portion of a recording to a person depicted in a recording or portion of a recording or to the personal representative of that person upon request, unless the head of the law enforcement agency determines otherwise. When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's presence in the recording.

Except as provided otherwise by this section, the head law enforcement officer of the custodial law enforcement agency has the discretion to determine whether, to whom, and what portions of the recording may be disclosed and whether a copy of the recording may be released.

In making a determination regarding the disclosure of or release of a copy of a recording, the head law enforcement officer shall consider all of the following factors and any other factors deemed relevant by the head law enforcement officer:

- (1) Disclosure is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure under State or federal law.
- (3) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party.

- (4) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Disclosure may harm the reputation or jeopardize the safety of a person.
- (6) Disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect an ongoing investigation.
- (8) There is good cause to disclose all portions of a recording.

(d) Denial of disclosure: remedies.— The head law enforcement officer of any law enforcement agency that redacts portions of a recording or that declines to disclose a recording or to release a copy of a recording shall provide a written statement to the person who requested it explaining why portions of a recording are redacted or why the law enforcement agency declines to disclose or provide a copy of the recording.

Any person who is denied disclosure or who is denied a copy of the recording may apply 48 hours after the request is made or later to the Superior Court in any county where any portion of the recording was made for an order compelling disclosure or release of a copy. The court shall have jurisdiction to issue such orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

In any proceeding regarding the disclosure or release of a copy of a recording, the head law enforcement officer of the custodial agency shall be notified. The head law enforcement officer and any other persons in the law enforcement agency designated by the head shall be given an opportunity to participate in the proceeding.

(g) Attorney's fees.— The procedure and grounds for awarding attorney's fees in any action brought under this subsection shall be the same as set out in G.S. 132-9(c). If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs.

(h) Disclosure pursuant to court order: standards.—When considering whether to order that a recording be disclosed or that a copy of the recording be provided to the requesting party, the court shall consider, in addition to any other standards the court deems relevant, all of the following standards:

- (1) Disclosure is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure under State or federal law.
- (3) The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party.
- (4) Disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording.
- (6) Disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect an ongoing investigation.
- (8) There is good cause shown to disclose all portions of a recording.

(i) Retention of recordings.—Any law enforcement agency that uses body-worn cameras or dashboard cameras shall retain the recording for at least the period of time required by the State Archives schedule for "law enforcement video and audio recordings". This subsection does not preclude a law enforcement agency from specifying additional requirements or a longer period of time for the retention of a recording subject to the agency's jurisdiction.

(j) Fee for copies.—A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a requested recording. The fee shall not exceed the actual cost of making the copy."

SECTION 2.(a) Best Practices—The Criminal Justice Education and Training Standards Commission and the Sheriffs' Education and Training Standards Commission (Commissions), in consultation with the School of Government at the University of North Carolina at Chapel Hill, the North Carolina Conference of District Attorneys, and any other organizations the Commissions jointly deem appropriate shall develop best practices for the use of body-worn cameras by local and State law enforcement officers. Best practices developed pursuant to this section shall address all of the following:

- (1) The type and intensity of training a law enforcement officer should receive prior to using a body-worn camera.
- (2) The best practices and procedures for recording, including an identification of (i) situations when the law enforcement officer should activate the body-worn camera to record and (ii) situations in which the law enforcement officer should deactivate the body-worn camera or seek permission prior to recording.
- (3) The best practices and procedures for retaining and storing any recordings captured by body-worn cameras, including (i) the costs of retention and storage, (ii) the types of recordings that should be retained and stored, and (iii) the standard retention and storage schedules for the different types of recordings. When addressing this issue, the Commissions shall consider retention practices, procedures, and schedules already implemented by State and local law enforcement agencies and evaluate whether any modifications may be helpful with regard to those practices, procedures, and schedules.
- (4) Any other issues deemed relevant and important regarding body-worn cameras.

SECTION 2.(b) Report.—The Criminal Justice Education and Training Standards Commission and the Sheriffs' Education and Training Standards Commission shall jointly report their proposed best practices and recommendations, including any legislative proposals and including any recommendations regarding retention policies implemented prior to this study, to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by December 1, 2016.

SECTION 3.(a) Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§153A-458. Body-worn and dashboard camera software for SBI and State Crime Laboratory.

The local law enforcement agency of any county that uses body-worn cameras or dashboard cameras when carrying out its law enforcement responsibilities shall provide a copy of the software required to operate the recordings from the cameras at no cost to the State Bureau of Investigation and also to the North Carolina State Crime Laboratory if the law enforcement agency uses the services of the North Carolina State Crime Laboratory to analyze the recording."

SECTION 3.(b) Article 21 of Chapter 160 of the General Statutes is amended by adding a new section to read:

"§ 160A-490.1. Body-worn and dashboard camera software for SBI and State Crime Laboratory.

The local law enforcement agency of any county that uses body-worn cameras or dashboard cameras when carrying out its law enforcement responsibilities shall provide a copy of the software required to operate the recordings from the cameras at no cost to the State Bureau of Investigation and also to the North Carolina State Crime Laboratory if the law enforcement agency uses the services of the North Carolina State Crime Laboratory to analyze the recording."

SECTION 3.(c) Article 9 of Chapter 114 of the General Statutes is amended by adding a new section to read:

1 **"§114-64. Body-worn and dashboard camera software provided by law enforcement**
2 **agencies.**

3 Any State or local law enforcement agency that uses body-worn cameras or dashboard
4 cameras when carrying out its law enforcement responsibilities shall provide a copy of the
5 software required to operate the recordings from the cameras at no cost to the North Carolina State
6 Crime Laboratory if the law enforcement agency uses the services of the North Carolina State
7 Crime Laboratory to analyze the recording."

8 **SECTION 3.(d)** Chapter 15A of the General Statutes is amended by adding a new
9 article to read:

10 "Article 8A.

11 Law Enforcement Agencies to Provide Body-worn and Dashboard Camera Software to SBI and
12 Crime Laboratory

13 **"§15A-220. Law enforcement agencies to provide body-worn and dashboard camera**
14 **software to SBI and Crime Laboratory.**

15 Any State or local law enforcement agency that uses body-worn cameras or dashboard
16 cameras when carrying out its law enforcement responsibilities shall provide a copy of the
17 software required to operate the recordings from the cameras at no cost to the State Bureau of
18 Investigation and also to the North Carolina State Crime Laboratory if the law enforcement agency
19 uses the services of the North Carolina State Crime Laboratory to analyze the recording."

20 **SECTION 4.** Section 1 of this act becomes effective October 1, 2016, and applies
21 to all body-worn camera recordings and dashboard camera recordings made on or after that date.
22 Section 3 of this act becomes effective December 1, 2016, and applies to any law enforcement
23 agency that has or is using body-worn or dashboard cameras on or after that date. The remainder
24 of this act is effective when it becomes law.