



2016-2017 General Assembly

## Bill Draft 2015-LHz-181C: Body-worn & Dashboard Cameras/No Public Record.

<b>Committee:</b>	<b>Date:</b>	April 12, 2016
<b>Introduced by:</b>	<b>Prepared by:</b>	Emily Johnson
<b>Analysis of:</b>	2015-LHz-181C	Committee Co-Counsel

### ***SUMMARY:***

This bill provides that body-worn camera and dashboard camera recordings are not public records. This bill also sets out the law regarding disclosure of body-worn and dashboard camera recordings. Section 2 of this bill directs 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 and report back to the Joint Legislative Oversight Committee on Justice and Public Safety by December 1, 2016.

### **CURRENT LAW:**

There is no legislation on body-worn camera recordings.

### **BILL ANALYSIS:**

A section by section analysis of the bill follows:

#### **Section 1:**

##### Status as public record or personnel record

Provides that the recordings from body-worn cameras and dashboard cameras are not public records. Also, those recordings are not personnel records unless determined otherwise by the head of the law enforcement agency that has custody of the recording. If the head of the law enforcement agency determines the recordings are personnel records then the laws regarding personnel records apply to the recordings.

##### Disclosure of Recording

This subsection establishes the general rule that recordings in the custody of a law enforcement agency may be disclosed only as provided by the provisions of this section. As such, these recordings would not be treated as criminal investigations and criminal intelligence information under G.S. 132-1.4. The head of the custodial law enforcement agency makes the initial determination based on the criteria set out in the statute of whether, to whom, and what portions of a recording may be disclosed. The terms "disclosed" and "disclosure" are defined as making a recording available for viewing by the person requesting disclosure. The head of law enforcement agency has discretion regarding disclosure of all other recordings. In determining whether to disclose a recording, the head of law enforcement agency must consider the list of statutory factors set out in G.S. 132-1.4A(e) and may consider any other factors deemed relevant by the head of the law enforcement agency.

##### Remedies when request for disclosure is denied.

The head of the law enforcement agency must provide a written statement explaining the reason for denial of disclosure or refusal to provide copy of recording. A person who is denied may apply to the Superior Court of any county in which the recording was made to compel disclosure or release of a copy



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of the recording after 48 hours. The person requesting a copy of the recording must also comply with G.S. 7A-38 which requires attending a mediated settlement conference. Action for disclosure must be given priority by the court. The head of the law enforcement agency must be notified of court action and must also give the head of the law enforcement agency an opportunity to participate in the hearing and subsequent proceedings. This subsection also provides when attorney's fees may be awarded.

## Standards to be considered by the court when considering whether to order disclosure or release of copy of recording.

Sets out list of standards in G.S. 132-1.4A(h) that the court must consider, in addition to any other standards the court deems relevant.

## Retention of recordings.

At a minimum, law enforcement agencies must retain recording at a minimum for the amount of time required by State Archives Schedule for "law enforcement video and audio recordings". An agency may have more stringent retention practices and procedures.

**Section 2:** Directs the Criminal Justice Education and Training Standards Commission and the Sheriffs' Education and Training Standards Commission in consultation with School of Government, NC District Attorneys Conference, and any other organizations the Commissions jointly deem appropriate to develop best practices for the use of body-worn cameras (does not include dashboard cameras) by local and State law enforcement officers. Best practices must address all of the following:

- Training LEO should receive prior to using a body-worn camera
- Use of a camera, including when to activate and deactivate a camera
- Retaining and storing recordings.
- Directs Commissions to take into consideration retention practices and schedules that may have already been implemented by State and local law enforcement agencies and to evaluate whether any modifications to those implemented practices and schedules may be helpful.

The Commissions must report jointly by December 1, 2016 to the Chairs of Joint Legislative Oversight Committee on Justice and Public Safety.

**Section 3:** Amends Chapter 153A (counties) and Chapter 160A (municipalities) of the General Statutes to require local law enforcement agencies using body-worn cameras and dashboard cameras to provide to the SBI and the State Crime Lab free copies of the software required to operate the recordings from those cameras.

## **EFFECTIVE DATE:**

Section 1 becomes effective October 1, 2016 and applies to all body-worn camera and dashboard camera recordings made on or after that date. Section 3 becomes effective December 1, 2016. The remainder of the act is effective when it becomes law.