

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 972  
Committee Substitute Favorable 6/8/16  
Committee Substitute #2 Favorable 6/23/16  
Fourth Edition Engrossed 6/27/16  
Senate Judiciary I Committee Substitute Adopted 6/28/16  
Sixth Edition Engrossed 6/29/16

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, 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, TO AUTHORIZE GOVERNMENTAL AND NONGOVERNMENTAL ORGANIZATIONS TO ESTABLISH AND OPERATE HYPODERMIC SYRINGE AND NEEDLE EXCHANGE PROGRAMS, AND TO OFFER LIMITED IMMUNITY TO EMPLOYEES, VOLUNTEERS, AND PARTICIPANTS OF AUTHORIZED HYPODERMIC SYRINGE AND NEEDLE EXCHANGE PROGRAMS.

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.



1           (4) Disclose or disclosure. – To make a recording available for viewing or listening  
2 to by the person requesting disclosure, at a time and location chosen by the  
3 custodial law enforcement agency. This term does not include the release of a  
4 recording.

5           (5) Personal representative. – A parent, court-appointed guardian, spouse, or  
6 attorney of a person whose image or voice is in the recording. If a person whose  
7 image or voice is in the recording is deceased, the term also means the personal  
8 representative of the estate of the deceased person; the deceased person's  
9 surviving spouse, parent, or adult child; the deceased person's attorney; or the  
10 parent or guardian of a surviving minor child of the deceased.

11           (6) Recording. – A visual, audio, or visual and audio recording captured by a  
12 body-worn camera, a dashboard camera, or any other video or audio recording  
13 device operated by or on behalf of a law enforcement agency or law  
14 enforcement agency personnel when carrying out law enforcement  
15 responsibilities. This term does not include any video or audio recordings of  
16 interviews regarding agency internal investigations or interviews or  
17 interrogations of suspects or witnesses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1           (3) If disclosure would reveal information regarding a person that is of a highly  
2           sensitive personal nature.  
3           (4) If disclosure may harm the reputation or jeopardize the safety of a person.  
4           (5) If disclosure would create a serious threat to the fair, impartial, and orderly  
5           administration of justice.  
6           (6) If confidentiality is necessary to protect either an active or inactive internal or  
7           criminal investigation or potential internal or criminal investigation.

8           (e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant  
9 to subsection (d) of this section, or has failed to provide disclosure more than three business days  
10 after the request for disclosure, the person seeking disclosure may apply to the superior court in  
11 any county where any portion of the recording was made for a review of the denial of disclosure.  
12 The court may conduct an in-camera review of the recording. The court may order the disclosure  
13 of the recording only if the court finds that the law enforcement agency abused its discretion in  
14 denying the request for disclosure. The court may only order disclosure of those portions of the  
15 recording that are relevant to the person's request. A person who receives disclosure pursuant to  
16 this subsection shall not record or copy the recording. An order issued pursuant to this subsection  
17 may not order the release of the recording.

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

25           (e1) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the  
26 provisions of subsection (f) of this section, a person authorized to receive disclosure pursuant to  
27 subsection (c) of this section, or the custodial law enforcement agency, may petition the superior  
28 court in any county where any portion of the recording was made for an order releasing the  
29 recording to a person authorized to receive disclosure. There shall be no fee for filing the petition  
30 which shall be filed on a form approved by the Administrative Office of the Courts and shall state  
31 the date and approximate time of the activity captured in the recording, or otherwise identify the  
32 activity with reasonable particularity sufficient to identify the recording. If the petitioner is a  
33 person authorized to receive disclosure, notice and an opportunity to be heard shall be given to the  
34 head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be  
35 set down for hearing as soon as practicable and shall be accorded priority by the court.

36           The court shall first determine if the person to whom release of the recording is requested is a  
37 person authorized to receive disclosure pursuant to subsection (c) of this section. In making this  
38 determination, the court may conduct an in-camera review of the recording and may, in its  
39 discretion, allow the petitioner to be present to assist in identifying the image or voice in the  
40 recording that authorizes disclosure to the person to whom release is requested. If the court  
41 determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this  
42 section, there shall be no right of appeal and the petitioner may file an action for release pursuant  
43 to subsection (f) of this section.

44           If the court determines that the person to whom release of the recording is requested is a  
45 person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall  
46 consider the standards set out in subsection (f) of this section and any other standards the court  
47 deems relevant in determining whether to order the release of all or a portion of the recording. The  
48 court may conduct an in-camera review of the recording. The court shall release only those  
49 portions of the recording that are relevant to the person's request and may place any conditions or  
50 restrictions on the release of the recording that the court, in its discretion, deems appropriate.

1        (f) Release of Recordings; General; Court Order Required. – Recordings in the custody of  
2 a law enforcement agency shall only be released pursuant to court order. Any custodial law  
3 enforcement agency or any person requesting release of a recording may file an action in the  
4 superior court in any county where any portion of the recording was made for an order releasing  
5 the recording. The request for release must state the date and approximate time of the activity  
6 captured in the recording, or otherwise identify the activity with reasonable particularity sufficient  
7 to identify the recording to which the action refers. The court may conduct an in-camera review of  
8 the recording. In determining whether to order the release of all or a portion of the recording, in  
9 addition to any other standards the court deems relevant, the court shall consider the applicability  
10 of all of the following standards:

- 11            (1) Release is necessary to advance a compelling public interest.
- 12            (2) The recording contains information that is otherwise confidential or exempt  
13 from disclosure or release under State or federal law.
- 14            (3) The person requesting release is seeking to obtain evidence to determine legal  
15 issues in a current or potential court proceeding.
- 16            (4) Release would reveal information regarding a person that is of a highly  
17 sensitive personal nature.
- 18            (5) Release may harm the reputation or jeopardize the safety of a person.
- 19            (6) Release would create a serious threat to the fair, impartial, and orderly  
20 administration of justice.
- 21            (7) Confidentiality is necessary to protect either an active or inactive internal or  
22 criminal investigation or potential internal or criminal investigation.
- 23            (8) There is good cause shown to release all portions of a recording.

24 The court shall release only those portions of the recording that are relevant to the person's  
25 request, and may place any conditions or restrictions on the release of the recording that the court,  
26 in its discretion, deems appropriate.

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

34        (g) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the  
35 requirements of subsections (c), (e1), and (f) of this section, a custodial law enforcement agency  
36 shall disclose or release a recording to a district attorney (i) for review of potential criminal  
37 charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use  
38 in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may  
39 disclose or release a recording for any of the following purposes:

- 40            (1) For law enforcement training purposes.
- 41            (2) Within the custodial law enforcement agency for any administrative, training,  
42 or law enforcement purpose.
- 43            (3) To another law enforcement agency for law enforcement purposes.

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

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



1 associated with drug use and other high-risk behaviors, may establish and operate a needle and  
2 hypodermic syringe exchange program. The objectives of the program shall be to do all of the  
3 following:

- 4 (1) Reduce the spread of HIV, AIDS, viral hepatitis, and other bloodborne diseases  
5 in this State.
- 6 (2) Reduce needle stick injuries to law enforcement officers and other emergency  
7 personnel.
- 8 (3) Encourage individuals who inject drugs to enroll in evidence-based treatment.
- 9 (b) Programs established pursuant to this section shall offer all of the following:
  - 10 (1) Disposal of used needles and hypodermic syringes.
  - 11 (2) Needles, hypodermic syringes, and other injection supplies at no cost and in  
12 quantities sufficient to ensure that needles, hypodermic syringes, and other  
13 injection supplies are not shared or reused. No public funds may be used to  
14 purchase needles, hypodermic syringes, or other injection supplies.
  - 15 (3) Reasonable and adequate security of program sites, equipment, and personnel.  
16 Written plans for security shall be provided to the police and sheriff's offices  
17 with jurisdiction in the program location and shall be updated annually.
  - 18 (4) Educational materials on all of the following:
    - 19 a. Overdose prevention.
    - 20 b. The prevention of HIV, AIDS, and viral hepatitis transmission.
    - 21 c. Drug abuse prevention.
    - 22 d. Treatment for mental illness, including treatment referrals.
    - 23 e. Treatment for substance abuse, including referrals for medication  
24 assisted treatment.
  - 25 (5) Access to naloxone kits that contain naloxone hydrochloride that is approved by  
26 the federal Food and Drug Administration for the treatment of a drug overdose,  
27 or referrals to programs that provide access to naloxone hydrochloride that is  
28 approved by the federal Food and Drug Administration for the treatment of a  
29 drug overdose.
  - 30 (6) For each individual requesting services, personal consultations from a program  
31 employee or volunteer concerning mental health or addiction treatment as  
32 appropriate.

33 (c) Notwithstanding any provision of the Controlled Substances Act in Article 5 of  
34 Chapter 90 of the General Statutes or any other law, no employee, volunteer, or participant of a  
35 program established pursuant to this section shall be charged with or prosecuted for possession of  
36 any of the following:

- 37 (1) Needles, hypodermic syringes, or other injection supplies obtained from or  
38 returned to a program established pursuant to this section.
- 39 (2) Residual amounts of a controlled substance contained in a used needle, used  
40 hypodermic syringe, or used injection supplies obtained from or returned to a  
41 program established pursuant to this section.

42 The limited immunity provided in this subsection shall apply only if the person claiming  
43 immunity provides written verification that a needle, syringe, or other injection supplies were  
44 obtained from a needle and hypodermic syringe exchange program established pursuant to this  
45 section. In addition to any other applicable immunity or limitation on civil liability, a law  
46 enforcement officer who, acting on good faith, arrests or charges a person who is thereafter  
47 determined to be entitled to immunity from prosecution under this section shall not be subject to  
48 civil liability for the arrest or filing of charges.

49 (d) Prior to commencing operations of a program established pursuant to this section, the  
50 governmental or nongovernmental organization shall report to the North Carolina Department of  
51 Health and Human Services, Division of Public Health, all of the following information:

- 1           (1)    The legal name of the organization or agency operating the program.  
2           (2)    The areas and populations to be served by the program.  
3           (3)    The methods by which the program will meet the requirements of subsection  
4                    (b) of this section.

5       (e)    Not later than one year after commencing operations of a program established pursuant  
6 to this section, and every 12 months thereafter, each organization operating such a program shall  
7 report the following information to the North Carolina Department of Health and Human Services,  
8 Division of Public Health:

- 9           (1)    The number of individuals served by the program.  
10          (2)    The number of needles, hypodermic syringes, and needle injection supplies  
11                   dispensed by the program and returned to the program.  
12          (3)    The number of naloxone kits distributed by the program.  
13          (4)    The number and type of treatment referrals provided to individuals served by  
14                   the program, including a separate report of the number of individuals referred to  
15                   programs that provide access to naloxone hydrochloride that is approved by the  
16                   federal Food and Drug Administration for the treatment of a drug overdose."

17       **SECTION 5.** Sections 1, 2, and 3 of this act become effective October 1, 2016, and  
18 apply to all requests made on or after that date for the disclosure or release of a recording. The  
19 remainder of this act is effective when it becomes law.  
20