

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
PROPOSED SENATE COMMITTEE SUBSTITUTE H972-CSSA-121 [v.3]
06/27/2016 10:18:45 PM

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.
- (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



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1 custodial law enforcement agency. This term does not include the release of a
2 recording.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Release is necessary to advance a compelling public interest.

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

(3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.

(4) Release would reveal information regarding a person that is of a highly sensitive personal nature.

(5) Release may harm the reputation or jeopardize the safety of a person.

(6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.

(7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(8) There is good cause shown to release all portions of a recording.

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

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law

enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

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

(1) For law enforcement training purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Article 8A.

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

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

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

SECTION 3. G.S. 143-318.11(a) reads as rewritten:

"(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

...

(10) To view a recording released pursuant to G.S. 132-1.4A."

SECTION 4. Article 5C of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-113.27. Needle and hypodermic syringe exchange programs authorized; limited immunity.

(a) Any governmental or nongovernmental organization, including a local or district health department or an organization that promotes scientifically proven ways of mitigating health risks associated with drug use and other high risk behaviors, may establish and operate a needle and hypodermic syringe exchange program. The objectives of the program shall be to do all of the following:

(1) Reduce the spread of HIV, AIDS, viral hepatitis, and other bloodborne diseases in this State.

(2) Reduce needlestick injuries to law enforcement officers and other emergency personnel.

(3) Encourage individuals who inject drugs to enroll in evidence-based treatment.

(b) Programs established pursuant to this section shall offer all of the following:

(1) Disposal of used needles and hypodermic syringes.

(2) Needles, hypodermic syringes, and other injection supplies at no cost and in quantities sufficient to ensure that needles, hypodermic syringes, and other injection supplies are not shared or reused. No public funds may be used to purchase needles, hypodermic syringes, or other injection supplies.

(3) Reasonable and adequate security of program sites, equipment, and personnel. Written plans for security shall be provided to the police and sheriff's offices with jurisdiction in the program location and shall be updated annually.

(4) Educational materials on all of the following:

a. Overdose prevention.

b. The prevention of HIV, AIDS, and viral hepatitis transmission.

c. Drug abuse prevention.

d. Treatment for mental illness, including treatment referrals.

e. Treatment for substance abuse, including referrals for medication assisted treatment.

(5) Access to naloxone kits that contain naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose, or referrals to programs that provide access to naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose.

(6) For each individual requesting services, personal consultations from a program employee or volunteer concerning mental health or addiction treatment as appropriate.

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

5 (1) Needles, hypodermic syringes, or other injection supplies obtained from or
6 returned to a program established pursuant to this section.

7 (2) Residual amounts of a controlled substance contained in a used needle, used
8 hypodermic syringe, or used injection supplies obtained from or returned to a
9 program established pursuant to this section.

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

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

20 (1) The legal name of the organization or agency operating the program.

21 (2) The areas and populations to be served by the program.

22 (3) The methods by which the program will meet the requirements of subsection
23 (b) of this section.

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

28 (1) The number of individuals served by the program.

29 (2) The number of needles, hypodermic syringes, and needle injection supplies
30 dispensed by the program and returned to the program.

31 (3) The number of naloxone kits distributed by the program.

32 (4) The number and type of treatment referrals provided to individuals served by
33 the program, including a separate report of the number of individuals referred to
34 programs that provide access to naloxone hydrochloride that is approved by the
35 federal Food and Drug Administration for the treatment of a drug overdose."

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