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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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **SECTION 2.1.** G.S. 143-318.11(a) reads as rewritten:

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

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

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