

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 972

Short Title: Body-Worn & Dashboard Cameras/No Public Record. (Public)

Sponsors: Representatives Faircloth, McNeill, Boles, and Hurley (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary II

April 27, 2016

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT BODY-WORN CAMERA AND DASHBOARD CAMERA
2 RECORDINGS ARE NOT PUBLIC RECORDS, TO ESTABLISH WHETHER, TO WHOM,
3 AND WHAT PORTIONS OF A RECORDING MAY BE DISCLOSED OR A COPY
4 RELEASED, TO ESTABLISH THE PROCEDURE FOR CONTESTING A REFUSAL TO
5 DISCLOSE A RECORDING OR COPY, TO DIRECT ANY STATE OR LOCAL LAW
6 ENFORCEMENT AGENCY THAT USES BODY-WORN OR DASHBOARD CAMERAS
7 TO PROVIDE A FREE COPY OF THE SOFTWARE THAT OPERATES THE
8 RECORDING SYSTEM TO THE STATE BUREAU OF INVESTIGATION AND THE
9 NORTH CAROLINA STATE CRIME LABORATORY, AND TO DIRECT THE
10 CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND
11 THE SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION TO
12 DEVELOP BEST PRACTICES FOR THE USE OF BODY-WORN CAMERAS, AS
13 RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON
14 JUSTICE AND PUBLIC SAFETY.

15
16 Whereas, the General Assembly recognizes the great professionalism of our law
17 enforcement officers; and

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

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

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

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

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

32 The General Assembly of North Carolina enacts:

33 **SECTION 1.** Chapter 132 of the General Statutes is amended by adding a new section
34 to read:

35 **"§ 132-1.4A. Body-worn camera and dashboard recordings.**



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

2 (1) Body-worn camera. – An operational video or digital camera or other electronic
3 device, including a microphone or other mechanism for allowing audio capture,
4 affixed to a law enforcement officer's uniform or person and positioned in a
5 way that allows the camera or device to capture interactions the law
6 enforcement officer has with the public.

7 (2) Dashboard camera. – A device or system installed or used in a law enforcement
8 vehicle that electronically records images depicting activities that take place
9 during a traffic stop, vehicle pursuit, vehicle search, and other interaction with
10 the public that is within the range of the camera. This term does not include
11 body-worn cameras.

12 (3) Disclose or disclosure. – To make a recording available for viewing by the
13 person requesting disclosure.

14 (4) Personal representative. – A parent, court-appointed guardian, or attorney of, or
15 a person holding a power of attorney for, a person recorded by a body-worn
16 camera. If a person depicted in the recording is deceased, the term also means
17 the personal representative of the estate of the deceased person; the deceased
18 person's surviving spouse, parent, or adult child; the deceased person's attorney;
19 or the parent or guardian of a surviving minor child of the deceased.

20 (5) Recording. – A visual, audio, or visual and audio recording captured by a
21 body-worn camera or a dashboard camera.

22 (b) Public Record and Personnel Record Classification. – Recordings are not public
23 records as defined by G.S. 132-1. If an issue is raised as to whether an individual recording is a
24 personnel record, the head law enforcement officer of the law enforcement agency that has
25 custody of the recording shall make that determination. If a recording is determined by the head
26 law enforcement officer to be a personnel record, the recording is subject to the provisions of
27 Chapter 126 of the General Statutes, Part 4 of Article 7 of Chapter 160A of the General Statutes,
28 or Part 4 of Article 5 of Chapter 153A of the General Statutes.

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

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

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

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

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

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

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

10 (d) Denial of Disclosure or Release of a Copy; Remedies. – The head law enforcement
11 officer of any law enforcement agency that redacts portions of a recording or that declines to
12 disclose a recording or to release a copy of a recording shall provide a written statement to the
13 person who requested it explaining why portions of a recording are redacted or why the law
14 enforcement agency declines to disclose or provide a copy of the recording.

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

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

25 (e) Attorneys' Fees. – The procedure and grounds for awarding attorneys' fees in any
26 action brought under this subsection shall be the same as set out in G.S. 132-9(c). If the court
27 determines that an action brought pursuant to this section was filed in bad faith or was frivolous,
28 the court shall assess reasonable attorneys' fees against the person or persons instituting the action
29 and award it to the public agency as part of the costs.

30 (f) Disclosure Pursuant to Court Order; Standards. – When considering whether to order
31 that a recording be disclosed or that a copy of the recording be provided to the requesting party,
32 the court shall consider, in addition to any other standards the court deems relevant, all of the
33 following standards:

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

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

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

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

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

26 **SECTION 2.(b)** Report. – The Criminal Justice Education and Training Standards
27 Commission and the Sheriffs' Education and Training Standards Commission shall jointly report
28 their proposed best practices and recommendations, including any legislative proposals and
29 including any recommendations regarding retention policies implemented prior to this study, to
30 the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by December
31 1, 2016.

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

34 **§ 153A-458. Body-worn and dashboard camera software for SBI and State Crime**
35 **Laboratory.**

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

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

44 **§ 160A-490.1. Body-worn and dashboard camera software for SBI and State Crime**
45 **Laboratory.**

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

