

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

1

SENATE BILL 286

Short Title: Amend LEO Recordings: Decision Authority. (Local)

Sponsors: Senator Lowe (Primary Sponsor).

Referred to: Rules and Operations of the Senate

March 16, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THE CITY OF WINSTON-SALEM WITH THE FLEXIBILITY TO
3 PROVIDE LAW ENFORCEMENT AGENCY RECORDINGS TO THE CITIZENS'
4 POLICE REVIEW BOARD AND TO AMEND THE COURT PROCEEDINGS FOR
5 LAW ENFORCEMENT RECORDINGS FOR THE CITY OF WINSTON-SALEM.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 132-1.4A reads as rewritten:

8 **"§ 132-1.4A. Law enforcement agency recordings.**

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

- 10 (1) Body-worn camera. – An operational video or digital camera or other
11 electronic device, including a microphone or other mechanism for allowing
12 audio capture, affixed to the uniform or person of law enforcement agency
13 personnel and positioned in a way that allows the camera or device to
14 capture interactions the law enforcement agency personnel has with others.
- 15 (2) Custodial law enforcement agency. – The law enforcement agency that owns
16 or leases or whose personnel operates the equipment that created the
17 recording at the time the recording was made.
- 18 (3) Dashboard camera. – A device or system installed or used in a law
19 enforcement agency vehicle that electronically records images or audio
20 depicting interaction with others by law enforcement agency personnel. This
21 term does not include body-worn cameras.
- 22 (4) Disclose or disclosure. – To make a recording available for viewing or
23 listening to by the person requesting disclosure, at a time and location
24 chosen by the custodial law enforcement agency. This term does not include
25 the release of a recording.
- 26 (5) Personal representative. – A parent, court-appointed guardian, spouse, or
27 attorney of a person whose image or voice is in the recording. If a person
28 whose image or voice is in the recording is deceased, the term also means
29 the personal representative of the estate of the deceased person; the deceased
30 person's surviving spouse, parent, or adult child; the deceased person's
31 attorney; or the parent or guardian of a surviving minor child of the
32 deceased.
- 33 (6) Recording. – A visual, audio, or visual and audio recording captured by a
34 body-worn camera, a dashboard camera, or any other video or audio
35 recording device operated by or on behalf of a law enforcement agency or
36 law enforcement agency personnel when carrying out law enforcement



1 responsibilities. This term does not include any video or audio recordings of
2 interviews regarding agency internal investigations or interviews or
3 interrogations of suspects or witnesses.

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

5 (b) Public Record and Personnel Record Classification. – Recordings are ~~not~~ public
6 records as defined by ~~G.S. 132-1~~ G.S. 132-1 and are subject to disclosure and release within a
7 reasonable time frame, as determined by the law enforcement agency in possession of the
8 recordings, unless a court order from a court of competent jurisdiction precluding the disclosure
9 or release of the recordings has been obtained pursuant to subsection (e) of this section. Before
10 disclosing or releasing the recordings, the law enforcement agency in possession of the
11 recordings shall notify, in writing, at least five calendar days before disclosing or releasing the
12 recordings, the district attorney, each employee and person whose image is captured in the
13 recordings, and their personal representatives, if known, provided that the law enforcement
14 agency in custody of the recordings is able to determine, after exercising reasonable measures,
15 the identity and location of each person whose image is captured in the recordings. Three
16 calendar days shall be allowed for mailing. If upon the expiration of the five-day notice and the
17 three-day mailing period a petition for an order has not been filed, the law enforcement agency
18 in possession of the recordings may disclose or release the requested recordings. The return of
19 any written notice, as undeliverable or for any other reason, shall not create liability for the law
20 enforcement agency or the city of that agency and shall not preclude the disclosure or release of
21 the recordings by the law enforcement agency in possession of such. Before any recordings are
22 disclosed to the Citizens' Police Review Board in open session, the aforementioned notification
23 process must be adhered to. Recordings are not personnel records as defined in Part 7 of
24 Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

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

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

- 33 (1) A person whose image or voice is in the recording.
- 34 (2) A personal representative of an adult person whose image or voice is in the
35 recording, if the adult person has consented to the disclosure.
- 36 (3) A personal representative of a minor or of an adult person under lawful
37 guardianship whose image or voice is in the recording.
- 38 (4) A personal representative of a deceased person whose image or voice is in
39 the recording.
- 40 (5) A personal representative of an adult person who is incapacitated and unable
41 to provide consent to disclosure.

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

45 (d) Disclosure; Factors for Consideration. — Upon receipt of the written request for
46 disclosure, as promptly as possible, the custodial law enforcement agency must either disclose
47 the portion of the recording relevant to the person's request or notify the requestor of the
48 custodial law enforcement agency's decision not to disclose the recording to the requestor.

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

- 1 (1) If the person requesting disclosure of the recording is a person authorized to
2 receive disclosure pursuant to subsection (c) of this section.
- 3 (2) If the recording contains information that is otherwise confidential or exempt
4 from disclosure or release under State or federal law.
- 5 (3) If disclosure would reveal information regarding a person that is of a highly
6 sensitive personal nature.
- 7 (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- 8 (5) If disclosure would create a serious threat to the fair, impartial, and orderly
9 administration of justice.
- 10 (6) If confidentiality is necessary to protect either an active or inactive internal
11 or criminal investigation or potential internal or criminal investigation.

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

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

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

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

49 If the court determines that the person to whom release of the recording is requested is a
50 person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall
51 consider the standards set out in subsection (g) of this section and any other standards the court

1 deems relevant in determining whether to order the release of all or a portion of the recording.
2 The court may conduct an in-camera review of the recording. The court shall release only those
3 portions of the recording that are relevant to the person's request and may place any conditions
4 or restrictions on the release of the recording that the court, in its discretion, deems
5 appropriate.]

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

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

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

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

39 (c) Court Order Prohibiting Disclosure or Release of Recordings. – Any person,
40 including the district attorney, or the law enforcement agency in possession of the recordings or
41 the city of such agency, may file an action or petition to the Forsyth County Superior Court for
42 an order prohibiting the disclosure or release of the recordings. If such action or petition is
43 filed, the petitioner must serve a copy of the action or petition upon the city of the law
44 enforcement agency in custody of the recordings in accordance with G.S. 1A-1, Rule 4, unless
45 the petitioner is said law enforcement agency. If the petitioner is not the district attorney, a
46 copy of the action or petition filed must be served upon the district attorney in accordance with
47 G.S. 1A-1, Rule 4. Upon receipt of the action or petition filed pursuant to this subsection, the
48 law enforcement agency in possession of the recordings and the city shall refrain from
49 disclosing or releasing the recordings until the court has rendered a decision. Any disclosure or
50 release of the recordings must adhere to said decision. In determining whether to enter such an
51 order, the court shall consider the following:

- 1 (1) Disclosure or release may jeopardize public safety.
- 2 (2) The recording contains information that is otherwise confidential or exempt
3 from disclosure or release under State or federal law.
- 4 (3) Disclosure or release would reveal information regarding a person that is of
5 a highly sensitive personal nature.
- 6 (4) Disclosure or release may harm the reputation or jeopardize the safety of a
7 person.
- 8 (5) Disclosure or release would create a serious threat to the fair, impartial, and
9 orderly administration of justice.
- 10 (6) Confidentiality is necessary to protect either an active or inactive internal or
11 criminal investigation or a potential internal or criminal investigation.
- 12 (7) There is good cause shown to prohibit the disclosure or release of all or
13 portions of a recording.

14 The court may conduct an in camera review of the recordings. The court may preclude
15 disclosure or release of all or portions of the recordings until such time the basis for prohibiting
16 the disclosure or release of the recordings ceases to exist. Actions or petitions brought pursuant
17 to this subsection shall be set down for hearing as soon as practicable and subsequent
18 proceedings in such actions shall be accorded priority by the trial and appellate courts.

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

- 25 (1) For law enforcement training purposes.
- 26 (2) Within the custodial law enforcement agency for any administrative,
27 training, or law enforcement purpose.
- 28 (3) To another law enforcement agency for law enforcement purposes.

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

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

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

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

41 ~~(m)~~(i) Attorneys' Fees. – The court may not award attorneys' fees to any party in any
42 action brought pursuant to this section."

43 **SECTION 2.** This act shall apply to the City of Winston-Salem only.

44 **SECTION 3.** This act is effective when it becomes law.