



LAW ENFORCEMENT
RECORDINGS/NOT PUBLIC
RECORD
H972 – SESSION LAW 2016-88

Representative Allen McNeill and Representative Pat Hurley
Justice and Public Safety Subcommittee

RECORDING

OVERVIEW

H972 does the following with respect to recordings made by law enforcement agencies:

- Provides that they are not public records.
- Establishes whether, to whom, and what portions of a recording may be disclosed or a copy released.
- Establishes the procedure for contesting a refusal to disclose a recording or to obtain a copy of a recording.

- Directs 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 (SBI) and the North Carolina State Crime Laboratory (State Crime Lab).
- H972 also authorizes governmental and nongovernmental organizations to establish and operate hypodermic syringe and needle exchange programs and provides limited immunity from criminal prosecution to employees, volunteers, and participants of authorized hypodermic syringe and needle exchange programs.

RECORDINGS MADE BY LAW ENFORCEMENT

- Creates a new G.S. 132-1.4A to govern the disclosure and release of video and audio recordings made by law enforcement agencies through the use of body-worn cameras, dashboard cameras, or any other video or audio recording device operated by or on behalf of a law enforcement agency when carrying out law enforcement responsibilities.
- The provisions do not govern video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
- The recordings are not public records or personnel records.

DISCLOSURES

- Allowing a person to view or listen to a recording
- May be provided by the custodial law enforcement agency upon:
 - Written request to the head of the law enforcement agency.
 - States the date and approximate time of the activity captured in the recording or otherwise identifying the activity with reasonable particularity sufficient to identify the recording to which the request refers.
- Only those portions of the recording that are relevant to the person's request may be disclosed.



DISCLOSURES CONTINUED

- Law enforcement agencies may disclose a recording only to the following persons:
 - A person whose image or voice is in the recording.
 - A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
 - A personal representative of a minor or an adult person under lawful guardianship whose image or voice is in the recording.
 - A personal representative of a deceased person whose image or voice is in the recording.
 - A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.



DISCLOSURES CONTINUED

- The custodial law enforcement agency may consider any of the following factors in determining if a record is disclosed:
 - If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
 - If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
 - If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
 - If disclosure may harm the reputation or jeopardize the safety of a person.
 - If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
 - If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

DISCLOSURES CONTINUED



- A person requesting disclosure may appeal the denial of disclosure, or the agency's failure to provide disclosure more than three business days after the request, to the superior court in any county where any portion of the recording was made.
- The court's standard of review is abuse of discretion.
- The court may conduct an in camera review of the recording.
- Notice of any proceeding shall be given to the head of the custodial law enforcement agency, any law enforcement officer whose image or voice is in the recording and the head of their employing agency, and the District Attorney.

RELEASE

- Providing a copy of a recording
- Recordings may only be released pursuant to court order.
- **Expedited release for certain persons**
 - A person authorized to receive disclosure may petition for release on a form provided by the Administrative Office of the Courts (AOC) with no fee required.
 - These petitions shall be set down for hearing as soon as practicable.
 - If the court determines that the person is entitled to disclosure, the court shall then consider whether to release a recording under the same provisions as for general requests for release.

GENERAL REQUESTS FOR RELEASE

- Any person 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.
- In determining whether to release a recording, the court shall consider the following standards:
 - Release is necessary to advance a compelling public interest.
 - The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
 - The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
 - Release would reveal information regarding a person that is of a highly sensitive personal nature.

- Release may harm the reputation or jeopardize the safety of a person.
- Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- There is good cause shown to release all portions of a recording.



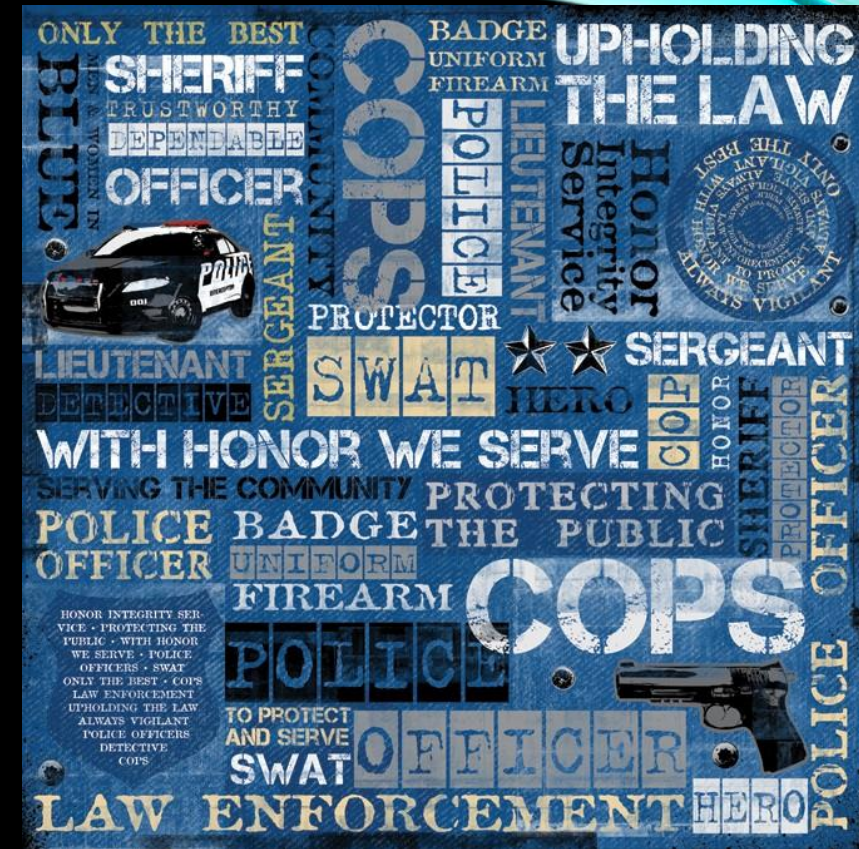


- The court may conduct an in camera review of the recording.
- The court may place any conditions or restrictions on the release of the recording that the court deems appropriate.
- Notice of any proceeding shall be given to the head of the custodial law enforcement agency, any law enforcement officer whose image or voice is in the recording and the head of their employing agency, and the District Attorney.

ADDITIONAL PROVISIONS

- A custodial law enforcement agency shall disclose or release a recording to a district attorney:
 - For review of potential criminal charges.
 - In order to comply with discovery requirements in a criminal prosecution.
 - For use in criminal proceedings in district court.
 - Any other law enforcement purpose.
- A custodial law enforcement agency may disclose or release a recording for the following purposes:
 - For law enforcement training purposes.
 - Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
 - To another law enforcement agency for law enforcement purposes.

- Recordings shall be retained for 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.
- Any law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.
- No civil liability shall arise from the good faith compliance with the provisions of this act.
- A fee may be charged to copy the recording for release.

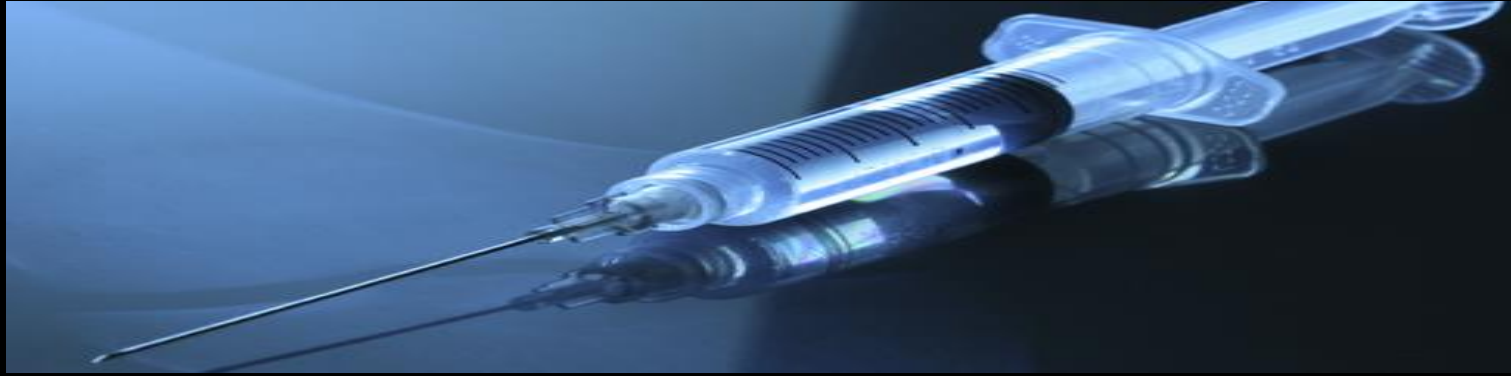


- No attorney fees shall be awarded for any action pursuant to this section.
- Any law enforcement agency that uses the services of the SBI or the State Crime Lab to analyze a recording must, at no cost, provide access to a method to view and analyze the recording upon request of the SBI or the State Crime Lab.
- Authorizes a public body to view a recording released pursuant to this act in closed session.
- These provisions became effective October 1, 2016, and apply to all requests made on or after that date for the disclosure or release of a recording.



NEEDLE EXCHANGE PROGRAMS

- Authorizes governmental and nongovernmental organizations to establish and operate hypodermic syringe and needle exchange programs. The programs are required to offer all of the following:
 - Disposal of used needles and hypodermic syringes.
 - Needles, hypodermic syringes, and other injection supplies at no cost.
 - Security of program sites, equipment, and personnel.
 - Educational materials.
 - Access to naloxone kits.
 - Consultations on mental health or addiction treatment.



- Provides immunity from charges or prosecution for possession of needles, hypodermic syringes, or other injection supplies or residual amounts of controlled substances contained in a used needle, a used hypodermic syringe, or use injection supplies if they are obtained from or returned to an exchange program.
- Programs are required to report to the Department of Health and Human Services before commencing operations and every 12 months thereafter.
- These provisions became effective July 11, 2016.

RECENT COURT CASES

<http://www.charlotteobserver.com/news/local/crime/article113906648.html>

- Under a new state law that went into effect Oct. 1, a judge must approve the release of video from patrol cars and the body cameras worn by officers.
- On Tuesday, WFAE, the city's public radio station, went to court seeking a court order for the release of video capturing the Smith shooting. Reporter Lisa Worf argued that the public had a compelling interest in police shootings and in the transparent workings of their local governments, according to WFAE's account.





- Attorneys for the police department, the district attorney's office and the officers opposed her request, WFAE reported Thursday. Assistant District Attorney Bill Stetzer said the events surrounding Smith's death remain part of an active law enforcement investigation. George Laughrun, an attorney for one of the officers, said the public viewing of the videos could compromise his client's trial, should prosecutors decide to bring charges.

- Superior Court Judge Eric Levinson ordered the video to remain sealed. Saying the interests of an ongoing criminal investigation outweigh the more generalized public right to know. Under the law, he wrote, the courts must decide whether a “compelling” necessity exists for a video to be made public. Any release of Smith video, he added, would “create a serious threat to the fair, impartial and orderly administration of justice” at future criminal or civil trials involving the officers, should they occur.
- Levinson said the law “has been the subject of discussion in scholarly publications but not by a court of record.”