

MEMORANDUM

To: Working Group #1

From: TREC Staff¹

Date: October 7, 2020

Re: Body-Worn Cameras

At a 2017 symposium on body-worn cameras put on by the North Carolina Law Review and the UNC Center for Media Law & Policy, Professor Richard Myers of UNC School of Law suggested that a well-crafted policy regarding digital video recordings must answer five questions:²

- (1) How will recordings be created?
- (2) How will recordings be stored?
- (3) Who will have access to recordings, and how will they get it?
- (4) How we handle redaction of recordings?
- (5) How will recordings be used?

North Carolina's current "law enforcement agency recordings" statute primarily answers the third question: Who will have access to recordings and under what circumstances. To a much more limited extent, it comments on how recordings will be used.

This memo addresses the following topics:

- I. Body-Worn Camera Adoption in North Carolina
- II. Current State Legal Regime Regarding BWC Footage in North Carolina
 - a. Currently-proposed changes
- III. Policies in Other States
- IV. Points to Consider

It is not a comprehensive treatment of those topics, but is instead an effort at gathering useful information in the short time available.

¹ This information was compiled by a team of staff who is more than happy to answer any additional questions.

² Richard E. II Myers, *Police-Generated Digital Video: Five Key Questions, Multiple Audiences, and a Range of Answers Badge Cams as Data and Deterrent: Enforcement, the Public, and the Press in the Age of Digital Video*, 96 N.C. L. REV. 1237–1256 (2017).

I. Body-Worn Camera Adoption in North Carolina

There does not seem to be a comprehensive resource detailing the use of body-worn cameras in the state. However, the following entities have received federal Bureau of Justice Assistance (BJA) grants for BWCs:

- Black Mountain Police Department ([link](#))
- Brunswick County Sheriff's Department ([link](#))
- Burlington Police Department ([link](#))
- Carrboro Police Department ([link](#))
- Currituck County Sheriff's Office ([link](#))
- Davidson County ([link](#))
- Fayetteville Police Department ([link](#))
- Forsyth County Sheriff's Department ([link](#))
- Garner Police Department ([link](#))
- Gastonia Police Department ([link](#))
- Goldsboro Police Department ([link](#))
- Greensboro Police Department ([link](#))
- Greenville Police Department ([link](#))
- Guilford County Sheriff's Department ([link](#))
- Halifax County Sheriff's Department ([link](#))
- Hickory Police Department ([link](#))
- High Point Police Department ([link](#))
- Nash County Sheriff's Office ([link](#))
- Pitt County ([link](#))
- Raleigh Police Department ([link](#))
- Rocky Mount Police Department ([link](#))
- Salisbury Police Department ([link](#))
- Statesville Police Department ([link](#))
- Thomasville Police Department ([link](#))
- Wilmington Police Department ([link](#))
- Wilson Police Department ([link](#))

In addition, the following department-level BWC policies are included as resources on the BJA's website³ (duplicates from the list above are omitted):

- Albemarle Police Department
- Asheville Police Department
- Buncombe County Sheriff's Office
- Charlotte-Mecklenburg Police Department
- Davidson Police Department
- Durham Police Department
- Winston-Salem Police Department

³ <https://bja.ojp.gov/program/bwc/resources-faqs/resources>

II. Current State Legal Regime Regarding BWC Footage in North Carolina

Section 132-1.4A of the North Carolina General Statutes governs access to law enforcement agency recordings, including footage produced by body-worn cameras and dashboard cameras. Current statutes do not govern the use of body-worn cameras by law enforcement personnel. However, any law enforcement agency using body-worn cameras or dashboard cameras must have a policy on how the cameras are used. N.C.G.S. § 132-1.4A(j). Further, recordings are subject to a minimum retention period determined by the Department of Natural and Cultural Resources, Division of Archives and Records. *Id.* § 132-1.4A(i).

North Carolina has a two-tiered access regime, whereby recordings may either be disclosed or released. If a recording is disclosed, that means the recipient can view or listen to the recording but cannot take it or make a copy. N.C.G.S. § 132-1.4A(a). If a recording is released, then the recipient receives a copy. *Id.* Recordings are neither subject to production upon request as public records nor are they protected as personnel records. *Id.* § 132-1.4A(b).

Disclosure or release to district attorneys

District attorneys have the least complicated access to recordings under the statute (except for the agency that holds the recordings). A law enforcement agency is required to “disclose or release a recording to a district attorney” for any law enforcement purpose. *Id.* § 132-1.4A(h). Specifically enumerated purposes include review of potential criminal charges, compliance with discovery requirements in a criminal prosecution, and use in criminal proceedings in district court. *Id.*

Disclosure or release to other actors for law enforcement purposes

Law enforcement agencies have discretion to either disclose or release recordings to unspecified recipients for the following purposes:

1. Law enforcement training.
2. Suspect identification or apprehension.
3. To locate a missing or abducted person. *Id.*

Law enforcement agencies also have discretion to disclose or release recordings to another law enforcement agency for law enforcement purposes, and may disclose or release recordings within the agency for any administrative, training, or law enforcement purpose. *Id.*

Disclosure to persons appearing in recording

A law enforcement agency has discretion to disclose, but not release a recording to a person in the recording or that person's representative. *Id.* § 132-1.4A(c). The person or their representative must request access in writing, *id.*, and the law enforcement agency is empowered to either grant or deny the request,⁴ *id.* § 132-1.4A(d). The law enforcement agency "may consider" six statutory factors when deciding whether to disclose a recording, which include:

1. whether the requesting individual (or the person represented) appears in the recording, by either their image or voice;
2. whether the recording contains confidential information or information exempt from disclosure or release under state or federal law;
3. whether disclosing the recording would reveal highly sensitive personal information;
4. whether disclosing the recording would harm anyone's reputation or jeopardize their safety;
5. whether disclosing the recording "would create a serious threat to the fair, impartial, and orderly administration of justice"; and
6. whether keeping the recording confidential "is necessary" to protect an active, inactive, or potential investigation. *Id.* § 132-1.4A(d).

The law enforcement agency must make its decision within three business days, and the decision can be appealed to superior court. *Id.* § 132-1.4A(e). Another level of discretion exists at the review stage, where the superior court "may order" disclosure "only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure." *Id.*

Release to persons appearing in the recording or to the general public

A person appearing in a recording (or their representative) may petition the superior court free of court costs for an order releasing the recording, meaning that person will receive a copy of the recording. *Id.* § 132-1.4A(f). Similarly, any person may request release of the footage by filing an action in superior court. *Id.* § 132-1.4A(g). The custodial law enforcement agency can make the same request under both provisions, requesting permission to release footage to a person appearing in the recording or to a member of the general public. *Id.* § 132-1.4A(f), (g).

The trial court has discretion to grant the request, but must consider the following statutory factors (in addition to "any other standards the court deems relevant"):

⁴ In what appears to be the only state appellate decision addressing this statute, the North Carolina Court of Appeals stated that "those depicted in the video and their personal representatives have an absolute right to view the footage." *In re Custodial Law Enf't Recording Sought by City of Greensboro*, 833 S.E.2d 1, 2 (N.C. Ct. App. 2019). However, the extent of the right of access does not appear to have been litigated in that case or in any other.

1. whether release is necessary to advance a compelling public interest;
2. whether the recording contains confidential information or information exempt from disclosure or release under state or federal law;
3. whether the person requesting release wants to use the recording in a court proceeding;
4. whether release would reveal highly sensitive personal information;
5. whether release would harm anyone's reputation or jeopardize their safety;
6. whether release would seriously threaten the fair, impartial, and orderly administration of justice;
7. whether release would threaten an investigation; and
8. whether good cause has been shown to release "all portions of a recording."
Id. § 132-1.4A(g).

Currently-proposed Changes

The following changes were proposed during the General Assembly's 2019 Regular Session. Please see the attachments for the draft bills.

2019 NC H.B. 706 – would repeal and replace the current statute, (1) requiring broad use of body-worn cameras, (2) specifying when they should be turned on and off, (3) giving the law enforcement agency discretion to release footage to persons who submit a written request, (4) providing for judicial review where access is denied, (5) creating right of access for a citizen review board (subject to confidentiality requirements) if one is established, (6) setting clear retention requirements, and (7) instructing the Department of Justice to develop a model policy to assist law enforcement agencies.

2019 NC H.B. 791 – would (1) clarify the meaning of "deceased person;" (2) permit disclosure or release of still images for investigative purposes; (3) permit disclosure to the following (subject to confidentiality requirements enforceable by imposition of a Class 1 misdemeanor): (a) a municipal or county manager, (b) a municipal council or board of county commissioners, or (c) a citizen review board; and (4) preempt any municipal or county ordinance or regulation regarding the release of law enforcement agency recordings.

2019 NC S.B. 263 – would permit disclosure or release of recordings to the following: (1) other local emergency response agencies; (2) school resource officers, principals, and other school administrators; (3) a citizen review board (subject to confidentiality requirements); (4) the general public (still images only) for the purposes of identifying or locating a criminal suspect, crime victim, or missing person; (5) a city or county manager (subject to confidentiality requirements); and a city or town council (subject to confidentiality requirements). This bill would also make disclosing or releasing a recording in violation of the statute a Class 3 misdemeanor punishable by fine.

2019 NC S.B. 619 – same as 2019 NC H.B. 791, except without creating a Class 1 misdemeanor and without the preemption provision.

III. Policies in Other States

A number of organizations have collected state and local policies regarding the use of body-worn cameras and other law enforcement agency recordings, such as those made by dashboard cameras. These organizations include the National Conference of State Legislatures (NCSL),⁵ the Urban Institute,⁶ the DC Open Government Coalition,⁷ the Reporters Committee for Freedom of the Press,⁸ the Electronic Privacy Information Center,⁹ the Brennan Center for Justice,¹⁰ and the Leadership Conference.¹¹ None of these resources provides a comprehensive, up-to-date review of laws pertaining to law enforcement recordings around the country. They do, however, provide some helpful information about what is being enacted and considered in other states.

According to the NCSL, as of February 28, 2018:

- Five states have enacted laws requiring at least some officers to wear BWCs.
- Thirteen states (including North Carolina), as well as the District of Columbia have legislated funding for BWCs.
- Of the twenty-four jurisdictions that specify how BWC footage relates to public records laws, five specifically consider BWC footage to be public records, “but provide standards and many caveats for when police may withhold, redact or obscure certain videos. Another five exclude BWC footage from open record requests, “but provide several exceptions that enable access to videos by specific persons or for specific situations.”
- Twenty jurisdictions require written policies for departments using or receiving funds for BWCs.
- Eleven jurisdictions have statutorily-authorized pilot programs or begun studies of BWC use.

According to the Urban Institute, as of October 29, 2018:

- A minority of states have statewide standards on where, when, and how BWCs can be used. For example:

⁵ National Conference of State Legislatures: <https://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx>

⁶ Urban Institute: <https://apps.urban.org/features/body-camera-update/>

⁷ DC Open Government Coalition: <http://dcogc.github.io/bwc/>

⁸ Reporters Committee for Freedom of the Press: <https://www.rcfp.org/resources/bodycams/>

⁹ Electronic Privacy Information Center: <https://epic.org/state-policy/police-cams/>

¹⁰ Brennan Center for Justice: <https://www.brennancenter.org/our-work/research-reports/police-body-worn-camera-policies>

¹¹ The Leadership Conference: <https://www.bwccscorecard.org/>

- Delaware requires that a camera be on “when an arrest, detention, or use of force is likely and where the safety of people or property is promoted.”
- Illinois requires that a camera be on whenever the officer is on-duty and engaged in law enforcement activity.
- Connecticut prohibits recording when speaking with other officers outside of official duties; during encounters with undercover officers or informants; during personal activity; when a person is undergoing medical or psychological evaluation, procedure, or treatment; any non-suspect in a medical setting; or in a mental health facility in certain circumstances.

The Leadership Conference provides a “policy scorecard” which seeks to evaluate the BWC policies of various law enforcement agencies. It provides the following criteria for a good policy:

- The department publishes the most recent publicly available version of its policy on its website, in a location that is easy for members of the public to find.
- The policy clearly describes when officers must record, and requires officers to provide concrete justifications for failing to record required events.
- The policy specifically protects categories of vulnerable individuals (*e.g.*, victims of sex crimes) from being recorded without their informed consent.
- The policy requires officers to file an initial written report or statement before relevant footage is reviewed, for all incidents.
- The policy requires the department to delete unflagged footage within six months.
- The policy expressly prohibits both footage tampering and unauthorized access, and indicates that all access to recorded footage will be logged or audited.
- The policy expressly allows individuals who are filing police misconduct complaints to view all relevant footage.
- The policy sharply limits the use of biometric technologies (*e.g.*, facial recognition) to identify individuals in footage.

IV. Points to Consider

Many policies pertain to both body-worn cameras and dashboard cameras. It may be important to consider both, and whether the same or different rules should apply to each. It is unlikely, for example, that dashboard cameras will record the inside of a residence. However, both body-worn cameras and dashboard cameras may produce footage that is of great interest to the public, or sensitive in nature.

Access for accountability

A number of other jurisdictions release BWC footage following certain significant events, principally when an officer discharges a firearm or when use of force results in serious bodily injury or death. For example:

- California requires that BWC footage of a critical incident¹² be released, but permits an agency to delay release for up to forty-five days in certain circumstances, with extended delay up to one year in certain circumstances. *See* Cal. Gov't Code § 6254.¹³
- Colorado will require that all officers wear BWCs as of July 1, 2023. In connection with that requirement, Colorado will require that a law enforcement agency release relevant recordings within twenty-one days when there is a complaint of officer misconduct. Where the recording depicts a death, the victim's family member or other representative may receive and review the recording in advance of release. A victim or the victim's representative may request that the recording not be released. Further, the recording may be redacted or blurred to protect substantial privacy interests. *See* 2020 CO SB217.
- Minnesota classifies recordings documenting an officer discharging a firearm or using force resulting in substantial bodily harm as public data subject to release. The law requires redaction where a non-officer subject included in the recording does not consent to release and to protect the identity of certain persons. Recordings pertaining to an active criminal investigation are nonpublic. Any person depicted in a recording may access and receive a copy of the recording, but the copy may be redacted to hide the identity of any person not consenting to release. *See* Minn. Stat. § 13.825.
- The New York City Police Department publicly releases BWC footage of a critical incident¹⁴ within thirty days. The footage is redacted as appropriate to protect confidentiality and privacy interests. At least twenty-four hours prior to release, the department will notify the subject of police action (or their family member or representative), uniformed officers appearing in the recording, and other law enforcement personnel or entities. Further, the prosecuting authority is notified seven days prior to release where possible. *See* NYPD Operations Order No. 54, issued July 9, 2020.

Should North Carolina consider a similar strategy, whereby recordings depicting a critical incident are proactively subject to release after a period of time that permits

¹² California statute: A critical incident is defined as: (i) an incident involving the discharge of a firearm at a person by a peace officer or custodial officer; or (ii) an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

¹³ California's law is drafted as an exemption to its public records requirement. As discussed above, North Carolina currently excludes law enforcement agency recordings by BWC or dashboard cameras from public records laws.

¹⁴ NYPD: A critical incident is one where (a) use of force results in death or serious physical injury; (b) an officer discharges a firearm in such a way that the discharge hits or could hit another; and/or (c) the Police Commissioner determines that release "will address vast public attention, or concern, or will help enforce the law, preserve peace, and/or maintain public order."

the witnesses to be interviewed, information to be gathered that provides context for the event to the public, and redaction (blurring) necessary to protect privacy and confidentiality interests?

Study

A number of states have funded pilot programs and more formal studies to help determine best practices around BWCs. In fact, a bill was offered unsuccessfully in North Carolina in 2015¹⁵ that would have done just that. *See* 2015 NC H.B. 811.

There is very little, if any, existing research on the extent to which BWCs affect disparate racial outcomes in policing. There are also few or no evaluative studies that measure the affect of BWCs on police-community relations, such as systematic observation studies on the use of procedural justice in actual interactions. Similarly, there are few or no evaluative studies on the effect BWCs have on internal department accountability structures, such as whether BWCs affect relationships between sergeants and first-line supervisors.

Given that the data is mixed as to whether body-worn cameras are effective as an accountability tool,¹⁶ should the state consider a funded study to determine the best practices and procedures for using BWCs, with ongoing study of community impact and law enforcement accountability metrics to determine whether the use of BWCs is achieving the benefits of greater accountability and improved community relations?

Appropriate use

The states that affirmatively mandate who should wear cameras and when they should be turned on appear to base the requirement on interaction with the public or on incidents which are likely to result in an altercation between law enforcement and the public. For example:

- 2020 CO SB217 requires that an officer activate the camera “when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law.”
- N.H. Rev. Stat. § 105-D:2 requires that an officer activate BWC “upon arrival on scene of a call for service or when engaged in any law enforcement-related encounter or activity,” or, if “required by local policy, upon activation of lights and siren.”
- Model Policy Guidelines No. 1-2016, Delaware Police Chiefs’ Council, March 8, 2016¹⁷ requires that officers activate a BWC where an arrest or detention

¹⁵ The bill was passed by the House but never left committee in the Senate.

¹⁶ Cynthia Lum et al., *Research on body-worn cameras*, 18 CRIMINOLOGY & PUBLIC POLICY 93–118 (2019). This resource has been provided in your materials for the October 15th meeting.

¹⁷ Available at <https://attorneygeneral.delaware.gov/wp-content/uploads/sites/50/2018/03/Model-Policy-Body-Worn-Cameras.pdf>.

is likely, where use of force is likely, and where recording would promote the safety of people or property.

Similarly, policies state that recording should not occur in various situations implicating (1) the public's or law enforcement personnel's privacy, (2) concerns regarding active investigations, or (3) where vulnerable populations require protection. For example:

- N.H. Rev. Stat. § 105-D:2 generally prohibits or limits recording: (1) communications with other police personnel, (2) interactions with undercover officers or confidential informants, (3) intimate searches, (4) interviews with crime victims, (5) interactions with anonymous informants; (6) while on school grounds, (7) when engaged in personal activities, and (8) where electrostatic interference from the BWC might trigger an explosive device. It also requires that officers inform an individual that they are being recorded as soon as practicable.

One suggestion from the literature is that it is very important to have a clear policy, and to train, reinforce, and enforce the policy, detailing when cameras should and should not be used – greater officer discretion in turning cameras off or on was correlated with increased instances of use of force.¹⁸

Further, some jurisdictions limit the use of facial or voice recognition software in connection with BWCs or their recordings to protect the privacy interests of the public. For example, the Baltimore Police Department prohibits the use of facial or voice recognition software on BWC data, except that facial recognition software may be used “to analyze the recording of a specific incident when a supervisory member has reason to believe that a specific suspect, witness, or person in need of assistance was recorded.” Baltimore Police Department Policy 824, issued June 23, 2020.¹⁹

Should North Carolina consider uniform standards for when recording by law enforcement is or is not appropriate, with emphasis on (1) not contributing to heightened surveillance of already highly-surveilled communities and groups, and (2) protecting the privacy of vulnerable populations?

As a further point, one staff member had a conversation with Professor Lum of George Mason University, who led the recent study on evidence related to BWCs. She suggested that there is currently very little evidence for the proposition that BWCs promote the goals of accountability, police-community relations, and resolving racial disparities in policing. To be effective as an accountability tool, Dr. Lum stressed the importance of the surrounding accountability structures at the department, including the strength of frontline supervision and internal affairs divisions. She stressed that these accountability structures are a start, but very important.

¹⁸ Lum et al., *supra* note 13.

¹⁹ Available at <https://www.baltimorepolice.org/824-body-worn-camera>.

To that end, should North Carolina consider how the use of BWCs can be connected to strong policies and practices aimed at achieving accountability, improving police-community relations, and reducing racial disparities in policing?²⁰

Public input into policies

Some jurisdictions involve their communities in the development of BWC policies. For example, Minnesota requires that any law enforcement agency using or proposing to use a BWC system establish and enforce a written policy, subject to public comment before the system is purchased or implemented. *See* Minn. Stat. § 626.8473.

Should North Carolina adopt a similar strategy, requiring that local law enforcement agencies develop their BWC policies in conjunction with community stakeholders, either through the use of a public comment period before a policy is implemented or through town forum events while the policy is being developed?

Compliance with policies

Many states establish penalties for failure to comply with BWC policies. These penalties range from minor (inadmissibility of the recording as evidence in a criminal proceeding, or a rebuttable presumption that an event not recorded in violation of policy would have shown officer misconduct) to major (criminal felony liability and a maximum ten-year prison sentence). Colorado, for example, either suspends officer certification in certain circumstances where it is determined that the officer intentionally failed to record their own illegal or inappropriate behavior, or revokes certification where the incident results in a civilian death.²¹

²⁰ Lum et al., *supra* note 13. The author states that “[i]f BWCs are to produce substantial changes in police behavior and performance, these changes are most likely to come through their effects on processes in police organizations, particularly those pertaining to training, supervision, and investigation of police misconduct.”

²¹ *See* 2020 CO SB217. This provision does not take effect until July 1, 2023, when Colorado’s universal BWC requirement goes into effect. At that time, it will be codified at Colo. Rev. Stat. § 24-31-902.

APPENDIX A

Currently-enacted text of N.C.G.S. § 132-1.4A

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

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

(7) Release. -- To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. -- Recordings are not public records as defined by [G.S. 132-1](#). Recordings are not

personnel records as defined in Part 7 of Chapter 126 of the General Statutes, [G.S. 160A-168](#), or [G.S. 153A-98](#).

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

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

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

When disclosing the recording, the law enforcement agency shall disclose only 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.

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

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

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.

(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 to Certain Persons; Expedited Process. -
- Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall 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. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set

down for hearing as soon as practicable and shall be accorded priority by the court.

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

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the 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.

(g) 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.

(h) Release of Recordings; Law Enforcement Purposes. -

- Notwithstanding the requirements of subsections (c), (f), and (g) 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) for 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.

(4) For suspect identification or apprehension.

(5) To locate a missing or abducted person.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) Attorneys' Fees. -- The court may not award attorneys' fees to any party in any action brought pursuant to this section.