

STATE OF NEW YORK

3398--A

2019-2020 Regular Sessions

IN SENATE

February 6, 2019

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law and the public officers law, in relation to excluding video camera recordings from cameras worn or used by police from being included as personnel records; and to amend the criminal procedure law, in relation to making certain records available to independent review boards investigating allegations of police or law enforcement misconduct

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 50-a of the civil rights law is amended by adding a
2 new subdivision 5 to read as follows:

3 5. a. The provisions of this section shall not apply to recordings
4 made of police officers, firefighters, firefighter/paramedics,
5 correction officers or peace officers in the course of duty, including
6 recordings made by body cameras worn by an officer, dashboard cameras
7 placed on any part of an officer's motor vehicle, truck, bicycle or
8 other vehicle, cameras mounted on a taser or other weapon, or any other
9 government-operated recording device, or the metadata from those
10 recordings.

11 b. Any recording, as specified in paragraph a of this subdivision and
12 released pursuant to section eighty-seven of the public officers law,
13 shall have all identifying details of all persons in the video redacted,
14 including but not limited to, facial features and voices and other
15 personal information as defined in subdivision seven of section ninety-
16 two of the public officers law.

17 c. Nothing in this section shall modify the rights of litigants in a
18 civil or criminal action to access recordings or metadata.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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d. Nothing in this section shall be construed to disallow recordings or metadata from being used for disciplinary, hiring or other personnel decisions.

e. Anyone who requests a recording or metadata, as specified in paragraph a of this subdivision and released pursuant to section eighty-seven of the public officers law, may also request any or all records of agencies as defined in subdivisions three and four of section eighty-six of the public officers law, necessary only to identify any officer in the recording or metadata.

§ 2. The opening paragraph of section 1-a of the civil rights law is designated subdivision 1 and a new subdivision 2 is added to read as follows:

2. The term "recording", as used in this chapter, shall mean an original photographic record, disc, tape, audio or video cassette, wire, film, hard drive, flash drive, memory card or other data storage device or any other medium on which such sounds, images, or both sounds and images are or can be recorded or otherwise stored, or a copy or reproduction that duplicates in whole or in part the original.

§ 3. Paragraph (c) of subdivision 2 of section 89 of the public officers law, as amended by section 11 of part U of chapter 61 of the laws of 2011, is amended to read as follows:

(c) Unless otherwise provided by this article, disclosure shall not be construed to constitute an unwarranted invasion of personal privacy pursuant to paragraphs (a) and (b) of this subdivision:

- i. when identifying details are deleted or redacted;
- ii. when the person to whom a record pertains consents in writing to disclosure;
- iii. when upon presenting reasonable proof of identity, a person seeks access to records pertaining to him or her; or
- iv. when a record or group of records relates to the right, title or interest in real property, or relates to the inventory, status or characteristics of real property, in which case disclosure and providing copies of such record or group of records shall not be deemed an unwarranted invasion of personal privacy, provided that nothing herein shall be construed to authorize the disclosure of electronic contact information, such as an e-mail address or a social network username, that has been collected from a taxpayer under section one hundred four of the real property tax law.

§ 4. Paragraph (d) of subdivision 1 of section 160.50 of the criminal procedure law, as amended by chapter 449 of the laws of 2015, is amended to read as follows:

(d) such records shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex parte motion in any superior court, or in any district court, city court or the criminal court of the city of New York provided that such court sealed the record, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is on parole supervision as a result of conditional release or a parole release granted by the New York state board of parole, and the arrest which is the subject of the inquiry is one which occurred while

1 the accused was under such supervision, or (v) any prospective employer
2 of a police officer or peace officer as those terms are defined in
3 subdivisions thirty-three and thirty-four of section 1.20 of this chap-
4 ter, in relation to an application for employment as a police officer or
5 peace officer; provided, however, that every person who is an applicant
6 for the position of police officer or peace officer shall be furnished
7 with a copy of all records obtained under this paragraph and afforded an
8 opportunity to make an explanation thereto, or (vi) the probation
9 department responsible for supervision of the accused when the arrest
10 which is the subject of the inquiry is one which occurred while the
11 accused was under such supervision, or (vii) an independent review board
12 investigating allegations of police or law enforcement misconduct, where
13 such records pertain to the allegations being investigated; and

14 § 5. Paragraph (d) of subdivision 1 of section 160.55 of the criminal
15 procedure law, as amended by chapter 449 of the laws of 2015, is amended
16 to read as follows:

17 (d) the records referred to in paragraph (c) of this subdivision shall
18 be made available to the person accused or to such person's designated
19 agent, and shall be made available to (i) a prosecutor in any proceeding
20 in which the accused has moved for an order pursuant to section 170.56
21 or 210.46 of this chapter, or (ii) a law enforcement agency upon ex
22 parte motion in any superior court, or in any district court, city court
23 or the criminal court of the city of New York provided that such court
24 sealed the record, if such agency demonstrates to the satisfaction of
25 the court that justice requires that such records be made available to
26 it, or (iii) any state or local officer or agency with responsibility
27 for the issuance of licenses to possess guns, when the accused has made
28 application for such a license, or (iv) the New York state department of
29 corrections and community supervision when the accused is under parole
30 supervision as a result of conditional release or parole release granted
31 by the New York state board of parole and the arrest which is the
32 subject of the inquiry is one which occurred while the accused was under
33 such supervision, or (v) the probation department responsible for super-
34 vision of the accused when the arrest which is the subject of the
35 inquiry is one which occurred while the accused was under such super-
36 vision, or (vi) a police agency, probation department, sheriff's office,
37 district attorney's office, department of correction of any municipality
38 and parole department, for law enforcement purposes, upon arrest in
39 instances in which the individual stands convicted of harassment in the
40 second degree, as defined in section 240.26 of the penal law, committed
41 against a member of the same family or household as the defendant, as
42 defined in subdivision one of section 530.11 of this chapter, and deter-
43 mined pursuant to subdivision eight-a of section 170.10 of this title,
44 or (vii) an independent review board investigating allegations of police
45 or law enforcement misconduct, where such records pertain to the allega-
46 tions being investigated; and

47 § 6. Subdivision 6 of section 160.58 of the criminal procedure law, as
48 added by section 3 of part AAA of chapter 56 of the laws of 2009, is
49 amended to read as follows:

50 6. Records sealed pursuant to this subdivision shall be made available
51 to:

52 (a) the defendant or the defendant's designated agent;

53 (b) qualified agencies, as defined in subdivision nine of section
54 eight hundred thirty-five of the executive law, and federal and state
55 law enforcement agencies, when acting within the scope of their law
56 enforcement duties; or

1 (c) any state or local officer or agency with responsibility for the
2 issuance of licenses to possess guns, when the person has made applica-
3 tion for such a license; or

4 (d) any prospective employer of a police officer or peace officer as
5 those terms are defined in subdivisions thirty-three and thirty-four of
6 section 1.20 of this chapter, in relation to an application for employ-
7 ment as a police officer or peace officer; provided, however, that every
8 person who is an applicant for the position of police officer or peace
9 officer shall be furnished with a copy of all records obtained under
10 this paragraph and afforded an opportunity to make an explanation there-
11 to[]; or

12 (e) an independent review board investigating allegations of police or
13 law enforcement misconduct, where such records pertain to the allega-
14 tions being investigated.

15 § 7. Subdivision 9 of section 160.59 of the criminal procedure law, as
16 added by section 48 of part WWW of chapter 59 of the laws of 2017, is
17 amended to read as follows:

18 9. Records sealed pursuant to this section shall be made available to:

19 (a) the defendant or the defendant's designated agent;

20 (b) qualified agencies, as defined in subdivision nine of section
21 eight hundred thirty-five of the executive law, and federal and state
22 law enforcement agencies, when acting within the scope of their law
23 enforcement duties; or

24 (c) any state or local officer or agency with responsibility for the
25 issuance of licenses to possess guns, when the person has made applica-
26 tion for such a license; or

27 (d) any prospective employer of a police officer or peace officer as
28 those terms are defined in subdivisions thirty-three and thirty-four of
29 section 1.20 of this chapter, in relation to an application for employ-
30 ment as a police officer or peace officer; provided, however, that every
31 person who is an applicant for the position of police officer or peace
32 officer shall be furnished with a copy of all records obtained under
33 this paragraph and afforded an opportunity to make an explanation there-
34 to; or

35 (e) the criminal justice information services division of the federal
36 bureau of investigation, for the purposes of responding to queries to
37 the national instant criminal background check system regarding attempts
38 to purchase or otherwise take possession of firearms, as defined in 18
39 USC 921 (a) (3)[]; or

40 (f) an independent review board investigating allegations of police or
41 law enforcement misconduct, where such records pertain to the allega-
42 tions being investigated.

43 § 8. This act shall take effect immediately.