

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

4 e. Anyone who requests a recording or metadata, as specified in para-  
5 graph a of this subdivision and released pursuant to section eighty-sev-  
6 en of the public officers law, may also request any or all records of  
7 agencies as defined in subdivisions three and four of section eighty-six  
8 of the public officers law, necessary only to identify any officer in  
9 the recording or metadata.

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

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

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

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

- 25 i. when identifying details are deleted or redacted;
- 26 ii. when the person to whom a record pertains consents in writing to  
27 disclosure;
- 28 iii. when upon presenting reasonable proof of identity, a person seeks  
29 access to records pertaining to him or her; or
- 30 iv. when a record or group of records relates to the right, title or  
31 interest in real property, or relates to the inventory, status or char-  
32 acteristics of real property, in which case disclosure and providing  
33 copies of such record or group of records shall not be deemed an unwar-  
34 ranted invasion of personal privacy, provided that nothing herein shall  
35 be construed to authorize the disclosure of electronic contact informa-  
36 tion, such as an e-mail address or a social network username, that has  
37 been collected from a taxpayer under section one hundred four of the  
38 real property tax law.

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

42 (d) such records shall be made available to the person accused or to  
43 such person's designated agent, and shall be made available to (i) a  
44 prosecutor in any proceeding in which the accused has moved for an order  
45 pursuant to section 170.56 or 210.46 of this chapter, or (ii) a law  
46 enforcement agency upon ex parte motion in any superior court, or in any  
47 district court, city court or the criminal court of the city of New York  
48 provided that such court sealed the record, if such agency demonstrates  
49 to the satisfaction of the court that justice requires that such records  
50 be made available to it, or (iii) any state or local officer or agency  
51 with responsibility for the issuance of licenses to possess guns, when  
52 the accused has made application for such a license, or (iv) the New  
53 York state department of corrections and community supervision when the  
54 accused is on parole supervision as a result of conditional release or a  
55 parole release granted by the New York state board of parole, and the  
56 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.