

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 860

Short Title: Criminal Investigative Records.

(Public)

Sponsors: Senator Sands.

Referred to: Judiciary I.

April 14, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PUBLIC RECORDS LAW WITH RESPECT TO
CRIMINAL INVESTIGATIVE RECORDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-1.4. Criminal investigations; intelligence information records.

(a) Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

(b) As used in this section:

(1) 'Records of criminal investigations' means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.

(2) 'Records of criminal intelligence information' means records or information that pertain to a person or group of persons that is

1 compiled by a public law enforcement agency in an effort to
2 anticipate, prevent, or monitor possible violations of the law.

3 (3) 'Public law enforcement agency' means a municipal police department,
4 a county police department, a sheriff's department, a company police
5 agency commissioned by the Attorney General pursuant to G.S. 74E-1,
6 et seq., and any State or local agency, force, department, or unit
7 responsible for investigating, preventing, or solving violations of the
8 law.

9 (4) 'Violations of the law' means crimes and offenses that are prosecutable
10 in the criminal courts in this State or the United States and infractions
11 as defined in G.S. 14-3.1.

12 (5) 'Complaining witness' means a victim or other person who reports a
13 violation or apparent violation of the law to a public law enforcement
14 agency.

15 (c) Notwithstanding the provisions of this section, and unless otherwise
16 prohibited by law, the following information shall be public records within the meaning
17 of G.S. 132-1.

18 (1) The time, date, location, and nature of a violation or apparent violation
19 of the law reported to a public law enforcement agency.

20 (2) The name, sex, age, address, employment, and alleged violation of law
21 of a person arrested, charged, or indicted.

22 (3) The circumstances surrounding an arrest, including the time and place
23 of the arrest, whether the arrest involved resistance, possession or use
24 of weapons, or pursuit, and a description of any items seized in
25 connection with the arrest.

26 (4) The contents of '911' and other emergency telephone calls received by
27 or on behalf of public law enforcement agencies, except for such
28 contents that reveal the name, address, telephone number, or other
29 information that may identify the caller, victim, or witness.

30 (5) The contents of communications between or among employees of
31 public law enforcement agencies that are broadcast over the public
32 airways.

33 (6) The name, sex, age, and address of a complaining witness.

34 (d) A public law enforcement agency may temporarily withhold the name or
35 address of a complaining witness if release of the information is reasonably likely to
36 pose a threat to the personal safety of the complaining witness or materially
37 compromise a continuing or future criminal investigation or criminal intelligence
38 operation. Information temporarily withheld under this subsection shall be made
39 available for release to the public in accordance with G.S. 132-6 as soon as the
40 circumstances that justify withholding it cease to exist. Any person denied access to
41 information withheld under this subsection may apply to a court of competent
42 jurisdiction for an order compelling disclosure of the information. In such action, the
43 court shall balance the interests of the public in disclosure against the interests of the
44 law enforcement agency in withholding the information. Actions brought pursuant to

1 this subsection shall be set down for immediate hearing, and subsequent proceedings in
2 such actions shall be accorded priority by the trial and appellate courts.

3 (e) If a public law enforcement agency believes that release of information that is
4 a public record under subdivisions (c)(1) through (c)(5) of this section will jeopardize
5 the right of the State to prosecute a defendant or the right of a defendant to receive a fair
6 trial or will undermine an ongoing or future investigation, it may seek an order from a
7 court of competent jurisdiction to prevent disclosure of the information. In such action
8 the law enforcement agency shall have the burden of showing by a preponderance of the
9 evidence that disclosure of the information in question will jeopardize the right of the
10 State to prosecute a defendant or the right of a defendant to receive a fair trial or will
11 undermine an ongoing or future investigation. Actions brought pursuant to this
12 subsection shall be set down for immediate hearing, and subsequent proceedings in such
13 actions shall be accorded priority by the trial and appellate courts.

14 (f) Nothing in this section shall be construed as authorizing any public law
15 enforcement agency to prohibit or prevent another public agency having custody of a
16 public record from permitting the inspection, examination, or copying of such public
17 record in compliance with G.S. 132-6. The use of a public record in connection with a
18 criminal investigation or the gathering of criminal intelligence shall not affect its status
19 as a public record.

20 (g) Disclosure of records of criminal investigations and criminal intelligence
21 information that have been transmitted to a district attorney or other attorney authorized
22 to prosecute a violation of law shall be governed by this section and Chapter 15A of the
23 General Statutes.

24 (h) Nothing in this section shall be construed as requiring law enforcement
25 agencies to disclose the following:

- 26 (1) Information that would not be required to be disclosed under Chapter
27 15A of the General Statutes; or
28 (2) Information that is reasonably likely to identify a confidential
29 informant.

30 (i) Law enforcement agencies shall not be required to maintain any tape
31 recordings of '911' or other communications for more than 30 days from the time of the
32 call.

33 (j) When information that is not a public record under the provisions of this
34 section is deleted from a document, tape recording, or other record, the law enforcement
35 agency shall make clear that a deletion has been made.

36 (k) The following court records are public records and may be withheld only
37 when sealed by court order: arrest warrants, search warrants, indictments, criminal
38 summons, and nontestimonial identification orders."

39 Sec. 2. G.S. 114-15 reads as rewritten:

40 "All records and evidence collected and compiled by the Director of the Bureau and
41 his assistants shall not be considered public records within the meaning of G.S. 132-1,
42 and following, of the General Statutes of North Carolina and may be made available to
43 the public only upon an order of a court of competent jurisdiction. Provided that, all All
44 records and evidence collected and compiled by the Director of the Bureau and his

1 assistants shall, upon request, be made available to the district attorney of any district if
2 the same concerns persons or investigations in his district.

3 In all cases where the cost is assessed against the defendant and paid by him, there
4 shall be assessed in the bill of cost, mileage and witness fees to the Director and any of
5 his assistants who are witnesses in cases arising in courts of this State. The fees so
6 assessed, charged and collected shall be forwarded by the clerks of the court to the
7 Treasurer of the State of North Carolina, and there credited to the Bureau of
8 Identification and Investigation Fund."

9 Sec. 3. This act is effective October 1, 1993.