

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 15-0723.01 Michael Dohr x4347

HOUSE BILL 15-1290

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A BILL FOR AN ACT

101 **CONCERNING PROHIBITING A PEACE OFFICER FROM INTERFERING**
102 **WITH A PERSON LAWFULLY RECORDING A PEACE**
103 **OFFICER-INVOLVED INCIDENT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

The bill creates a private right of action against a peace officer's employing law enforcement agency if a person records an incident involving a peace officer and a peace officer destroys the recording or seizes the recording without receiving consent or obtaining a warrant or if the peace officer intentionally interferes with the recording or retaliates

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 21, 2015

against the person making the recording. The person who recorded the peace officer incident is entitled to actual damages, a civil penalty of \$15,000, and attorney fees and costs.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, add 13-21-128 as
3 follows:

4 **13-21-128. Civil liability for destruction or unlawful seizure**
5 **of recordings by a law enforcement officer - definitions.**

6 (1) (a) NOTWITHSTANDING ANY OTHER REMEDIES, A PERSON HAS A RIGHT
7 OF RECOVERY AGAINST A PEACE OFFICER'S EMPLOYING LAW ENFORCEMENT
8 AGENCY IF A PERSON ATTEMPTS TO OR LAWFULLY RECORDS AN INCIDENT
9 INVOLVING A PEACE OFFICER AND:

10 (I) A PEACE OFFICER UNLAWFULLY DESTROYS OR DAMAGES THE
11 RECORDING OR RECORDING DEVICE;

12 (II) A PEACE OFFICER SEIZES THE RECORDING OR RECORDING
13 DEVICE WITHOUT PERMISSION, WITHOUT LAWFUL ORDER OF THE COURT, OR
14 WITHOUT OTHER LAWFUL GROUNDS TO SEIZE THE DEVICE;

15 (III) A PEACE OFFICER INTENTIONALLY INTERFERES WITH THE
16 PERSON'S LAWFUL ATTEMPT TO RECORD AN INCIDENT INVOLVING A PEACE
17 OFFICER;

18 (IV) A PEACE OFFICER RETALIATES AGAINST A PERSON FOR
19 RECORDING OR ATTEMPTING TO RECORD AN INCIDENT INVOLVING A PEACE
20 OFFICER; OR

21 (V) A PEACE OFFICER REFUSES TO RETURN THE PERSON'S
22 RECORDING DEVICE THAT CONTAINS A RECORDING OF A PEACE
23 OFFICER-INVOLVED INCIDENT WITHIN A REASONABLE TIME PERIOD AND
24 WITHOUT LEGAL JUSTIFICATION.

1 (b) IF A PEACE OFFICER ENGAGES IN ANY OF THE CONDUCT
2 DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1), THE AGGRIEVED
3 PROPERTY OWNER MAY SUBMIT AN AFFIDAVIT TO THE PEACE OFFICER'S
4 EMPLOYING LAW ENFORCEMENT AGENCY SETTING FORTH THE FACTS OF
5 THE INCIDENT, THE DAMAGE DONE TO THE OWNER'S PROPERTY, AND A
6 VERIFIABLE ESTIMATE OF THE REPLACEMENT COST FOR ANY DAMAGED OR
7 DESTROYED DEVICE. IF A RECORDING WAS DAMAGED OR DESTROYED, THE
8 OWNER MAY CLAIM FIVE HUNDRED DOLLARS AS THE VALUE OF THE
9 RECORDING ITSELF. UPON RECEIPT OF THIS AFFIDAVIT, THE LAW
10 ENFORCEMENT AGENCY SHALL HAVE THIRTY DAYS TO EITHER PAY THE
11 AGGRIEVED PROPERTY OWNER THE AMOUNT REQUESTED IN THE AFFIDAVIT
12 OR ISSUE A DENIAL OF THE REQUEST IN WRITING.

13 (c) IF A DENIAL OF CLAIM IS ISSUED BY THE LAW ENFORCEMENT
14 AGENCY PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (1), AND THE
15 AGGRIEVED PROPERTY OWNER DISAGREES WITH THE DENIAL, THE
16 PROPERTY OWNER MAY BRING A CIVIL ACTION AGAINST THE PEACE
17 OFFICER'S EMPLOYING LAW ENFORCEMENT AGENCY FOR ACTUAL
18 DAMAGES, INCLUDING THE REPLACEMENT VALUE OF THE DEVICE, THE
19 AMOUNT OF FIVE HUNDRED DOLLARS FOR ANY DAMAGED OR DESTROYED
20 RECORDING, AND ANY COSTS AND FEES ASSOCIATED WITH THE FILING OF
21 THE CIVIL ACTION. THE COURT MAY ORDER PUNITIVE DAMAGES UP TO
22 FIFTEEN THOUSAND DOLLARS AND ATTORNEYS' FEES TO THE PROPERTY
23 OWNER UPON A FINDING THAT THE DENIAL BY THE LAW ENFORCEMENT
24 AGENCY TO REIMBURSE THE PERSON PURSUANT TO PARAGRAPH (b) OF THIS
25 SECTION WAS MADE IN BAD FAITH. IF THE COURT FINDS THAT AN ACTION
26 BROUGHT BY A PERSON IS FRIVOLOUS AND WITHOUT MERIT, THE COURT
27 MAY AWARD THE LAW ENFORCEMENT AGENCY ITS REASONABLE COSTS

1 AND ATTORNEYS' FEES.

2 (2) AN ACTION BROUGHT PURSUANT TO THIS SECTION DOES NOT
3 PRECLUDE THE PERSON FROM SEEKING THAT CRIMINAL CHARGES BE FILED
4 AGAINST A PEACE OFFICER FOR TAMPERING WITH PHYSICAL EVIDENCE IN
5 VIOLATION OF SECTION 18-8-610, C.R.S., OR ANY OTHER CRIME.

6 (3) FOR PURPOSES OF THIS SECTION, "RETALIATION" MEANS A
7 THREAT, ACT OF HARASSMENT, AS DEFINED IN SECTION 18-9-111, C.R.S.,
8 OR ACT OF HARM OR INJURY UPON ANY PERSON OR PROPERTY, WHICH
9 ACTION IS DIRECTED TO OR COMMITTED UPON A PERSON RECORDING THE
10 PEACE OFFICER-INVOLVED INCIDENT, AS RETALIATION OR RETRIBUTION
11 AGAINST SUCH WITNESS OR VICTIM.

12 **SECTION 2.** In Colorado Revised Statutes, **add** 16-3-311 as
13 follows:

14 **16-3-311. Peace officer incident recordings.** (1) A PERSON HAS
15 THE RIGHT TO LAWFULLY RECORD ANY INCIDENT INVOLVING A PEACE
16 OFFICER AND TO MAINTAIN CUSTODY AND CONTROL OF THAT RECORDING
17 AND THE DEVICE USED TO RECORD THE RECORDING. A PEACE OFFICER
18 SHALL NOT SEIZE A RECORDING OR RECORDING DEVICE WITHOUT CONSENT,
19 WITHOUT A SEARCH WARRANT OR SUBPOENA, OR WITHOUT A LAWFUL
20 EXCEPTION TO THE WARRANT REQUIREMENT.

21 (2) (a) IF A PEACE OFFICER SEEKS TO OBTAIN FROM A PERSON A
22 DEVICE USED TO RECORD AN INCIDENT INVOLVING A PEACE OFFICER IN
23 ORDER TO ACCESS THE RECORDING AS POSSIBLE EVIDENCE IN AN
24 INVESTIGATION, THE OFFICER SHALL FIRST:

25 (I) ADVISE THE PERSON OF HIS OR HER NAME, HIS OR HER BADGE
26 NUMBER OR OTHER IDENTIFYING NUMBER, AND THE NAME OF THE LAW
27 ENFORCEMENT AGENCY;

1 (II) IDENTIFY THE LEGAL REASON FOR WHICH THE INFORMATION IS
2 REQUESTED; AND

3 (III) IF PRACTICABLE UNDER THE CIRCUMSTANCES, INQUIRE
4 WHETHER THE PERSON WILL VOLUNTARILY PROVIDE THE OFFICER WITH A
5 COPY OF THE SPECIFIC RECORDING THAT IS RELEVANT TO THE
6 INVESTIGATION EITHER BY VOLUNTARILY PROVIDING THE DEVICE TO THE
7 OFFICER OR IMMEDIATELY ELECTRONICALLY TRANSFERRING THE
8 INFORMATION TO THE OFFICER OR THE LAW ENFORCEMENT AGENCY SO
9 THAT THE PERSON MAY RETAIN POSSESSION OF HIS OR HER DEVICE, THE
10 RECORDING, AND ANY PERSONAL NON-EVIDENTIARY PRIVATE
11 INFORMATION CONTAINED ON THE DEVICE.

12 (b) IF THE PERSON CONSENTS VOLUNTARILY TO THE TRANSFER OF
13 THE DEVICE TO LAW ENFORCEMENT, THE PEACE OFFICER SHALL LIMIT HIS
14 OR HER SEARCH OF THE DEVICE TO A SEARCH FOR THE RECORDING THAT IS
15 RELEVANT EVIDENCE TO THE INVESTIGATION, AND THE DEVICE SHALL BE
16 RETURNED TO THE PERSON UPON REQUEST AND WITH ALL CONVENIENT
17 SPEED.

18 (c) IF THE PERSON CONSENTS TO AN ELECTRONIC TRANSFER OF THE
19 RECORDING, THE ELECTRONIC TRANSFER SHALL TAKE PLACE AS SOON AS
20 POSSIBLE AND WITHOUT UNNECESSARY DELAY.

21 (d) IN CIRCUMSTANCES WHEN THE IMMEDIATE ELECTRONIC
22 TRANSFER IS NOT PRACTICABLE OR IF THE PERSON DOES NOT CONSENT TO
23 THE ELECTRONIC TRANSFER OF THE EVIDENTIARY INFORMATION OR TO THE
24 SEIZURE OF THE DEVICE, THE PEACE OFFICER MAY ARRANGE FOR THE
25 TRANSFER OR DELIVERY OF THE INFORMATION OR DEVICE WITH THE
26 PERSON TO THE PEACE OFFICER OR TO THE LAW ENFORCEMENT AGENCY BY
27 ANY ALTERNATIVE MEANS CONSISTENT WITH ANY POLICIES AND

1 PROCEDURES OF THE LAW ENFORCEMENT AGENCY.

2 (e) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A PEACE
3 OFFICER HAS THE AUTHORITY TO TEMPORARILY SEIZE AND MAINTAIN
4 CONTROL OVER A DEVICE THAT WAS USED TO RECORD AN INCIDENT
5 INVOLVING A PEACE OFFICER UNTIL A SEARCH WARRANT CAN BE OBTAINED
6 WHEN EXIGENT CIRCUMSTANCES EXIST SUCH THAT THE PEACE OFFICER
7 BELIEVES IT IS NECESSARY TO SAVE A LIFE OR WHEN THE PEACE OFFICER
8 HAS A REASONABLE, ARTICULABLE, GOOD-FAITH BELIEF THAT SEIZURE OF
9 THE DEVICE IS NECESSARY TO PREVENT THE DESTRUCTION OF THE
10 EVIDENTIARY RECORDING WHILE A WARRANT IS OBTAINED.

11 (3) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO DEVICES
12 SEIZED INCIDENT TO ARREST.

13 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALLOW A
14 PERSON TO INTERFERE WITH A PEACE OFFICER IN THE LAWFUL
15 PERFORMANCE OF HIS OR HER DUTIES.

16 **SECTION 3.** In Colorado Revised Statutes, 24-10-106, **add** (1)
17 (i) as follows:

18 **24-10-106. Immunity and partial waiver.** (1) A public entity
19 shall be immune from liability in all claims for injury which lie in tort or
20 could lie in tort regardless of whether that may be the type of action or the
21 form of relief chosen by the claimant except as provided otherwise in this
22 section. Sovereign immunity is waived by a public entity in an action for
23 injuries resulting from:

24 (i) AN ACTION BROUGHT PURSUANT TO SECTION 13-21-128, C.R.S.

25 **SECTION 4. Effective date - applicability.** This act takes effect
26 one year after passage and applies to actions committed on or after said
27 date.

1 **SECTION 5. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety.