

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.*

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
7 PRIVATE CIVIL RIGHT OF ACTION AGAINST A PEACE OFFICER'S EMPLOYING
8 LAW ENFORCEMENT AGENCY IF A PERSON ATTEMPTS TO OR LAWFULLY
9 RECORDS AN INCIDENT 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 INTERRUPTS THE PERSON'S LAWFUL
16 ATTEMPT TO RECORD AN INCIDENT INVOLVING A PEACE OFFICER;

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

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

24 (b) IN THE ACTION, THE PERSON WHO RECORDED OR ATTEMPTED

1 TO RECORD THE PEACE OFFICER-INVOLVED INCIDENT IS ENTITLED TO
2 ACTUAL DAMAGES, DAMAGES FOR NONECONOMIC LOSS OR INJURY OF UP
3 TO FIFTEEN THOUSAND DOLLARS, AND ATTORNEY FEES AND COSTS.

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

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

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

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

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

27 (I) ADVISE THE PERSON OF HIS OR HER NAME, HIS OR HER BADGE

1 NUMBER OR OTHER IDENTIFYING NUMBER, AND THE NAME OF THE LAW
2 ENFORCEMENT AGENCY;

3 (II) IDENTIFY THE LEGAL REASON FOR WHICH THE INFORMATION IS
4 REQUESTED; AND

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

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

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

23 (d) IN CIRCUMSTANCES WHEN THE IMMEDIATE ELECTRONIC
24 TRANSFER IS NOT PRACTICABLE FOR THE OFFICER OR THE PERSON WHO HAS
25 RECORDED THE EVIDENTIARY INFORMATION OR IF THE PERSON DOES NOT
26 CONSENT TO THE ELECTRONIC TRANSFER OF THE EVIDENTIARY
27 INFORMATION OR TO THE SEIZURE OF THE DEVICE, THE PEACE OFFICER

1 SHALL ISSUE A WRITTEN ORDER OF PRESERVATION TO THE PERSON
2 REQUIRING THAT THE PERSON PRESERVE, FOR A CERTAIN DESIGNATED TIME
3 PERIOD, THE EVIDENTIARY INFORMATION IN ORDER FOR THE OFFICER TO
4 ATTEMPT TO OBTAIN A SEARCH WARRANT OR OTHER LAWFUL ORDER
5 GRANTING THE AUTHORITY TO SEIZE THE DEVICE AND THE EVIDENTIARY
6 ELECTRONIC RECORDING.

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

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

18 **SECTION 3. Effective date - applicability.** This act takes effect
19 one year after passage and applies to actions committed on or after said
20 date.

21 **SECTION 4. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.