

First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

REVISED

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

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.*

SENATE  
2nd Reading Unamended  
April 29, 2015

HOUSE  
3rd Reading Unamended  
April 22, 2015

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.

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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.