

HOUSE COMMITTEE OF REFERENCE REPORT

\_\_\_\_\_  
Chairman of Committee

April 14, 2015  
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB15-1290 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:
- 3 "SECTION 1. In Colorado Revised Statutes, **add** 13-21-128 as  
4 follows:
- 5 **13-21-128. Civil liability for destruction or unlawful seizure**  
6 **of recordings by a law enforcement officer - definitions.**
- 7 (1) (a) NOTWITHSTANDING ANY OTHER REMEDIES, A PERSON HAS A  
8 PRIVATE CIVIL RIGHT OF ACTION AGAINST A PEACE OFFICER'S EMPLOYING  
9 LAW ENFORCEMENT AGENCY IF A PERSON ATTEMPTS TO OR LAWFULLY  
10 RECORDS AN INCIDENT INVOLVING A PEACE OFFICER AND:
- 11 (I) A PEACE OFFICER UNLAWFULLY DESTROYS OR DAMAGES THE  
12 RECORDING OR RECORDING DEVICE;
- 13 (II) A PEACE OFFICER SEIZES THE RECORDING OR RECORDING  
14 DEVICE WITHOUT PERMISSION, WITHOUT LAWFUL ORDER OF THE COURT, OR  
15 WITHOUT OTHER LAWFUL GROUNDS TO SEIZE THE DEVICE;
- 16 (III) A PEACE OFFICER INTERRUPTS THE PERSON'S LAWFUL  
17 ATTEMPT TO RECORD AN INCIDENT INVOLVING A PEACE 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) IN THE ACTION, THE PERSON WHO RECORDED OR ATTEMPTED  
2 TO RECORD THE PEACE OFFICER-INVOLVED INCIDENT IS ENTITLED TO  
3 ACTUAL DAMAGES, DAMAGES FOR NONECONOMIC LOSS OR INJURY OF UP  
4 TO FIFTEEN THOUSAND DOLLARS, AND ATTORNEY FEES AND COSTS.

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

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

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

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

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

28 (I) ADVISE THE PERSON OF HIS OR HER NAME, HIS OR HER BADGE  
29 NUMBER OR OTHER IDENTIFYING NUMBER, AND THE NAME OF THE LAW  
30 ENFORCEMENT AGENCY;

31 (II) IDENTIFY THE LEGAL REASON FOR WHICH THE INFORMATION IS  
32 REQUESTED; AND

33 (III) IF PRACTICABLE UNDER THE CIRCUMSTANCES, INQUIRE  
34 WHETHER THE PERSON WILL VOLUNTARILY PROVIDE THE OFFICER WITH A  
35 COPY OF THE SPECIFIC RECORDING THAT IS RELEVANT TO THE  
36 INVESTIGATION EITHER BY VOLUNTARILY PROVIDING THE DEVICE TO THE  
37 OFFICER OR IMMEDIATELY ELECTRONICALLY TRANSFERRING THE  
38 INFORMATION TO THE OFFICER OR THE LAW ENFORCEMENT AGENCY SO  
39 THAT THE PERSON MAY RETAIN POSSESSION OF HIS OR HER DEVICE AND  
40 ANY PERSONAL NON-EVIDENTIARY PRIVATE INFORMATION CONTAINED ON  
41 THE DEVICE.

1 (b) IF THE PERSON CONSENTS TO THE VOLUNTARILY TRANSFER OF  
2 THE DEVICE TO LAW ENFORCEMENT, THE PEACE OFFICER SHALL LIMIT HIS  
3 OR HER SEARCH OF THE DEVICE TO A SEARCH FOR THE RECORDING THAT IS  
4 RELEVANT EVIDENCE TO THE INVESTIGATION, AND THE DEVICE SHALL BE  
5 RETURNED TO THE PERSON UPON REQUEST AND WITH ALL CONVENIENT  
6 SPEED.

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

10 (d) IN CIRCUMSTANCES WHEN THE IMMEDIATE ELECTRONIC  
11 TRANSFER IS NOT PRACTICABLE FOR THE OFFICER OR THE PERSON WHO HAS  
12 RECORDED THE EVIDENTIARY INFORMATION OR IF THE PERSON DOES NOT  
13 CONSENT TO THE ELECTRONIC TRANSFER OF THE EVIDENTIARY  
14 INFORMATION OR TO THE SEIZURE OF THE DEVICE, THE PEACE OFFICER  
15 SHALL ISSUE A WRITTEN ORDER OF PRESERVATION TO THE PERSON  
16 REQUIRING THAT THE PERSON PRESERVE, FOR A CERTAIN DESIGNATED TIME  
17 PERIOD, THE EVIDENTIARY INFORMATION IN ORDER FOR THE OFFICER TO  
18 ATTEMPT TO OBTAIN A SEARCH WARRANT OR OTHER LAWFUL ORDER  
19 GRANTING THE AUTHORITY TO SEIZE THE DEVICE AND THE EVIDENTIARY  
20 ELECTRONIC RECORDING.

21 (e) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A PEACE  
22 OFFICER HAS THE AUTHORITY TO TEMPORARILY SEIZE AND MAINTAIN  
23 CONTROL OVER A DEVICE THAT WAS USED TO RECORD AN INCIDENT  
24 INVOLVING A PEACE OFFICER UNTIL A SEARCH WARRANT CAN BE OBTAINED  
25 WHEN EXIGENT CIRCUMSTANCES EXIST SUCH THAT THE PEACE OFFICER  
26 BELIEVES IT IS NECESSARY TO SAVE A LIFE OR WHEN THE PEACE OFFICER  
27 HAS A REASONABLE, ARTICULABLE, GOOD-FAITH BELIEF THAT SEIZURE OF  
28 THE DEVICE IS NECESSARY TO PREVENT THE DESTRUCTION OF THE  
29 EVIDENTIARY RECORDING WHILE A WARRANT IS OBTAINED.

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

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

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

\*\* \*\* \*\* \*\* \*\*