

CHAPTER 212

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 15-1290

BY REPRESENTATIVE(S) Salazar and Esgar, Lundeen, Priola, Pettersen, Buckner, Duran, Everett, Garnett, Kagan, Lee, Lontine, Melton, Pabon, Saine, Tate, Tyler, Vigil, Williams, Fields, Lebsack, McCann, Neville P., Rosenthal, Becker K., Humphrey, Klingenschmitt, Moreno, Singer, Van Winkle, Young, Hullinghorst;
 also SENATOR(S) Guzman and Balmer, Ulibarri, Aguilar, Baumgardner, Carroll, Donovan, Garcia, Heath, Hill, Holbert, Jahn, Johnston, Jones, Kefalas, Kerr, Lambert, Lundberg, Marble, Merrifield, Neville T., Newell, Scott, Steadman, Todd, Woods, Cadman.

AN ACT
CONCERNING PROHIBITING A PEACE OFFICER FROM INTERFERING WITH A PERSON LAWFULLY RECORDING A PEACE OFFICER-INVOLVED INCIDENT.

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

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

13-21-128. Civil liability for destruction or unlawful seizure of recordings by a law enforcement officer - definitions. (1)(a) NOTWITHSTANDING ANY OTHER REMEDIES, A PERSON HAS A RIGHT OF RECOVERY AGAINST A PEACE OFFICER'S EMPLOYING LAW ENFORCEMENT AGENCY IF A PERSON ATTEMPTS TO OR LAWFULLY RECORDS AN INCIDENT INVOLVING A PEACE OFFICER AND:

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

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A PEACE OFFICER HAS THE AUTHORITY TO TEMPORARILY SEIZE AND MAINTAIN CONTROL OVER A DEVICE THAT WAS USED TO RECORD AN INCIDENT INVOLVING A PEACE OFFICER FOR NO LONGER THAN SEVENTY-TWO HOURS TO OBTAIN A SEARCH WARRANT WHEN EXIGENT CIRCUMSTANCES EXIST SUCH THAT THE PEACE OFFICER BELIEVES IT IS NECESSARY TO SAVE A LIFE OR WHEN THE PEACE OFFICER HAS A REASONABLE, ARTICULABLE, GOOD-FAITH BELIEF THAT SEIZURE OF THE DEVICE IS NECESSARY TO PREVENT THE DESTRUCTION OF THE EVIDENTIARY RECORDING WHILE A WARRANT IS OBTAINED.

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

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

DUTIES.

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

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

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

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

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

Approved: May 20, 2015