S T A T E O F N E W Y O R K

10185

I N A S S E M B L Y

August 22, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Perry) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to enacting the "New Yorker's right to monitor act" permitting the filming or recording of police in the act of an arrest or law enforcement activity

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "New Yorker's right to monitor act".

S 2. The criminal procedure law is amended by adding a new section 120.85 to read as follows:

S 120.85 WARRANT OF ARREST; FILMING AN ARREST OR OTHER LAW ENFORCEMENT ACTIVITY.

1. AN INDIVIDUAL MAY FILM OR RECORD A POLICE OFFICER OR POLICE OFFICERS IN THE ACT OF MAKING AN ARREST OR OTHER LAW ENFORCEMENT ACTIVITY. SUCH OFFICER OR OFFICERS MAY NOT INTENTIONALLY ACT IN A MANNER SOLELY FOR THE PURPOSE OF BLOCKING OR OBSTRUCTING CAMERAS OR OTHER PHOTO, AUDIO OR VIDEO RECORDING DEVICES BEING USED IN MONITORING THE ARREST OR OTHER LAW ENFORCEMENT ACTIVITY.

2. AN INDIVIDUAL IN NEW YORK MAY NOT BE SUBJECT TO HARASSMENT OR ARREST FOR FILMING OR RECORDING AN ARREST, PROVIDED THAT SUCH INDIVIDUAL WHO FILMS OR RECORDS THE ARREST DOES SO WITHOUT INTENTIONALLY INTERFERING WITH POLICE DUTIES, OR PURPOSEFULLY HARASSING MEMBERS OF THE POLICE OR OTHERS. SUCH INDIVIDUAL WHO FILMS OR RECORDS AN ARREST OR OTHER LAW ENFORCEMENT ACTIVITY MAY NOT ENGAGE IN ACTIONS THAT JEOPARDIZE THE SAFETY OF AN OFFICER, A SUSPECT, OR OTHERS IN THE VICINITY. AN INDIVIDUAL, WHILE ENGAGED IN THE ACT OF RECORDING OR FILMING AN ARREST OR OTHER LAW ENFORCEMENT ACTIVITY, MAY NOT SUBSTANTIVELY VIOLATE THE LAW OR INCITE OTHERS TO VIOLATE THE LAW.

3. A POLICE OFFICER OR POLICE OFFICERS MAY NOT ARREST, STOP OR DETAIN AN ONLOOKER OF AN ARREST, POLICE STOP, OR DETAINMENT FOR PROBABLE CAUSE BASED ON THE ONLOOKER'S SPEECH ALONE, EVEN THOUGH CRUDE AND VULGAR; REQUESTING AND MAKING NOTES OF POLICE SHIELD NUMBERS OR NAMES OF OFFICERS; OR REMAINING IN THE VICINITY OF THE ARREST OR OTHER LAW ENFORCE-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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MENT ACTIVITY. AN INDIVIDUAL WHO RECORDS OR FILMS AN ARREST OR OTHER LAW ENFORCEMENT ACTIVITY IN A MANNER THAT IS REASONABLE AND OTHERWISE LAWFUL UNDER THE CIRCUMSTANCES SHALL NOT BE CHARGED WITH DISORDERLY CONDUCT PURSUANT TO SECTION 240.20 OF THE PENAL LAW OR OBSTRUCTION OF GOVERNMENTAL ADMINISTRATION IN THE SECOND DEGREE PURSUANT TO SECTION 195.05 OF THE PENAL LAW.

4. A POLICE OFFICER OR POLICE OFFICERS MAY NOT SEARCH OR SEIZE A CAMERA, FILMING, PHOTO, VIDEO OR RECORDING DEVICE WITHOUT A WARRANT, UNLESS USED IN THE COMMISSION OF A CRIME. A POLICE OFFICER OR POLICE OFFICERS SHALL NOT THREATEN, INTIMIDATE, OR OTHERWISE DISCOURAGE AN INDIVIDUAL FROM RECORDING OR FILMING LAW ENFORCEMENT ACTIVITIES. AN INDIVIDUAL SHOULD BE GIVEN NOTICE AND OPPORTUNITY TO OBJECT BEFORE THEY ARE IRREVOCABLY DEPRIVED OF THEIR RECORDINGS.

5. A LAW ENFORCEMENT OFFICER SHALL NOT DAMAGE OR ERASE THE CONTENTS OF A CAMERA, CELL PHONE OR OTHER VIDEO OR AUDIO RECORDING DEVICE CONFISCATED OR SEIZED DURING AN ARREST OR OTHER LAW ENFORCEMENT ACTIVITY. THE DESTRUCTION OF THE CONTENTS OF A CAMERA OR RECORDING DEVICE BY A LAW ENFORCEMENT OFFICER IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION SHALL CONSTITUTE TAMPERING WITH PHYSICAL EVIDENCE, AS DEFINED IN SUBDIVISION TWO OF SECTION 215.40 OF THE PENAL LAW.

6. THE ATTORNEY GENERAL SHALL ESTABLISH GUIDELINES CLEARLY STATING CIRCUMSTANCES UNDER WHICH A POLICE OFFICER MAY SEIZE A CELL PHONE OR OTHER VIDEO OR AUDIO RECORDING DEVICE, EVEN TEMPORARILY, AND HOW THE RECORDINGS ON THE DEVICE SHALL BE PRESERVED AND MAINTAINED AFTER SEIZURE. THE ATTORNEY GENERAL SHALL ALSO ESTABLISH OFFICER EDUCATION REGARDING THE FILMING OR RECORDING OF ARRESTS. HE OR SHE SHALL ALSO PROVIDE APPROPRIATE SANCTIONS SHOULD OFFICERS NOT COMPLY WITH THE TERMS OF THIS SECTION. THESE GUIDELINES SHALL BE ADOPTED AND IMPLEMENTED BY ALL POLICE DEPARTMENTS IN THE STATE.

7. THIS SECTION SHALL APPLY TO BOTH PUBLIC AND PRIVATE PROPERTY.

8. ANY VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE A MISDEMEANOR.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.