

# STATE OF NEW YORK

1848

2017-2018 Regular Sessions

## IN ASSEMBLY

January 13, 2017

Introduced by M. of A. BICHOTTE -- read once and referred to the Committee on Codes

AN ACT to amend the civil rights law, in relation to exercising the right to record police activities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The civil rights law is amended by adding a new section  
2 79-o to read as follows:

3 § 79-o. Right to record police activities. 1. Definitions. For  
4 purposes of this section, the following terms have the following mean-  
5 ings:

6 (a) Officer. The term "officer" means any peace officer or police  
7 officer as defined in the criminal procedure law, or any special patrol-  
8 man appointed by the police commissioner of the city of New York pursu-  
9 ant to section 14-106 of the administrative code of the city of New  
10 York.

11 (b) Police activities. The term "police activities" means any activity  
12 by an officer acting under the color of law.

13 (c) Record. The term "record" means to capture or attempt to capture  
14 any moving or still image, sound, or impression through the use of any  
15 recording device, camera, or any other device capable of capturing  
16 audio, moving or still images, or by way of written notes or observa-  
17 tions.

18 2. Right to record police activities. A person may record police  
19 activities and maintain custody and control of any such recording and of  
20 any property or instruments used in such recording. Nothing in this  
21 section shall be construed to permit a person to engage in actions that  
22 physically interfere with an official and lawful police function, or to  
23 prevent the seizure of any property or instruments used in a recording  
24 of police activities otherwise authorized by law, or to prohibit any  
25 officer from enforcing any other provision of law.

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

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1 3. Private right of action. (a) A claim of unlawful interference with  
2 recording police activities is established under this section when an  
3 individual demonstrates that he or she recorded or attempted to record  
4 police activities in accordance with subdivision two of this section and  
5 an officer interfered with that person's recording of police activities.  
6 Such interference includes, but is not limited to, the following  
7 actions:

8 (i) preventing or attempting to prevent the recording of police activ-  
9 ities;

10 (ii) threatening or making any effort to intimidate a person recording  
11 police activities;

12 (iii) stopping, seizing, searching, issuing any summons, or arresting  
13 any individual because such individual recorded police activities; or

14 (iv) seizing property or instruments used by any individual to record  
15 police activities.

16 (b) It shall be an affirmative defense that a reasonable officer in  
17 the position of such officer would have had probable cause to believe  
18 that the person recording police activities physically interfered with  
19 an official and lawful police function, or that such officer's actions  
20 were otherwise authorized by law.

21 (c) A person subject to unlawful interference with recording police  
22 activities as described in paragraph (a) of this subdivision may bring  
23 an action in any court of competent jurisdiction for any damages,  
24 including punitive damages, and for declaratory and injunctive relief  
25 and such other remedies as may be appropriate.

26 (d) In any action or proceeding to enforce this section, the court may  
27 allow a prevailing plaintiff reasonable attorney's fees as part of the  
28 costs, and may include expert fees as part of the attorney's fees.

29 (e) Any action or proceeding to enforce this section shall be  
30 commenced no later than one year and ninety days after the date on which  
31 the violation of this section is committed.

32 4. Preservation of rights. This section shall be in addition to all  
33 rights, procedures, and remedies available under the United States  
34 Constitution, Section 1983 of Title 42 of the United States Code, the  
35 constitution of the state of New York and all other federal laws, state  
36 laws, laws of the city of New York or the administrative code of the  
37 city of New York, and all pre-existing civil remedies, including mone-  
38 tary damages, created by statute, ordinance, regulation or common law.

39 5. Reporting. Every law enforcement agency shall submit to the super-  
40 intendent of state police, and the superintendent of state police shall  
41 submit to the governor and post to the division of state police's  
42 website within twenty days of the beginning of each quarter, a report  
43 containing the following information for the previous quarter: the  
44 number of arrests, criminal summonses, and civil summonses in which the  
45 person arrested or summonsed was recording police activities as defined  
46 in subdivision one of this section. Such report shall include this  
47 information in total and disaggregated by the following factors: the  
48 location at which such arrest or summons occurred, the offense charged,  
49 and the apparent race, ethnicity, gender, and age of the person arrested  
50 or summonsed. The information to be reported pursuant to this subdivi-  
51 sion shall be compared to previous reporting periods, shall be perma-  
52 nently stored on the division of state police's website, and shall be  
53 stored in alphanumeric form that can be digitally transmitted or proc-  
54 essed and not in portable document format or scanned copies of original  
55 documents.

1 § 2. Severability. If any provision of this bill or any other  
2 provision of this law, or any amendments thereto, shall be held invalid  
3 or ineffective in whole or in part or inapplicable to any person or  
4 situation, such holding shall not affect, impair or invalidate any  
5 portion of or the remainder of this law, and all other provisions there-  
6 of shall nevertheless be separately and fully effective and the applica-  
7 tion of any such provision to other persons or situations shall not be  
8 affected.

9 § 3. This act shall take effect on the thirtieth day after it shall  
10 have become a law, provided that the first quarterly report required  
11 pursuant to subdivision 5 of section 79-o of the civil rights law, as  
12 added by section one of this act, shall be due within twenty days of the  
13 quarter beginning on the first of October next succeeding the date upon  
14 which it shall have become a law.