STATE OF NEW YORK

3230

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. BICHOTTE, VANEL, BARRON, WRIGHT -- 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:

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

§ 79-o. Right to record police activities. 1. Definitions. For purposes of this section, the following terms have the following meanings:

(a) Officer. The term "officer" means any peace officer or police officer as defined in the criminal procedure law, or any special patrolman appointed by the police commissioner of the city of New York pursuant to section 14-106 of the administrative code of the city of New York.

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

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

2. Right to record police activities. A person may record police activities and maintain custody and control of any such recording and of any property or instruments used in such recording. Nothing in this section shall be construed to permit a person to engage in actions that physically interfere with an official and lawful police function, or to prevent the seizure of any property or instruments used in a recording of police activities otherwise authorized by law, or to prohibit any 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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3. Private right of action. (a) A claim of unlawful interference with recording police activities is established under this section when an individual demonstrates that he or she recorded or attempted to record police activities in accordance with subdivision two of this section and an officer interfered with that person's recording of police activities. Such interference includes, but is not limited to, the following actions:

(i) preventing or attempting to prevent the recording of police activities;

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

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

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

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

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

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

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

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

5. Reporting. Every law enforcement agency shall submit to the superintendent of state police, and the superintendent of state police shall submit to the governor and post to the division of state police's website within twenty days of the beginning of each quarter, a report containing the following information for the previous quarter: the number of arrests, criminal summonses, and civil summonses in which the person arrested or summonsed was recording police activities as defined in subdivision one of this section. Such report shall include this information in total and disaggregated by the following factors: the location at which such arrest or summons occurred, the offense charged, and the apparent race, ethnicity, gender, and age of the person arrested or summonsed. The information to be reported pursuant to this subdivision shall be compared to previous reporting periods, shall be permanently stored on the division of state police's website, and shall be stored in alphanumeric form that can be digitally transmitted or processed and not in portable document format or scanned copies of original documents.

§ 2. Severability. If any provision of this bill or any other provision of this law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

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