

# STATE OF NEW YORK

1360

2019-2020 Regular Sessions

## IN ASSEMBLY

January 15, 2019

Introduced by M. of A. PERRY, ARROYO, TAYLOR, D'URSO, FERNANDEZ, RIVERA, HYNDMAN, NIOU, BARRON, GOTTFRIED, RICHARDSON, WRIGHT -- read once and referred to the Committee on Codes

AN ACT to amend the civil rights law, in relation to recording certain law enforcement activities

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

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

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

5 § 79-o. Recording certain activities. 1. Definitions. For purposes of  
6 this section, the following terms shall have the following meanings:

7 (a) "Officer" means any peace officer, police officer, security offi-  
8 cer, security guard or similar official who is engaged in a law enforce-  
9 ment activity;

10 (b) "Law enforcement activity" means any activity by an officer acting  
11 under the color of law; and

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

16 2. Right to record law enforcement related activities. A person not  
17 under arrest or in the custody of a law enforcement official has the  
18 right to record law enforcement activity and to maintain custody and  
19 control of that recording and of any property or instruments used by  
20 that person to record law enforcement activities, provided, however,  
21 that a person in custody or under arrest does not, by that status alone,  
22 forfeit the right to have any such recordings, property and equipment  
23 maintained and returned to him or her. Nothing in this subdivision shall  
24 be construed to permit a person to engage in actions that physically

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

LBD06662-01-9

1 interfere with law enforcement activity or otherwise constitute a crime  
2 defined in the penal law involving obstructing governmental adminis-  
3 tration.

4 3. Private right of action. (a) A claim of unlawful interference with  
5 recording a law enforcement activity is established under this section  
6 when a person demonstrates that he or she exercised or attempted to  
7 exercise the right established in subdivision two of this section to  
8 record a law enforcement activity and an officer acted to interfere with  
9 that person's recording of a law enforcement activity, including but not  
10 limited to, by:

11 (i) intentionally preventing or attempting to prevent that person from  
12 recording law enforcement activity;

13 (ii) threatening that person for recording a law enforcement activity;

14 (iii) commanding that the person cease recording law enforcement  
15 activity when the person was nevertheless authorized under law to  
16 record;

17 (iv) stopping, seizing, searching, ticketing or arresting that person  
18 because that person recorded a law enforcement activity; or

19 (v) unlawfully seizing property or instruments used by that person to  
20 record a law enforcement activity, unlawfully destroying, or seizing a  
21 recorded image or recorded images of a law enforcement activity, or  
22 copying such a recording of a law enforcement activity without consent  
23 of the person who recorded it or approval from an appropriate court.

24 (b) It shall be an affirmative defense to a civil action under subpar-  
25 agraphs (i), (iii) and (iv) of paragraph (a) of this subdivision that at  
26 the time of such conduct by an officer, such officer had probable cause  
27 to arrest the person recording such a law enforcement activity for a  
28 crime defined in the penal law involving obstructing governmental admin-  
29 istration.

30 (c) A person subject to unlawful interference with recording law  
31 enforcement activities as described in paragraph (a) of this subdivision  
32 may bring an action for any violation of this section in any court of  
33 competent jurisdiction for damages, including punitive damages, for  
34 declaratory and injunctive relief, and such other remedies as the court  
35 may deem appropriate.

36 (d) In any action or proceeding brought pursuant to this section, the  
37 court may allow a prevailing plaintiff reasonable attorney's fees and  
38 expert fees as a part of the costs which may be recovered.

39 (e) Any action or proceeding brought pursuant to this section shall be  
40 commenced no later than three years after the date on which the  
41 violation of this section is committed.

42 4. Preservation of rights. This section shall be in addition to all  
43 rights, procedures, and remedies available under the United States  
44 Constitution, 42 USC 1983, the constitution of the state of New York and  
45 all other federal law, state law, law of the city of New York or the  
46 administrative code of the city of New York, and all other civil reme-  
47 diaries, including monetary damages, created by statute, ordinance, regu-  
48 lation or common law.

49 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-  
50 sion, section or part of this act shall be adjudged by any court of  
51 competent jurisdiction to be invalid, such judgment shall not affect,  
52 impair, or invalidate the reminder thereof, but shall be confined in its  
53 operation to the clause, sentence, paragraph, subdivision, section or  
54 part thereof directly involved in the controversy in which such judge-  
55 ment shall have been rendered. It is hereby declared to be the intent of

1 the legislature that this act would have been enacted even if such  
2 invalid provisions had not been included herein.  
3 § 4. This act shall take effect on the thirtieth day after it shall  
4 have become a law.