SENATE, No. 3366

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 21, 2021

Sponsored by:
Senator RONALD L. RICE
District 28 (Essex)

SYNOPSIS

Establishes right to record law enforcement activity under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning recording of law enforcement activity and supplementing chapter 14 of Title 40A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "New Jerseyans' Right to Monitor Act."

2. a. For purposes of this section:

"Law enforcement activity" means any activity of a law enforcement officer acting in the performance of the officer's duties.

"Law enforcement officer" means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.

"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 other device capable of capturing audio, moving or still images, or by way of written notes or observations.

b. A person who is not under arrest or in the custody of a law enforcement officer has the right to record law enforcement activity and to maintain custody and control of that recording and any property, instruments, or equipment used by the person to record law enforcement activities. A person under arrest or in custody shall not, based solely on that status, forfeit the right to have a recording, property, instrument, or equipment maintained and returned.

c. Nothing in this section shall be construed to permit a person to engage in actions that physically interfere with law enforcement activity or otherwise constitute the crime of obstructing administration of law or other governmental function pursuant to N.J.S.2C:29-1.

d. A claim of unlawful interference with recording law enforcement activity shall be established pursuant to this section if the person exercised or attempted to exercise the right to record law enforcement activity and the law enforcement officer commits an act that interferes with that person, including, but not limited to:

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

(2) threatening that person for recording law enforcement activity;

(3) commanding the person cease recording law enforcement activity when the person was authorized by law to record;

(4) stopping, seizing, searching, ticketing, or arresting that person because the person recorded law enforcement activity; or

(5) unlawfully seizing property, instruments, or equipment used by that person to record a law enforcement activity, unlawfully destroying or seizing a recorded image of law enforcement activity, or copying a recording of law enforcement activity without consent of the person who recorded it or approval from an appropriate court.

e. It shall be an affirmative defense to a civil action under paragraphs (1), (3), and (5) of subsection d. of this section that at the time of the conduct of the law enforcement officer, the officer had probable cause to arrest the person recording the law enforcement activity for obstructing administration of law or other governmental function pursuant to N.J.S.2C:29-1.

f. A person subject to unlawful interference with recording law enforcement activity may bring an action for any violation of this section in any court of competent jurisdiction for damages, including punitive damages, declaratory and injunctive relief, or other remedy the court may deem appropriate.

g. In any action or proceeding brought pursuant to this section, the court may allow a prevailing plaintiff reasonable attorney's fees and expert fees, in addition to any other costs which may be recovered.

h. Any action or proceeding brought pursuant to this section shall be commenced no later than three years after the date on which the violation is committed.

i The right to record law enforcement activity established in this section shall be in addition to all rights, procedures, and remedies available under the United States Constitution; 42 U.S.C. s.1983; the Constitution of the State of New Jersey; other federal, State, or local law; administrative law; or other civil remedies, including monetary damages, created by statute, ordinance, regulation, or common law.

3. This act shall take effect immediately.

STATEMENT

This bill, entitled the "New Jerseyans' Right to Monitor Act," authorizes this State's citizens to record the activities of law enforcement officers.

Specifically, a person who is not under arrest or in the custody of a law enforcement officer is accorded the right to record law enforcement activity. The bill defines "law enforcement activity" as any activity of a law enforcement officer acting in the performance of the officer's duties. Under the bill, the person also has the right to maintain custody and control of the recording, as well as any property, instruments, or equipment used to record the activity. But the bill specifically prohibits anyone from engaging in actions that physically interfere with law enforcement activity or

obstruct the administration of law or another governmental function.

A claim of unlawful interference with recording a law enforcement activity is established pursuant to the bill's provisions if a person exercised or attempted to exercise the right to record law enforcement activity and a law enforcement officer commits an act that interferes with the person. Those acts include intentionally preventing or attempting to prevent that person from recording law enforcement activity; threatening the person for recording law enforcement activity; commanding that the person cease recording law enforcement activity when the person was authorized under law to record; stopping, seizing, searching, ticketing, or arresting the person for recording law enforcement activity; or unlawfully seizing property, instruments, or equipment used by the person to record law enforcement activity, unlawfully destroying or seizing a recorded image of law enforcement activity, or copying a recording of law enforcement activity without the consent of the person who recorded it or approval from the court.

The bill establishes an affirmative defense under certain circumstances to a civil action if the law enforcement officer had probable cause to arrest the person recording the law enforcement activity for obstructing administration of law or other governmental function.

An action for a violation of the bill's provisions may be brought in any court of competent jurisdiction for damages, including punitive damages, declaratory and injunctive relief, and any other remedy the court may deem appropriate. The court may allow a prevailing plaintiff reasonable attorney's and expert fees, in addition to any other costs which may be recovered.

This bill is modelled on a recently enacted New York State law that affirms the right to record law enforcement activity and maintain custody of the recording and related equipment.