

JAN 22 2021

A BILL FOR AN ACT

RELATING TO RECORDINGS OF LAW ENFORCEMENT ACTIVITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **RECORDING LAW ENFORCEMENT ACTIVITIES**

6 **"§ -A Definitions.** As used in this chapter:

7 "Law enforcement activity" means any activity by a law
8 enforcement officer acting under the color of law.

9 "Law enforcement officer" means any police officer, peace
10 officer, security officer, security guard, or similar person who
11 is engaged in a law enforcement activity.

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



1 § **-B Right to record law enforcement activities.** A

2 person neither under arrest nor in the custody of a law
3 enforcement officer shall have the right to record law
4 enforcement activity and to maintain custody and control of that
5 recording and of any property or instruments used by that person
6 to record law enforcement activities; provided that a person
7 under arrest or in custody of a law enforcement officer does
8 not, by that status alone, forfeit the right to have any such
9 recordings taken prior to the arrest or prior to being taken
10 into custody or the right to have such property and equipment
11 used for the recording to be maintained and returned to that
12 person. Nothing in this chapter shall be construed to permit a
13 person to engage in actions that physically interfere with law
14 enforcement activity or otherwise constitute a crime under
15 chapter 710.

16 § **-C Private right of action.** (a) A claim of unlawful

17 interference with recording a law enforcement activity shall be
18 established under this section when a person demonstrates that
19 the person exercised or attempted to exercise the right to
20 record law enforcement activities pursuant to section -B and



1 a law enforcement officer acted to interfere with that person's
2 recording of a law enforcement activity, including by:

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

5 (2) Threatening that person for recording law enforcement
6 activity;

7 (3) Commanding that the person cease recording law
8 enforcement activity when the person was otherwise
9 authorized by law to do so;

10 (4) Stopping, seizing, searching, ticketing, or arresting
11 that person because that person recorded law
12 enforcement activity;

13 (5) Unlawfully seizing property or instruments used by
14 that person to record law enforcement activity;

15 (6) Unlawfully destroying or seizing a recorded image or
16 recorded images of law enforcement activity; or

17 (7) Copying such a recording of law enforcement activity
18 without the consent of the person who recorded it or
19 approval from a court of competent jurisdiction.

20 (b) It shall be an affirmative defense to a civil action
21 under this section that at the time of such conduct by a law



1 enforcement officer, the law enforcement officer had probable
2 cause to arrest the person recording such law enforcement
3 activity for a crime under chapter 710.

4 (c) A person subject to unlawful interference with
5 recording law enforcement activities under this section may
6 bring an action for any violation of this section in any court
7 of competent jurisdiction for damages, including:

8 (1) Punitive damages;

9 (2) Declaratory and injunctive relief; and

10 (3) Other remedies as the court may deem appropriate.

11 (d) In any action or proceeding brought pursuant to this
12 section, the court may award a prevailing plaintiff reasonable
13 attorney's and expert's fees.

14 (e) Any action or proceeding brought pursuant to this
15 section shall be commenced no later than three years after the
16 date on which the violation of this section was committed.

17 § -D **Preservation of rights.** The rights under this
18 chapter shall be in addition to all other rights and remedies
19 available pursuant to law."

20 SECTION 2. If any provision of this Act, or the
21 application thereof to any person or circumstance, is held



1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the provisions
4 of this Act are severable.

5 SECTION 3. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 4. This Act shall take effect upon its approval.

9

INTRODUCED BY: Karl Rhoads



S.B. NO. 529

Report Title:

Law Enforcement Activities; Recordings; Private Right of Action

Description:

Establishes the right of persons to record law enforcement activities. Establishes a private right of action for violations of the right.

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