



# Ohio Legislative Service Commission

## Bill Analysis

Andrea Holmes

### **S.B. 174**

131st General Assembly  
(As Introduced)

**Sens.** Tavares, Thomas, Williams

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## **BILL SUMMARY**

- Grants a person the right to lawfully record any incident involving a state or local law enforcement officer and to maintain custody and control of that recording and the device used to record the recording.
- Prohibits a law enforcement officer from seizing a recording or recording device without consent, without a search warrant or subpoena, or without a lawful exception to the warrant or subpoena requirement.
- Requires a law enforcement officer seeking to obtain a device used to record an incident involving a peace officer to provide identification, inform the person of the reason the information is requested, and ask if the person will voluntarily provide a copy of the specific recording.
- Specifies that, if a person consents voluntarily to the transfer of the device, the officer must limit any search of the device to a search for the recording that is relevant to the investigation and to return the device to the person upon request with all convenient speed.
- Grants a law enforcement officer the authority to temporarily seize and maintain control over a device that was used to record an incident involving a law enforcement officer when the officer believes that the seizure is necessary to save a life or necessary to prevent the destruction of the evidentiary recording.
- Specifies that the law enforcement agency is liable if a person lawfully records or attempts to record an incident involving a law enforcement officer and the officer or officer's law enforcement agency commits any of a specified set of unlawful actions.

- Provides a right of recovery of a lost, damaged, or destroyed electronic recording against the state or a local government, and sets the value of such a recording at \$500.
- Specifies that any immunity conferred upon a political subdivision by existing provisions of law involving employee conduct does not affect or limit the liability of a political subdivision under the bill.
- Specifies that the bill's provisions do not apply to devices seized incident to a person's arrest and must not be construed to allow a person to interfere with a law enforcement officer engaged in the lawful performance of the officer's duties.

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## **CONTENT AND OPERATION**

The bill specifies that a person has the right to lawfully record any incident involving a state or local law enforcement officer and to maintain custody and control of that recording and the device used to record the recording. The bill prohibits a state or local law enforcement officer from seizing a recording or recording device without consent, without a search warrant or subpoena, or without a lawful exception to the warrant or subpoena requirement. The bill defines a state-level "law enforcement officer" as an officer, agent, or employee of the state or any department, division, commission, board, bureau, or agency of the state upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred. Separately, the bill defines a local-level "law enforcement officer" as a sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, or municipal police officer.<sup>1</sup>

### **Law enforcement officer seeking to obtain device**

If a state or local law enforcement officer seeks to obtain from a person a device used to record an incident involving a peace officer in order to access the recording as possible evidence in an investigation, the law enforcement officer must do all of the following:<sup>2</sup>

(1) Advise the person of the law enforcement officer's name, badge number or other identifying number, and the officer's law enforcement agency;<sup>3</sup>

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<sup>1</sup> R.C. 2743.021(A) and (H)(1) and 2744.021(A) and (G).

<sup>2</sup> R.C. 2743.021(B)(1) and 2744.021(B)(1).

<sup>3</sup> The bill also uses the term "officer's employing law enforcement agency," which is undefined but currently used in the context of local law enforcement.

(2) Identify the lawful reason for which the information is requested;

(3) If practicable under the circumstances, inquire whether the person will voluntarily provide a copy of the specific recording that is relevant to the investigation either by voluntarily providing the device to the law enforcement officer or immediately electronically transferring the information to the officer or the officer's law enforcement agency. If the person immediately electronically transfers the information, the person will retain possession of the device, the recording, and all personal nonevidentiary private information and recordings contained in the device.

The bill defines "officer's law enforcement agency" as the state or department, division, commission, board, bureau, or agency of the state that employs the law enforcement officer.<sup>4</sup>

### **Voluntary consent to transfer device**

Under the bill, if the person consents voluntarily to the transfer of the device to the law enforcement officer, the officer and the officer's law enforcement agency must limit any search of the device to a search for the recording that is relevant to the investigation. The officer or the officer's law enforcement agency must return the device to the person upon request with all convenient speed. If the person consents to the electronic transfer of the recording, the electronic transfer must take place as soon as possible and without unnecessary delay.<sup>5</sup>

### **Immediate transfer not possible**

In circumstances in which the immediate electronic transfer of the recording is not practicable, or when the person voluntarily consents to the electronic transfer of the evidentiary information or to the seizure of the device after having withheld voluntary consent, the law enforcement officer may arrange for the transfer or delivery of the information or device to the officer or the officer's law enforcement agency by an alternative means consistent with any policies and procedures of the law enforcement agency.<sup>6</sup>

### **Temporary seizure of device – exigent circumstances**

Notwithstanding the provisions described above, the bill grants a law enforcement officer the authority to temporarily seize and maintain control over a

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<sup>4</sup> R.C. 2743.021(H)(2).

<sup>5</sup> R.C. 2743.021(B)(2) and 2744.021(B)(2).

<sup>6</sup> R.C. 2743.021(B)(3) and 2744.021(B)(3).

device that was used to record an incident involving a law enforcement officer. This authority applies when exigent circumstances exist that (1) the law enforcement officer believes that the seizure of the device is necessary to save a life or (2) when the law enforcement officer has a reasonable, articulable, good-faith belief that the seizure is necessary to prevent the destruction of the evidentiary recording while a search warrant or subpoena for the recording is obtained. The officer or the officer's law enforcement agency must not maintain control over the device to obtain a search warrant or subpoena for longer than 72 hours and must return the device to the person after obtaining the search warrant or subpoena or not later than 72 hours after the device is seized.<sup>7</sup>

### **State or local law enforcement agency liability**

The state or the local law enforcement agency, as applicable, is liable if a person lawfully records or attempts to record an incident involving a law enforcement officer and the officer or officer's law enforcement agency does any of the following:<sup>8</sup>

- Unlawfully destroys or damages the recording or the recording device;
- Seizes the recording or recording device without permission, without lawful court order, or without other lawful grounds to seize the recording or recording device;
- Intentionally interferes with the person's lawful attempt to record the incident;
- Retaliates against the person for recording or attempting to record the incident. "Retaliate" is defined as threatening or harassing a person who recorded or attempted to record an incident involving a law enforcement officer, or purposely harming or injuring the person or the person's property, as retaliation or retribution against the person.
- Refuses to return a recording device that contains a recording of the incident within a reasonable time period and without legal justification.

### **Right of recovery against state law enforcement agency**

If a person's electronic recording was lost, damaged, or destroyed as a result of a state law enforcement agency's violation of one of the previously described provisions,

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<sup>7</sup> R.C. 2743.021(C) and 2744.021(C).

<sup>8</sup> R.C. 2743.021(D) and (H)(3), 2744.021(D), and 2744.022(A) and (E)(1).

the person may claim \$500 as the value of the electronic recording in a civil action brought in the Court of Claims.<sup>9</sup>

### **Right of recovery against local law enforcement agency**

If a local law enforcement officer engages in any of the prohibited conduct, the aggrieved person may submit a written request to the officer's employing law enforcement agency asking the law enforcement agency to pay for the damage to the person's property with an affidavit setting forth the facts of the incident, the damage done to the person's property, and a verifiable estimate of the replacement cost for any damaged or destroyed recording device. If a recording was damaged or destroyed, the person may claim \$500 as the value of the recording. Upon its receipt of the request and affidavit, the law enforcement agency has 30 days to either pay the person the amount requested in the affidavit or issue a denial of the request in writing.<sup>10</sup>

The bill specifies that any immunity conferred upon a political subdivision by the Political Subdivision Immunity Law does not affect or limit liability under the bill.<sup>11</sup>

### **Denial of request for damages from local law enforcement agency**

If the local law enforcement agency denies a person's request for damages and the person disagrees with the denial, the person may bring a civil action against the law enforcement agency for actual damages, including the replacement value of the device, the amount of \$500 for any damaged or destroyed recording, and any costs and fees associated with the filing of the civil action. The court may order punitive damages of up to \$15,000 and award attorney fees to the claimant if the court finds that the law enforcement agency's denial of the request for damages was made in bad faith. If the court finds that the civil action is frivolous and without merit, the court may award the law enforcement agency its reasonable costs and attorney fees.<sup>12</sup>

The bill specifies that its provisions do not prevent a prosecutor from investigating and prosecuting criminal activity committed by a law enforcement officer that is related to the incident, including tampering with evidence. "Prosecutor" has the same meaning as in the Criminal Law.<sup>13</sup>

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<sup>9</sup> R.C. 2743.021(E).

<sup>10</sup> R.C. 2744.022(B) and 2744.02(B)(5).

<sup>11</sup> R.C. 2744.03(C).

<sup>12</sup> R.C. 2744.022(C), 2744.04(C), and 2744.05(B).

<sup>13</sup> R.C. 2744.022(D) and (E)(2).

## Devices seized incident to arrest; interference with law enforcement

The bill's provisions do not apply to devices seized incident to a person's arrest and are not to be construed to allow a person to interfere with a law enforcement officer engaged in the lawful performance of the officer's duties.<sup>14</sup>

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### HISTORY

ACTION	DATE
Introduced	06-01-15

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<sup>14</sup> R.C. 2743.021(F) and (G) and 2744.021(E) and (F).

