



STATE SENATOR
CHARLETA B. TAVARES

15TH DISTRICT

Sponsor Testimony

Presented by: Senator Charleta B. Tavares

Senate Bill 13

Local Government, Public Safety and Veterans Affairs Committee

Senator Joe Uecker, Chair

Tuesday April 17, 2018

Chairman Uecker, Ranking Member Thomas and members of the Local Government, Public Safety and Veterans Affairs Committee; I appreciate you giving me the opportunity to provide sponsor testimony for Senate Bill 13. Senate Bill 13 will grant the right to a person to lawfully record any incident involving a law enforcement officer. The bill will impose civil liability upon the state or a local law enforcement agency if a law enforcement officer interferes with the recording of the incident, destroys the recording, seizes the recording without warrant, subpoena, or the person's consent, and if the agency or officer retaliates against the person who recorded the incident.

Senate Bill 13 allows for damages, if any occur. A person can bring a civil action against the law enforcement agency up to five hundred (\$500) dollars for damages to the device, the court may order punitive damages up to fifteen thousand (\$15,000) dollars and award attorney fees if the law enforcement agency denial of damages was made in bad faith.

Currently, we have witnessed a string of law enforcement shootings that has sparked a nationwide movement to hold law enforcement more accountable for their actions. If not for bystanders recording most of these incidents on their phones, we would not have known about a majority of these law enforcement shooting incidents.

In those same incidents, there have been countless cases of police officers ordering people to turn off their cameras, confiscating phones, and arresting those who attempt to capture footage of them. Despite a common misconception, it is actually perfectly legal to film police officers on the job.

In April of 2012, the City of Boston agreed to pay Simon Glik \$170,000 in damages and legal fees to settle a civil rights lawsuit

stemming from his 2007 felony arrest for videotaping police roughing up a suspect. Prior to the settlement, the First Circuit Court of Appeals unanimously ruled that Glik had a “constitutionally protected right to videotape police carrying out their duties in public.” The Boston Police Department now explicitly instructs its officers not to arrest citizens openly recording them in public.

In April of this year, a woman, in Houston, Texas, recorded law enforcement during an incident and a U.S. Marshal walked up to her, grabbed her phone and slammed it into the pavement. There are probably a number of stories like this however; the incidents may not be reported or individuals do not believe there is any recourse. If the law enforcement officers are doing their job appropriately, they should not mind being recorded.

As previously mentioned in my testimony, we have a **1st Amendment** right to record the police—public servants performing their public duties in a public place have no right to privacy regarding your right to record their actions. Courts have ruled that “Recording governmental officers engaged in public

duties is a form of speech through which private individuals may gather and disseminate information of public concern, including the conduct of law enforcement officers. (*Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011)).

The **4th Amendment** ensures your right to privacy. This protects your right to record police by making it illegal for a law enforcement officer to “unreasonably” search your recording device or confiscate it. As we discussed in a previous post, police do not have the right to view the contents of your cellphone or other recording device without your consent or a warrant.

The **14th Amendment** and your right to due process means there must be some fair procedure owed to you if an officer does confiscate your possessions. Police officers violate the due process clause of the 14th Amendment when they deprive individuals of their recordings without first providing notice and an opportunity to object.

This bill is needed to give those individuals who decide to record law enforcement, and their property is damaged by law enforcement some recourse.

Chairman Uecker and members of the Committee, I appreciate your attention to this issue and I respectfully request your favorable consideration and passage of Senate Bill 13. Thank you and I am happy to respond to questions from the committee.