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In Support of and Suggesting Changes to

Raised S.B. 245 An Act Concerning the Recording of Police Activity by the Public

Before the Judiciary Committee of the Connecticut General Assembly on March 12, 2012

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I. Why Prompt Action is Important

Today, anyone can make his or her own “Rodney King Video.” The proliferation of citizen-recordings of police conduct offers four benefits, all for free. The recordings:

- provide necessary evidence;
- deter police misconduct;
- enable direct civic participation; and
- are crucial to police legitimacy in the eyes of the community.²

Similarly, there are four concerns articulated about the proliferation of cameras in the hands of ordinary citizens. Recording:

- may be taken in an unsafe manner;
- may delay an investigation;
- may be taken out of context; and
- may cause personal offense, to officers or others: the privacy-in-public question.³

Street-level police procedure has not kept pace with video technology.⁴ Neither police nor citizens understand the limits of the “rules” in this new context. Police almost never receive particular guidance beyond, “Always act like you’re being recorded.” That instruction is grossly inadequate for both officers and citizens. The legislature has a duty to define the rules so as to **preserve the interests above on both sides.** This Act attempts, but fails, to adequately do so for

either citizens or police.

II. The Problem: What is “Interfering”?

Recording is itself physically harmless, and cannot create a physical obstruction. However, both police and citizens are confused about “interfering” with respect to cameras. Consider the following unclear situations officers and citizens may face:

1. From 30 feet away, Anne records an officer arrest a suspect in public. The officer is self-conscious and offended at the idea of being recorded. Anne’s act of recording actually distracts the officer. Is Anne interfering?
2. From 30 feet away, Anne records her friend, Betty, being arrested at Betty’s request. Calvin is present, and he is a witness who does not want to be recorded. He will not cooperate if Anne records. Is Anne interfering?
3. Anne is uncomfortable and wants to record her traffic stop. The officer asks her questions and for identification, but Anne is somewhat distracted from operating the camera and slower as a result. Is Anne interfering?

Chief Strillacci testified that the Connecticut Chiefs of Police Association struggles with the definition of “interfere.”⁵ Similarly, officers have expressed varied ideas of what “interfering” means with respect to recording. “Interfering” is central to CGS §§ 53a-167 interfering with an officer and 54a-182 disorderly conduct, the statutes generally used to chill recordings of police.⁶ Officers have expressed to me different opinions on the scenarios above. The bill should work to clarify the boundaries of “interfering” in a way that both citizens and police can understand.

Recording police, without more, is not criminal. Nor can recording be used as a pretext to violate the law. In short: **recording police interferes with police only when the conduct would still interfere with police without a camera present.**

III. The Problem: Property Rights

Many officers remain confused about when they may seize evidence from an innocent citizen who documents illegal activity. Some police believe they may, or must, seize that recording as evidence, and do so without a subpoena or warrant. Some police believe they may use a seized camera. Some police have deleted seized video. The law must protect citizens’ property rights with respect to cameras and recordings.

IV. The Problem: Privacy-in-Public

Protecting privacy-in-public will lead to unforeseen consequences for law enforcement. If the legislature enacts a law that recognizes a reasonable expectation of privacy-in-public, then criminals will be able to challenge certain stops, searches and seizures based on violations of this new expectation of privacy. Further, recognizing such a privacy right in public to override the right to record public officials is probably inconsistent with U.S. Constitutional Law, and will

⁵ West Hartford Police Chief James J. Strillacci, Co-Chair of the Connecticut Police Chiefs Association, criticized S.B. 1206 (2011) because the association was “concerned about the lack of definition for ‘interfere’” DVD: Judiciary Committee March 23rd Public Hearing (Connecticut Network 2011) (Disk 1, Testimony of Anthony J. Salvatore & James J. Strillacci), *available at* http://www.youtube.com/watch?v=GO3fYPBgxYw&feature=player_detailpage#t=227s.

⁶ For a more complete analysis of these statutes with respect to citizen recordings, see Cerase *supra* note 1, at 401-06.

⁷ An alternative to full deletion would be to alter the language to read:

safeguard the privacy interests of any person, including a victim of a crime **where that person is on private property and the recorder does not have a right to be on that property**

⁸ I lay out touchstones for such procedures in Cerase, *supra* note 1, at 448-50.