

BILL ANALYSIS

Senate Research Center

S.B. 897
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, as more and more people have started carrying smartphones, there has been a disturbing trend nationwide of citizens being harassed by law enforcement for filming, photographing, and recording law enforcement officers. Unfortunately, multiple incidents have occurred in Texas where citizens were told to stop filming the police, even though filming the police is perfectly legal. It is important that police be accountable to the citizenry; the police should never engage in activity in public that they fear being recorded.

This bill confirms that it is legal to film and otherwise record the public activities of the police by expressly including "filming, recording, photographing, documenting, or observing a peace officer" among the defenses to prosecution of interference with public duties (Section 38.15 (Interference with Public Duties), Penal Code), and by stating that the general statute requiring obedience with orders of police officers (Section 542.501 (Obedience Required To Police Officers and To School Crossing Guards), Transportation Code) does not require a person to stop "filming, recording, photographing, documenting, observing" the police. These are the two statutes abused most often by law enforcement officers in retaliation against citizens who film them.

The bill provides that a person who is charged with interference with public duties, failure to obey the police, or assaulting an officer and is subsequently acquitted may recover reasonable attorney's fees and treble the value of all recording equipment damaged by the peace officer if the person can prove by a preponderance of the evidence that the real reason he/she was charged and prosecuted was for filming the police.

As proposed, S.B. 897 amends current law relating to the offenses of interference with public duties, required obedience to the order or direction of a police officer, and assault, certain unsuccessful prosecutions therefor, and related civil liability of a governmental unit.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 112, as follows:

CHAPTER 112. LIABILITY OF GOVERNMENTAL UNIT FOR CERTAIN UNSUCCESSFUL PROSECUTIONS

Sec. 112.001. DEFINITION. Defines "governmental unit" in this chapter.

Sec. 112.002. LIABILITY FOR CERTAIN RETALIATORY PROSECUTIONS. (a) Authorizes a person who is prosecuted for an offense under Section 22.01(a)(1) (relating to the commission of an offense if a person causes bodily injury to another), Penal Code, Section 38.15(a)(1) (relating to the commission of an offense if a person interferes with a police officer while the peace officer is performing a duty), Penal Code, or Section

542.501(a)(1), Transportation Code, and is acquitted of the offense to recover in a civil action against the governmental unit that employed any peace officer who accused the person of the offense of which the person was acquitted if the person shows by a preponderance of the evidence that:

(1) the person was filming, recording, photographing, documenting, or observing the peace officer; and

(2) the peace officer's accusation was made in retaliation for the person's act of filming, recording, photographing, or observing the peace officer.

Sec. 112.003. REMEDIES. Entitles a person who prevails in a suit against a governmental unit described in Section 112.002 of this chapter to recover only the person's reasonable attorney's fees incurred in connection with the prosecution and three times the amount of any actual damages incurred by the person arising from damage by a peace officer to any recording equipment used in connection with the conduct which resulted in the retaliatory prosecution.

Sec. 112.004. SOVEREIGN IMMUNITY WAIVED. Provides that sovereign immunity to suit and liability is waived and abolished to the extent of liability created by this chapter.

SECTION 2. Amends Section 38.15(c), Penal Code, to provide that it is a defense to prosecution under Subsection (a)(1) that the conduct engaged in by the defendant consisted only of filming, recording, photographing, documenting, or observing a peace officer.

SECTION 3. Amends Section 542.501, Transportation Code, as follows:

Sec. 542.501. OBEDIENCE REQUIRED TO POLICE OFFICERS AND TO SCHOOL CROSSING GUARDS. (a) Creates this subsection from existing text and makes no further change to this subsection.

(b) Provides that Subsection (a)(1) (relating to prohibiting a person from willfully failing or refusing to comply with a lawful order or direction of a police officer or school crossing guard) does not apply to an order or direction to cease filming, recording, photographing, documenting, or observing a police officer while the officer is engaged in the performance of official duties.

SECTION 4. Provides that Chapter 112, Civil Practice and Remedies Code, as added by this Act, applies only with respect to a prosecution of an offense committed on or after the effective date of this Act.

SECTION 5. (a) Provides that, except as provided by Subsection (b) of this section, Section 38.15 (Interference with Public Duties), Penal Code, and Section 542.501, Transportation Code, as amended by this Act, apply to the prosecution of an offense under one of those sections commenced before, on, or after the effective date of this Act.

(b) Provides that a final conviction for an offense under Section 38.15, Penal Code, or Section 542.501, Transportation Code, that exists on the effective date of this Act is unaffected by this Act.

SECTION 6. Effective date: September 1, 2013.