



From The Desk Of
SENATOR GINNY BURDICK

The ACLU of Oregon Urges a Yes Vote on HB 2704

It should not be a crime to pull out a phone, hold it up, and record an officer who is engaged in misconduct. As recent events have shown, bystander video can be a powerful tool for police accountability. Unfortunately, however, Oregon law currently criminalizes certain recordings of police officers—recordings which courts overwhelmingly agree are protected by the First Amendment.

Under current Oregon law, it is a crime to record a conversation without “specifically informing” the parties to the conversation (interpreted by Oregon courts as “unequivocal warning”). The problem is sometimes it’s not safe for a person to interrupt an officer to provide warning, such as:

- When an officer is engaged in a dangerous situation and will be distracted by the warning.
- When an officer is actively engaged in misconduct, and warning the officer may provoke additional misconduct directed at the person recording.

Many officers would also prefer that people quietly stand by while recording, rather than having to listen to warning upon warning in the middle of what may already be a tense situation. In addition, **because it is common knowledge that the public has a right to record on-duty police, people all over Oregon are unintentionally violating Oregon’s eavesdropping statute** when they openly record without a warning.¹

HB 2704 fixes this problem by adding an exemption for a person who records a conversation in which a law enforcement officer is a participant, if:

- (A) The recording is made while the officer is performing official duties;
- (B) The recording is made openly and in plain view of the participants in the conversation;
- (C) The conversation being recorded is audible to the person by normal unaided hearing; and
- (D) The person is in a place where the person lawfully may be.

In addition, the text of HB 2704 clarifies that it does not authorize a person who is recording to trespass or interfere with police.

Please support HB 2704 to clarify that the public cannot be punished for taking bystander videos of police encounters and to ensure Oregon law complies with the First Amendment.

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¹ The ACLU of Oregon believes (as do many courts around the nation) the First Amendment protects certain surreptitious recordings of on-duty police. While HB 2704 does not exempt such recordings from Oregon’s eavesdropping statute, it takes a significant step toward protecting the right to record on-duty police in Oregon.