

SECOND REGULAR SESSION

# HOUSE BILL NO. 2789

98TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE PACE.

6885H.011

D. ADAM CRUMBLISS, Chief Clerk

---

## AN ACT

To repeal section 542.402 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and section 542.402 as enacted by senate bill no. 712, ninety-first general assembly, second regular session, and to enact in lieu thereof three new sections relating to requiring video cameras on uniformed police officers and police vehicles.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 542.402 as enacted by senate bill no. 491, ninety-seventh general  
2 assembly, second regular session and section 542.402 as enacted by senate bill no. 712, ninety-  
3 first general assembly, second regular session, are repealed and three new sections enacted in lieu  
4 thereof, to be known as sections 542.402, 590.704, and 590.705, to read as follows:

542.402. 1. Except as otherwise specifically provided in sections 542.400 to 542.422,  
2 a person is guilty of a class D felony and upon conviction shall be punished as provided by law,  
3 if such person:

4 (1) Knowingly intercepts, endeavors to intercept, or procures any other person to  
5 intercept or endeavor to intercept, any wire communication;

6 (2) Knowingly uses, endeavors to use, or procures any other person to use or endeavor  
7 to use any electronic, mechanical, or other device to intercept any oral communication when such  
8 device transmits communications by radio or interferes with the transmission of such  
9 communication; provided, however, that nothing in sections 542.400 to 542.422 shall be  
10 construed to prohibit the use by law enforcement officers of body microphones and transmitters  
11 in undercover investigations for the acquisition of evidence and the protection of law  
12 enforcement officers and others working under their direction in such investigations;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 (3) Knowingly discloses, or endeavors to disclose, to any other person the contents of  
14 any wire communication, when he knows or has reason to know that the information was  
15 obtained through the interception of a wire communication in violation of this subsection; or

16 (4) Knowingly uses, or endeavors to use, the contents of any wire communication, when  
17 he knows or has reason to know that the information was obtained through the interception of  
18 a wire communication in violation of this subsection.

19 2. It is not unlawful under the provisions of sections 542.400 to 542.422:

20 (1) For an operator of a switchboard, or an officer, employee, or agent of any  
21 communication common carrier, whose facilities are used in the transmission of a wire  
22 communication, to intercept, disclose, or use that communication in the normal course of his  
23 employment while engaged in any activity which is a necessary incident to the rendition of his  
24 service or to the protection of the rights or property of the carrier of such communication,  
25 however, communication common carriers shall not utilize service observing or random  
26 monitoring except for mechanical or service quality control checks;

27 (2) **For a uniformed law enforcement officer to make an audio recording in**  
28 **conjunction with a video recording in the ordinary course of the officer's duties or as**  
29 **required by law, provided that the officer shall:**

30 (a) **First give notification of such recording to the party to the communication;**

31 (b) **At the time of the interception, the oral communication does not occur inside**  
32 **the residence of any of the individuals; and**

33 (c) **At the time of the interception, the law enforcement officer:**

34 a. **Is in uniform or otherwise clearly identifiable as a law enforcement officer;**

35 b. **Is in close proximity to the individual's oral communication; and**

36 c. **Is using an electronic, mechanical, or other device approved by the law**  
37 **enforcement agency to intercept the oral communication;**

38 (3) For a person acting under law to intercept a wire or oral communication, where such  
39 person is a party to the communication or where one of the parties to the communication has  
40 given prior consent to such interception;

41 [(3)] (4) For a person not acting under law to intercept a wire communication where such  
42 person is a party to the communication or where one of the parties to the communication has  
43 given prior consent to such interception unless such communication is intercepted for the  
44 purpose of committing any criminal or tortious act.

542.402. 1. Except as otherwise specifically provided in sections 542.400 to 542.422,  
2 a person is guilty of a class D felony and upon conviction shall be punished as provided by law,  
3 if such person:

4 (1) Knowingly intercepts, endeavors to intercept, or procures any other person to  
5 intercept or endeavor to intercept, any wire communication;

6 (2) Knowingly uses, endeavors to use, or procures any other person to use or endeavor  
7 to use any electronic, mechanical, or other device to intercept any oral communication when such  
8 device transmits communications by radio or interferes with the transmission of such  
9 communication; provided, however, that nothing in sections 542.400 to 542.422 shall be  
10 construed to prohibit the use by law enforcement officers of body microphones and transmitters  
11 in undercover investigations for the acquisition of evidence and the protection of law  
12 enforcement officers and others working under their direction in such investigations;

13 (3) Knowingly discloses, or endeavors to disclose, to any other person the contents of  
14 any wire communication, when he knows or has reason to know that the information was  
15 obtained through the interception of a wire communication in violation of this subsection; or

16 (4) Knowingly uses, or endeavors to use, the contents of any wire communication, when  
17 he knows or has reason to know that the information was obtained through the interception of  
18 a wire communication in violation of this subsection.

19 2. It is not unlawful under the provisions of sections 542.400 to 542.422:

20 (1) For an operator of a switchboard, or an officer, employee, or agent of any  
21 communication common carrier, whose facilities are used in the transmission of a wire  
22 communication, to intercept, disclose, or use that communication in the normal course of his  
23 employment while engaged in any activity which is a necessary incident to the rendition of his  
24 service or to the protection of the rights or property of the carrier of such communication,  
25 however, communication common carriers shall not utilize service observing or random  
26 monitoring except for mechanical or service quality control checks;

27 (2) **For a uniformed law enforcement officer to make an audio recording in**  
28 **conjunction with a video recording in the ordinary course of the officer's duties or as**  
29 **required by law, provided that the office shall:**

30 (a) **First give notification of such recording to the party to the communication;**

31 (b) **At the time of the interception, the oral communication does not occur inside**  
32 **the residence of any of the individuals; and**

33 (c) **At the time of the interception, the law enforcement officer:**

34 a. **Is in uniform or otherwise clearly identifiable as a law enforcement officer;**

35 b. **Is in close proximity to the individual's oral communication; and**

36 c. **Is using an electronic, mechanical, or other device approved by the law**  
37 **enforcement agency to intercept the oral communication;**

38           **(3)** For a person acting under law to intercept a wire or oral communication, where such  
39 person is a party to the communication or where one of the parties to the communication has  
40 given prior consent to such interception;

41           ~~[(3)]~~ **(4)** For a person not acting under law to intercept a wire communication where such  
42 person is a party to the communication or where one of the parties to the communication has  
43 given prior consent to such interception unless such communication is intercepted for the  
44 purpose of committing any criminal or tortious act.

**590.704. Every new or used police vehicle which is primarily used for traffic stops  
2 shall be equipped with a video camera. Fifty percent of the police vehicles currently  
3 operating without a video camera shall be equipped with a video camera no later than  
4 December 31, 2016, and the other fifty percent shall be equipped with a video camera no  
5 later than June 30, 2016.**

**590.705. 1. In accordance with section 542.402, each uniformed law enforcement  
2 officer in this state shall, at all times when the officer is interacting with the public in his  
3 or her official capacity, wear an operating video camera with a microphone for audio  
4 capture. Each video recorded shall be catalogued and preserved.**

**2. Each police department shall have a written policy that outlines, at a minimum:**

6           **(1) The proper uses of the equipment;**

7           **(2) The times when the camera is to be activated;**

8           **(3) Conditions under which is it permissible not to have the camera activated;**

9           **(4) Potential disciplinary actions for failure to activate the camera when required  
10 to be activated;**

11           **(5) The retention period for the tapes or other recording media, which shall not be  
12 less than thirty days;**

13           **(6) The method for replacing defective or nonfunctioning equipment; and**

14           **(7) The logging policy to record failures or periods when the equipment is down for  
15 repairs.**

16

17 **The policy shall be on file at the agency and open to public inspection or available on the  
18 department's website.**

19           **3. The use of any recording obtained under this section shall be for internal or  
20 external investigations of misconduct, and when police have reasonable suspicion that a  
21 recording contains evidence of a crime.**

22           **4. In any prosecution, if the state expects to offer the testimony of a law  
23 enforcement officer against a defendant and the law enforcement officer was required to  
24 record video and audio information of his or her interaction with the defendant, the state**

25 shall produce a copy of the video and audio information in a reasonably usable format  
26 upon the defendant's request. If the state does not produce the video and audio  
27 information, the court may draw an adverse inference from the state's failure to produce  
28 such information.

29       5. The provisions of this section shall not apply to detectives or other law  
30 enforcement officers while they are working in an undercover capacity or to any law  
31 enforcement officer in any situation where the wearing of such video camera would  
32 endanger the safety of the officer or the public.

✓