

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1278 Session of 2023

INTRODUCED BY PIELLI, BRIGGS, MADDEN, DELLOSO, SANCHEZ, SCOTT AND GREEN, MAY 30, 2023

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, SEPTEMBER 26, 2023

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in wiretapping and electronic
3 surveillance, further providing for definitions and for
4 exceptions to prohibition of interception and disclosure of
5 communications, providing for PUBLIC ACCESS AND FOR
6 Department of Corrections retention policy and further
7 providing for expiration of chapter. <--

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The definition of "oral communication" in section
11 5702 of Title 18 of the Pennsylvania Consolidated Statutes is
12 amended by adding paragraphs and the section is amended by
13 adding a definition DEFINITIONS to read: <--

14 § 5702. Definitions.

15 As used in this chapter, the following words and phrases
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Agent." As defined in 61 Pa.C.S. § 6101 (relating to
19 definitions).

20 * * *

1 (P.L.469, No.210), entitled "An act providing for
2 commissioning as police officers certain employes of
3 institutions maintained in whole or in part by the
4 Commonwealth; conferring upon them the powers of constables
5 in certain cases; and imposing duties on wardens and keepers
6 of jails, police stations and lock-ups," who meets all of the
7 following:

8 (i) Is clearly identifiable and on official duty.

9 (ii) Is using an electronic, mechanical or other
10 device that has been approved under section 5706(b)(4) to
11 intercept a wire, electronic or oral communication in the
12 course of official duties.

13 (iii) Has received training on the device.

14 (iv) Is not intercepting a communication from inside
15 the residence of an employee of the ~~Department of~~ <--
16 ~~Corrections~~ DEPARTMENT without the consent of the <--
17 employee or prior court approval.

18 * * *

19 "SECRETARY." THE SECRETARY OF CORRECTIONS OF THE <--
20 COMMONWEALTH.

21 Section 2. Section 5704 of Title 18 is amended by adding a <--
22 ~~paragraph~~ PARAGRAPHS to read: <--

23 § 5704. Exceptions to prohibition of interception and
24 disclosure of communications.

25 It shall not be unlawful and no prior court approval shall be
26 required under this chapter for:

27 * * *

28 ~~(19) The following:~~ <--

29 ~~(i) An agent to intercept an oral communication~~
30 ~~where:~~

1 ~~(A) the communication is made by a person~~
2 ~~subject to State parole or a third party in the~~
3 ~~vicinity of an agent interacting with a person~~
4 ~~subject to State parole; or~~

5 ~~(B) the communication is made by another agent,~~
6 ~~investigative or law enforcement officer present~~
7 ~~during the agent's interaction with a person subject~~
8 ~~to State parole.~~

9 ~~(ii) No interception made under this paragraph shall~~
10 ~~be disclosed to an investigative or law enforcement~~
11 ~~officer unless disclosed pursuant to a lawful warrant.~~

12 (19) AN AGENT TO INTERCEPT, RECORD, MONITOR OR DIVULGE <--
13 ANY ORAL COMMUNICATION IF THE FOLLOWING CONDITIONS ARE MET:

14 (I) THE DEPARTMENT SHALL ADHERE TO THE FOLLOWING
15 PROCEDURES AND RESTRICTIONS WHEN INTERCEPTING, RECORDING,
16 MONITORING OR DIVULGING ANY ORAL COMMUNICATION:

17 (A) THE INDIVIDUAL SUBJECT TO STATE SUPERVISION
18 OR PAROLE SHALL BE NOTIFIED IN WRITING THAT AS OF THE
19 EFFECTIVE DATE OF THIS PARAGRAPH THE PERSON'S ORAL
20 COMMUNICATIONS MAY BE INTERCEPTED, RECORDED,
21 MONITORED OR DIVULGED.

22 (B) UNLESS OTHERWISE PROVIDED IN THIS PARAGRAPH,
23 AFTER INTERCEPTING OR RECORDING AN ORAL
24 COMMUNICATION, ONLY THE SECRETARY, AN AGENT, OTHER
25 ADMINISTRATIVE OFFICIALS OF THE DEPARTMENT DESIGNATED
26 BY THE SECRETARY AND EMPLOYEES OF THE PENNSYLVANIA
27 PAROLE BOARD SHALL HAVE ACCESS TO THE RECORDING OR
28 INTERCEPTION.

29 (C) THE CONTENTS OF AN INTERCEPTED AND RECORDED
30 ORAL COMMUNICATION SHALL BE DIVULGED ONLY AS

1 NECESSARY TO SAFEGUARD THE ORDERLY OPERATION OF STATE
2 SUPERVISION, PAROLE HEARING PURPOSES, IN RESPONSE TO
3 A COURT ORDER OR IN THE PROSECUTION OR INVESTIGATION
4 OF A CRIME.

5 (II) THIS PARAGRAPH SHALL APPLY TO THE FOLLOWING:

6 (A) ORAL COMMUNICATION MADE FROM OR TO AN
7 INDIVIDUAL SUBJECT TO STATE SUPERVISION OR PAROLE OR
8 A THIRD PARTY WHILE IN THE VICINITY OF AN AGENT
9 INTERACTING WITH AN INDIVIDUAL ON STATE SUPERVISION
10 OR PAROLE.

11 (B) ORAL COMMUNICATION MADE BY AN AGENT,
12 INVESTIGATIVE OR LAW ENFORCEMENT OFFICER PRESENT
13 DURING THE AGENT'S INTERACTION WITH A PERSON SUBJECT
14 TO STATE SUPERVISION OR PAROLE.

15 (III) NO INTERCEPTION OR RECORDING OF AN ORAL
16 COMMUNICATION MADE UNDER THIS PARAGRAPH SHALL BE SHARED
17 WITH AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER UNLESS
18 PURSUANT TO A LAWFUL WARRANT.

19 (IV) THE DEPARTMENT SHALL DEVELOP GUIDELINES TO
20 IMPLEMENT THIS PARAGRAPH FOR STATE SUPERVISION.

21 (20) A PERSON TO INTERCEPT THE WIRE COMMUNICATIONS OF A
22 TELEMARKETER, TELEMARKETING BUSINESS OR AN INDIVIDUAL OR
23 ENTITY THAT INITIATES ROBOCALLS, AS THOSE TERMS ARE DEFINED
24 IN SECTION 2 OF THE ACT OF DECEMBER 4, 1996 (P.L.911,
25 NO.147), KNOWN AS THE TELEMARKETER REGISTRATION ACT, PROVIDED
26 THAT THE PERSON WHO RECEIVED THE TELEPHONE CALL HAS CONSENTED
27 TO THE INTERCEPTION, FOR PURPOSES OF ENFORCING ANY OF THE
28 FOLLOWING:

29 (I) 47 U.S.C. § 227 (RELATING TO RESTRICTIONS ON USE
30 OF TELEPHONE EQUIPMENT).

1 (II) THE ACT OF DECEMBER 17, 1968 (P.L.1224,
2 NO.387), KNOWN AS THE UNFAIR TRADE PRACTICES AND CONSUMER
3 PROTECTION LAW.

4 (III) THE TELEMARKETER REGISTRATION ACT.

5 SECTION 3. SUBCHAPTER B OF CHAPTER 57 OF TITLE 18 IS AMENDED
6 BY ADDING A SECTION TO READ:

7 § 5729. PUBLIC ACCESS.

8 A REQUEST FOR ACCESS TO AUDIO AND VIDEO RECORDINGS MADE BY AN
9 AGENT UNDER THIS CHAPTER SHALL NOT BE SUBJECT TO THE ACT OF
10 FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW,
11 AND SHALL FOLLOW THE ACCESS PROCEDURES PROVIDED FOR UNDER 42
12 PA.C.S. CH. 67A (RELATING TO RECORDINGS BY LAW ENFORCEMENT
13 OFFICERS).

14 Section ~~3~~ 4. Subchapter C of Chapter 57 of Title 18 is <--
15 amended by adding a section to read:

16 § 5750. Department of Corrections retention policy.

17 ~~The Secretary of Corrections~~ SECRETARY shall develop a record <--
18 retention policy for all communications lawfully intercepted by
19 ~~Department of Corrections~~ DEPARTMENT employees. By January 1, <--
20 2024, the ~~Secretary of Corrections~~ SECRETARY shall issue a <--
21 notice of the record retention policy developed under this
22 section. The notice shall be published on the ~~Department of <--~~
23 ~~Correction's~~ DEPARTMENT'S publicly accessible Internet website <--
24 and transmitted to the Legislative Reference Bureau for
25 publication in the next available issue of the Pennsylvania
26 Bulletin.

27 Section ~~4~~ 5. Section 5781 of Title 18 is amended to read: <--

28 § 5781. Expiration of chapter.

29 This chapter expires December 31, [2023] 2029, unless
30 extended by statute.

1 Section 5 6. Nothing in this act shall be construed to waive <--
2 or otherwise reduce the rights guaranteed under the Constitution
3 of the United States or the Constitution of Pennsylvania of a
4 nonconsenting third party who is present in the approved home of
5 an individual who is under supervision of an agent and whose
6 communications are lawfully intercepted by an agency of the
7 Department of Corrections under paragraph (3) of the definition
8 of "oral communication" in 18 Pa.C.S. § 5702.

9 Section 6 7. This act shall take effect as follows: <--

10 ~~(1) The amendment of the definition of "oral~~ <--
11 ~~communication" in 18 Pa.C.S. § 5702 shall take effect in 60~~
12 ~~days.~~

13 (1) THE FOLLOWING SHALL TAKE EFFECT IN 60 DAYS: <--

14 (I) THE AMENDMENT OF THE DEFINITION OF "ORAL
15 COMMUNICATION" IN 18 PA.C.S. § 5702.

16 (II) THE ADDITION OF 18 PA.C.S. § 5704(20).

17 (2) The remainder of this act shall take effect
18 immediately.