

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 560 Session of
2017

INTRODUCED BY GREENLEAF, BREWSTER, BROOKS, RESCHENTHALER,
VULAKOVICH, SCHWANK, COSTA, MENSCH, MCGARRIGLE, HAYWOOD,
RAFFERTY, BROWNE AND WARD, MARCH 27, 2017

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 7, 2017

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in wiretapping and electronic surveillance, further
4 providing for definitions, for exceptions to prohibition of
5 interception and disclosure of communications and, for <--
6 exceptions to prohibitions in possession, sale, distribution,
7 manufacture or advertisement of electronic, mechanical or
8 other devices AND FOR EXPIRATION OF CHAPTER; and providing <--
9 for recordings by law enforcement officers.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. The definition of "oral communication" in section
13 5702 of Title 18 of the Pennsylvania Consolidated Statutes is
14 amended to read:

15 § 5702. Definitions.

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

19 * * *

20 "Oral communication." Any oral communication uttered by a

1 person possessing an expectation that such communication is not
2 subject to interception under circumstances justifying such
3 expectation. The term does not include [any electronic
4 communication.] the following:

5 (1) An electronic communication.

6 ~~(2) A communication made in the presence of a law~~ <--
7 ~~enforcement officer on official duty who is in uniform or~~
8 ~~otherwise clearly identifiable as a law enforcement officer,~~
9 ~~sheriff or deputy sheriff and the law enforcement officer,~~
10 ~~sheriff or deputy sheriff is using an electronic, mechanical~~
11 ~~or other device which has been approved under section 5706(b)~~
12 ~~(4) (relating to exceptions to prohibitions in possession,~~
13 ~~sale, distribution, manufacture or advertisement of~~
14 ~~electronic, mechanical or other devices) for the purpose of~~
15 ~~recording the communication.~~

16 (2) A COMMUNICATION MADE IN THE PRESENCE OF A LAW <--
17 ENFORCEMENT OFFICER ON OFFICIAL DUTY WHO IS IN UNIFORM OR
18 OTHERWISE CLEARLY IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER
19 AND WHO IS USING AN ELECTRONIC, MECHANICAL OR OTHER DEVICE
20 WHICH HAS BEEN APPROVED UNDER SECTION 5706(B)(4) (RELATING TO
21 EXCEPTIONS TO PROHIBITIONS IN POSSESSION, SALE, DISTRIBUTION,
22 MANUFACTURE OR ADVERTISEMENT OF ELECTRONIC, MECHANICAL OR
23 OTHER DEVICES) TO INTERCEPT THE COMMUNICATION IN THE COURSE
24 OF LAW ENFORCEMENT DUTIES. AS USED IN THIS PARAGRAPH ONLY,
25 "LAW ENFORCEMENT OFFICER" MEANS A MEMBER OF THE PENNSYLVANIA
26 STATE POLICE, AN INDIVIDUAL EMPLOYED AS A POLICE OFFICER WHO
27 HOLDS A CURRENT CERTIFICATE UNDER 53 PA.C.S. CH. 21 SUBCH. D
28 (RELATING TO MUNICIPAL POLICE EDUCATION AND TRAINING), A
29 SHERIFF OR A DEPUTY SHERIFF.

30 * * *

1 Section 2. Sections 5704(13), (14) and (16) ~~and~~, 5706(b) AND <--
2 5781 of Title 18 are amended to read:

3 § 5704. Exceptions to prohibition of interception and
4 disclosure of communications.

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

7 * * *

8 (13) An investigative officer, a law enforcement officer
9 or employees of the Department of Corrections for State
10 correctional facilities to intercept, record, monitor or
11 divulge any [telephone calls] oral communication, electronic
12 communication or wire communication from or to an inmate in a
13 facility under the following conditions:

14 (i) The Department of Corrections shall adhere to
15 the following procedures and restrictions when
16 intercepting, recording, monitoring or divulging any
17 [telephone calls] oral communication, electronic
18 communication or wire communication from or to an inmate
19 in a State correctional facility as provided for by this
20 paragraph:

21 (A) Before the implementation of this paragraph,
22 all inmates of the facility shall be notified in
23 writing that, as of the effective date of this
24 paragraph, their [telephone conversations] oral
25 communication, electronic communication or wire
26 communication may be intercepted, recorded, monitored
27 or divulged.

28 (B) Unless otherwise provided for in this
29 paragraph, after intercepting or recording [a
30 telephone conversation] an oral communication,

1 electronic communication or wire communication, only
2 the superintendent, warden or a designee of the
3 superintendent or warden or other chief
4 administrative official or his or her designee, or
5 law enforcement officers shall have access to that
6 recording.

7 (C) The contents of an intercepted and recorded
8 [telephone conversation] oral communication,
9 electronic communication or wire communication shall
10 be divulged only as is necessary to safeguard the
11 orderly operation of the facility, in response to a
12 court order or in the prosecution or investigation of
13 any crime.

14 (ii) So as to safeguard the attorney-client
15 privilege, the Department of Corrections shall not
16 intercept, record, monitor or divulge [any conversation]
17 an oral communication, electronic communication or wire
18 communication between an inmate and an attorney.

19 (iii) [Persons who are calling in to a facility to
20 speak to an inmate shall be notified that the call may be
21 recorded or monitored.] Persons who are engaging in an
22 oral communication, electronic communication or wire
23 communication with an inmate shall be notified that the
24 communication may be recorded or monitored. Notice may be
25 provided by any means reasonably designed to inform the
26 non-inmate party of the recording or monitoring.

27 (iv) The Department of Corrections shall promulgate
28 guidelines to implement the provisions of this paragraph
29 for State correctional facilities.

30 (14) An investigative officer, a law enforcement officer

1 or employees of a county correctional facility to intercept,
2 record, monitor or divulge [any telephone calls] an oral
3 communication, electronic communication or wire communication
4 from or to an inmate in a facility under the following
5 conditions:

6 (i) The county correctional facility shall adhere to
7 the following procedures and restrictions when
8 intercepting, recording, monitoring or divulging [any
9 telephone calls] an oral communication, electronic
10 communication or wire communication from or to an inmate
11 in a county correctional facility as provided for by this
12 paragraph:

13 (A) Before the implementation of this paragraph,
14 all inmates of the facility shall be notified in
15 writing that, as of the effective date of this
16 paragraph, their [telephone conversations] oral
17 communications, electronic communications or wire
18 communications may be intercepted, recorded,
19 monitored or divulged.

20 (B) Unless otherwise provided for in this
21 paragraph, after intercepting or recording [a
22 telephone conversation] an oral communication,
23 electronic communication or wire communication, only
24 the superintendent, warden or a designee of the
25 superintendent or warden or other chief
26 administrative official or his or her designee, or
27 law enforcement officers shall have access to that
28 recording.

29 (C) The contents of an intercepted and recorded
30 [telephone conversation] oral communication,

1 electronic communication or wire communication shall
2 be divulged only as is necessary to safeguard the
3 orderly operation of the facility, in response to a
4 court order or in the prosecution or investigation of
5 any crime.

6 (ii) So as to safeguard the attorney-client
7 privilege, the county correctional facility shall not
8 intercept, record, monitor or divulge [any conversation]
9 an oral communication, electronic communication or wire
10 communication between an inmate and an attorney.

11 (iii) [Persons who are calling into a facility to
12 speak to an inmate shall be notified that the call may be
13 recorded or monitored.] Persons who are engaging in an
14 oral communication, electronic communication or wire
15 communication with an inmate shall be notified that the
16 communication may be recorded or monitored. Notice may be
17 provided by any means reasonably designed to inform the
18 non-inmate party of the recording or monitoring.

19 (iv) The superintendent, warden or a designee of the
20 superintendent or warden or other chief administrative
21 official of the county correctional system shall
22 promulgate guidelines to implement the provisions of this
23 paragraph for county correctional facilities.

24 * * *

25 [(16) A law enforcement officer, whether or not
26 certified under section 5724 (relating to training), acting
27 in the performance of his official duties to intercept and
28 record an oral communication between individuals in
29 accordance with the following:

30 (i) At the time of the interception, the oral

1 communication does not occur inside the residence of any
2 of the individuals.

3 (ii) At the time of the interception, the law
4 enforcement officer:

5 (A) is in uniform or otherwise clearly
6 identifiable as a law enforcement officer;

7 (B) is in close proximity to the individuals'
8 oral communication;

9 (C) is using an electronic, mechanical or other
10 device which has been approved under section 5706(b)

11 (4) (relating to exceptions to prohibitions in
12 possession, sale, distribution, manufacture or
13 advertisement of electronic, mechanical or other
14 devices) to intercept the oral communication; and

15 (D) informs, as soon as reasonably practicable,
16 the individuals identifiably present that he has
17 intercepted and recorded the oral communication.

18 (iii) As used in this paragraph, the term "law
19 enforcement officer" means a member of the Pennsylvania
20 State Police or an individual employed as a police
21 officer who holds a current certificate under 53 Pa.C.S.
22 Ch. 21 Subch. D (relating to municipal police education
23 and training).]

24 * * *

25 § 5706. Exceptions to prohibitions in possession, sale,
26 distribution, manufacture or advertisement of
27 electronic, mechanical or other devices.

28 * * *

29 (b) Responsibility.--

30 (1) Except as provided under paragraph (2), the Attorney

1 General and the district attorney or their designees so
2 designated in writing shall have the sole responsibility to
3 buy, possess and loan any electronic, mechanical or other
4 device which is to be used by investigative or law
5 enforcement officers for purposes of interception as
6 authorized under section 5704(2), (5) and (12) (relating to
7 exceptions to prohibition of interception and disclosure of
8 communications), 5712 (relating to issuance of order and
9 effect), 5713 (relating to emergency situations) or 5713.1
10 (relating to emergency hostage and barricade situations).

11 (2) The division or bureau or section of the
12 Pennsylvania State Police responsible for conducting the
13 training in the technical aspects of wiretapping and
14 electronic surveillance as required by section 5724 (relating
15 to training) may buy and possess any electronic, mechanical
16 or other device which is to be used by investigative or law
17 enforcement officers for purposes of interception as
18 authorized under section 5704(2), (5) and (12), 5712, 5713 or
19 5713.1 for the purpose of training. However, any electronic,
20 mechanical or other device bought or possessed under this
21 provision may be loaned to or used by investigative or law
22 enforcement officers for purposes of interception as
23 authorized under section 5704(2), (5) and (12), 5712, 5713 or
24 5713.1 only upon written approval by the Attorney General or
25 a deputy attorney general designated in writing by the
26 Attorney General or the district attorney or an assistant
27 district attorney designated in writing by the district
28 attorney of the county wherein the suspected criminal
29 activity has been, is or is about to occur.

30 (3) With the permission of the Attorney General or a

1 district attorney who has designated any supervising law
2 enforcement officer for purposes of interceptions as
3 authorized under section 5713.1, the law enforcement agency
4 which employs the supervising law enforcement officer may
5 buy, possess, loan or borrow any electronic, mechanical or
6 other device which is to be used by investigative or law
7 enforcement officers at the direction of the supervising law
8 enforcement officer solely for the purpose of interception as
9 authorized under sections 5704(12) and 5713.1.

10 (4) The Pennsylvania State Police shall annually
11 establish equipment standards for any electronic, mechanical
12 or other device which is to be used by law enforcement
13 officers for purposes of [interception as authorized under
14 section 5704(16).] ~~recording a communication, other than an~~ <--
15 ~~oral communication, made in the presence of the law~~
16 ~~enforcement officer on official duty who is in uniform or~~
17 ~~otherwise clearly identifiable as a law enforcement officer.~~
18 RECORDING A COMMUNICATION UNDER CIRCUMSTANCES WITHIN <--
19 PARAGRAPH (2) OF THE DEFINITION OF "ORAL COMMUNICATION" IN
20 SECTION 5702 (RELATING TO DEFINITIONS). The equipment
21 standards shall be published annually in the Pennsylvania
22 Bulletin.

23 (5) The Pennsylvania State Police shall annually
24 establish and publish standards in the Pennsylvania Bulletin
25 for the secure onsite and offsite storage of an audio
26 recording or video recording made in accordance with <--
27 paragraph (4) OR ANY ACCOMPANYING VIDEO RECORDING. The <--
28 standards shall comply with the Federal Bureau of
29 Investigation's Criminal Justice Information Services (CJIS)
30 Security Policy.

1 (1) The identity of a confidential source.

2 (2) The identity of a suspect or witness to whom
3 confidentiality has been assured.

4 (3) Information made confidential by law or court order.

5 "Information pertaining to an investigation." An audio
6 recording or video recording which contains any of the
7 following:

8 (1) Complaints or depictions of criminal conduct,
9 including all actions or statements made before or after the
10 criminal conduct that are part of or relate to the same
11 incident or occurrence.

12 (2) Upon disclosure, information that would:

13 (i) reveal the institution, progress or result of a
14 criminal investigation;

15 (ii) deprive an individual of the right to a fair
16 trial or an impartial adjudication;

17 (iii) impair the ability of the Attorney General, a
18 district attorney or a law enforcement officer to locate
19 a defendant or codefendant;

20 (iv) hinder the ability of the Attorney General, a
21 district attorney or a law enforcement officer to secure
22 an arrest, prosecution or conviction; or

23 (v) endanger the life or physical safety of an
24 individual.

25 "Law enforcement agency." The Office of Attorney General, a
26 district attorney's office or an agency that employs a law
27 enforcement officer.

28 "Law enforcement officer." An officer of the United States,
29 the Commonwealth or a political subdivision thereof, another
30 state or political subdivision thereof or who is empowered by

1 law to conduct investigations of or to make arrests for offenses
2 enumerated in this chapter or an equivalent crime in another
3 jurisdiction, a sheriff or deputy sheriff and any attorney
4 authorized by law to prosecute or participate in the prosecution
5 of the offense.

6 "Victim." An individual who was subjected to an act that was
7 committed by another individual, including a juvenile, which
8 constitutes any of the following:

9 (1) An offense committed under any of the following:

10 (i) The act of April 14, 1972 (P.L.233, No.64),
11 known as The Controlled Substance, Drug, Device and
12 Cosmetic Act.

13 (ii) 18 Pa.C.S. (relating to crimes and offenses).

14 (iii) 30 Pa.C.S. § 5502 (relating to operating
15 watercraft under influence of alcohol or controlled
16 substance).

17 (iv) 30 Pa.C.S. § 5502.1 (relating to homicide by
18 watercraft while operating under influence).

19 (v) 75 Pa.C.S. § 3732 (relating to homicide by
20 vehicle).

21 (vi) 75 Pa.C.S. § 3735 (relating to homicide by
22 vehicle while driving under influence).

23 (vii) 75 Pa.C.S. § 3735.1 (relating to aggravated
24 assault by vehicle while driving under the influence).

25 (viii) 75 Pa.C.S. § 3742 (relating to accidents
26 involving death or personal injury).

27 (ix) 75 Pa.C.S. Ch. 38 (relating to driving after
28 imbibing alcohol or utilizing drugs).

29 (x) Any other Federal or State law.

30 (2) An offense similar to an offense listed under

1 paragraph (1) committed outside of this Commonwealth.

2 (3) An offense which would constitute grounds for the
3 issuance of relief under Chapter 62A (relating to protection
4 of victims of sexual violence or intimidation) or 23 Pa.C.S.
5 Ch. 61 (relating to protection from abuse).

6 (4) An offense against a resident of this Commonwealth
7 which is an act of international terrorism.

8 "Victim information." Information that would disclose the
9 identity or jeopardize the safety of a victim.

10 § 67A02. Scope of chapter.

11 ~~The act of February 14, 2008 (P.L.6, No.3), known as the~~ <--
12 ~~Right to Know Law, shall not apply to an audio recording or a~~
13 ~~video recording by a law enforcement officer under this chapter,~~
14 ~~including communications between a law enforcement agency and~~
15 ~~the Attorney General or the district attorney with jurisdiction.~~
16 ~~An audio recording or video recording made inside of a facility~~
17 ~~owned or operated by a law enforcement agency shall not be~~
18 ~~subject to public requests.~~

19 (A) EXEMPTION.--THE PROVISIONS OF THIS CHAPTER, AND NOT THE <--
20 ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-
21 KNOW LAW, SHALL APPLY TO ANY AUDIO RECORDING OR VIDEO RECORDING
22 MADE BY A LAW ENFORCEMENT AGENCY.

23 (B) LIMITATION.--NOTHING IN THIS CHAPTER NOR THE RIGHT-TO-
24 KNOW LAW SHALL ESTABLISH A RIGHT TO PRODUCTION OF AN AUDIO
25 RECORDING OR VIDEO RECORDING MADE INSIDE A FACILITY OWNED OR
26 OPERATED BY A LAW ENFORCEMENT AGENCY OR TO ANY COMMUNICATIONS
27 BETWEEN OR WITHIN LAW ENFORCEMENT AGENCIES CONCERNING AN AUDIO
28 OR VIDEO RECORDING.

29 § 67A03. Requests for law enforcement audio recordings or video
30 recordings.

1 The following shall apply:

2 (1) An individual who requests an audio recording or
3 video recording made by a law enforcement agency shall,
4 within 20 days of the date when the audio recording or video
5 recording was made, serve a written request to the individual
6 who is designated as the open-records officer for the law
7 enforcement agency under section 502 of the act of February
8 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.
9 Service is effective upon receipt of the written request by
10 the open-records officer FROM PERSONAL DELIVERY OR CERTIFIED <--
11 MAIL WITH PROOF OF SERVICE.

12 (2) The request under paragraph (1) shall specify with
13 particularity the incident or event that is the subject of
14 the audio recording or video recording, including the date,
15 time and location of the incident or event.

16 (3) The request shall include a statement describing the
17 requester's relationship to the incident or event that is the
18 subject of the audio or video recording.

19 (4) If the incident or event that is the subject of the
20 audio recording or video recording occurred inside a
21 residence, the request shall identify each individual who was
22 present at the time of the audio recording or video recording
23 UNLESS NOT KNOWN AND NOT REASONABLY ASCERTAINABLE. <--

24 § 67A04. Law enforcement review.

25 (a) Determination.--Except as provided in this section, if a
26 law enforcement agency determines that an audio recording or
27 video recording contains potential evidence in a criminal
28 matter, information pertaining to an investigation or a matter
29 in which a criminal charge has been filed, confidential
30 information or victim information and the reasonable redaction

1 of the audio or video recording would not safeguard potential
2 evidence, information pertaining to an investigation,
3 confidential information or victim information, the law
4 enforcement agency shall deny the ~~determination~~ REQUEST in <--
5 writing. The written denial shall state that ~~no~~ reasonable <--
6 redaction of the audio recording or video recording will NOT <--
7 safeguard potential evidence, information pertaining to an
8 investigation, confidential information or victim information.
9 If an agreement under subsection (b) is in effect between the <--
10 law enforcement agency and the Attorney General or the district
11 attorney with jurisdiction, the law enforcement agency shall
12 issue the written denial to the requester.

13 (b) Agreement.--A law enforcement agency may enter into a
14 memorandum of understanding with the Attorney General or the
15 district attorney with jurisdiction to ensure consultation <--
16 regarding the reviewing of audio recordings or video recordings
17 in order to make a determination or to DISTRICT ATTORNEY WITH <--
18 JURISDICTION TO:

19 (1) ENSURE CONSULTATION REGARDING THE REVIEWING OF AUDIO
20 RECORDINGS OR VIDEO RECORDINGS IN ORDER TO MAKE A
21 DETERMINATION; OR

22 (2) require the Attorney General or district attorney
23 with jurisdiction to issue a denial permitted under
24 subsection (a).

25 § 67A05. Procedure.

26 (a) Disclosure.--A law enforcement agency that receives a
27 request under section 67A03 (relating to requests for law
28 enforcement audio recordings or video recordings) for an audio
29 recording or video recording shall provide the audio recording
30 or video recording or identify in writing the basis for denying

1 the request within 30 days of receiving the request, unless the
2 requester and law enforcement agency agree to a longer time
3 period. If an agreement under subsection (b) SECTION 67A04(B) (2) <--
4 (RELATING TO LAW ENFORCEMENT REVIEW) is in effect between the
5 law enforcement agency and the Attorney General or district
6 attorney with jurisdiction, then an agreement to a longer time
7 period must be between the requester and the Attorney General or
8 district attorney with jurisdiction.

9 (b) Denials BY OPERATION OF LAW.--The request under section <--
10 67A03 shall be deemed BY OPERATION OF LAW denied if the law <--
11 enforcement agency does not provide the audio recording or video
12 recording to the requester or explain why the request is denied
13 within the time period specified or agreed to under subsection
14 (a).

15 (c) Preservation.--A law enforcement agency that has
16 received a request for an audio recording or video recording
17 shall preserve the unaltered audio recording or video recording
18 that has been requested for no less than the time periods
19 provided in this chapter for service of and responses to written
20 requests for the production of the audio recording or video
21 recording AND ANY PERIOD WITHIN WHICH A PETITION FOR JUDICIAL <--
22 REVIEW IS ALLOWABLE OR PENDING.

23 (d) Fees.--A law enforcement agency may establish reasonable
24 fees relating to the costs incurred to disclose audio recordings
25 or video recordings. The fees shall be paid by the requesting
26 party at the time of disclosure of the audio recording or video
27 recording.

28 (e) Construction.--Nothing in this section shall be
29 construed to prohibit a law enforcement agency from redacting an
30 audio recording or video recording in order to protect potential

1 evidence in a criminal matter, information pertaining to an
2 investigation, confidential information or victim information.
3 § 67A06. Petition for approval.

4 (a) Petition.--

5 (1) If a request under section 67A03 (relating to
6 requests for law enforcement audio recordings or video
7 recordings) is denied, the requester may file a petition for
8 judicial review in the court of common pleas with
9 jurisdiction within 30 days of the date of denial.

10 (2) The respondent to a petition filed under this
11 section shall be the entity that denied the request for the
12 audio recording or video recording under section 67A05(a)
13 (relating to procedure) unless the request is denied under
14 section 67A05(b), in which case the law enforcement agency
15 that created the audio recording or video recording shall be
16 the respondent.

17 (b) Duties of petitioner.--A petitioner under this section
18 shall have the following duties:

19 (1) The petitioner shall pay a filing fee of \$125.

20 (2) If the incident or event that is the subject of the
21 request occurred inside a residence, the petitioner shall
22 certify that notice of the petition has been served or that
23 service was attempted on each individual who was present at
24 the time of the audio recording or video recording and on the
25 owner and occupant of the residence. Notice shall not be
26 required under this paragraph if the identity of an
27 individual present or the location is unknown ~~or~~ AND not <--
28 reasonably ascertainable by the petitioner. Service shall be
29 effective upon receipt from personal delivery or certified
30 mail WITH PROOF OF SERVICE. <--

1 ~~(3) The petitioner shall include with the petition a~~ <--
2 ~~copy of the written request under section 67A03 that was~~
3 ~~served on the law enforcement agency and any written response~~
4 ~~by the law enforcement agency or Attorney General or district~~
5 ~~attorney with jurisdiction to the request.~~

6 (3) THE PETITIONER SHALL INCLUDE WITH THE PETITION A <--
7 COPY OF THE WRITTEN REQUEST UNDER SECTION 67A03 THAT WAS
8 SERVED ON THE LAW ENFORCEMENT AGENCY AND ANY WRITTEN
9 RESPONSES TO THE REQUEST THAT WERE RECEIVED.

10 (4) The petitioner shall serve notice of the petition to <--
11 ON THE OPEN RECORDS OFFICER OF the respondent on the same <--
12 WITHIN FIVE DAYS OF THE date that the petitioner files the <--
13 petition with the court of common pleas with jurisdiction. <--

14 (c) Intervention. If not the respondent named in the
15 petition for judicial review, the Attorney General or the
16 district attorney who provides certification under section
17 section 67A04(e) (relating to law enforcement review) may
18 intervene in a petition filed under this section as necessary
19 and appropriate., AND SERVICE SHALL BE EFFECTIVE UPON RECEIPT BY <--
20 THE OPEN RECORDS OFFICER.

21 (C) INTERVENTION AS MATTER OF RIGHT.--IF NOT A RESPONDENT, A
22 PROSECUTING ATTORNEY WITH JURISDICTION MAY INTERVENE IN THE
23 ACTION AS A MATTER OF RIGHT.

24 (d) Summary dismissal.--It shall be grounds for summary
25 dismissal of a petition filed under this section if:

26 (1) the request to the law enforcement agency under
27 section 67A03 or the filing of the petition under subsection
28 (a) is untimely; or <--

29 (2) the request to the law enforcement agency failed to
30 describe with sufficient particularity the incident or event

1 that is the subject of the audio recording or video
2 recording, including the date, time and location of the
3 incident or event-; OR <--

4 (3) THE PETITIONER HAS NOT COMPLIED WITH THE
5 REQUIREMENTS OF SUBSECTION (B) (1), (2), (3) AND (4).

6 (e) Approval.--A court of common pleas with jurisdiction may
7 only grant a petition under this section, in whole or in part, <--
8 and order the disclosure of the audio recording or video
9 recording ONLY if the court of common pleas determines that the <--
10 petitioner has established all of the following by a
11 preponderance of the evidence:

12 (1) The request was not denied under section 67A04
13 (RELATING TO LAW ENFORCEMENT REVIEW) or the request was <--
14 denied under section 67A04 and the court of common pleas with
15 jurisdiction determines that the denial was arbitrary and
16 capricious.

17 (2) The public interest in disclosure of the audio
18 recording or video recording or the interest of the
19 petitioner outweighs the interests of the Commonwealth, the
20 law enforcement agency or an individual's interest in
21 nondisclosure. In making a determination under this
22 paragraph, the court of common pleas may consider the
23 public's interest in understanding how law enforcement
24 officers interact with the public, the interests of crime
25 victims, law enforcement and others with respect to safety
26 and privacy and the resources available to review and
27 disclose the audio recording or video recording.

28 § 67A07. Audio recording or video recording policies.

29 (a) Policies.--A municipal law enforcement agency or sheriff
30 that makes audio recordings or video recordings OF <--

1 COMMUNICATIONS UNDER CIRCUMSTANCES WITHIN PARAGRAPH (2) OF THE
2 DEFINITION OF "ORAL COMMUNICATION" IN 18 PA.C.S. § 5702
3 (RELATING TO DEFINITIONS) shall comply with the guidelines
4 established under 18 Pa.C.S. § 5706(b)(4), (5) and (6) (relating
5 to exceptions to prohibitions in possession, sale, distribution,
6 manufacture or advertisement of electronic, mechanical or other
7 devices) and shall establish written policies, WHICH SHALL BE <--
8 PUBLIC, for the following:

9 (1) The training of law enforcement officers authorized
10 to make audio recordings or video recordings.

11 (2) The time periods when an electronic, mechanical or
12 other device shall be in operation to make audio recordings
13 or video recordings.

14 (3) The proper use, maintenance and storage of the
15 electronic, mechanical or other device to make audio
16 recordings or video recordings, including equipment
17 inspections and audits and procedures to address
18 malfunctioning equipment.

19 (4) The information collected from audio recordings or
20 video recordings, including the information's storage,
21 accessibility and retrieval.

22 (5) Electronic records retention.

23 (6) The use of facial recognition software or programs.

24 (7) A statement that a violation of the agency's policy
25 subjects the violator to the agency's disciplinary policy.

26 (8) Supervisory responsibilities.

27 (b) Pennsylvania Commission on Crime and Delinquency.--The
28 Pennsylvania Commission on Crime and Delinquency is authorized
29 to condition funding or a grant related to the implementation,
30 use, maintenance or storage of body worn cameras or recordings

1 from body worn cameras on the following:

2 (1) Requiring the grantee to have a protocol, guidelines
3 or written policies related to the implementation, use,
4 maintenance or storage of body worn cameras.

5 (2) Requiring that such a protocol, guidelines or
6 written policies are publicly accessible, including being
7 retrievable on a municipal website.

8 (3) Ensuring that the protocol, guidelines, or written
9 policies substantially comply with applicable recommendations
10 by the commission.

11 § 67A08. Construction.

12 The following shall apply:

13 (1) Nothing in this chapter shall be construed to alter
14 the responsibilities of parties to any criminal or civil
15 litigation to exchange information in accordance with
16 applicable rules of procedure.

17 (2) Nothing in this chapter shall be construed to
18 preclude the Attorney General, OR a district attorney or a <--
19 law enforcement agency from disclosing an audio recording or
20 video recording in the absence of a written request or beyond
21 the time periods stated in this chapter, but the Attorney THE <--
22 TIME PERIODS STATED IN THIS CHAPTER.

23 (3) ATTORNEY General or the district attorney with
24 jurisdiction must agree to the disclosure in writing BY A LAW <--
25 ENFORCEMENT AGENCY if:

26 (i) the audio recording or video recording contains
27 potential evidence in a criminal matter, information
28 pertaining to an investigation, confidential information
29 or victim information; and

30 (ii) reasonable redaction of the audio recording or

1 video recording will not safeguard the potential
2 evidence, information pertaining to an investigation,
3 confidential information or victim information.

4 § 67A09. Applicability.

5 ~~The provisions of this chapter shall not apply if the~~ <--
6 ~~provisions conflict with any other Federal or State law.~~

7 THE FOLLOWING SHALL APPLY: <--

8 (1) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO ALTER
9 THE RESPONSIBILITIES OF PARTIES TO CRIMINAL OR CIVIL
10 LITIGATION TO PRODUCE INFORMATION IN ACCORDANCE WITH THE
11 APPLICABLE RULES OF PROCEDURE.

12 (2) NOTHING IN THIS CHAPTER SHALL APPLY TO AN AUDIO
13 RECORDING OR VIDEO RECORDING THAT IS OTHERWISE PROHIBITED OR
14 PROTECTED FROM DISCLOSURE UNDER ANY OTHER FEDERAL OR STATE
15 LAW.

16 Section 4. This act shall take effect in 60 days.