

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 12, 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           (6) A vendor to law enforcement agencies which stores  
2 data related to audio recordings and video recordings shall,  
3 at a minimum, comply with the standards set forth by the  
4 Pennsylvania State Police under paragraphs (4) and (5). Law  
5 enforcement agencies under contract with a vendor for the  
6 storage of data before the effective date of this paragraph  
7 shall comply with paragraphs (4) and (5) and this paragraph  
8 upon expiration or renewal of the contract.

9 § 5781. EXPIRATION OF CHAPTER. <--

10       THIS CHAPTER EXPIRES DECEMBER 31, [2018] 2023, UNLESS  
11 EXTENDED BY STATUTE.

12       Section 3. Title 42 is amended by adding a chapter to read:

13                               CHAPTER 67A

14                               RECORDINGS BY LAW ENFORCEMENT OFFICERS

15 Sec.

16 67A01. Definitions.

17 67A02. Scope of chapter.

18 67A03. Requests for law enforcement audio recordings or video  
19 recordings.

20 67A04. Law enforcement review.

21 67A05. Procedure.

22 67A06. Petition for approval.

23 67A07. Audio recording or video recording policies.

24 67A08. Construction.

25 67A09. Applicability.

26 § 67A01. Definitions.

27       The following words and phrases when used in this chapter  
28 shall have the meanings given to them in this section unless the  
29 context clearly indicates otherwise:

30       "Confidential information." Any of the following:

- 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           (3) UPON DISCLOSURE, INFORMATION THAT WOULD:

<--

26           (I) REVEAL THE INSTITUTION, PROGRESS OR RESULT OF AN  
27           AGENCY INVESTIGATION.

28           (II) DEPRIVE A PERSON OF THE RIGHT TO AN IMPARTIAL  
29           ADMINISTRATIVE ADJUDICATION.

30           (III) CONSTITUTE AN UNWARRANTED INVASION OF PRIVACY.

1           (IV) HINDER AN AGENCY'S ABILITY TO SECURE AN  
2           ADMINISTRATIVE OR CIVIL SANCTION.

3           (V) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN  
4           INDIVIDUAL.

5           "Law enforcement agency." The Office of Attorney General, a  
6           district attorney's office or an agency that employs a law  
7           enforcement officer.

8           "Law enforcement officer." An officer of the United States,  
9           the Commonwealth or a political subdivision thereof, another  
10           state or political subdivision thereof or who is empowered by  
11           law to conduct investigations of or to make arrests for offenses  
12           enumerated in this chapter or an equivalent crime in another  
13           jurisdiction, a sheriff or deputy sheriff and any attorney  
14           authorized by law to prosecute or participate in the prosecution  
15           of the offense.

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

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

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

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

24           (iii) 30 Pa.C.S. § 5502 (relating to operating  
25           watercraft under influence of alcohol or controlled  
26           substance).

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

29           (v) 75 Pa.C.S. § 3732 (relating to homicide by  
30           vehicle).

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

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

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

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

9           (x) Any other Federal or State law.

10          (2) An offense similar to an offense listed under  
11 paragraph (1) committed outside of this Commonwealth.

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

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

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

20          § 67A02. Scope of chapter.

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

29          (A) EXEMPTION.--THE PROVISIONS OF THIS CHAPTER, AND NOT THE <--  
30 ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-

1 KNOW LAW, SHALL APPLY TO ANY AUDIO RECORDING OR VIDEO RECORDING  
2 MADE BY A LAW ENFORCEMENT AGENCY.

3 (B) LIMITATION.--NOTHING IN THIS CHAPTER NOR THE RIGHT-TO-  
4 KNOW LAW SHALL ESTABLISH A RIGHT TO PRODUCTION OF AN AUDIO  
5 RECORDING OR VIDEO RECORDING MADE INSIDE A FACILITY OWNED OR  
6 OPERATED BY A LAW ENFORCEMENT AGENCY OR TO ANY COMMUNICATIONS  
7 BETWEEN OR WITHIN LAW ENFORCEMENT AGENCIES CONCERNING AN AUDIO  
8 OR VIDEO RECORDING.

9 § 67A03. Requests for law enforcement audio recordings or video  
10 recordings.

11 The following shall apply:

12 (1) An individual who requests an audio recording or  
13 video recording made by a law enforcement agency shall,  
14 within ~~20~~ 60 days of the date when the audio recording or <--  
15 video recording was made, serve a written request to the  
16 individual who is designated as the open-records officer for  
17 the law enforcement agency under section 502 of the act of  
18 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know  
19 Law. Service is effective upon receipt of the written request  
20 by the open-records officer FROM PERSONAL DELIVERY OR <--  
21 CERTIFIED MAIL WITH PROOF OF SERVICE.

22 (2) The request under paragraph (1) shall specify with  
23 particularity the incident or event that is the subject of  
24 the audio recording or video recording, including the date,  
25 time and location of the incident or event.

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

29 (4) If the incident or event that is the subject of the  
30 audio recording or video recording occurred inside a

1 residence, the request shall identify each individual who was  
2 present at the time of the audio recording or video recording  
3 UNLESS NOT KNOWN AND NOT REASONABLY ASCERTAINABLE. <--

4 § 67A04. Law enforcement review.

5 (a) Determination.--Except as provided in this section, if a  
6 law enforcement agency determines that an audio recording or  
7 video recording contains potential evidence in a criminal  
8 matter, information pertaining to an investigation or a matter  
9 in which a criminal charge has been filed, confidential  
10 information or victim information and the reasonable redaction  
11 of the audio or video recording would not safeguard potential  
12 evidence, information pertaining to an investigation,  
13 confidential information or victim information, the law  
14 enforcement agency shall deny the ~~determination~~ REQUEST in <--  
15 writing. The written denial shall state that ~~no~~ reasonable <--  
16 redaction of the audio recording or video recording will NOT <--  
17 safeguard potential evidence, information pertaining to an  
18 investigation, confidential information or victim information.  
19 ~~If an agreement under subsection (b) is in effect between the~~ <--  
20 ~~law enforcement agency and the Attorney General or the district~~  
21 ~~attorney with jurisdiction, the law enforcement agency shall~~  
22 ~~issue the written denial to the requester.~~

23 (b) Agreement.--A law enforcement agency may enter into a  
24 memorandum of understanding with the Attorney General or the  
25 ~~district attorney with jurisdiction to ensure consultation~~ <--  
26 ~~regarding the reviewing of audio recordings or video recordings~~  
27 ~~in order to make a determination or to~~ DISTRICT ATTORNEY WITH <--  
28 JURISDICTION TO:

29 (1) ENSURE CONSULTATION REGARDING THE REVIEWING OF AUDIO  
30 RECORDINGS OR VIDEO RECORDINGS IN ORDER TO MAKE A

1 DETERMINATION; OR

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

5 § 67A05. Procedure.

6 (a) Disclosure.--A law enforcement agency that receives a  
7 request under section 67A03 (relating to requests for law  
8 enforcement audio recordings or video recordings) for an audio  
9 recording or video recording shall provide the audio recording  
10 or video recording or identify in writing the basis for denying  
11 the request within 30 days of receiving the request, unless the  
12 requester and law enforcement agency agree to a longer time  
13 period. If an agreement under ~~subsection (b)~~ SECTION 67A04(B)(2) <--  
14 (RELATING TO LAW ENFORCEMENT REVIEW) is in effect between the  
15 law enforcement agency and the Attorney General or district  
16 attorney with jurisdiction, then an agreement to a longer time  
17 period must be between the requester and the Attorney General or  
18 district attorney with jurisdiction.

19 (b) Denials BY OPERATION OF LAW.--The request under section <--  
20 67A03 shall be deemed DENIED BY OPERATION OF LAW ~~denied~~ if the <--  
21 law enforcement agency does not provide the audio recording or  
22 video recording to the requester or explain why the request is  
23 denied within the time period specified or agreed to under  
24 subsection (a).

25 (c) Preservation.--A law enforcement agency that has  
26 received a request for an audio recording or video recording  
27 shall preserve the unaltered audio recording or video recording  
28 that has been requested for no less than the time periods  
29 provided in this chapter for service of and responses to written  
30 requests for the production of the audio recording or video



1 recording AND ANY PERIOD WITHIN WHICH A PETITION FOR JUDICIAL <--  
2 REVIEW IS ALLOWABLE OR PENDING.

3 (d) Fees.--A law enforcement agency may establish reasonable  
4 fees relating to the costs incurred to disclose audio recordings  
5 or video recordings. The fees shall be paid by the requesting  
6 party at the time of disclosure of the audio recording or video  
7 recording.

8 (e) Construction.--Nothing in this section shall be  
9 construed to prohibit a law enforcement agency from redacting an  
10 audio recording or video recording in order to protect potential  
11 evidence in a criminal matter, information pertaining to an  
12 investigation, confidential information or victim information.

13 § 67A06. Petition for ~~approval~~ JUDICIAL REVIEW. <--

14 (a) Petition.--

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

20 (2) The respondent to a petition filed under this  
21 section shall be the entity that denied the request for the  
22 audio recording or video recording under section 67A05(a)  
23 (relating to procedure) unless the request is denied under  
24 section 67A05(b), in which case the law enforcement agency  
25 that created the audio recording or video recording shall be  
26 the respondent.

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

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

30 (2) If the incident or event that is the subject of the

1 request occurred inside a residence, the petitioner shall  
2 certify that notice of the petition has been served or that  
3 service was attempted on each individual who was present at  
4 the time of the audio recording or video recording and on the  
5 owner and occupant of the residence. Notice shall not be  
6 required under this paragraph if the identity of an  
7 individual present or the location is unknown or AND not <--  
8 reasonably ascertainable by the petitioner. Service shall be  
9 effective upon receipt from personal delivery or certified  
10 mail WITH PROOF OF SERVICE. <--

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

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

20 ~~(4) The petitioner shall serve notice of the petition to~~ <--  
21 ~~ON THE OPEN RECORDS OFFICER OF the respondent on the same~~ <--  
22 ~~WITHIN FIVE DAYS OF THE date that the petitioner files the~~ <--  
23 ~~petition with the court of common pleas with jurisdiction.~~ <--

24 ~~(c) Intervention. If not the respondent named in the~~  
25 ~~petition for judicial review, the Attorney General or the~~  
26 ~~district attorney who provides certification under section~~  
27 ~~section 67A04(c) (relating to law enforcement review) may~~  
28 ~~intervene in a petition filed under this section as necessary~~  
29 ~~and appropriate., AND SERVICE SHALL BE EFFECTIVE UPON RECEIPT BY~~ <--  
30 ~~THE OPEN RECORDS OFFICER FOR PERSONAL DELIVERY OR CERTIFIED MAIL~~ <--

1 WITH PROOF OF SERVICE.

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

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

7 (1) the request to the law enforcement agency under  
8 section 67A03 or the filing of the petition under subsection  
9 (a) is untimely; ~~or~~ <--

10 (2) the request to the law enforcement agency failed to  
11 describe with sufficient particularity the incident or event  
12 that is the subject of the audio recording or video  
13 recording, including the date, time and location of the  
14 incident or event-; OR <--

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

17 (e) Approval.--A court of common pleas with jurisdiction may  
18 only grant a petition under this section, in whole or in part, <--  
19 and order the disclosure of the audio recording or video  
20 recording ONLY if the court ~~of common pleas~~ determines that the <--  
21 petitioner has established all of the following by a  
22 preponderance of the evidence:

23 (1) The request was not denied under section 67A04  
24 (RELATING TO LAW ENFORCEMENT REVIEW) or the request was <--  
25 denied under section 67A04 and the court of common pleas with  
26 jurisdiction determines that the denial was arbitrary and  
27 capricious.

28 (2) The public interest in disclosure of the audio  
29 recording or video recording or the interest of the  
30 petitioner outweighs the interests of the Commonwealth, the

1 law enforcement agency or an individual's interest in  
2 nondisclosure. In making a determination under this  
3 paragraph, the court of common pleas may consider the  
4 public's interest in understanding how law enforcement  
5 officers interact with the public, the interests of crime  
6 victims, law enforcement and others with respect to safety  
7 and privacy and the resources available to review and  
8 disclose the audio recording or video recording.

9 § 67A07. Audio recording or video recording policies.

10 (a) Policies.--A municipal law enforcement agency or sheriff  
11 that makes audio recordings or video recordings OF <--  
12 COMMUNICATIONS UNDER CIRCUMSTANCES WITHIN PARAGRAPH (2) OF THE  
13 DEFINITION OF "ORAL COMMUNICATION" IN 18 PA.C.S. § 5702  
14 (RELATING TO DEFINITIONS) shall comply with the guidelines  
15 established under 18 Pa.C.S. § 5706(b)(4), (5) and (6) (relating  
16 to exceptions to prohibitions in possession, sale, distribution,  
17 manufacture or advertisement of electronic, mechanical or other  
18 devices) and shall establish written policies, WHICH SHALL BE <--  
19 PUBLIC, for the following:

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

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

25 (3) The proper use, maintenance and storage of the  
26 electronic, mechanical or other device to make audio  
27 recordings or video recordings, including equipment  
28 inspections and audits and procedures to address  
29 malfunctioning equipment.

30 (4) The information collected from audio recordings or

1 video recordings, including the information's storage,  
2 accessibility and retrieval.

3 (5) Electronic records retention.

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

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

7 (8) Supervisory responsibilities.

8 (b) Pennsylvania Commission on Crime and Delinquency.--The  
9 Pennsylvania Commission on Crime and Delinquency is authorized  
10 to condition funding or a grant related to the implementation,  
11 use, maintenance or storage of body worn cameras or recordings  
12 from body worn cameras on the following:

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

16 (2) Requiring that such a protocol, guidelines or  
17 written policies are publicly accessible, including being  
18 retrievable on a municipal website.

19 (3) Ensuring that the protocol, guidelines, or written  
20 policies substantially comply with applicable recommendations  
21 by the commission.

22 § 67A08. Construction.

23 The following shall apply:

24 (1) Nothing in this chapter shall be construed to alter  
25 the responsibilities of parties to any criminal or civil  
26 litigation to exchange information in accordance with  
27 applicable rules of procedure.

28 (2) Nothing in this chapter shall be construed to  
29 preclude the Attorney General, OR a district attorney or a <--  
30 law enforcement agency A PROSECUTING ATTORNEY WITH <--

1 JURISDICTION OR A LAW ENFORCEMENT AGENCY from disclosing an  
2 audio recording or video recording in the absence of a  
3 written request or beyond the time periods stated in this <--  
4 chapter, but the Attorney THE TIME PERIODS STATED IN THIS  
5 CHAPTER.

6 (3) ATTORNEY General or the district attorney THE <--  
7 PROSECUTING ATTORNEY with jurisdiction must agree IN WRITING <--  
8 to the disclosure in writing BY A LAW ENFORCEMENT AGENCY if <--  
9 THE PROSECUTING ATTORNEY DETERMINES THAT: <--

10 (i) the audio recording or video recording contains  
11 potential evidence in a criminal matter, information  
12 pertaining to an investigation, confidential information  
13 or victim information; and

14 (ii) reasonable redaction of the audio recording or  
15 video recording will not safeguard the potential  
16 evidence, information pertaining to an investigation,  
17 confidential information or victim information.

18 § 67A09. Applicability.

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

21 THE FOLLOWING SHALL APPLY: <--

22 (1) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO ALTER  
23 THE RESPONSIBILITIES OF PARTIES TO CRIMINAL OR CIVIL  
24 LITIGATION TO PRODUCE INFORMATION IN ACCORDANCE WITH THE  
25 APPLICABLE RULES OF PROCEDURE.

26 (2) NOTHING IN THIS CHAPTER SHALL APPLY TO AN AUDIO  
27 RECORDING OR VIDEO RECORDING THAT IS OTHERWISE PROHIBITED OR  
28 PROTECTED FROM DISCLOSURE UNDER ANY OTHER FEDERAL OR STATE  
29 LAW.

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