

AMENDMENTS TO SENATE BILL NO. 976

Sponsor: SENATOR GREENLEAF

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1 Amend Bill, page 1, line 1, by striking out "Title" and

2 inserting

3 Titles

4 Amend Bill, page 1, line 1, by inserting after "Offenses)"

5 and 42 (Judiciary and Judicial Procedure)

6 Amend Bill, page 1, line 3, by striking out "and" and

7 inserting a comma

8 Amend Bill, page 1, line 5, by striking out the period after

9 "communications" and inserting

10 and for exceptions to prohibitions in possession, sale,
11 distribution, manufacture or advertisement of electronic,
12 mechanical or other devices; and providing for recordings by
13 law enforcement officers.

14 Amend Bill, page 1, lines 13 through 19; pages 2 through 9,
15 lines 1 through 30; page 10, lines 1 through 21; by striking out
16 all of said lines on said pages and inserting

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

20 § 5702. Definitions.

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

24 * * *

25 "Oral communication." As follows:

26 (1) Any oral communication uttered by a person
27 possessing an expectation that such communication is not
28 subject to interception under circumstances justifying such
29 expectation. The term does not include any electronic
30 communication[.] or a communication made in the presence of a

1 law enforcement officer on official duty who is in uniform or
2 otherwise clearly identifiable as a law enforcement officer
3 and who is using an electronic, mechanical or other device
4 which has been approved under section 5706(b)(4) (relating to
5 exceptions to prohibitions in possession, sale, distribution,
6 manufacture or advertisement of electronic, mechanical or
7 other devices) to intercept the oral communication in the
8 course of law enforcement duties.

9 (2) For purposes of this definition, a law enforcement
10 officer means a member of the Pennsylvania State Police or an
11 individual employed as a police officer who holds a current
12 certificate under 53 Pa.C.S. Ch. 21 Subch. D (relating to
13 municipal police education and training).

14 * * *

15 Section 2. Sections 5704(13), (14) and (16) and 5706(b)(4)
16 of Title 18 are amended to read:

17 § 5704. Exceptions to prohibition of interception and
18 disclosure of communications.

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

21 * * *

22 (13) An investigative officer, a law enforcement officer
23 or employees of the Department of Corrections for State
24 correctional facilities to intercept, record, monitor or
25 divulge any [telephone calls] oral, electronic or wire
26 communication from or to an inmate in a facility under the
27 following conditions:

28 (i) The Department of Corrections shall adhere to
29 the following procedures and restrictions when
30 intercepting, recording, monitoring or divulging any
31 [telephone calls] oral, electronic or wire communication
32 from or to an inmate in a State correctional facility as
33 provided for by this paragraph:

34 (A) Before the implementation of this paragraph,
35 all inmates of the facility shall be notified in
36 writing that, as of the effective date of this
37 paragraph, their [telephone conversations] oral,
38 electronic or wire communications may be intercepted,
39 recorded, monitored or divulged.

40 (B) Unless otherwise provided for in this
41 paragraph, after intercepting or recording [a
42 telephone conversation] any oral, electronic or wire
43 communication, only the superintendent, warden or a
44 designee of the superintendent or warden or other
45 chief administrative official or his or her designee,
46 or law enforcement officers shall have access to that
47 recording.

48 (C) The contents of an intercepted and recorded
49 [telephone conversation] oral, electronic or wire
50 communication shall be divulged only as is necessary
51 to safeguard the orderly operation of the facility,

1 in response to a court order or in the prosecution or
2 investigation of any crime.

3 (ii) So as to safeguard the attorney-client
4 privilege, the Department of Corrections shall not
5 intercept, record, monitor or divulge any [conversation]
6 oral, electronic or wire communication between an inmate
7 and an attorney.

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

16 (iv) The Department of Corrections shall promulgate
17 guidelines to implement the provisions of this paragraph
18 for State correctional facilities.

19 (14) An investigative officer, a law enforcement officer
20 or employees of a county correctional facility to intercept,
21 record, monitor or divulge any [telephone calls] oral,
22 electronic or wire communication from or to an inmate in a
23 facility under the following conditions:

24 (i) The county correctional facility shall adhere to
25 the following procedures and restrictions when
26 intercepting, recording, monitoring or divulging any
27 [telephone calls] oral, electronic or wire communication
28 from or to an inmate in a county correctional facility as
29 provided for by this paragraph:

30 (A) Before the implementation of this paragraph,
31 all inmates of the facility shall be notified in
32 writing that, as of the effective date of this
33 paragraph, their [telephone conversations] oral,
34 electronic or wire communications may be intercepted,
35 recorded, monitored or divulged.

36 (B) Unless otherwise provided for in this
37 paragraph, after intercepting or recording [a
38 telephone conversation] any oral, electronic or wire
39 communication, only the superintendent, warden or a
40 designee of the superintendent or warden or other
41 chief administrative official or his or her designee,
42 or law enforcement officers shall have access to that
43 recording.

44 (C) The contents of an intercepted and recorded
45 [telephone conversation] oral, electronic or wire
46 communication shall be divulged only as is necessary
47 to safeguard the orderly operation of the facility,
48 in response to a court order or in the prosecution or
49 investigation of any crime.

50 (ii) So as to safeguard the attorney-client
51 privilege, the county correctional facility shall not

1 intercept, record, monitor or divulge any [conversation]
2 oral, electronic or wire communication between an inmate
3 and an attorney.

4 (iii) [Persons who are calling into a facility to
5 speak to an inmate shall be notified that the call may be
6 recorded or monitored.] Persons who are engaging in an
7 oral or wire communication with an inmate shall be
8 notified that the communication may be recorded or
9 monitored. Notice may be provided by any means reasonably
10 designed to inform the non-inmate party to the
11 communication of the recording or monitoring.

12 (iv) The superintendent, warden or a designee of the
13 superintendent or warden or other chief administrative
14 official of the county correctional system shall
15 promulgate guidelines to implement the provisions of this
16 paragraph for county correctional facilities.

17 * * *

18 [(16) A law enforcement officer, whether or not
19 certified under section 5724 (relating to training), acting
20 in the performance of his official duties to intercept and
21 record an oral communication between individuals in
22 accordance with the following:

23 (i) At the time of the interception, the oral
24 communication does not occur inside the residence of any
25 of the individuals.

26 (ii) At the time of the interception, the law
27 enforcement officer:

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

30 (B) is in close proximity to the individuals'
31 oral communication;

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

34 (4) (relating to exceptions to prohibitions in
35 possession, sale, distribution, manufacture or
36 advertisement of electronic, mechanical or other
37 devices) to intercept the oral communication; and

38 (D) informs, as soon as reasonably practicable,
39 the individuals identifiably present that he has
40 intercepted and recorded the oral communication.

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

47 * * *

48 § 5706. Exceptions to prohibitions in possession, sale,
49 distribution, manufacture or advertisement of
50 electronic, mechanical or other devices.

51 * * *

1 (b) Responsibility.--

2 * * *

3 (4) The Pennsylvania State Police shall annually
4 establish equipment standards for any electronic, mechanical
5 or other device which is to be used by law enforcement
6 officers [for purposes of interception as authorized under
7 section 5704(16).] to record communications made in the
8 presence of a law enforcement officer that are excepted from
9 the definition of "oral communication" in section 5702
10 (relating to definitions). The equipment standards shall be
11 published annually in the Pennsylvania Bulletin.

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

13 CHAPTER 67

14 RECORDINGS BY LAW ENFORCEMENT OFFICERS

15 Sec.

16 6701. Definitions.

17 6702. Production of an audio or video recording.

18 6703. Procedure for requesting production of a law enforcement
19 audio or video recording.

20 § 6701. Definitions.

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

24 "Audio or video recording pertaining to an investigation."
25 An audio or video recording pertains to an investigation if it
26 includes:

27 (1) Complaints of potential criminal conduct.

28 (2) The identity of a confidential source or the
29 identity of a suspect who has not been charged with an
30 offense to whom confidentiality has been promised.

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

32 (4) Victim information, including any information that
33 would jeopardize the safety of the victim.

34 (5) Information that would, if disclosed, do any of the
35 following:

36 (i) Reveal the institution, progress or result of a
37 criminal investigation, except for the filing of criminal
38 charges.

39 (ii) Deprive an individual of the right to a fair
40 trial or an impartial adjudication.

41 (iii) Impair the ability of a law enforcement
42 officer, a district attorney or the Attorney General to
43 locate a defendant or codefendant.

44 (iv) Hinder a law enforcement officer's, a district
45 attorney's or the Attorney General's ability to secure an
46 arrest, prosecution or conviction.

47 (v) Endanger the life or physical safety of an
48 individual.

49 "Law enforcement officer." A member of the Pennsylvania
50 State Police or an individual employed as a police officer who
51 holds a current certificate under 53 Pa.C.S. Ch. 21 Subch. D

1 (relating to municipal police education and training).

2 § 6702. Production of an audio or video recording.

3 An audio or video recording by a law enforcement officer
4 shall not be subject to production under the act of February 14,
5 2008 (P.L.6, No.3), known as the Right-to-Know Law.

6 § 6703. Procedure for requesting production of a law
7 enforcement audio or video recording.

8 (a) Written request.--A party seeking production of an audio
9 or video recording made by a law enforcement officer shall,
10 within 14 days of the date on which the audio or video recording
11 was made, serve a written request on the person who is
12 designated as the Right-to-Know officer under the act of
13 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law,
14 for the law enforcement agency that employs the law enforcement
15 officer that made the audio or video recording. The following
16 shall apply:

17 (1) The written request must identify with particularity
18 an incident or event that is the subject of the audio or
19 video recording, including the date, time and location of the
20 incident or event.

21 (2) The written request must identify each individual
22 who was present at the time of the audio or video recording
23 or, if the identity of an individual is unknown, describe the
24 individual.

25 (3) If the audio or video recording has been identified
26 by the law enforcement agency as potential evidence in a
27 criminal matter, the law enforcement agency shall notify the
28 appropriate district attorney or the Attorney General, who
29 shall be permitted to certify that the audio or video
30 recording pertains to an investigation.

31 (4) It shall be grounds for denial of the written
32 request if the district attorney or Attorney General
33 certifies that the audio or video recording pertains to an
34 investigation.

35 (5) A law enforcement agency may establish reasonable
36 fees relating to the costs incurred to disclose audio or
37 video recordings. The fees shall be paid by the requesting
38 party at the time of disclosure of the audio or video
39 recording.

40 (b) Petition.--A party seeking production of an audio or
41 video recording made by a law enforcement officer may, within 14
42 days of the date on which the written request was denied or
43 deemed to be denied by the law enforcement agency, file a
44 petition in the court of common pleas having jurisdiction of the
45 matter. The following shall apply:

46 (1) The petitioner shall pay a filing fee of \$250.

47 (2) The petitioner shall certify that notice of the
48 petition has been served or that service was attempted on
49 each individual who was present at the time of the audio or
50 video recording and, if the requested audio or video
51 recording was made inside a structure, the owner and occupant

1 of the structure.

2 (3) The petition shall include a copy of the written
3 request that was served on the law enforcement agency and any
4 written response by the law enforcement agency to the
5 request.

6 (c) Summary dismissal.--It shall be grounds for summary
7 dismissal of the petition under subsection (b) if any of the
8 following apply:

9 (1) The written request to the law enforcement agency or
10 the filing of the petition was untimely.

11 (2) The written request to the law enforcement agency
12 failed to describe with sufficient particularity the incident
13 or event that is the subject of the audio or video recording,
14 including the date, time and location of the incident or
15 event.

16 (3) The district attorney or Attorney General certified
17 in response to the written request that the audio or video
18 recording pertains to an investigation.

19 (d) Order.--

20 (1) The court may grant the petition under subsection
21 (b), in whole or in part, and order disclosure of the audio
22 or video recording if the court determines that the
23 petitioner has established all of the following by a
24 preponderance of the evidence:

25 (i) Neither the district attorney nor the Attorney
26 General has certified that the audio or video recording
27 pertains to an investigation.

28 (ii) Disclosure of the audio or video recording
29 would be permissible under the Right-to-Know Law.

30 (iii) The public interest in disclosure outweighs
31 the interests of the law enforcement agency, the
32 Commonwealth or any individual's interest in
33 nondisclosure.

34 (2) When making a determination under paragraph (1)
35 (iii), the court may consider the public's interest in
36 understanding how law enforcement officers interact with the
37 public, the interests of crime victims and others in safety
38 and privacy and the resources available to review and
39 disclose audio or video recordings.

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