

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 THIRD CONSIDERATION, MAY 9, 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 providing for recordings by law
9 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
21 person possessing an expectation that such communication is not

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

4 (1) An electronic communication.

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

15 * * *

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

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

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

22 * * *

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

29 (i) The Department of Corrections shall adhere to
30 the following procedures and restrictions when

1 intercepting, recording, monitoring or divulging any
2 [telephone calls] oral communication, electronic
3 communication or wire communication from or to an inmate
4 in a State correctional facility as provided for by this
5 paragraph:

6 (A) Before the implementation of this paragraph,
7 all inmates of the facility shall be notified in
8 writing that, as of the effective date of this
9 paragraph, their [telephone conversations] oral
10 communication, electronic communication or wire
11 communication may be intercepted, recorded, monitored
12 or divulged.

13 (B) Unless otherwise provided for in this
14 paragraph, after intercepting or recording [a
15 telephone conversation] an oral communication,
16 electronic communication or wire communication, only
17 the superintendent, warden or a designee of the
18 superintendent or warden or other chief
19 administrative official or his or her designee, or
20 law enforcement officers shall have access to that
21 recording.

22 (C) The contents of an intercepted and recorded
23 [telephone conversation] oral communication,
24 electronic communication or wire communication shall
25 be divulged only as is necessary to safeguard the
26 orderly operation of the facility, in response to a
27 court order or in the prosecution or investigation of
28 any crime.

29 (ii) So as to safeguard the attorney-client
30 privilege, the Department of Corrections shall not

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

4 (iii) [Persons who are calling in to 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 communication, electronic communication or wire
8 communication with an inmate shall be notified that the
9 communication may be recorded or monitored. Notice may be
10 provided by any means reasonably designed to inform the
11 non-inmate party of the recording or monitoring.

12 (iv) The Department of Corrections shall promulgate
13 guidelines to implement the provisions of this paragraph
14 for State correctional facilities.

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

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

28 (A) Before the implementation of this paragraph,
29 all inmates of the facility shall be notified in
30 writing that, as of the effective date of this

1 paragraph, their [telephone conversations] oral
2 communications, electronic communications or wire
3 communications may be intercepted, recorded,
4 monitored or divulged.

5 (B) Unless otherwise provided for in this
6 paragraph, after intercepting or recording [a
7 telephone conversation] an oral communication,
8 electronic communication or wire communication, only
9 the superintendent, warden or a designee of the
10 superintendent or warden or other chief
11 administrative official or his or her designee, or
12 law enforcement officers shall have access to that
13 recording.

14 (C) The contents of an intercepted and recorded
15 [telephone conversation] oral communication,
16 electronic communication or wire communication shall
17 be divulged only as is necessary to safeguard the
18 orderly operation of the facility, in response to a
19 court order or in the prosecution or investigation of
20 any crime.

21 (ii) So as to safeguard the attorney-client
22 privilege, the county correctional facility shall not
23 intercept, record, monitor or divulge [any conversation]
24 an oral communication, electronic communication or wire
25 communication between an inmate and an attorney.

26 (iii) [Persons who are calling into a facility to
27 speak to an inmate shall be notified that the call may be
28 recorded or monitored.] Persons who are engaging in an
29 oral communication, electronic communication or wire
30 communication with an inmate shall be notified that the

1 communication may be recorded or monitored. Notice may be
2 provided by any means reasonably designed to inform the
3 non-inmate party of the recording or monitoring.

4 (iv) The superintendent, warden or a designee of the
5 superintendent or warden or other chief administrative
6 official of the county correctional system shall
7 promulgate guidelines to implement the provisions of this
8 paragraph for county correctional facilities.

9 * * *

10 [(16) A law enforcement officer, whether or not
11 certified under section 5724 (relating to training), acting
12 in the performance of his official duties to intercept and
13 record an oral communication between individuals in
14 accordance with the following:

15 (i) At the time of the interception, the oral
16 communication does not occur inside the residence of any
17 of the individuals.

18 (ii) At the time of the interception, the law
19 enforcement officer:

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

22 (B) is in close proximity to the individuals'
23 oral communication;

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

26 (4) (relating to exceptions to prohibitions in
27 possession, sale, distribution, manufacture or
28 advertisement of electronic, mechanical or other
29 devices) to intercept the oral communication; and

30 (D) informs, as soon as reasonably practicable,

1 the individuals identifiably present that he has
2 intercepted and recorded the oral communication.

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

9 * * *

10 § 5706. Exceptions to prohibitions in possession, sale,
11 distribution, manufacture or advertisement of
12 electronic, mechanical or other devices.

13 * * *

14 (b) Responsibility.--

15 (1) Except as provided under paragraph (2), the Attorney
16 General and the district attorney or their designees so
17 designated in writing shall have the sole responsibility to
18 buy, possess and loan any electronic, mechanical or other
19 device which is to be used by investigative or law
20 enforcement officers for purposes of interception as
21 authorized under section 5704(2), (5) and (12) (relating to
22 exceptions to prohibition of interception and disclosure of
23 communications), 5712 (relating to issuance of order and
24 effect), 5713 (relating to emergency situations) or 5713.1
25 (relating to emergency hostage and barricade situations).

26 (2) The division or bureau or section of the
27 Pennsylvania State Police responsible for conducting the
28 training in the technical aspects of wiretapping and
29 electronic surveillance as required by section 5724 (relating
30 to training) may buy and possess any electronic, mechanical

1 or other device which is to be used by investigative or law
2 enforcement officers for purposes of interception as
3 authorized under section 5704(2), (5) and (12), 5712, 5713 or
4 5713.1 for the purpose of training. However, any electronic,
5 mechanical or other device bought or possessed under this
6 provision may be loaned to or used by investigative or law
7 enforcement officers for purposes of interception as
8 authorized under section 5704(2), (5) and (12), 5712, 5713 or
9 5713.1 only upon written approval by the Attorney General or
10 a deputy attorney general designated in writing by the
11 Attorney General or the district attorney or an assistant
12 district attorney designated in writing by the district
13 attorney of the county wherein the suspected criminal
14 activity has been, is or is about to occur.

15 (3) With the permission of the Attorney General or a
16 district attorney who has designated any supervising law
17 enforcement officer for purposes of interceptions as
18 authorized under section 5713.1, the law enforcement agency
19 which employs the supervising law enforcement officer may
20 buy, possess, loan or borrow any electronic, mechanical or
21 other device which is to be used by investigative or law
22 enforcement officers at the direction of the supervising law
23 enforcement officer solely for the purpose of interception as
24 authorized under sections 5704(12) and 5713.1.

25 (4) The Pennsylvania State Police shall annually
26 establish equipment standards for any electronic, mechanical
27 or other device which is to be used by law enforcement
28 officers for purposes of [interception as authorized under
29 section 5704(16).] recording a communication, other than an
30 oral communication, made in the presence of the law

1 enforcement officer on official duty who is in uniform or
2 otherwise clearly identifiable as a law enforcement officer.
3 The equipment standards shall be published annually in the
4 Pennsylvania Bulletin.

5 (5) The Pennsylvania State Police shall annually
6 establish and publish standards in the Pennsylvania Bulletin
7 for the secure onsite and offsite storage of an audio
8 recording or video recording made in accordance with
9 paragraph (4). The standards shall comply with the Federal
10 Bureau of Investigation's Criminal Justice Information
11 Services (CJIS) Security Policy.

12 (6) A vendor to law enforcement agencies which stores
13 data related to audio recordings and video recordings shall,
14 at a minimum, comply with the standards set forth by the
15 Pennsylvania State Police under paragraphs (4) and (5). Law
16 enforcement agencies under contract with a vendor for the
17 storage of data before the effective date of this paragraph
18 shall comply with paragraphs (4) and (5) and this paragraph
19 upon expiration or renewal of the contract

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

21 CHAPTER 67A

22 RECORDINGS BY LAW ENFORCEMENT OFFICERS

23 Sec.

24 67A01. Definitions.

25 67A02. Scope of chapter.

26 67A03. Requests for law enforcement audio recordings or video
27 recordings.

28 ~~67A04. Potential evidence in a criminal matter~~ LAW ENFORCEMENT <--
29 REVIEW.

30 ~~67A05. Duties of law enforcement agencies~~ PROCEDURE. <--

1 67A06. Petition for approval.

2 67A07. Audio recording or video recording policies.

3 67A08. Construction.

4 67A09. Applicability.

5 § 67A01. Definitions.

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

9 "Confidential information." Any of the following:

10 (1) The identity of a confidential source.

11 (2) The identity of a suspect or witness to whom
12 confidentiality has been ~~ensured~~ ASSURED. <--

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

14 "Information pertaining to an investigation." An audio
15 recording or video recording which contains any of the
16 following:

17 (1) Complaints or depictions of criminal conduct,
18 including all actions or statements made before or after the
19 criminal conduct that are part of or relate to the same
20 incident or occurrence.

21 (2) Upon disclosure, information that would:

22 (i) reveal the institution, progress or result of a
23 criminal investigation;

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

26 (iii) impair the ability of the Attorney General, a
27 district attorney or a law enforcement officer to locate
28 a defendant or codefendant;

29 (iv) hinder the ability of the Attorney General, a
30 district attorney or a law enforcement officer to secure

1 an arrest, prosecution or conviction; or
2 (v) endanger the life or physical safety of an
3 individual.

4 "Law enforcement agency." ~~An~~ THE OFFICE OF ATTORNEY GENERAL, <--
5 A DISTRICT ATTORNEY'S OFFICE OR AN agency that employs a law
6 enforcement officer.

7 "LAW ENFORCEMENT OFFICER." AN OFFICER OF THE UNITED STATES, <--
8 THE COMMONWEALTH OR A POLITICAL SUBDIVISION THEREOF, ANOTHER
9 STATE OR POLITICAL SUBDIVISION THEREOF OR WHO IS EMPOWERED BY
10 LAW TO CONDUCT INVESTIGATIONS OF OR TO MAKE ARRESTS FOR OFFENSES
11 ENUMERATED IN THIS CHAPTER OR AN EQUIVALENT CRIME IN ANOTHER
12 JURISDICTION, A SHERIFF OR DEPUTY SHERIFF AND ANY ATTORNEY
13 AUTHORIZED BY LAW TO PROSECUTE OR PARTICIPATE IN THE PROSECUTION
14 OF THE OFFENSE.

15 "Victim." An individual who ~~resides in this Commonwealth and~~ <--
16 was subjected to an act that was committed by another
17 individual, including a juvenile, which constitutes any of the
18 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 ~~Except as otherwise provided under this chapter, the THE act~~ <--
22 ~~of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know~~
23 ~~Law, shall not apply to an audio recording or a video recording~~
24 ~~by a law enforcement officer under this chapter, including~~
25 ~~communications between a law enforcement agency and the Attorney~~
26 ~~General or the district attorney with jurisdiction. An audio~~
27 ~~recording or video recording under this chapter made inside of a~~ <--
28 ~~facility owned or operated by a law enforcement agency shall not~~
29 ~~be subject to public requests and shall be produced to the~~ <--
30 ~~public at the discretion of the Attorney General, the district~~

1 ~~attorney with jurisdiction or the law enforcement~~
2 ~~agency. Nothing in this section shall be construed to alter the~~
3 ~~responsibilities of parties to criminal or civil litigation to~~
4 ~~exchange information in accordance with the applicable rules of~~
5 ~~procedure.~~

6 § 67A03. Requests for law enforcement audio recordings or video
7 recordings.

8 The following shall apply:

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

18 (2) The request UNDER PARAGRAPH (1) shall specify with <--
19 particularity the incident or event that is the subject of
20 the audio recording or video recording, including the date,
21 time and location of the incident or event.

22 (3) THE REQUEST SHALL INCLUDE A STATEMENT DESCRIBING THE <--
23 REQUESTER'S RELATIONSHIP TO THE INCIDENT OR EVENT THAT IS THE
24 SUBJECT OF THE AUDIO OR VIDEO RECORDING.

25 ~~(3)~~ (4) If the incident or event that is the subject of <--
26 the audio recording or video recording occurred inside a
27 residence, the request shall ~~specify~~ IDENTIFY each individual <--
28 who was present at the time of the audio recording or video
29 recording or, if the identify of an individual is unknown, <--
30 describe the individual.

1 ~~§ 67A04. Potential evidence in a criminal matter LAW~~ <--
2 ~~ENFORCEMENT REVIEW.~~

3 ~~(a) Notice.--If DETERMINATION.--EXCEPT AS PROVIDED IN THIS~~ <--
4 ~~SECTION, IF a law enforcement agency determines that an audio~~
5 ~~recording or video recording contains potential evidence in a~~
6 ~~criminal matter, information pertaining to a criminal AN~~ <--
7 ~~investigation or a matter in which a criminal charge has been~~
8 ~~filed, confidential information or victim information AND THE~~ <--
9 ~~REASONABLE REDACTION OF THE AUDIO OR VIDEO RECORDING WOULD NOT~~
10 ~~SAFEGUARD POTENTIAL EVIDENCE, INFORMATION PERTAINING TO AN~~
11 ~~INVESTIGATION, CONFIDENTIAL INFORMATION OR VICTIM INFORMATION,~~
12 ~~the law enforcement agency shall certify DENY the determination~~ <--
13 ~~in writing. The written certification DENIAL shall state that no~~ <--
14 ~~REASONABLE redaction of the audio recording or video recording~~ <--
15 ~~will safeguard potential evidence, information pertaining to an~~
16 ~~investigation, confidential information or victim information.~~
17 ~~If a memorandum of understanding AN AGREEMENT under subsection~~ <--
18 ~~(b) is in effect between the law enforcement agency and the~~
19 ~~Attorney General or the district attorney with jurisdiction, the~~
20 ~~law enforcement agency shall provide the written certification~~ <--
21 ~~to the Attorney General or the district attorney with~~
22 ~~jurisdiction~~ 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 under subsection (c). OR TO~~ <--
28 ~~REQUIRE THE ATTORNEY GENERAL OR DISTRICT ATTORNEY WITH~~
29 ~~JURISDICTION TO ISSUE A DENIAL PERMITTED UNDER SUBSECTION (A).~~

30 ~~(c) Certification. The Attorney General or the district~~ <--

1 ~~attorney with jurisdiction may, after receiving the written~~
2 ~~certification under subsection (a), make a determination that a~~
3 ~~recording requested under section 67A03 (relating to requests~~
4 ~~for law enforcement audio recordings or video recordings)~~
5 ~~contains potential evidence in a criminal matter, information~~
6 ~~pertaining to an investigation, confidential information or~~
7 ~~victim information and that no redaction of the recording will~~
8 ~~safeguard the potential evidence, information pertaining to an~~
9 ~~investigation, confidential information or victim information.~~

10 ~~(d) Grounds for denial. A request under section 67A03 shall~~
11 ~~be denied if the Attorney General or the district attorney with~~
12 ~~jurisdiction makes a determination under subsection (c).~~

13 ~~§ 67A05. Duties of law enforcement agencies PROCEDURE.~~ <--

14 ~~(a) Disclosure.--A law enforcement agency that receives a~~
15 ~~request under section 67A03 (relating to requests for law~~
16 ~~enforcement audio recordings or video recordings) for an audio~~
17 ~~recording or video recording shall provide the audio recording~~
18 ~~or video recording or explain why the request is denied IDENTIFY <--~~
19 ~~IN WRITING THE BASIS FOR DENYING THE REQUEST within 60 30 days <--~~
20 ~~of receiving the request, unless the requester and law~~
21 ~~enforcement agency agree to a longer time period. IF AN <--~~
22 ~~AGREEMENT UNDER SUBSECTION (B) IS IN EFFECT BETWEEN THE LAW~~
23 ~~ENFORCEMENT AGENCY AND THE ATTORNEY GENERAL OR DISTRICT ATTORNEY~~
24 ~~WITH JURISDICTION, THEN AN AGREEMENT TO A LONGER TIME PERIOD~~
25 ~~MUST BE BETWEEN THE REQUESTER AND THE ATTORNEY GENERAL OR~~
26 ~~DISTRICT ATTORNEY WITH JURISDICTION.~~

27 ~~(b) Denials.--The request under section 67A03 shall be~~
28 ~~considered DEEMED denied if the law enforcement agency does not <--~~
29 ~~provide the audio recording or video recording to the requester~~
30 ~~or explain why the request is denied within the time period~~

1 specified or agreed to under subsection (a).

2 (c) Preservation.--A law enforcement agency that has
3 received a request for an audio recording or video recording
4 shall preserve the unaltered audio recording or video recording
5 that has been requested for no less than the time periods
6 provided in this chapter for service of and responses to written
7 requests for the production of the audio recording or video
8 recording.

9 (d) Fees.--A law enforcement agency may establish reasonable
10 fees relating to the costs incurred to disclose audio recordings
11 or video recordings. The fees shall be paid by the requesting
12 party at the time of disclosure of the audio recording or video
13 recording.

14 (e) Construction.--Nothing in this section shall be
15 construed to prohibit a law enforcement agency from redacting an
16 audio recording or video recording in order to protect potential
17 evidence in a criminal matter, information pertaining to an
18 investigation, confidential information or victim information.
19 § 67A06. Petition for approval.

20 (a) Petition.--

21 (1) If a request under section 67A03 (relating to
22 requests for law enforcement audio recordings or video
23 recordings) is denied, the requester may file a petition FOR <--
24 JUDICIAL REVIEW in the court of common pleas with
25 jurisdiction within 30 days of the date of denial.

26 (2) The respondent to a petition filed under this
27 section shall be the entity that denied the request for the
28 audio recording or video recording under section 67A05(a)
29 (relating to ~~duties of law enforcement agencies~~ PROCEDURE) <--
30 unless the request is denied under section 67A05(b), in which

1 case the law enforcement agency that created the audio
2 recording or video recording shall be the respondent.

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

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

6 (2) If the incident or event that is the subject of the
7 request occurred inside a residence, the petitioner shall
8 certify that notice of the petition has been served or that
9 service was attempted on each individual who was present at
10 the time of the audio recording or video recording and on the
11 owner and occupant of the residence. Notice shall not be
12 required under this paragraph if the identity of an
13 individual present or the location is unknown or not
14 reasonably ascertainable by the petitioner. Service shall be
15 effective upon receipt from personal delivery or certified
16 mail.

17 (3) The petitioner shall include with the petition a
18 copy of the written request under section 67A03 that was
19 served on the law enforcement agency and any written response
20 by the law enforcement agency OR ATTORNEY GENERAL OR DISTRICT <--
21 ATTORNEY WITH JURISDICTION to the request.

22 (4) The petitioner shall serve notice of the petition to
23 the respondent on the same date that the petitioner files the
24 petition with the court of common pleas with jurisdiction.

25 (c) Intervention.--~~The~~ IF NOT THE RESPONDENT NAMED IN THE <--
26 PETITION FOR JUDICIAL REVIEW, THE Attorney General or the
27 district attorney who provides certification under section
28 section 67A04(c) (relating to ~~potential evidence in a criminal~~ <--
29 matter LAW ENFORCEMENT REVIEW) may intervene in a petition filed <--
30 under this section as necessary and appropriate.

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

3 (1) the request to the law enforcement agency under
4 section 67A03 or the filing of the petition under subsection
5 (a) is untimely; or

6 (2) the request to the law enforcement agency failed to
7 describe with sufficient particularity the incident or event
8 that is the subject of the audio recording or video
9 recording, including the date, time and location of the
10 incident or event.

11 (e) Approval.--A court of common pleas with jurisdiction may
12 only grant a petition under this section, in whole or in part,
13 and order the disclosure of the audio recording or video
14 recording if the court of common pleas determines that the
15 petitioner has established all of the following by a
16 preponderance of the evidence:

17 (1) The request was not denied under section 67A04 or
18 the request was denied under section 67A04 and the court of
19 common pleas with jurisdiction determines, ~~with deference~~ <--
20 ~~given to the entity that made the certification under section~~
21 ~~67A04,~~ that the denial was arbitrary and capricious.

22 (2) The public interest ~~of disclosing~~ IN DISCLOSURE OF <--
23 the audio recording or video recording or the interest of the
24 petitioner outweighs the interests of the Commonwealth, the
25 law enforcement agency or an individual's interest in
26 nondisclosure. In making a determination under this
27 paragraph, the court of common pleas may consider the
28 public's interest in understanding how law enforcement
29 officers interact with the public, the interests of crime
30 victims, LAW ENFORCEMENT and others with respect to safety <--

1 and privacy and the resources available to review and
2 disclose the audio recording or video recording.

3 § 67A07. Audio recording or video recording policies.

4 (a) Policies.--A municipal law enforcement agency OR SHERIFF <--
5 that makes audio recordings or video recordings shall comply
6 with the guidelines established under 18 Pa.C.S. § 5706(b)(4),
7 (5) and (6) (relating to exceptions to prohibitions in
8 possession, sale, distribution, manufacture or advertisement of
9 electronic, mechanical or other devices) and shall establish
10 written policies for the following:

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

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

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

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

24 (5) Electronic records retention.

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

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

28 (8) Supervisory responsibilities.

29 ~~(b) Review and approval. The following shall apply: <--~~

30 ~~(1) The policies established under subsection (a) shall~~

1 ~~be submitted for approval to the Pennsylvania Commission on~~
2 ~~Crime and Delinquency in a format designated by the~~
3 ~~commission.~~

4 ~~(2) The commission shall approve and recommend revisions~~
5 ~~to the policies under subsection (a) in accordance with~~
6 ~~research findings and the best evidence based practices in~~
7 ~~the field of criminal justice.~~

8 ~~(3) After the commission approves the policies under~~
9 ~~subsection (a), the law enforcement agency shall make the~~
10 ~~policy available on the municipality's publicly accessible~~
11 ~~Internet website.~~

12 ~~(4) The law enforcement agency shall resubmit the~~
13 ~~written policies to the Pennsylvania Commission on Crime and~~
14 ~~Delinquency when changes to the policies are proposed and~~
15 ~~every three years after the last approval of the policies by~~
16 ~~the Pennsylvania Commission on Crime and Delinquency,~~
17 ~~whichever occurs first.~~

18 ~~(c) Technical assistance. The commission shall provide~~
19 ~~training, funding and technical assistance to law enforcement~~
20 ~~agencies regarding the use of electronic, mechanical or other~~
21 ~~devices to make audio and video recordings. In order to receive~~
22 ~~training, funding and technical assistance from the commission,~~
23 ~~a law enforcement agency must have written policies approved~~
24 ~~under this section by the commission.~~

25 (B) PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY.--THE <--
26 PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY IS AUTHORIZED
27 TO CONDITION FUNDING OR A GRANT RELATED TO THE IMPLEMENTATION,
28 USE, MAINTENANCE OR STORAGE OF BODY WORN CAMERAS OR RECORDINGS
29 FROM BODY WORN CAMERAS ON THE FOLLOWING:

30 (1) REQUIRING THE GRANTEE TO HAVE A PROTOCOL, GUIDELINES

1 OR WRITTEN POLICIES RELATED TO THE IMPLEMENTATION, USE,
2 MAINTENANCE OR STORAGE OF BODY WORN CAMERAS.

3 (2) REQUIRING THAT SUCH A PROTOCOL, GUIDELINES OR
4 WRITTEN POLICIES ARE PUBLICLY ACCESSIBLE, INCLUDING BEING
5 RETRIEVABLE ON A MUNICIPAL WEBSITE.

6 (3) ENSURING THAT THE PROTOCOL, GUIDELINES, OR WRITTEN
7 POLICIES SUBSTANTIALLY COMPLY WITH APPLICABLE RECOMMENDATIONS
8 BY THE COMMISSION.

9 § 67A08. Construction.

10 The following shall apply:

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

15 (2) Nothing in this chapter shall be construed to
16 preclude the Attorney General, a district attorney or a law
17 enforcement agency from disclosing an audio recording or
18 video recording in the absence of a written request or beyond
19 the time periods stated in this chapter, but the Attorney
20 General and OR the district attorney with jurisdiction must <--
21 agree to the disclosure in writing if:

22 (i) the audio recording or video recording contains
23 potential evidence in a criminal matter, information
24 pertaining to an investigation, confidential information
25 or victim information; and

26 (ii) ~~no~~ REASONABLE redaction of the audio recording <--
27 or video recording will NOT safeguard the potential <--
28 evidence, information pertaining to an investigation,
29 confidential information or victim information.

30 § 67A09. Applicability.

1 The provisions of this chapter shall not apply if the
2 provisions conflict with any other Federal or State law.

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