

**SENATE APPROPRIATIONS COMMITTEE
FISCAL NOTE**

BILL NO. Senate Bill 560

PRINTER NO. 614

AMOUNT

\$160,000 FY 2017-18

FUND

General Fund

DATE INTRODUCED

March 27, 2017

PRIME SPONSOR

Senator Greenleaf

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 560 amends Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to expand the scope of permissible audio and video recording by law enforcement officers and correctional facilities, requires certain guidelines and policies to be established pertaining to recording of oral communications, electronic communications and wire communications and allows for public access to those recordings.

This legislation amends Title 18 (Crimes and Offenses) by making changes to the Wiretapping and Electronic Surveillance Control Act ("Wiretap Act") as follows:

- Amends the definition of "oral communication" to eliminate the expectation that communications in the presence of an identifiable law enforcement officer will be private and free from recording. This definitional change eliminates the current prohibition against police intercepting and recording communications inside a residence and the requirement in any location that a law enforcement officer inform all individuals in the vicinity that the officer is recording. Law enforcement officers will not be criminally or civilly liable for making audio recordings inside a residence. Law enforcement officers shall only use communications recording devices approved by the Pennsylvania State Police;
- Eliminates the use of the term "telephone" and uses the broader defined term "oral communication, electronic communication or wire communication." This change will permit county and state prison officials to record certain inmate communications that are currently prohibited. The change does not alter existing law that protects the attorney-client privilege; and
- Requires the Pennsylvania State Police to annually establish and publish standards in the Pennsylvania Bulletin regarding the storage of audio and video recordings made by law enforcement officers. The standards shall comply with the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy. This standard shall apply to any vendor to law enforcement agencies that stores data related to body cameras.

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Additionally, this legislation amends Title 42 (Judiciary and Judicial Procedure) by adding a new Chapter 67A (Recordings by Law Enforcement Officers). This new chapter does the following:

- Establishes as a general rule that audio recordings and video recordings by law enforcement will not be subject to the Right-to-Know Law, but instead establishes a special process for the public to obtain certain audio and video recordings. All requests for law enforcement audio recordings and video recordings shall be submitted as follows:
 - 1) An individual who requests an audio recording or video recording made by a law enforcement agency shall submit a written request to the law enforcement agency that made the recording within 60 days of the date when the recording was made. The law enforcement agency must within 60 days of receipt of the request produce the recording or explain why it will not produce the recording. If the law enforcement agency fails to respond within 60 days, the request will be deemed denied. The law enforcement agency must deny the request if the recording relates to a criminal case or contains information involving a crime victim or confidential informant; and
 - 2) The requester may appeal the denial of a recording to the court of common pleas with jurisdiction. If the law enforcement agency denied the recording based on a criminal case, victim information, or confidential informant information, the court may overrule that denial only if the law enforcement decision was without reasonable grounds or adequate consideration of the circumstances. Otherwise the court will weigh the interests of the public and the requester in obtaining the recording against the interest of law enforcement and any other individual in not producing the recording.
- Finally, the bill requires that municipal law enforcement agencies making audio recordings or video recordings shall comply with the guidelines established previously in this legislation under Title 18 and shall establish written policies to be submitted for approval to the Pennsylvania Commission on Crime and Delinquency (Commission). After the Commission approves the policies, the law enforcement agency shall make the policy available on the municipality's publicly accessible Internet website; and
- The policy must include the training each officer must receive, when the camera is to be recording and when it may be turned off, guidelines for maintaining the cameras, how the recordings will be stored, and a policy governing facial recognition software.

This act shall take effect in 60 days.

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FISCAL IMPACT:

This legislation simply allows for audio recording and video recording by law enforcement officers. It does not mandate the use of such equipment. The costs to annually establish and publish standards in the Pennsylvania Bulletin regarding the storage of audio and video recordings are expected to be de minimis and capable of being absorbed within existing fiscal resources of the Pennsylvania State Police.

According to the Pennsylvania Commission on Crime and Delinquency, the Office of Criminal Justice System Improvements would need to hire two (2) new full-time employees to address the legislation's initial policy development, review, revisions, approvals of policies received, ongoing training, technical assistance and subsequent reviews of resubmitted policies resulting from changes and/or the 3-year resubmission period. The estimated annual cost of salary and benefits for the additional staff is \$160,000.