

## AMENDMENTS TO SENATE BILL NO. 976

Sponsor: SENATOR GREENLEAF

Printer's No. 1372

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.