

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1933 Session of
2001

INTRODUCED BY MAYERNIK, PERZEL, COLAFELLA, GEIST, CALTAGIRONE,
CLARK, CORNELL, CORRIGAN, CREIGHTON, D. EVANS, J. EVANS,
FEESE, FRANKEL, GABIG, GEORGE, HARHAI, HENNESSEY, HERSHEY,
LAUGHLIN, MARKOSEK, S. MILLER, PIPPY, PISTELLA, SAINATO,
SCHULER, B. SMITH, STERN, T. STEVENSON, J. TAYLOR, TRICH,
WALKO, WATERS, WATSON, WOJNAROSKI, M. WRIGHT, YOUNGBLOOD,
CAPPELLI, KAISER, CASORIO, C. WILLIAMS, McILHATTAN, McCALL,
WASHINGTON, PALLONE, COSTA, STEELMAN AND PICKETT,
SEPTEMBER 26, 2001

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, MAY 7, 2002

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 75 (Vehicles) of
2 the Pennsylvania Consolidated Statutes, ~~authorizing police~~ <—
3 ~~officers to record certain oral communications; and further~~
4 PROVIDING FOR THE RETENTION OF CERTAIN RECORDS; REQUIRING THE <—
5 PROMULGATION OF REGULATIONS; AND FURTHER providing for
6 windshield obstructions and wipers.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 ~~Section 1. Sections 5704 and 5706(b) of Title 18 of the~~ <—
10 ~~Pennsylvania Consolidated Statutes are amended by adding~~
11 ~~paragraphs to read:~~

12 ~~§ 5704. Exceptions to prohibition of interception and~~
13 ~~disclosure of communications.~~

14 ~~It shall not be unlawful and no prior court approval shall be~~
15 ~~required under this chapter for:~~

16 * * *

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

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

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

~~(A) is operating the visual or audible warning system of the law enforcement officer's vehicle authorized by 75 Pa.C.S. § 4571 (relating to visual and audible signals on emergency vehicles) or otherwise identifies himself as a law enforcement officer;~~

~~(B) is in close proximity to the individuals' oral communication; and~~

~~(C) notifies, as soon as practicable, the individuals identifiably present at the location that the oral communication is being or has been intercepted and recorded.~~

~~(iii) The commander shall maintain all recordings of oral communications intercepted under this paragraph for~~

SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED
STATUTES IS AMENDED BY ADDING SECTIONS TO READ:
§ 5749. RETENTION OF CERTAIN RECORDS.

(A) RETENTION.--THE COMMANDER SHALL MAINTAIN ALL RECORDINGS OF ORAL COMMUNICATIONS INTERCEPTED UNDER SECTION 5704(16) (RELATING TO EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND

1 DISCLOSURE OF COMMUNICATIONS) FOR a minimum of 31 days after the
2 date of the interception. All recordings made under this <—
3 paragraph SECTION 5704(16) shall be recorded over or otherwise <—
4 destroyed no later than 90 days after the date of the recording
5 unless any of the following apply:

6 ~~(A) The contents of the recording may result in~~ <—

7 (1) THE CONTENTS OF THE RECORDING MAY RESULT IN the <—
8 issuance of a citation or the filing of criminal charges. <—

9 Except as otherwise authorized under this subparagraph <—
10 SUBSECTION, if no criminal charges are filed within the <—
11 applicable statute of limitations, any recording maintained

12 under this elause PARAGRAPH shall be recorded over or <—
13 destroyed no later than 90 days after the expiration of the <—
14 statute of limitations CONCLUSION OF THE PROCEEDINGS RELATED <—

15 TO THE CITATION. All recordings under this elause PARAGRAPH <—
16 shall be maintained in accordance with section 5714(a)

17 (RELATING TO RECORDING OF INTERCEPTED COMMUNICATIONS), except <—
18 that monitors need not be certified under section 5724
19 (RELATING TO TRAINING). <—

20 ~~(B) The commander or a law enforcement officer~~ <—

21 ~~on the recording reasonably believes that the~~

22 (2) THE COMMANDER OR A LAW ENFORCEMENT OFFICER ON THE <—
23 RECORDING BELIEVES THAT THE contents of the recording, or
24 evidence derived from the recording, may be necessary in a
25 proceeding for which disclosure is authorized under section
26 5717 (RELATING TO INVESTIGATIVE DISCLOSURE OR USE OF CONTENTS <—
27 OF WIRE, ELECTRONIC OR ORAL COMMUNICATIONS OR DERIVATIVE
28 EVIDENCE) or 5721.1 (relating to evidentiary disclosure of
29 contents of intercepted communication or derivative evidence)
30 or in a civil proceeding. All recordings under this elause <—

1 PARAGRAPH shall be maintained in accordance with section <—
2 5714(a), except that monitors need not be certified under
3 section 5724.

4 ~~(C) A criminal defendant, who is a participant~~ <—

5 (3) A CRIMINAL DEFENDANT, WHO IS A PARTICIPANT on the <—
6 recording, reasonably believes that the recording may be
7 useful for its evidentiary value at some later time in a
8 specific criminal proceeding and, no later than 30 days
9 following the filing of criminal charges, provides written
10 notice to the commander indicating a desire that the
11 recording be maintained. The written notice must specify the
12 date, time and location of the recording; the names of the
13 parties involved; and, if known, the case docket number.

14 ~~(D) An individual who is a participant on the~~ <—

15 (4) AN INDIVIDUAL WHO IS A PARTICIPANT ON THE recording <—
16 intends to pursue a civil action or has already initiated a
17 civil action and, no later than 30 days after the date of the
18 recording, gives written notice to the commander indicating a
19 desire that the recording be maintained. The written notice
20 must specify the date, time and location of the recording;
21 the names of the parties involved; and, if a civil action has
22 be initiated, the case caption and docket number.

23 ~~(E) The commander intends to use the recording~~ <—
24 ~~for training purposes.~~

25 ~~(iv) In addition to any disclosure authorized under~~
26 ~~sections 5717 and 5721.1, any recording maintained:~~

27 ~~(A) under subparagraph (iii)(D) shall be~~

28 (5) THE COMMANDER INTENDS TO USE THE RECORDING FOR <—
29 TRAINING PURPOSES.

30 (B) DISCLOSURE.--IN ADDITION TO ANY DISCLOSURE AUTHORIZED

1 UNDER SECTIONS 5717 AND 5721.1, ANY RECORDING MAINTAINED:

2 (1) UNDER SUBSECTION (A)(4) SHALL BE disclosed pursuant
3 to an order of court or as required by the Pennsylvania Rules
4 of Civil Procedure or the Pennsylvania Rules of Evidence; and

5 ~~(B) under subparagraph (iii)(E) shall be~~ <—

6 (2) UNDER SUBSECTION (A)(5) SHALL BE disclosed <—
7 consistent with written consent obtained from the law
8 enforcement officer and all participants required to consent <—
9 to such use.

10 ~~(v) The Commissioner of the Pennsylvania State~~ <—

11 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING <—
12 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
13 SUBSECTION:

14 "COMMANDER." THE:

15 (1) COMMISSIONER OR A DESIGNEE, IF THE RECORDING AT
16 ISSUE WAS MADE BY A MEMBER OF THE PENNSYLVANIA STATE POLICE;
17 OR

18 (2) CHIEF OR A DESIGNEE OF THE LAW ENFORCEMENT AGENCY
19 WHICH MADE THE RECORDING AT ISSUE.

20 "LAW ENFORCEMENT OFFICER." A MEMBER OF THE PENNSYLVANIA
21 STATE POLICE OR AN INDIVIDUAL EMPLOYED AS A POLICE OFFICER WHO
22 IS REQUIRED TO BE TRAINED UNDER 53 PA.C.S. CH. 21 SUBCH. D
23 (RELATING TO MUNICIPAL POLICE EDUCATION AND TRAINING).

24 § 5782. REGULATIONS.

25 THE COMMISSIONER OF THE PENNSYLVANIA STATE Police, in
26 consultation with the Attorney General, shall promulgate
27 regulations consistent with this paragraph SECTION 5704(16) <—
28 (RELATING TO EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND
29 DISCLOSURE OF COMMUNICATIONS) AND SECTION 5749 (RELATING TO
30 RETENTION OF CERTAIN RECORDS) setting forth procedures to be

1 ~~followed by law enforcement officers regarding the interception,~~
2 ~~maintenance and destruction of recordings made under this~~ <—
3 ~~paragraph SECTION 5704(16).~~ <—

4 ~~(vi) As used in this paragraph, the following words~~ <—
5 ~~and phrases shall have the meanings given to them in this~~
6 ~~subparagraph:~~

7 ~~"Commander." The:~~

8 ~~(A) commissioner or a designee, if the recording~~
9 ~~at issue was made by a member of the Pennsylvania~~
10 ~~State Police; or~~

11 ~~(B) chief or a designee of the law enforcement~~
12 ~~agency which made the recording at issue.~~

13 ~~"Law enforcement officer." A member of the~~
14 ~~Pennsylvania State Police or an individual employed as a~~
15 ~~police officer who received training under 53 Pa.C.S. Ch.~~
16 ~~21 Subch. D (relating to municipal police education and~~
17 ~~training).~~

18 ~~§ 5706. Exceptions to prohibitions in possession, sale,~~
19 ~~distribution, manufacture or advertisement of~~
20 ~~electronic, mechanical or other devices.~~

21 * * *

22 ~~(b) Responsibility.~~

23 * * *

24 ~~(4) The Pennsylvania State Police shall annually~~
25 ~~establish equipment standards for any electronic, mechanical~~
26 ~~or other device which is to be used by law enforcement~~
27 ~~officers for purposes of interception as authorized under~~
28 ~~section 5704(16). The equipment standards shall be published~~
29 ~~annually in the Pennsylvania Bulletin.~~

30 Section 2. Section 4524 of Title 75 is amended by adding a

1 subsection to read:

2 § 4524. Windshield obstructions and wipers.

3 * * *

4 (f) Exception.--This section does not apply to mobile video
5 recording equipment installed in a vehicle exclusively used for
6 official police purposes.

7 ~~Section 3. This act shall take effect in 60 days.~~ <—

8 SECTION 3. THE AMENDMENT OR ADDITION OF 18 PA.C.S. §§ 5749 <—
9 AND 5782 AND 75 PA.C.S. § 4524(F) SHALL APPLY UPON ENACTMENT OF
10 A STATUTE PROVIDING FOR THE INTERCEPTING AND RECORDING OF ORAL
11 COMMUNICATIONS UNDER 18 PA.C.S. § 5704.

12 SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.