

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 976 Session of 2015

INTRODUCED BY GREENLEAF, BREWSTER, TEPLITZ, BROOKS, COSTA, RAFFERTY, ALLOWAY, TARTAGLIONE, VULAKOVICH, HUGHES AND BROWNE, AUGUST 13, 2015

AS AMENDED ON SECOND CONSIDERATION, OCTOBER 18, 2016

AN ACT

1 Amending ~~Title~~ TITLES 18 (Crimes and Offenses) AND 42 (JUDICIARY <--
2 AND JUDICIAL PROCEDURE) of the Pennsylvania Consolidated
3 Statutes, in wiretapping and electronic surveillance, further
4 providing for definitions and, for exceptions to prohibition <--
5 of 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. Paragraph (3) of the definition of "electronic, <--
13 mechanical or other device" in section 5702 of Title 18 of the
14 Pennsylvania Consolidated Statutes is amended and the section is
15 amended by adding definitions to read:~~

16 ~~§ 5702. Definitions.~~

17 ~~As used in this chapter, the following words and phrases
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:~~

20 * * *

21 "Custodial interrogation." An interview:

1 ~~(1) which occurs when an individual interviewed is in~~
2 ~~custody; and~~

3 ~~(2) in which a question, statement or other conduct is~~
4 ~~reasonably likely to elicit an incriminating response from~~
5 ~~the individual.~~

6 "Custody." A state of affairs in which an individual is:

7 ~~(1) physically deprived of freedom in a significant way~~
8 ~~while being interviewed by a law enforcement officer; or~~

9 ~~(2) placed in a situation in which the individual~~
10 ~~reasonably believes that his freedom of action or movement is~~
11 ~~restricted.~~

12 * * *

13 "Electronic, mechanical or other device." Any device or
14 apparatus, including, but not limited to, an induction coil or a
15 telecommunication identification interception device, that can
16 be used to intercept a wire, electronic or oral communication
17 other than:

18 * * *

19 ~~(3) Equipment or devices used to conduct interceptions~~
20 ~~under section 5704(15) [(relating to exceptions to~~
21 ~~prohibition of interception and disclosure of~~
22 ~~communications)].~~

23 "Electronic recording." An audiovisual or audio recording of
24 a statement.

25 * * *

26 "Interview." A conversation between a law enforcement
27 officer and another individual which takes place in the course
28 of a criminal investigation.

29 * * *

30 "Law enforcement agency." A government entity charged with

1 ~~enforcement of criminal statutes or the investigation of~~
2 ~~suspected criminal activity.~~

3 * * *

4 Section 2. ~~Section 5704 of Title 18 is amended by adding~~
5 ~~paragraphs to read:~~

6 ~~§ 5704. Exceptions to prohibition of interception and~~
7 ~~disclosure of communications.~~

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

10 * * *

11 ~~(19) A law enforcement officer, whether or not certified~~
12 ~~under section 5724, acting in the performance of official~~
13 ~~duties to intercept and record an oral communication between~~
14 ~~an individual and the law enforcement officer in accordance~~
15 ~~with the following:~~

16 ~~(i) At the time of the interception, the oral~~
17 ~~communication occurs inside a room designated or used for~~
18 ~~interrogations or interviews within a police facility.~~

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

21 ~~(A) Is in uniform or otherwise clearly~~
22 ~~identifiable as a law enforcement officer.~~

23 ~~(B) Places the other party on notice of the~~
24 ~~interception and recording, orally or in writing or~~
25 ~~by the posting of a clearly visible notice that the~~
26 ~~individual's words and actions are being recorded.~~

27 ~~(C) Is using an electronic, mechanical or other~~
28 ~~device to intercept and record the oral~~
29 ~~communication.~~

30 ~~(D) Is conducting a custodial interrogation of~~

1 ~~an individual about any reported crime.~~

2 ~~(E) Records a warning of constitutional rights~~
3 ~~to the individual.~~

4 ~~(F) Records the entire interaction occurring in~~
5 ~~the interrogation room between the law enforcement~~
6 ~~officer and the individual interrogated in an~~
7 ~~unedited and unaltered manner.~~

8 ~~(G) Documents the interception and recording of~~
9 ~~the interrogation.~~

10 ~~(iii) An oral and video recording made under this~~
11 ~~paragraph shall not be subject to production under the~~
12 ~~act of February 14, 2008 (P.L.6, No.3), known as the~~
13 ~~Right to Know Law, and must be preserved until all:~~

14 ~~(A) appeals, postconviction and habeas corpus~~
15 ~~proceedings regarding the individual recorded are~~
16 ~~concluded; or~~

17 ~~(B) applicable Federal and State statutes of~~
18 ~~limitations bar prosecution of the individual~~
19 ~~recorded.~~

20 ~~(iv) An electronic recording of a custodial~~
21 ~~interrogation regarding a reported violent crime must be~~
22 ~~conducted pursuant to this paragraph unless:~~

23 ~~(A) an electronic recording of the custodial~~
24 ~~interrogation is not feasible, including, but not~~
25 ~~limited to, cases in which recording equipment~~
26 ~~malfunctions;~~

27 ~~(B) a spontaneous statement is made outside the~~
28 ~~course of custodial interrogation;~~

29 ~~(C) a statement is made in response to~~
30 ~~questioning that is routinely asked during the~~

1 ~~processing of the arrest of the suspect;~~

2 ~~(D) a statement is made by an accused in open~~
3 ~~court during trial, before a grand jury or at a~~
4 ~~preliminary hearing;~~

5 ~~(E) a suspect refuses to have the custodial~~
6 ~~interrogation electronically recorded and the refusal~~
7 ~~itself is electronically recorded;~~

8 ~~(F) a statement is made during a custodial~~
9 ~~interrogation that is conducted in another state by~~
10 ~~law enforcement officers of that state;~~

11 ~~(G) a statement is given that occurs at a time~~
12 ~~when the interrogators have no knowledge that a crime~~
13 ~~for which recording is required has been committed;~~

14 ~~(H) a statement is given in another jurisdiction~~
15 ~~and is conducted by officials of that jurisdiction in~~
16 ~~compliance with the law of that jurisdiction; or~~

17 ~~(I) exigent circumstances exist which prevent~~
18 ~~the making of or render it not feasible to make an~~
19 ~~electronic recording of the custodial interrogation.~~

20 ~~(v) A failure of a law enforcement officer to~~
21 ~~intercept and record an oral communication under~~
22 ~~subparagraph (iv) about a reported violent crime must be~~
23 ~~documented in writing, except that a failure to comply~~
24 ~~with the provisions of subparagraph (iv) or of this~~
25 ~~subparagraph shall not render the statement or~~
26 ~~communication inadmissible.~~

27 ~~(vi) The term "violent crime" when used in this~~
28 ~~paragraph shall mean any of the following crimes:~~

29 ~~(A) Criminal homicide as defined in section 2501~~
30 ~~(relating to criminal homicide).~~

1 ~~(B) Murder as defined in section 2502 (relating~~
2 ~~to murder).~~

3 ~~(C) Voluntary manslaughter as defined in section~~
4 ~~2503 (relating to voluntary manslaughter).~~

5 ~~(D) Involuntary manslaughter as defined in~~
6 ~~section 2504 (relating to involuntary manslaughter).~~

7 ~~(E) Causing or aiding suicide as defined in~~
8 ~~section 2505 (relating to causing or aiding suicide).~~

9 ~~(F) Drug delivery resulting in death as defined~~
10 ~~in section 2506 (relating to drug delivery resulting~~
11 ~~in death).~~

12 ~~(G) Criminal homicide of law enforcement officer~~
13 ~~as defined in section 2507 (relating to criminal~~
14 ~~homicide of law enforcement officer).~~

15 ~~(H) Rape as defined in section 3121 (relating to~~
16 ~~rape).~~

17 ~~(I) Statutory sexual assault as defined in~~
18 ~~section 3122.1 (relating to statutory sexual~~
19 ~~assault).~~

20 ~~(J) Involuntary deviate sexual intercourse as~~
21 ~~defined in section 3123 (relating to involuntary~~
22 ~~deviate sexual intercourse).~~

23 ~~(K) Sexual assault as defined in section 3124.1~~
24 ~~(relating to sexual assault).~~

25 ~~(L) Institutional sexual assault as defined in~~
26 ~~section 3124.2 (relating to institutional sexual~~
27 ~~assault).~~

28 ~~(M) Sexual assault by sports official, volunteer~~
29 ~~or employee of nonprofit association as defined in~~
30 ~~section 3124.3 (relating to sexual assault by sports~~

~~official, volunteer or employee of nonprofit
association).~~

~~(N) Aggravated indecent assault as defined in
section 3125 (relating to aggravated indecent
assault).~~

~~(O) Indecent assault as defined in section 3126
(relating to indecent assault).~~

~~(20) A law enforcement officer, whether or not certified
under section 5724, 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 except under the following
circumstances:~~

~~(A) the law enforcement officer is executing an
arrest or search warrant;~~

~~(B) an individual with either actual authority
or apparent authority has given consent to intercept
and record; or~~

~~(C) exigent circumstances are present.~~

~~(ii) Oral and video recordings by law enforcement
officers made under this section shall not be subject to
production under the Right to Know Law.~~

~~Section 3. The addition of 18 Pa.C.S. § 5704(19) and (20)
shall apply to law enforcement actions which take place on or
after the effective date of this section.~~

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

SECTION 1. THE DEFINITION OF "ORAL COMMUNICATION" IN SECTION <--
5702 OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS

1 AMENDED TO READ:

2 § 5702. DEFINITIONS.

3 AS USED IN THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES
4 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
5 CONTEXT CLEARLY INDICATES OTHERWISE:

6 * * *

7 "ORAL COMMUNICATION." AS FOLLOWS:

8 (1) ANY ORAL COMMUNICATION UTTERED BY A PERSON
9 POSSESSING AN EXPECTATION THAT SUCH COMMUNICATION IS NOT
10 SUBJECT TO INTERCEPTION UNDER CIRCUMSTANCES JUSTIFYING SUCH
11 EXPECTATION. THE TERM DOES NOT INCLUDE ANY ELECTRONIC
12 COMMUNICATION[.] OR A COMMUNICATION MADE IN THE PRESENCE OF A
13 LAW ENFORCEMENT OFFICER ON OFFICIAL DUTY WHO IS IN UNIFORM OR
14 OTHERWISE CLEARLY IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER
15 AND WHO IS USING AN ELECTRONIC, MECHANICAL OR OTHER DEVICE
16 WHICH HAS BEEN APPROVED UNDER SECTION 5706(B)(4) (RELATING TO
17 EXCEPTIONS TO PROHIBITIONS IN POSSESSION, SALE, DISTRIBUTION,
18 MANUFACTURE OR ADVERTISEMENT OF ELECTRONIC, MECHANICAL OR
19 OTHER DEVICES) TO INTERCEPT THE ORAL COMMUNICATION IN THE
20 COURSE OF LAW ENFORCEMENT DUTIES.

21 (2) FOR PURPOSES OF THIS DEFINITION, A LAW ENFORCEMENT
22 OFFICER MEANS A MEMBER OF THE PENNSYLVANIA STATE POLICE OR AN
23 INDIVIDUAL EMPLOYED AS A POLICE OFFICER WHO HOLDS A CURRENT
24 CERTIFICATE UNDER 53 PA.C.S. CH. 21 SUBCH. D (RELATING TO
25 MUNICIPAL POLICE EDUCATION AND TRAINING).

26 * * *

27 SECTION 2. SECTIONS 5704(13), (14) AND (16) AND 5706(B)(4)
28 OF TITLE 18 ARE AMENDED TO READ:

29 § 5704. EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND
30 DISCLOSURE OF COMMUNICATIONS.

1 IT SHALL NOT BE UNLAWFUL AND NO PRIOR COURT APPROVAL SHALL BE
2 REQUIRED UNDER THIS CHAPTER FOR:

3 * * *

4 (13) AN INVESTIGATIVE OFFICER, A LAW ENFORCEMENT OFFICER
5 OR EMPLOYEES OF THE DEPARTMENT OF CORRECTIONS FOR STATE
6 CORRECTIONAL FACILITIES TO INTERCEPT, RECORD, MONITOR OR
7 DIVULGE ANY [TELEPHONE CALLS] ORAL, ELECTRONIC OR WIRE
8 COMMUNICATION FROM OR TO AN INMATE IN A FACILITY UNDER THE
9 FOLLOWING CONDITIONS:

10 (I) THE DEPARTMENT OF CORRECTIONS SHALL ADHERE TO
11 THE FOLLOWING PROCEDURES AND RESTRICTIONS WHEN
12 INTERCEPTING, RECORDING, MONITORING OR DIVULGING ANY
13 [TELEPHONE CALLS] ORAL, ELECTRONIC OR WIRE COMMUNICATION
14 FROM OR TO AN INMATE IN A STATE CORRECTIONAL FACILITY AS
15 PROVIDED FOR BY THIS PARAGRAPH:

16 (A) BEFORE THE IMPLEMENTATION OF THIS PARAGRAPH,
17 ALL INMATES OF THE FACILITY SHALL BE NOTIFIED IN
18 WRITING THAT, AS OF THE EFFECTIVE DATE OF THIS
19 PARAGRAPH, THEIR [TELEPHONE CONVERSATIONS] ORAL,
20 ELECTRONIC OR WIRE COMMUNICATIONS MAY BE INTERCEPTED,
21 RECORDED, MONITORED OR DIVULGED.

22 (B) UNLESS OTHERWISE PROVIDED FOR IN THIS
23 PARAGRAPH, AFTER INTERCEPTING OR RECORDING [A
24 TELEPHONE CONVERSATION] ANY ORAL, ELECTRONIC OR WIRE
25 COMMUNICATION, ONLY THE SUPERINTENDENT, WARDEN OR A
26 DESIGNEE OF THE SUPERINTENDENT OR WARDEN OR OTHER
27 CHIEF ADMINISTRATIVE OFFICIAL OR HIS OR HER DESIGNEE,
28 OR LAW ENFORCEMENT OFFICERS SHALL HAVE ACCESS TO THAT
29 RECORDING.

30 (C) THE CONTENTS OF AN INTERCEPTED AND RECORDED

1 [TELEPHONE CONVERSATION] ORAL, ELECTRONIC OR WIRE
2 COMMUNICATION SHALL BE DIVULGED ONLY AS IS NECESSARY
3 TO SAFEGUARD THE ORDERLY OPERATION OF THE FACILITY,
4 IN RESPONSE TO A COURT ORDER OR IN THE PROSECUTION OR
5 INVESTIGATION OF ANY CRIME.

6 (II) SO AS TO SAFEGUARD THE ATTORNEY-CLIENT
7 PRIVILEGE, THE DEPARTMENT OF CORRECTIONS SHALL NOT
8 INTERCEPT, RECORD, MONITOR OR DIVULGE ANY [CONVERSATION]
9 ORAL, ELECTRONIC OR WIRE COMMUNICATION BETWEEN AN INMATE
10 AND AN ATTORNEY.

11 (III) [PERSONS WHO ARE CALLING IN TO A FACILITY TO
12 SPEAK TO AN INMATE SHALL BE NOTIFIED THAT THE CALL MAY BE
13 RECORDED OR MONITORED.] PERSONS WHO ARE ENGAGING IN AN
14 ORAL, ELECTRONIC OR WIRE COMMUNICATION WITH AN INMATE
15 SHALL BE NOTIFIED THAT THE COMMUNICATION MAY BE RECORDED
16 OR MONITORED. NOTICE MAY BE PROVIDED BY ANY MEANS
17 REASONABLY DESIGNED TO INFORM THE NON-INMATE PARTY TO THE
18 COMMUNICATION OF THE RECORDING OR MONITORING.

19 (IV) THE DEPARTMENT OF CORRECTIONS SHALL PROMULGATE
20 GUIDELINES TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH
21 FOR STATE CORRECTIONAL FACILITIES.

22 (14) AN INVESTIGATIVE OFFICER, A LAW ENFORCEMENT OFFICER
23 OR EMPLOYEES OF A COUNTY CORRECTIONAL FACILITY TO INTERCEPT,
24 RECORD, MONITOR OR DIVULGE ANY [TELEPHONE CALLS] ORAL,
25 ELECTRONIC OR WIRE COMMUNICATION FROM OR TO AN INMATE IN A
26 FACILITY UNDER THE FOLLOWING CONDITIONS:

27 (I) THE COUNTY CORRECTIONAL FACILITY SHALL ADHERE TO
28 THE FOLLOWING PROCEDURES AND RESTRICTIONS WHEN
29 INTERCEPTING, RECORDING, MONITORING OR DIVULGING ANY
30 [TELEPHONE CALLS] ORAL, ELECTRONIC OR WIRE COMMUNICATION

1 FROM OR TO AN INMATE IN A COUNTY CORRECTIONAL FACILITY AS
2 PROVIDED FOR BY THIS PARAGRAPH:

3 (A) BEFORE THE IMPLEMENTATION OF THIS PARAGRAPH,
4 ALL INMATES OF THE FACILITY SHALL BE NOTIFIED IN
5 WRITING THAT, AS OF THE EFFECTIVE DATE OF THIS
6 PARAGRAPH, THEIR [TELEPHONE CONVERSATIONS] ORAL,
7 ELECTRONIC OR WIRE COMMUNICATIONS MAY BE INTERCEPTED,
8 RECORDED, MONITORED OR DIVULGED.

9 (B) UNLESS OTHERWISE PROVIDED FOR IN THIS
10 PARAGRAPH, AFTER INTERCEPTING OR RECORDING [A
11 TELEPHONE CONVERSATION] ANY ORAL, ELECTRONIC OR WIRE
12 COMMUNICATION, ONLY THE SUPERINTENDENT, WARDEN OR A
13 DESIGNEE OF THE SUPERINTENDENT OR WARDEN OR OTHER
14 CHIEF ADMINISTRATIVE OFFICIAL OR HIS OR HER DESIGNEE,
15 OR LAW ENFORCEMENT OFFICERS SHALL HAVE ACCESS TO THAT
16 RECORDING.

17 (C) THE CONTENTS OF AN INTERCEPTED AND RECORDED
18 [TELEPHONE CONVERSATION] ORAL, ELECTRONIC OR WIRE
19 COMMUNICATION SHALL BE DIVULGED ONLY AS IS NECESSARY
20 TO SAFEGUARD THE ORDERLY OPERATION OF THE FACILITY,
21 IN RESPONSE TO A COURT ORDER OR IN THE PROSECUTION OR
22 INVESTIGATION OF ANY CRIME.

23 (II) SO AS TO SAFEGUARD THE ATTORNEY-CLIENT
24 PRIVILEGE, THE COUNTY CORRECTIONAL FACILITY SHALL NOT
25 INTERCEPT, RECORD, MONITOR OR DIVULGE ANY [CONVERSATION]
26 ORAL, ELECTRONIC OR WIRE COMMUNICATION BETWEEN AN INMATE
27 AND AN ATTORNEY.

28 (III) [PERSONS WHO ARE CALLING INTO A FACILITY TO
29 SPEAK TO AN INMATE SHALL BE NOTIFIED THAT THE CALL MAY BE
30 RECORDED OR MONITORED.] PERSONS WHO ARE ENGAGING IN AN

1 ORAL OR WIRE COMMUNICATION WITH AN INMATE SHALL BE
2 NOTIFIED THAT THE COMMUNICATION MAY BE RECORDED OR
3 MONITORED. NOTICE MAY BE PROVIDED BY ANY MEANS REASONABLY
4 DESIGNED TO INFORM THE NON-INMATE PARTY TO THE
5 COMMUNICATION OF THE RECORDING OR MONITORING.

6 (IV) THE SUPERINTENDENT, WARDEN OR A DESIGNEE OF THE
7 SUPERINTENDENT OR WARDEN OR OTHER CHIEF ADMINISTRATIVE
8 OFFICIAL OF THE COUNTY CORRECTIONAL SYSTEM SHALL
9 PROMULGATE GUIDELINES TO IMPLEMENT THE PROVISIONS OF THIS
10 PARAGRAPH FOR COUNTY CORRECTIONAL FACILITIES.

11 * * *

12 [(16) A LAW ENFORCEMENT OFFICER, WHETHER OR NOT
13 CERTIFIED UNDER SECTION 5724 (RELATING TO TRAINING), ACTING
14 IN THE PERFORMANCE OF HIS OFFICIAL DUTIES TO INTERCEPT AND
15 RECORD AN ORAL COMMUNICATION BETWEEN INDIVIDUALS IN
16 ACCORDANCE WITH THE FOLLOWING:

17 (I) AT THE TIME OF THE INTERCEPTION, THE ORAL
18 COMMUNICATION DOES NOT OCCUR INSIDE THE RESIDENCE OF ANY
19 OF THE INDIVIDUALS.

20 (II) AT THE TIME OF THE INTERCEPTION, THE LAW
21 ENFORCEMENT OFFICER:

22 (A) IS IN UNIFORM OR OTHERWISE CLEARLY
23 IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER;

24 (B) IS IN CLOSE PROXIMITY TO THE INDIVIDUALS'
25 ORAL COMMUNICATION;

26 (C) IS USING AN ELECTRONIC, MECHANICAL OR OTHER
27 DEVICE WHICH HAS BEEN APPROVED UNDER SECTION 5706 (B)

28 (4) (RELATING TO EXCEPTIONS TO PROHIBITIONS IN
29 POSSESSION, SALE, DISTRIBUTION, MANUFACTURE OR
30 ADVERTISEMENT OF ELECTRONIC, MECHANICAL OR OTHER

1 DEVICES) TO INTERCEPT THE ORAL COMMUNICATION; AND

2 (D) INFORMS, AS SOON AS REASONABLY PRACTICABLE,
3 THE INDIVIDUALS IDENTIFIABLY PRESENT THAT HE HAS
4 INTERCEPTED AND RECORDED THE ORAL COMMUNICATION.

5 (III) AS USED IN THIS PARAGRAPH, THE TERM "LAW
6 ENFORCEMENT OFFICER" MEANS A MEMBER OF THE PENNSYLVANIA
7 STATE POLICE OR AN INDIVIDUAL EMPLOYED AS A POLICE
8 OFFICER WHO HOLDS A CURRENT CERTIFICATE UNDER 53 PA.C.S.
9 CH. 21 SUBCH. D (RELATING TO MUNICIPAL POLICE EDUCATION
10 AND TRAINING).]

11 * * *

12 § 5706. EXCEPTIONS TO PROHIBITIONS IN POSSESSION, SALE,
13 DISTRIBUTION, MANUFACTURE OR ADVERTISEMENT OF
14 ELECTRONIC, MECHANICAL OR OTHER DEVICES.

15 * * *

16 (B) RESPONSIBILITY.--

17 * * *

18 (4) THE PENNSYLVANIA STATE POLICE SHALL ANNUALLY
19 ESTABLISH EQUIPMENT STANDARDS FOR ANY ELECTRONIC, MECHANICAL
20 OR OTHER DEVICE WHICH IS TO BE USED BY LAW ENFORCEMENT
21 OFFICERS [FOR PURPOSES OF INTERCEPTION AS AUTHORIZED UNDER
22 SECTION 5704(16).] TO RECORD COMMUNICATIONS MADE IN THE
23 PRESENCE OF A LAW ENFORCEMENT OFFICER THAT ARE EXCEPTED FROM
24 THE DEFINITION OF "ORAL COMMUNICATION" IN SECTION 5702
25 (RELATING TO DEFINITIONS). THE EQUIPMENT STANDARDS SHALL BE
26 PUBLISHED ANNUALLY IN THE PENNSYLVANIA BULLETIN.

27 SECTION 3. TITLE 42 IS AMENDED BY ADDING A CHAPTER TO READ:

28 CHAPTER 67

29 RECORDINGS BY LAW ENFORCEMENT OFFICERS

30 SEC.

1 6701. DEFINITIONS.

2 6702. PRODUCTION OF AN AUDIO OR VIDEO RECORDING.

3 6703. PROCEDURE FOR REQUESTING PRODUCTION OF A LAW ENFORCEMENT
4 AUDIO OR VIDEO RECORDING.

5 § 6701. 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 "AUDIO OR VIDEO RECORDING PERTAINING TO AN INVESTIGATION."
10 AN AUDIO OR VIDEO RECORDING PERTAINS TO AN INVESTIGATION IF IT
11 INCLUDES:

12 (1) COMPLAINTS OF POTENTIAL CRIMINAL CONDUCT.

13 (2) THE IDENTITY OF A CONFIDENTIAL SOURCE OR THE
14 IDENTITY OF A SUSPECT WHO HAS NOT BEEN CHARGED WITH AN
15 OFFENSE TO WHOM CONFIDENTIALITY HAS BEEN PROMISED.

16 (3) INFORMATION MADE CONFIDENTIAL BY LAW OR COURT ORDER.

17 (4) VICTIM INFORMATION, INCLUDING ANY INFORMATION THAT
18 WOULD JEOPARDIZE THE SAFETY OF THE VICTIM.

19 (5) INFORMATION THAT WOULD, IF DISCLOSED, DO ANY OF THE
20 FOLLOWING:

21 (I) REVEAL THE INSTITUTION, PROGRESS OR RESULT OF A
22 CRIMINAL INVESTIGATION, EXCEPT FOR THE FILING OF CRIMINAL
23 CHARGES.

24 (II) DEPRIVE AN INDIVIDUAL OF THE RIGHT TO A FAIR
25 TRIAL OR AN IMPARTIAL ADJUDICATION.

26 (III) IMPAIR THE ABILITY OF A LAW ENFORCEMENT
27 OFFICER, A DISTRICT ATTORNEY OR THE ATTORNEY GENERAL TO
28 LOCATE A DEFENDANT OR CODEFENDANT.

29 (IV) HINDER A LAW ENFORCEMENT OFFICER'S, A DISTRICT
30 ATTORNEY'S OR THE ATTORNEY GENERAL'S ABILITY TO SECURE AN

1 ARREST, PROSECUTION OR CONVICTION.

2 (V) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN
3 INDIVIDUAL.

4 "LAW ENFORCEMENT OFFICER." A MEMBER OF THE PENNSYLVANIA
5 STATE POLICE OR AN INDIVIDUAL EMPLOYED AS A POLICE OFFICER WHO
6 HOLDS A CURRENT CERTIFICATE UNDER 53 PA.C.S. CH. 21 SUBCH. D
7 (RELATING TO MUNICIPAL POLICE EDUCATION AND TRAINING).

8 § 6702. PRODUCTION OF AN AUDIO OR VIDEO RECORDING.

9 AN AUDIO OR VIDEO RECORDING BY A LAW ENFORCEMENT OFFICER
10 SHALL NOT BE SUBJECT TO PRODUCTION UNDER THE ACT OF FEBRUARY 14,
11 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW.

12 § 6703. PROCEDURE FOR REQUESTING PRODUCTION OF A LAW
13 ENFORCEMENT AUDIO OR VIDEO RECORDING.

14 (A) WRITTEN REQUEST.--A PARTY SEEKING PRODUCTION OF AN AUDIO
15 OR VIDEO RECORDING MADE BY A LAW ENFORCEMENT OFFICER SHALL,
16 WITHIN 14 DAYS OF THE DATE ON WHICH THE AUDIO OR VIDEO RECORDING
17 WAS MADE, SERVE A WRITTEN REQUEST ON THE PERSON WHO IS
18 DESIGNATED AS THE RIGHT-TO-KNOW OFFICER UNDER THE ACT OF
19 FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW LAW,
20 FOR THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE LAW ENFORCEMENT
21 OFFICER THAT MADE THE AUDIO OR VIDEO RECORDING. THE FOLLOWING
22 SHALL APPLY:

23 (1) THE WRITTEN REQUEST MUST IDENTIFY WITH PARTICULARITY
24 AN INCIDENT OR EVENT THAT IS THE SUBJECT OF THE AUDIO OR
25 VIDEO RECORDING, INCLUDING THE DATE, TIME AND LOCATION OF THE
26 INCIDENT OR EVENT.

27 (2) THE WRITTEN REQUEST MUST IDENTIFY EACH INDIVIDUAL
28 WHO WAS PRESENT AT THE TIME OF THE AUDIO OR VIDEO RECORDING
29 OR, IF THE IDENTITY OF AN INDIVIDUAL IS UNKNOWN, DESCRIBE THE
30 INDIVIDUAL.

1 (3) IF THE AUDIO OR VIDEO RECORDING HAS BEEN IDENTIFIED
2 BY THE LAW ENFORCEMENT AGENCY AS POTENTIAL EVIDENCE IN A
3 CRIMINAL MATTER, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE
4 APPROPRIATE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, WHO
5 SHALL BE PERMITTED TO CERTIFY THAT THE AUDIO OR VIDEO
6 RECORDING PERTAINS TO AN INVESTIGATION.

7 (4) IT SHALL BE GROUNDS FOR DENIAL OF THE WRITTEN
8 REQUEST IF THE DISTRICT ATTORNEY OR ATTORNEY GENERAL
9 CERTIFIES THAT THE AUDIO OR VIDEO RECORDING PERTAINS TO AN
10 INVESTIGATION.

11 (5) A LAW ENFORCEMENT AGENCY MAY ESTABLISH REASONABLE
12 FEES RELATING TO THE COSTS INCURRED TO DISCLOSE AUDIO OR
13 VIDEO RECORDINGS. THE FEES SHALL BE PAID BY THE REQUESTING
14 PARTY AT THE TIME OF DISCLOSURE OF THE AUDIO OR VIDEO
15 RECORDING.

16 (B) PETITION.--A PARTY SEEKING PRODUCTION OF AN AUDIO OR
17 VIDEO RECORDING MADE BY A LAW ENFORCEMENT OFFICER MAY, WITHIN 14
18 DAYS OF THE DATE ON WHICH THE WRITTEN REQUEST WAS DENIED OR
19 DEEMED TO BE DENIED BY THE LAW ENFORCEMENT AGENCY, FILE A
20 PETITION IN THE COURT OF COMMON PLEAS HAVING JURISDICTION OF THE
21 MATTER. THE FOLLOWING SHALL APPLY:

22 (1) THE PETITIONER SHALL PAY A FILING FEE OF \$250.

23 (2) THE PETITIONER SHALL CERTIFY THAT NOTICE OF THE
24 PETITION HAS BEEN SERVED OR THAT SERVICE WAS ATTEMPTED ON
25 EACH INDIVIDUAL WHO WAS PRESENT AT THE TIME OF THE AUDIO OR
26 VIDEO RECORDING AND, IF THE REQUESTED AUDIO OR VIDEO
27 RECORDING WAS MADE INSIDE A STRUCTURE, THE OWNER AND OCCUPANT
28 OF THE STRUCTURE.

29 (3) THE PETITION SHALL INCLUDE A COPY OF THE WRITTEN
30 REQUEST THAT WAS SERVED ON THE LAW ENFORCEMENT AGENCY AND ANY

1 WRITTEN RESPONSE BY THE LAW ENFORCEMENT AGENCY TO THE
2 REQUEST.

3 (C) SUMMARY DISMISSAL.--IT SHALL BE GROUNDS FOR SUMMARY
4 DISMISSAL OF THE PETITION UNDER SUBSECTION (B) IF ANY OF THE
5 FOLLOWING APPLY:

6 (1) THE WRITTEN REQUEST TO THE LAW ENFORCEMENT AGENCY OR
7 THE FILING OF THE PETITION WAS UNTIMELY.

8 (2) THE WRITTEN REQUEST TO THE LAW ENFORCEMENT AGENCY
9 FAILED TO DESCRIBE WITH SUFFICIENT PARTICULARITY THE INCIDENT
10 OR EVENT THAT IS THE SUBJECT OF THE AUDIO OR VIDEO RECORDING,
11 INCLUDING THE DATE, TIME AND LOCATION OF THE INCIDENT OR
12 EVENT.

13 (3) THE DISTRICT ATTORNEY OR ATTORNEY GENERAL CERTIFIED
14 IN RESPONSE TO THE WRITTEN REQUEST THAT THE AUDIO OR VIDEO
15 RECORDING PERTAINS TO AN INVESTIGATION.

16 (D) ORDER.--

17 (1) THE COURT MAY GRANT THE PETITION UNDER SUBSECTION
18 (B), IN WHOLE OR IN PART, AND ORDER DISCLOSURE OF THE AUDIO
19 OR VIDEO RECORDING IF THE COURT DETERMINES THAT THE
20 PETITIONER HAS ESTABLISHED ALL OF THE FOLLOWING BY A
21 PREPONDERANCE OF THE EVIDENCE:

22 (I) NEITHER THE DISTRICT ATTORNEY NOR THE ATTORNEY
23 GENERAL HAS CERTIFIED THAT THE AUDIO OR VIDEO RECORDING
24 PERTAINS TO AN INVESTIGATION.

25 (II) DISCLOSURE OF THE AUDIO OR VIDEO RECORDING
26 WOULD BE PERMISSIBLE UNDER THE RIGHT-TO-KNOW LAW.

27 (III) THE PUBLIC INTEREST IN DISCLOSURE OUTWEIGHS
28 THE INTERESTS OF THE LAW ENFORCEMENT AGENCY, THE
29 COMMONWEALTH OR ANY INDIVIDUAL'S INTEREST IN
30 NONDISCLOSURE.

1 (2) WHEN MAKING A DETERMINATION UNDER PARAGRAPH (1)
2 (III), THE COURT MAY CONSIDER THE PUBLIC'S INTEREST IN
3 UNDERSTANDING HOW LAW ENFORCEMENT OFFICERS INTERACT WITH THE
4 PUBLIC, THE INTERESTS OF CRIME VICTIMS AND OTHERS IN SAFETY
5 AND PRIVACY AND THE RESOURCES AVAILABLE TO REVIEW AND
6 DISCLOSE AUDIO OR VIDEO RECORDINGS.
7 SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.