

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1278 Session of 2023

INTRODUCED BY PIELLI, BRIGGS, MADDEN, DELLOSO, SANCHEZ, SCOTT AND GREEN, MAY 30, 2023

SENATOR BAKER, JUDICIARY, IN SENATE, AS AMENDED, NOVEMBER 14, 2023

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in wiretapping and electronic
3 surveillance, further providing for definitions and for
4 exceptions to prohibition of interception and disclosure of
5 communications, providing for public access and for
6 Department of Corrections retention policy and further
7 providing for expiration of chapter.

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

10 Section 1. The definition of "oral communication" in section
11 5702 of Title 18 of the Pennsylvania Consolidated Statutes is
12 amended by adding paragraphs and the section is amended by <--
13 adding definitions to read:

14 § 5702. Definitions.

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

18 "Agent." As defined in 61 Pa.C.S. § 6101 (relating to <--
19 definitions).

1 * * *

2 "Department." The Department of Corrections of the <--
3 Commonwealth.

4 "Oral communication." Any oral communication uttered by a
5 person possessing an expectation that such communication is not
6 subject to interception under circumstances justifying such
7 expectation. The term does not include the following:

8 * * *

9 (3) A communication made in the ~~physical~~ presence of an <--
10 agent from or to an individual subject to State supervision <--
11 or parole, AS DEFINED IN 61 PA.C.S. § 6101 (RELATING TO <--
12 DEFINITIONS), who meets all of the following:

13 (i) Is clearly identifiable and on official duty.

14 (ii) Is using an electronic, mechanical or other
15 device that has been approved under section 5706(b)(4) to
16 intercept a wire, electronic or oral communication in the
17 course of official duties.

18 (iii) Has received training on the device.

19 (iv) Has provided prior written notice to a person
20 under the lawful supervision of State parole that an
21 agent, AS DEFINED IN 61 PA.C.S. § 6101, may intercept <--
22 communications with the person.

23 (4) A communication made in the presence of an
24 individual employed in the ~~department~~ DEPARTMENT OF <--
25 CORRECTIONS, Bureau of Investigations and Intelligence
26 holding a police officer commission under the act of May 21,
27 1943 (P.L.469, No.210), entitled "An act providing for
28 commissioning as police officers certain employes of
29 institutions maintained in whole or in part by the
30 Commonwealth; conferring upon them the powers of constables

1 in certain cases; and imposing duties on wardens and keepers
2 of jails, police stations and lock-ups," who meets all of the
3 following:

4 (i) Is clearly identifiable and on official duty.

5 (ii) Is using an electronic, mechanical or other
6 device that has been approved under section 5706(b)(4) to
7 intercept a wire, electronic or oral communication in the
8 course of official duties.

9 (iii) Has received training on the device.

10 (iv) Is not intercepting a communication from inside
11 the residence of an employee of the department DEPARTMENT <--
12 OF CORRECTIONS without the consent of the employee or
13 prior court approval.

14 * * *

15 "Secretary." The Secretary of Corrections of the <--
16 Commonwealth.

17 Section 2. Section 5704 of Title 18 is amended by adding
18 ~~paragraphs~~ A PARAGRAPH to read: <--

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

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

23 * * *

24 ~~(19) An agent to intercept, record, monitor or divulge <--~~
25 ~~any oral communication if the following conditions are met:~~

26 ~~(i) The department shall adhere to the following~~
27 ~~procedures and restrictions when intercepting, recording,~~
28 ~~monitoring or divulging any oral communication:~~

29 ~~(A) The individual subject to State supervision~~
30 ~~or parole shall be notified in writing that as of the~~

1 ~~effective date of this paragraph the person's oral~~
2 ~~communications may be intercepted, recorded,~~
3 ~~monitored or divulged.~~

4 ~~(B) Unless otherwise provided in this paragraph,~~
5 ~~after intercepting or recording an oral~~
6 ~~communication, only the secretary, an agent, other~~
7 ~~administrative officials of the department designated~~
8 ~~by the secretary and employees of the Pennsylvania~~
9 ~~Parole Board shall have access to the recording or~~
10 ~~interception.~~

11 ~~(C) The contents of an intercepted and recorded~~
12 ~~oral communication shall be divulged only as~~
13 ~~necessary to safeguard the orderly operation of State~~
14 ~~supervision, parole hearing purposes, in response to~~
15 ~~a court order or in the prosecution or investigation~~
16 ~~of a crime.~~

17 ~~(ii) This paragraph shall apply to the following:~~

18 ~~(A) Oral communication made from or to an~~
19 ~~individual subject to State supervision or parole or~~
20 ~~a third party while in the vicinity of an agent~~
21 ~~interacting with an individual on State supervision~~
22 ~~or parole.~~

23 ~~(B) Oral communication made by an agent,~~
24 ~~investigative or law enforcement officer present~~
25 ~~during the agent's interaction with a person subject~~
26 ~~to State supervision or parole.~~

27 ~~(iii) No interception or recording of an oral~~
28 ~~communication made under this paragraph shall be shared~~
29 ~~with an investigative or law enforcement officer unless~~
30 ~~pursuant to a lawful warrant.~~

1 ~~(iv) The department shall develop guidelines to~~
2 ~~implement this paragraph for State supervision.~~

3 ~~(20) (19) A person to intercept the wire communications~~ <--
4 ~~of a telemarketer, telemarketing business or an individual or~~
5 ~~entity that initiates robocalls, as those terms are defined~~
6 ~~in section 2 of the act of December 4, 1996 (P.L.911,~~
7 ~~No.147), known as the Telemarketer Registration Act, provided~~
8 ~~that the person who received the telephone call has consented~~
9 ~~to the interception, for purposes of enforcing any of the~~
10 ~~following:~~

11 ~~(i) 47 U.S.C. § 227 (relating to restrictions on use~~
12 ~~of telephone equipment).~~

13 ~~(ii) The act of December 17, 1968 (P.L.1224,~~
14 ~~No.387), known as the Unfair Trade Practices and Consumer~~
15 ~~Protection Law.~~

16 ~~(iii) The Telemarketer Registration Act.~~

17 Section 3. Subchapter B of Chapter 57 of Title 18 is amended
18 by adding a section to read:

19 § 5729. Public access.

20 A request for access to audio and video recordings made by an
21 agent, AS DEFINED IN 61 PA.C.S. § 6101 (RELATING TO <--
22 DEFINITIONS), under this chapter shall not be subject to the act
23 of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know
24 Law, and shall follow the access procedures provided for under
25 42 Pa.C.S. Ch. 67A (relating to recordings by law enforcement
26 officers).

27 Section 4. Subchapter C of Chapter 57 of Title 18 is amended
28 by adding a section to read:

29 § 5750. Department of Corrections retention policy.

30 The ~~secretary~~ SECRETARY OF CORRECTIONS shall develop a record <--

1 retention policy for all communications lawfully intercepted by
2 department employees OF THE DEPARTMENT OF CORRECTIONS. By <--
3 January 1, 2024, the secretary SECRETARY OF CORRECTIONS shall <--
4 issue a notice of the record retention policy developed under
5 this section. The notice shall be published on the department's <--
6 DEPARTMENT OF CORRECTIONS' publicly accessible Internet website <--
7 and transmitted to the Legislative Reference Bureau for
8 publication in the next available issue of the Pennsylvania
9 Bulletin.

10 Section 5. Section 5781 of Title 18 is amended to read:

11 § 5781. Expiration of chapter.

12 This chapter expires December 31, [2023] 2029, unless
13 extended by statute.

14 ~~Section 6. Nothing in this act shall be construed to waive~~ <--
15 ~~or otherwise reduce the rights guaranteed under the Constitution~~
16 ~~of the United States or the Constitution of Pennsylvania of a~~
17 ~~nonconsenting third party who is present in the approved home of~~
18 ~~an individual who is under supervision of an agent and whose~~
19 ~~communications are lawfully intercepted by an agency of the~~
20 ~~Department of Corrections under paragraph (3) of the definition~~
21 ~~of "oral communication" in 18 Pa.C.S. § 5702.~~

22 Section 7 6. This act shall take effect as follows: <--

23 (1) The following shall take effect in 60 days:

24 (i) The amendment of the definition of "oral
25 communication" in 18 Pa.C.S. § 5702.

26 (ii) The addition of 18 Pa.C.S. § 5704(20) 5704(19). <--

27 (2) The remainder of this act shall take effect
28 immediately.