

MEMORANDUM

DATE: January 27, 2012
TO: All House Members
FROM: Rep. Dan Deasy
SUBJECT: Proposed Legislation – **Amend Crime Code to Specifically Authorize Audio Surveillance on School Vehicles**

I intend to introduce legislation that would amend Title 18 (Crimes and Offenses) to specifically authorize the interception of oral communications on school vehicles for disciplinary or security purposes, provided they meet certain conditions. In addition, my bill would require school districts to:

1. Adopt policies that authorize the audio recording for disciplinary purposes
2. Notify students and their parents/guardians of the policies in advance
3. Display signs on buses clearly stating that video & audio are being recorded

Video and, more recently, audio surveillance is used on school vehicles as a direct result of legitimate safety concerns of school districts and transportation companies. They want to ensure that students are transported safely.

We are in an age of wireless communications where individual privacy rights seem to be continuously defined and redefined. Courts have consistently ruled that without a specific exception the interception of any oral communications violate Section 5703 of the Pennsylvania Criminal Code. For that reason I am offering this legislation.

I believe that the legislation would strike a proper balance between the need for security on school vehicles and the right of passengers to privacy.

If you would like to co-sponsor this important legislation, please email Louise in my Harrisburg office at lkoppenh@pahouse.net

NOTE: PLEASE SEE ATTACHED NEWS ARTICLE FROM THE PITTSBURGH TRIBUNE-REVIEW

PITTSBURGH TRIBUNE-REVIEW

North Hills officials, others sound off on recording students

By Tory N. Parrish
PITTSBURGH TRIBUNE-REVIEW
Thursday, January 26, 2012

North Hills School District is recording sound on its school buses, a practice it started this school year and one most districts in Pennsylvania don't pursue for fear of violating the state's Wiretapping and Electronic Surveillance Control Act.

But North Hills officials say, based on a written opinion by Allegheny County District Attorney Stephen Zappala Jr., that the district is operating legally in making the recordings.

"In my opinion, there is a section of the law that exempts us," said David Hall, North Hills' director of finance and operations.

North Hills cites an April 2006 opinion from Zappala, which he forwarded to the district last month, regarding an incident involving a contractor for the McKeesport and West Mifflin area school districts. State police had investigated the contractor because the company had been recording audio on school buses.

Zappala said that his office would not consider such recordings to be a criminal matter as long as districts take three steps: adopt policies that authorize them for disciplinary purposes; notify students and their parents of the policies in advance; and place signs on the buses clearly stating that video and audio are being recorded.

"You can't surreptitiously record a conversation," Zappala said Tuesday. Recording video with sound protects children during criminal investigations, reducing the likelihood that cases will end up in courtrooms, he said.

While Zappala won't prosecute for bus cameras recording sound, the state Legislature should create an exemption to the wiretapping law, which would remove the threat of civil litigation against school districts, he said.

Neither McKeesport nor West Mifflin records sound on school buses now, officials said.

Zappala's three stipulations are being met in the North Hills School District -- the school board approved a policy at its meeting Monday -- Hall said.

North Hills contracts its bus services from First Student Inc., a division of

Cincinnati-based FirstGroup America Inc. that also provides bus services for the Pittsburgh, Penn Hills, Gateway and Shaler Area districts.

North Hills had been rotating 10 cameras among 56 buses, but in its five-year bus contract approved in July, the district asked for cameras to be placed on all buses and all of the new cameras record sound, Hall said.

Most Pennsylvania school districts use cameras on their buses to record only video, said Selina Pittenger, executive director of the Camp Hill-based Pennsylvania School Bus Association, which represents about 400 school bus contractors.

Video recordings have been shown to help curb student behavior, including bullying, school officials said.

"I think (sound) needs to be in place -- absolutely. Would I want it on a school bus that my child was on? Absolutely," said Sheila Lubert, business manager and director of transportation for the Shaler Area School District, which contracts with First Student for 50 to 60 buses daily and has about 25 cameras. Its five-year contract calls for adding more cameras each year.

She said Shaler likely will not follow North Hills' lead in adding audio recordings because the practice now relies solely on legal interpretation.

Seeking an exemption

The wiretap law requires consent of all involved parties for audio to be recorded where there is a reasonable expectation of privacy, said Stuart Knade, chief counsel for the Pennsylvania School Boards Association in Mechanicsburg, Cumberland County.

In 2008, legislation proposed in the House to allow an exception to the wiretapping law for school buses never made it out of the General Assembly.

Another attempt at an exemption, made in June by state Sen. Richard Alloway II, R-Franklin County, has languished in the Judiciary Committee. Alloway said he will reintroduce the bill if it is not approved this year.

"I think it protects the school bus owner, the school bus driver, and I also think it protects the student on the bus," he said.

Knade said a better approach to allowing recording is to clarify what is covered by the wiretap law. Although the association supports Alloway's bill, adding exemptions is cumbersome, he said, noting that there are already 16 exemptions that have been included.

In the meantime, the association is advising school officials to seek clarification from their county district attorneys to see if audio recordings would subject them to prosecution, he said.

"And, unfortunately, that means that from county to county, you may have different answers," Knade said.

The American Civil Liberties Union of Pennsylvania doesn't take issue with audio recordings as long as students and parents are notified in advance and signs are posted on buses, said Sara Rose, lawyer in the group's Pittsburgh office in Oakland.

"And certainly, if you're talking loud enough that the school bus driver can hear you, you have no reasonable expectation of privacy (even) without the signs," Rose said.

"I think the camera is the best form of the truth when it comes to getting the real story," said Chris Giunta, vice president of the Family-Teacher Organization of Gateway's Moss Side Middle School. Her ninth-grade son and fifth-grade daughter ride school buses.

Audio recordings are another level of projection, said Shelley West of Ross, co-vice president of North Hills' Highcliff Elementary School Parent-Teacher Organization. Three of her five children ride a bus to Highcliff.

"I think it just helps keep everyone safe, like an extra set of eyes and ears, making sure everyone is doing what they're supposed to do," she said.

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